

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

NATIONAL HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION,
ARIZONA HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION,
ARKANSAS HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION,
INDIANA HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION,
ILLINOIS HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION,
LOUISIANA HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION,
MOUNTAINEER PARK HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION,
NEBRASKA HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION,
OKLAHOMA HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION,
OREGON HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION,
PENNSYLVANIA HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION, AND
WASHINGTON HORSEMAN'S BENEVOLENT AND PROTECTIVE ASSOCIATION,

Plaintiffs,

v.

JERRY BLACK; KATRINA ADAMS; LEONARD COLEMAN, JR.; NANCY COX; JOSEPH DUNFORD; FRANK KEATING; KENNETH SCHANZER; the HORSERACING INTEGRITY AND SAFETY AUTHORITY, INC.; the FEDERAL TRADE COMMISSION; REBECCA KELLY SLAUGHTER, in her official capacity as Acting Chair of the Federal Trade Commission; ROHIT CHOPRA, in his official capacity as Commissioner of the Federal Trade Commission; NOAH JOSHUA PHILLIPS, in his official capacity as Commissioner of the Federal Trade Commission; and CHRISTINE S. WILSON, in her official capacity as Commissioner of the Federal Trade Commission,

Defendants.

No. _____

**COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE
RELIEF**

INTRODUCTION

1. Thousands of owners and trainers of Thoroughbred racehorses represented by Plaintiffs bring this action to challenge the recently enacted federal Horseracing Integrity and Safety Act (“HISA”), which, among other things, unconstitutionally delegates to a private entity the legislative authority to regulate Plaintiffs.

2. “Federal lawmakers cannot delegate regulatory authority to a private entity.” *Ass’n of Am. R.R. v. U.S. Dep’t of Transp.*, 721 F.3d 666, 670 (D.C. Cir. 2013) (vacated and remanded on other grounds by *Dep’t of Transp. v. Ass’n of Am. R.R.*, 135 S. Ct. 1225 (2015)). Under the private nondelegation doctrine, granting regulatory authority to a private entity violates Article I, Section 1 of the United States Constitution, which states that, “All legislative Powers herein granted shall be vested in a Congress of the United States”

3. This Court should declare HISA unconstitutional and preliminarily and permanently enjoin Defendants from implementing and enforcing the law.

PARTIES

4. Plaintiff National Horsemen’s Benevolent and Protective Association (“National HBPA”) is a not-for-profit corporation with its principal place of business in Lexington, Kentucky. Since 1940 it has represented the interests of Thoroughbred racehorse owners and trainers in the United States and Canada. The National HBPA

has close to 30,000 members in 30 affiliate organizations throughout the United States and Canada. It is the largest representation group of Thoroughbred owners and trainers in the United States. Membership is open without restriction to all owners and trainers licensed by state racing authorities.

5. Plaintiff National HBPA's purpose, as set forth in its by-laws, includes co-operating with governmental authorities charged with regulating horse racing; making recommendations in the best interest of racing and its participants, including medication and safety rules; and representing owners and trainers before state and federal governmental entities, national industry organizations, and trade associations. Its principal goals are providing a representative voice for all Thoroughbred horsemen on matters integral to the advancement of Thoroughbred racing in the United States and Canada and encouraging the highest standards of horsemanship to continuously improve the care, health, and safety of the horse.

6. Plaintiff Arizona Horsemen's Benevolent and Protective Association ("Arizona HBPA") is a not-for-profit corporation with its principal place of business in Phoenix, Arizona. It is an affiliate of the National HBPA. The Arizona HBPA Thoroughbred owner and trainer members are licensed by the Arizona Racing Commission, the state agency with regulatory authority over all aspects of racing in Arizona, including promulgating and enforcing equine medication and safety rules.

7. Plaintiff Arizona HBPA negotiates contracts on behalf of its members with racetrack ownership that include terms and conditions under which racing

occurs, consistent with applicable state laws and regulations of the Arizona Racing Commission, including those governing equine medication and safety.

8. Plaintiff Arkansas Horsemen's Benevolent and Protective Association ("Arkansas HBPA") is a not-for-profit corporation with its principal place of business in Hot Springs, Arkansas. It is an affiliate of the National HBPA. The Arkansas HBPA Thoroughbred owner and trainer members are licensed by the Arkansas Racing Commission, the state agency with regulatory authority over all aspects of racing in Arkansas, including promulgating and enforcing equine medication and safety rules.

