



PRESS RELEASE from the
LIBERTY JUSTICE CENTER

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**Fifth Circuit strikes down federal takeover of the horse racing industry hidden in massive COVID relief bill:
Gives racehorse owners and trainers rights back
*Liberty Justice Center victory revives nondelegation doctrine***

LUBBOCK, Texas (November 18, 2022) — Today, the United States Court of Appeals for the Fifth Circuit struck down the Horseracing Integrity and Safety Act (HISA) in response to a lawsuit brought by thoroughbred horse owners and trainers. The Fifth Circuit held that the Act is unconstitutional because it gives governmental power to a private body—the Horseracing Integrity and Safety Authority—which would allow industry insiders to regulate their competitors without any meaningful federal oversight.

The National Horsemen's Benevolent Association and affiliates in Arizona, Arkansas, Indiana, Illinois, Louisiana, Nebraska, Oklahoma, Oregon, Pennsylvania, Washington, West Virginia, and Tampa Bay filed a federal lawsuit challenging HISA in March 2021 and are represented by the **Liberty Justice Center (LJC)**, a national nonprofit law firm dedicated to protecting constitutional rights and enforcing constitutional limits on government power. HISA was a sweetheart deal—which Congress enacted hidden in a massive COVID relief bill—between politicians and their donors in the horseracing industry to give connected people federal power to regulate their own industry.

With this victory, the Liberty Justice Center restored constitutional order and revived a legal doctrine largely dormant for the last 80 years. The “nondelegation doctrine” constrains federal government overreach by stopping Congress from outsourcing its lawmaking job to unelected bureaucrats or nongovernmental groups. In the case of HISA, Congress gave a private organization federal authority to make laws, issue subpoenas and levy fees, fines and sanctions.

“Today’s ruling is a victory for the rule of law,” said **Daniel Suhr, managing attorney at the Liberty Justice Center**. “Congress cannot cede its legal authority to regulate an entire industry to a private organization. This victory is important to protecting the integrity of not only the horseracing industry but also our Constitution. Without this victory, this illegal practice could spread to any industry in America.”

HISA was first introduced by U.S. Reps. Paul Tonko (D-N.Y.) and Andy Barr (R-Ky.) in 2015. After no movement on the bill for five years, Sen. Mitch McConnell (R-Ky.) announced his support in August 2020. It was passed by the U.S. House of Representatives the next month and then passed the U.S. Senate as part of the Federal COVID-19 Relief Bill on December 21, 2020.

HISA created an unelected, national board of privately appointed individuals to replace the states’ regulatory structure, and it allowed the Authority to impose new fees, which are in essence taxes, and costs on the industry. The majority of those who will have to pay the fees are working class horsemen and women.

This is a unanimous decision written by Judge Kyle Duncan, appointed by President Trump, and joined by Judge Carolyn King, appointed by President Carter, and Judge Kurt Engelhardt, appointed by President Trump. From the ruling:

- “A cardinal constitutional principle is that federal power can be wielded only by the federal government. Private entities may do so only if they are subordinate to an agency. But the Authority is not subordinate to the FTC. The reverse is true. The Authority, rather than the FTC, has been given final say over HISA’s programs.”
- “For good reason, the Constitution vests federal power only in the three branches of the federal government. Congress defies this basic safeguard by vesting government power in a private entity not accountable to the people. That is what it has done in HISA.”
- “We only apply, as our duty demands, the settled constitutional principle that forbids private entities from exercising unchecked government power”

HISA has announced its intention to seek further review of this decision. LJC stands ready to defend the horseracing industry and all Americans against such unconstitutional delegations of power.

The lawsuit, *National Horsemen’s Benevolent and Protective Association v. Black*, was filed on March 15, 2021, in the U.S. District Court for the Northern District of Texas. To read the lawsuit and information about this case, visit: <https://libertyjusticecenter.org/media/fifth-circuit-strikes-down-hisa/>

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The Liberty Justice Center is a nonprofit, public-interest litigation center that fights to protect Americans’ fundamental constitutional rights. Its team of expert constitutional attorneys fight to protect workers’ rights and free speech, combat cancel culture and government overreach and improve the lives of everyday Americans. The Liberty Justice Center is best known for its 2018 U.S. Supreme Court victory in *Janus v. AFSCME*. Learn more about the Liberty Justice Center at [LibertyJusticeCenter.org](https://libertyjusticecenter.org).