9. Plaintiff Arkansas HBPA negotiates contracts on behalf of its members with racetrack ownership that include terms and conditions under which racing occurs, consistent with applicable state laws and regulations of the Arkansas Racing Commission, including those governing equine medication and safety.

10. Plaintiff Indiana Horsemen's Benevolent and Protective Association ("Indiana HBPA") is a not-for-profit corporation with its principal place of business in Shelbyville, Indiana. It is an affiliate of the National HBPA. The Indiana HBPA Thoroughbred owner and trainer members are licensed by the Indiana Racing Commission, the state agency with regulatory authority over all aspects of racing in Indiana, including promulgating and enforcing equine medication and safety rules.

11. Plaintiff Indiana HBPA negotiates contracts on behalf of its members with racetrack ownership that include terms and conditions under which racing

occurs, consistent with applicable state laws and regulations of the Indiana Racing Commission, including those governing equine medication and safety.

12. Plaintiff Illinois Horsemen's Benevolent and Protective Association ("Illinois HBPA") is a not-for-profit corporation with its principal place of business in Caseyville, Illinois. It is an affiliate of the National HBPA. The Illinois HBPA Thoroughbred owner and trainer members are licensed by the Illinois Racing Commission, the state agency with regulatory authority over all aspects of racing in Illinois, including promulgating and enforcing equine medication and safety rules.

13. Plaintiff Illinois HBPA negotiates contracts on behalf of its members with racetrack ownership that include terms and conditions under which racing occurs, consistent with applicable state laws and regulations of the Illinois Racing Commission, including those governing equine medication and safety.

14. Plaintiff Louisiana Horsemen's Benevolent and Protective Association ("Louisiana HBPA") is a not-for-profit corporation with its principal place of business in New Orleans, Louisiana. It is an affiliate of the National HBPA. The Louisiana HBPA Thoroughbred owner and trainer members are licensed by the Louisiana Racing Commission, the state agency with regulatory authority over all aspects of racing in Louisiana, including promulgating and enforcing equine medication and safety rules.

15. Plaintiff Louisiana HBPA negotiates contracts on behalf of its members with racetrack ownership that include terms and conditions under which racing

occurs, consistent with applicable state laws and regulations of the Louisiana Racing Commission, including those governing equine medication and safety.

16. Plaintiff Mountaineer Park Horsemen's Benevolent and Protective Association ("Mountaineer Park HBPA") is a not-for-profit corporation with its principal place of business in Newell, West Virginia. It is an affiliate of the National HBPA. The Mountaineer Park HBPA Thoroughbred owner and trainer members are licensed by the West Virginia Racing Commission, the state agency with regulatory authority over all aspects of racing in West Virginia, including promulgating and enforcing equine medication and safety rules.

17. Plaintiff Mountaineer Park HBPA negotiates contracts on behalf of its members with racetrack ownership that include terms and conditions under which racing occurs, consistent with applicable state laws and regulations of the West Virginia Racing Commission, including those governing equine medication and safety.

18. Plaintiff Nebraska Horsemen's Benevolent and Protective Association ("Nebraska HBPA") is a not-for-profit corporation with its principal place of business in Lincoln, Nebraska. It is an affiliate of the National HBPA. The Nebraska HBPA Thoroughbred owner and trainer members are licensed by the Nebraska Racing Commission, the state agency with regulatory authority over all aspects of racing in Nebraska, including promulgating and enforcing equine medication and safety rules.

19. Plaintiff Nebraska HBPA negotiates contracts on behalf of its members

with racetrack ownership that include terms and conditions under which racing occurs, consistent with applicable state laws and regulations of the Nebraska Racing Commission, including those governing equine medication and safety.

20. Plaintiff Oklahoma Horsemen's Benevolent and Protective Association ("Oklahoma HBPA") does business as the Thoroughbred Racing Association of Oklahoma and is a not-for-profit corporation with its principal place of business in Oklahoma City, Oklahoma. It is an affiliate of the National HBPA. The Oklahoma HBPA Thoroughbred owner and trainer members are licensed by the Oklahoma Racing Commission, the state agency with regulatory authority over all aspects of racing in Oklahoma, including promulgating and enforcing equine medication and safety rules.

21. Plaintiff Oklahoma HBPA negotiates contracts on behalf of its members with racetrack ownership that include terms and conditions under which racing occurs, consistent with applicable state laws and regulations of the Oklahoma Racing Commission, including those governing equine medication and safety.

22. Plaintiff Oregon Horsemen's Benevolent and Protective Association ("Oregon HBPA") is a not-for-profit corporation with its principal place of business in Portland, Oregon. It is an affiliate of the National HBPA. The Oregon HBPA Thoroughbred owner and trainer members are licensed by the Oregon Racing Commission, the state agency with regulatory authority over all aspects of racing in Oregon, including promulgating and enforcing equine medication and safety rules.

23. Plaintiff Oregon HBPA negotiates contracts on behalf of its members with racetrack ownership that include terms and conditions under which racing occurs, consistent with applicable state laws and regulations of the Oregon Racing Commission, including those governing equine medication and safety.

24. Plaintiff Pennsylvania Horsemen's Benevolent and Protective Association ("Pennsylvania HBPA") is a not-for-profit corporation with its principal place of business in Grantville, Pennsylvania. It is an affiliate of the National HBPA. The Pennsylvania HBPA Thoroughbred owner and trainer members are licensed by the Pennsylvania Racing Commission, the state agency with regulatory authority over all aspects of racing in Pennsylvania, including promulgating and enforcing equine medication and safety rules.

25. Plaintiff Pennsylvania HBPA negotiates contracts on behalf of its members with racetrack ownership that include terms and conditions under which racing occurs, consistent with applicable state laws and regulations of the Pennsylvania Racing Commission, including those governing equine medication and safety.

26. Plaintiff Washington Horsemen's Benevolent and Protective Association ("Washington HBPA") is a not-for-profit corporation with its principal place of business in Auburn, Washington. It is an affiliate of the National HBPA. The Washington HBPA Thoroughbred owner and trainer members are licensed by the Washington Racing Commission, the state agency with regulatory authority over all

aspects of racing in Washington, including promulgating and enforcing equine medication and safety rules.

27. Plaintiff Washington HBPA negotiates contracts on behalf of its members with racetrack ownership that include terms and conditions under which racing occurs, consistent with applicable state laws and regulations of the Washington Racing Commission, including those governing equine medication and safety.

28. Defendant Jerry Black is a member of the Nominating Committee for the Horseracing Integrity and Safety Authority and a Visiting Professor at the Texas Tech University School of Veterinary Medicine. On information and belief, he resides in Lubbock, Texas, in the Northern District of Texas.

29. Defendant Katrina Adams is a member of the Nominating Committee for the Horseracing Integrity and Safety Authority and a past President of the United States Tennis Association. On information and belief, she resides in White Plains, New York.

30. Defendant Leonard Coleman, Jr. is a co-chair of the Nominating Committee for the Horseracing Integrity and Safety Authority and a former President of the National League of Major League Baseball. On information and belief, he resides in Atlantic Highlands, New Jersey.

31. Defendant Nancy Cox is a co-chair of the Nominating Committee for the Horseracing Integrity and Safety Authority and Vice President for Land Grant

Engagement and the Dean of the College of Agriculture, Food, and Environment at the University of Kentucky. On information and belief, she resides in Lexington, Kentucky.

32. Defendant Joseph Dunford is a member of the Nominating Committee for the Horseracing Integrity and Safety Authority and a former Chairman of the Joint Chiefs of Staff. On information and belief, he resides in Marshfield, Massachusetts.

33. Defendant Frank Keating is a member of the Nominating Committee for the Horseracing Integrity and Safety Authority and a former Governor of the State of Oklahoma. On information and belief, he resides in McLean, Virginia.

34. Defendant Kenneth Schanzer is a member of the Nominating Committee for the Horseracing Integrity and Safety Authority and a former President of NBC Sports. On information and belief, he resides in Avon, Colorado.

35. Defendant Horseracing Integrity and Safety Authority, Inc. (the “Authority”) is a nonprofit Delaware corporation. HISA gives it the authority to draft rules to develop and implement a horseracing anti-doping and medication control program and a racetrack safety program.

36. Defendant Federal Trade Commission is the federal agency given limited authority by HISA to approve or disapprove rules promulgated by the Authority. Its headquarters are in Washington, D.C.

37. Defendant Rebecca Kelly Slaughter is sued in her official capacity as

Acting Chair of the Federal Trade Commission.

38. Defendant Rohit Chopra is sued in his official capacity as Commissioner of the Federal Trade Commission.

39. Defendant Noah Joshua Phillips is sued in his official capacity as Commissioner of the Federal Trade Commission.

40. Defendant Christine S. Wilson is sued in her official capacity as Commissioner of the Federal Trade Commission.

JURISDICTION AND VENUE

41. This case presents claims arising under the United States Constitution. Therefore, the Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and may grant injunctive relief pursuant to Fed. R. Civ. P. 65. The Court also has jurisdiction pursuant to 28 U.S.C. § 1337 because HISA purports to regulate commerce. The Court has jurisdiction pursuant to 28 U.S.C. §§ 2201-2202 and Fed. R. Civ. P. 57 to grant a declaratory judgment because an actual controversy exists among the parties. Jurisdiction is proper over Defendants Slaughter, Chopra, Phillips, and Wilson under *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682 (1949).

42. Venue is appropriate under 28 U.S.C. § 1391(b)(3) because Defendant Black resides in the Northern District of Texas and is subject to this Court's personal jurisdiction. Venue is also appropriate under 28 U.S.C. § 1391(e) because Defendant Federal Trade Commission is an agency of the United States, and Defendants

Slaughter, Chopra, Phillips, and Wilson are officers of the Federal Trade Commission.

FACTUAL ALLEGATIONS

Plaintiffs

43. Plaintiffs Arizona HBPA, Arkansas HBPA, Indiana HBPA, Illinois HBPA, Louisiana HBPA, Mountaineer Park HBPA, Nebraska HBPA, Oklahoma HBPA, Oregon HBPA, Pennsylvania HBPA, and Washington HBPA and are all affiliates of Plaintiff National HBPA (collectively, “Plaintiffs” or “Horsemen”). They have as their members thousands of men and women who own, train, and race Thoroughbred horses in the United States.

44. HBPA's grew out of the time-honored tradition of passing the hat to provide for burial services, medical attention, feeding, and housing for the many needy families in the industry.

45. For over 125 years, Thoroughbred racing has been regulated by the States. State laws establish a statutory framework, which is then administered and enforced by State Racing Commissions, whose members are appointed by the governor of each state. All owners and trainers must be licensed by their State Racing Commissions and are subject to rules and regulations promulgated by those Commissions, including rules and regulations regarding equine medication and racetrack safety.

46. Plaintiffs work to advance and protect the interests of their members by participating in State Racing Commission rule-making and enforcement procedures. They also negotiate, on behalf of their members, horsemen's contracts with racetrack management covering terms and conditions of racing consistent with state law, rules, and regulations.

47. Plaintiff National HBPA advises and assists its state affiliates in carrying out their responsibilities. On the national level, it participates in model rulemaking by the Association of Racing Commissioners International, a trade association of state regulators, and assists with the work of the Racing Medication & Testing Consortium, an organization of scientists, veterinarians, and racing industry stakeholders, in establishing equine medication and testing standards. In its advocacy, Plaintiff National HBPA makes recommendations in the best interest of racing and its participants, including proposed medication and safety rules, to foster safe and honest horse racing and to provide for the well-being of racehorses and those who care for them.

Legislative History

48. On September 8, 2020 the Horseracing Integrity and Safety Authority Inc. ("the Authority"), filed a Certificate of Incorporation in Delaware.

49. The Certificate of Incorporation, at ¶ Seventh, directs that a sole private individual shall appoint temporary Directors to the Authority, who shall then appoint a Nominating Committee, who shall then appoint the Board of Directors of the

Authority.

50. On September 29, 2020, the Horseracing Integrity and Safety Act of 2020, H.R. 1754, passed the U.S. House of Representatives on a voice vote with no debate. It was never discussed either in committee or on the floor of the U.S. Senate. It would have unconstitutionally delegated regulatory authority over the horseracing industry to the newly incorporated Authority.

51. On October 6, 2020, the Horseracing Integrity and Safety Authority, Inc. selected and publicized the members of the Nominating Committee to select the members of the Board of the Horseracing Integrity and Safety Authority.

52. Defendants Black, Adams, Coleman, Cox, Dunford, Keating, and Schanzer (collectively, the “Nominating Committee”) were appointed to the Nominating Committee; therefore, they have the authority to select the members of the Board of the Horseracing Integrity and Safety Authority.

53. On December 21, 2020, Congress enacted House Resolution 133, the 2,000-page Consolidated Appropriations Act, 2021, which was signed into law on December 27, 2020 as Public Law No. 116-260. Title XII of Division FF of the Consolidated Appropriations Act, 2021, constitutes the Horseracing Integrity and Safety Act of 2020 (“HISA” or the “Act”). Public Law No. 116-260, Sec’s 1201-1212.

HISA

54. HISA unconstitutionally grants to the Authority, a non-governmental private, independent, self-regulatory, non-profit corporation, power to develop and

enforce a horseracing medication control and racetrack safety program that preempts existing state regulation. The Authority has regulatory control over owners and trainers, among others, who compete in races having a substantial relation to interstate commerce, or virtually all Thoroughbred horse racing in the United States. The Authority is charged with developing programs and promulgating rules covering all facets of equine medication and horseracing safety. Further, the Authority is given investigatory powers of the sort possessed by State Racing Commissions and the right to enforce alleged rule violations with fines, suspensions, and civil lawsuits brought in its own name.

55. According to HISA, the Authority is governed by a nine member Board of Directors appointed by a non-governmental Nominating Committee of seven private citizen members. Those seven individuals are identified and named in their official capacity as Defendants in this action.

56. The Nominating Committee consists of private citizens who are “independent members selected from business, sports, and academia,” Public Law No. 116-260, Sec. 1203(d).

57. The Nominating Committee is a private entity and not a governmental body.

58. HISA did not give any governmental entity the authority to approve, disapprove, or modify the decision of the private individual appointing temporary Directors to the Authority or the decision of the temporary Directors of the Authority

appointing the Nominating Committee.

59. HISA delegates legislative authority to the Nominating Committee to “select the initial members of the Board” of the Authority. *Id.*

60. HISA does not give any governmental entity the authority to approve, disapprove, or modify the selection of the initial Board members of the Authority by the Nominating Committee.

61. The Nominating Committee has already solicited names of individuals for it to consider as initial Board members of the Authority.

62. On information and belief, the Nominating Committee expects to appoint initial members of the Board of the Authority by April 1, 2021.

63. The Authority is a “private, independent, self-regulatory, nonprofit corporation.” *Id.* at Sec. 1203(a).

64. HISA delegates legislative authority to regulate the horseracing industry to the Authority, including the power to “develop[] and implement[] a horseracing anti-doping and medication control program and a racetrack safety program.” *Id.*

65. HISA delegates legislative authority to the Authority to collect revenue from those it regulates. *Id.* at Sec. 1203(f).

66. The Authority may charge state racing commissions their proportionate share of the fees needed to operate the Authority. *Id.* at Sec. 1203(f)(1)(C).

67. If a state racing commission declines to raise funds for the Authority,

HISA gives the Authority the power to charge fees directly to horsemen, including the members of Plaintiffs. *Id.* at Sec. 1203(f)(3).

68. HISA delegates to the Authority federal regulatory authority over horseracing activities throughout the country. *Id.* at Sec. 1205.

69. HISA delegates legislative authority to the Authority to implement a horseracing anti-doping and medication control program and a racetrack safety program. *Id.* at Sec. 1205(a)(1).

70. HISA delegates legislative authority to the Authority to “exercise independent and exclusive national authority over . . . all horseracing safety, performance, and anti-doping and medication control matters for covered horses, covered persons, [and] covered horseraces.” *Id.* at Sec. 1205(a)(2).

71. HISA defines “covered” horses, persons, and horseraces initially to include only Thoroughbreds—the breed of horses that Plaintiffs’ members own, train, and race. *Id.* at Sec. 1202.

72. HISA delegates legislative authority to state and private organizations to expand the Authority’s regulatory jurisdiction to other breeds: “A State racing commission or a breed governing organization for a breed of horses other than Thoroughbred horses may elect to have such breed be covered by this Act.” *Id.* at Sec. 1205(l)(1).

73. HISA delegates to the Authority federal subpoena and investigatory authority to pursue civil violations within its jurisdiction. *Id.* at Sec. 1205(h).

74. HISA does not give any governmental entity the authority to approve, disapprove, or modify decisions of the Authority regarding issuing subpoenas and exercising its investigatory authority.

75. HISA delegates legislative authority to the Authority to establish its own civil penalties for violations of the rules it promulgates. *Id.* at Sec. 1205(i).

76. HISA delegates legislative authority to the Authority to bring civil enforcement actions, asserting the power of the federal government to enforce its rules. *Id.* at Sec. 1205(j).

77. HISA delegates legislative authority to the Authority to draft its own governmental rules. *Id.* at Sec. 1204(a).

78. The rules drafted by the Authority are published in the Federal Register for public comment, as if they had been drafted by a governmental agency. *Id.* at Sec's 1204(b)(1), (c)(1), and (d)(2).

79. HISA attempts to justify this unconstitutional delegation of legislative authority to a private entity by providing that the rules promulgated by the Authority must be submitted for oversight to Defendants the Federal Trade Commission and Commissioners Slaughter, Chopra, Phillips, and Wilson (collectively, the "FTC"). *Id.* at Sec. 1204.

80. But the FTC role in this process is purely ministerial. It does not develop or implement federal regulatory authority but, instead, publishes the Authority's regulations for notice and comment rulemaking. *Id.*

81. Under HISA, the FTC may not draft rules to regulate horse racing, nor may it modify rules drafted by the Authority. *Id.* at Sec. 1204(c)(1).

82. The FTC may only “approve or disapprove” rules that have already been drafted by the Authority. *Id.*

83. If the FTC wants to modify a rule, it must make recommendations to the Authority to do so. *Id.* at Sec. 1204(c)(3).

84. The only instruction given to the Authority for its rulemaking authority is to “develop[] and implement[] a horseracing anti-doping and medication control program and a racetrack safety program” *Id.* at Sec. 1203(a).

85. HISA provides the Authority a list of topics for rulemaking, but the list is non-exhaustive, and the Authority may or may not choose to draft rules on those topics. *Id.* at Sec. 1204(a).

86. The only guidance given to the FTC on whether to approve a rule that has been drafted by the Authority is that it “shall approve a proposed rule . . . if [it] finds that the proposed rule . . . is consistent with—(A) this Act; and (B) applicable rules approved by the [FTC].”

87. In summary, HISA gives tremendous power to a private entity, the Authority, to regulate many facets of the Horsemen’s business and relegates the FTC to a minor role in the process.

CLAIM I

HISA violates Article I, Section 1 of the United States Constitution because it delegates legislative authority to a private entity.

88. The allegations in all preceding paragraphs are incorporated herein by reference.

89. “The nondelegation doctrine is rooted in the principle of separation of powers that underlies our tripartite system of Government.” *Mistretta v. United States*, 488 U.S. 361, 371 (1989).

90. The doctrine dates back to the founding generation, with Chief Justice Marshall pointing out that “[i]t will not be contended that Congress can delegate to the courts, or to any other tribunals, powers which are strictly and exclusively legislative.” *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 42–43 (1825).

91. The basic principle is so well acknowledged that some years later the Court described it as self-evident: “That Congress cannot delegate legislative power . . . is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution.” *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892).

92. Even more objectionable is delegating authority to a private entity, which represents “legislative delegation in its most obnoxious form.” *Carter v. Carter Coal Co.*, 56 S. Ct. 855, 873 (1936); *see also Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 118-19, 49 S. Ct. 50 (1928); *Eubank v. City of Richmond*, 226 U.S. 137, 140-41, 33 S. Ct. 76 (1912).

93. Put simply, “Federal lawmakers cannot delegate regulatory authority to

a private entity.” *Ass’n of Am. R.R. v. U.S. Dep’t of Transp.*, 721 F.3d 666, 670 (D.C. Cir. 2013).

94. With HISA, Congress has delegated regulatory authority over the horseracing industry to the Authority, a private, nongovernmental entity.

95. This unlawful delegation of authority includes, among other things, the right to draft governmental rules on equine medication and safety, to assess millions of dollars in fees on horse owners and trainers to finance the operations of the Authority, to assess civil penalties, civil sanctions, and rule violations, including levying fines and ordering suspensions of owners and trainers for alleged violations of Authority rules, to issue subpoenas and otherwise investigate purported violations, and to commence civil actions in federal court to enforce Authority rules.

96. Congress has subjugated Plaintiffs to this entire regulatory scheme, which is unlawfully run by a private entity.

97. The delegation of legislative authority to a private entity in HISA constitutes a violation of the private nondelegation doctrine found in Article I, Section I of the Constitution.

98. The limited oversight given to the FTC over the Authority is not sufficient to cure the constitutional violation. Because the FTC may not draft rules on its own initiative, may only recommend modifications to Authority rules, and has virtually no say in enforcement proceedings, HISA places it in a subservient role to the Authority, and thus, violates the private nondelegation doctrine.

99. In addition, HISA unlawfully delegates to the Nominating Committee the unconstitutional authority to select this federal regulatory body, and there is no FTC oversight whatsoever over the decision.

100. The Horsemen are harmed by the unconstitutional delegations because they are subject to a regulatory process that they are forced to finance with fees imposed on them by the Authority. Also, the Horsemen are harmed because they are subject to new and onerous Authority rules on equine medication and safety that change and supersede the State Racing Commission rules on which their training and racing businesses have long relied.

CLAIM II

HISA violates Article I, Section I of the United States Constitution because it delegates legislative authority to a public entity without an intelligible principle.

101. The allegations in all preceding paragraphs are incorporated herein by reference.

102. When Congress delegates legislative authority to a public agency without giving it an “intelligible principle” to guide its discretion, it violates the public nondelegation doctrine found in Article I, Section 1 of the United States Constitution. *Gundy v. U.S.*, 139 S. Ct. 2116, 2123 (2019).

103. In the alternative, HISA’s delegation of oversight powers to the FTC violates the public nondelegation doctrine because Congress failed to give it an “intelligible principle” to guide its discretion.

104. HISA gives the FTC no standards upon which to base its decision to approve or disapprove rules proposed by the Authority. Pub. L. No. 116-260, Sec. 1204(c)(2). Its guidance is completely circular and unintelligible: it is told to look to rules proposed by the Authority and approved by the FTC to determine whether to approve rules proposed by the Authority. It is also told to look at the Act, itself, but that guidance is also unintelligible. It does not point to a specific section of the Act. In Sec. 1204(a), HISA gives a list of topics on which the Authority may draft rules, but it provides no direction about what principles the FTC should follow in deciding whether to approve the proposed rules.

105. This unlawful delegation of legislative authority to the FTC subjects the Horsemen to onerous fees and regulations without any Congressional or meaningful governmental oversight. It, thus, violates the public nondelegation doctrine and harms the Horsemen.

106. In addition, if the Authority were considered a public, governmental entity, HISA's delegation of authority to it still would be unconstitutional because Congress also failed to give it an "intelligible principle" to guide its discretion.

107. HISA contains no "statement of purpose" and no "findings" provision. In Sec. 1204(a), HISA gives a list of topics on which the Authority may draft rules, but it provides no direction about what principles the Authority should follow in doing so. The only instruction given to the Authority for its rulemaking authority is to "develop[] and implement[] a horseracing anti-doping and medication control

program and a racetrack safety program” Pub. L. No. 116-260, Sec. 1203(a). But the Authority is given no “intelligible principle” to guide its discretion in creating the two programs.

108. Therefore, HISA violates the public nondelegation doctrine, subjects the Horsemen to onerous fees and regulations, and harms the Horsemen.

CLAIM III

HISA violates the Appointments Clause found in Article II, Section 2, Clause 2 of the United States Constitution because the Authority is appointed by a private Nominating Commission.

109. The allegations in all preceding paragraphs are incorporated herein by reference.

110. In the alternative, if a court were to conclude that the grant of power to the Authority was sufficient to render it a public entity, it would still be unconstitutional because appointment of its Board of Directors violates the Appointments Clause of the United States Constitution.

111. Under the Appointments Clause, only the president, a head of a department, or a court of law may appoint an officer of the United States. U.S. Const. Art. II, Sec. 2, Cl. 2.

112. If it were deemed public, the members of the Board of the Authority would be “Officers of the United States” because they “occupy a continuing position established by law” and “exercise[] significant authority pursuant to the laws of the United States”. *Lucia v. SEC*, 138 S. Ct. 2044, 2051 (2018) (internal quotation marks

omitted).

113. But the Authority Board members are not appointed by the president, a head of a department, or a court of law. Instead, they are appointed by a private Nominating Committee, which was also selected privately, with no governmental oversight, even before HISA was passed into law.

114. Therefore, in the alternative, the appointment of the Authority violates the Appointments Clause.

115. The Horsemen are harmed by the unconstitutional appointment of the Authority because they are subject to a regulatory process that they are forced to finance with fees imposed on them by the Authority. Also, the Horsemen are harmed because they are subject to new and onerous Authority rules on equine medication and safety that change and supersede the State Racing Commission rules on which their training and racing businesses have long relied.

CLAIM IV

HISA violates the Due Process Clause of the Fifth Amendment because interested participants in the horseracing industry are given regulatory power over their competitors in the industry.

116. The allegations in all preceding paragraphs are incorporated herein by reference.

117. When Congress gives an “economically self-interested actor [the power] to regulate its competitors,” it violates the Due Process Clause found in the Fifth Amendment. *Ass’n of Am. R.Rs. v. Dep’t of Transp.*, 821 F.3d 19, 23 (D.C. Cir. 2016).

118. HISA designates four of the members of the Board of the Authority to be economically self-interested actors, and they are given authority to regulate their competitors. Public Law No. 116-260, Sec. 1203(b)(1)(B).

119. More importantly, under HISA the entire Board of the Authority is selected by a private Nominating Committee. On information and belief, this private Nominating Committee was hand-picked by a small group of owners and trainers within the horseracing industry who supported passage of HISA, over the objections of thousands of owners and trainers represented by Plaintiffs, who will be regulated by HISA.

120. On information and belief, the businesses of the small group of owners and trainers will thrive as a result of HISA. Meanwhile, HISA will harm thousands of horsemen and drive many of them out of the industry by artificially increasing the costs and fees of participation and by eliminating the use of therapeutic medication prescribed by veterinarians for the health and safety of horses.

121. By granting these self-interested actors the authority to regulate their competitors, Congress violated the Due Process Clause and harmed Plaintiffs by creating a regulatory body that will increase their fees, diminish the value of many of their horses, and otherwise subject them to onerous regulations.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

- a. Declare that HISA's delegation of legislative authority to the Horseracing

Integrity and Safety Authority is unconstitutional because it violates the private nondelegation doctrine;

b. In the alternative, declare that HISA's delegation of legislative authority to the Horseracing Integrity and Safety Authority violates the public nondelegation doctrine;

c. Declare that delegating legislative authority to the private Nominating Committee to select the Board members of the Authority violates the private nondelegation doctrine;

d. In the alternative, declare that delegating authority to the private Nominating Committee to select the Board members of the Authority violates the Appointments Clause of the Constitution;

e. In the alternative, declare that the delegation of legislative authority to the Federal Trade Commission and its Commissioners to oversee the Horseracing Integrity and Safety Authority violates the public nondelegation doctrine;

f. Declare that HISA violates the Due Process Clause of the Constitution because it gives economically self-interested actors the power to regulate their competitors;

g. Enjoin Defendants, preliminarily and permanently, from taking any action to implement the Horseracing Integrity and Safety Act of 2020;

h. Enjoin Defendants Black, Adams, Coleman, Cox, Dunford, Keating, and Schanzer, preliminarily and permanently, from appointing the Board of the

Horseracing Integrity and Safety Authority;

i. Award Plaintiffs nominal damages of \$1 each for suffering a violation of their constitutional rights;

j. Award Plaintiffs compensatory damages in the amount of any fees charged to them by Defendant the Horseracing Integrity and Safety Authority, Inc.; and

k. Award any further relief to which Plaintiffs may be entitled, including attorneys' fees and costs.

Dated: March 15, 2021

Respectfully Submitted,

/s/ Fernando M. Bustos

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