

**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, TAMPA BAY HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION, and WASHINGTON HORSEMEN'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. 5:21-cv-00071-H

**PLAINTIFFS' NOTICE
OF ACTIVITY BY THE
HORSERACING
INTEGRITY AND
SAFETY AUTHORITY,
INC. AND FEDERAL
TRADE COMMISSION**

Plaintiffs submit this Notice of Activity by the Horseracing Integrity and Safety Authority, Inc. (the “Authority”) and Federal Trade Commission (“FTC”) to update the Court on the actions that the Authority and FTC have taken relevant to this case since briefing closed June 18, 2021.

In their motions to dismiss, both the Authority and the FTC claimed that the issues at stake were not ripe and that, therefore, Plaintiffs lack standing. (Authority MTD, Dkt. 34, 8-12; FTC MTD, Dkt. 36, 6-10.) As Plaintiffs pointed out in their Reply brief filed on June 18, 2021, “[T]he Authority is moving full-steam ahead to enforce HISA.” (Pls.’ Reply in Supp. of Mot. for Summ. J., Dkt. 59, 15.) Since then, the Authority and the FTC have taken decisive steps to enforce the unconstitutional Horseracing Integrity and Safety Act (“HISA” or the “Act”), negating their argument that the case is unripe. Plaintiffs ask this Court to take notice of these recent actions and to rule against Defendants on their ripeness and standing objections.

On September 28, 2021, the FTC issued its procedural rule governing how rules proposed by the Authority shall be submitted to the FTC.¹ On October 5, 2021, the FTC published the procedural rule in the Federal Register.²

On December 6, 2021, the Authority submitted its proposed regulation for the racetrack safety program.³ On January 5, 2022, the FTC published the HISA Racetrack Safety proposed rule

¹ *FTC Issues Final Rule Establishing Process for Horseracing Integrity and Safety Authority’s Submission of Proposed Rules*, Federal Trade Commission (Sept. 28, 2021) <https://www.ftc.gov/news-events/press-releases/2021/09/ftc-issues-final-rule-establishing-process-horseracing-integrity>, attached as Exhibit A.

² *Procedures for Submission of Rules Under the Horseracing Integrity and Safety Act*, 86 Fed. Reg. 54,819-26 (Oct. 5, 2021) (to be codified at 16 C.F.R. pt. 1) <https://www.govinfo.gov/content/pkg/FR-2021-10-05/pdf/2021-21306.pdf>, attached as Exhibit B.

³ *Horseracing Integrity and Safety Authority Submits Draft Racetrack Safety Regulations to the Federal Trade Commission*, Horseracing Integrity and Safety Authority (Dec. 6, 2021)

in the Federal Register.⁴

On December 7, 2021, the Authority announced its proposed implementation for the anti-doping and medication control program.⁵ The Authority published on its website a proposed version of the anti-doping and medication control regulation.⁶

On January 11, 2021, the Authority announced that Lisa Lazarus will serve as Chief Executive Officer of the Authority, who takes over from interim CEO Hank Zeitlin on February 15, 2022.⁷

These affirmative actions to implement HISA negate any argument that the case is not ripe for adjudication or that Plaintiffs lack standing. In May, the Authority supported its argument that

<https://static1.squarespace.com/static/604f6ab712afe14e11227976/t/61ae82bc7dbd4966f4ddca76/1638826685158/HISA+FTC+Submission+Press+Release+12.6.21.pdf>, attached as Exhibit C.

⁴ HISA Racetrack Safety, 87 Fed. Reg. 435-59 (Jan. 5, 2022)

<https://www.govinfo.gov/content/pkg/FR-2022-01-05/pdf/2021-28513.pdf>, attached as Exhibit D.

⁵ *Horseracing Integrity and Safety Authority Announces Proposed Implementation Date for Anti-Doping and Medication Control Program*, Horseracing Integrity and Safety Authority (Dec. 7, 2021)

<https://static1.squarespace.com/static/604f6ab712afe14e11227976/t/61afbfa218db67245b1c8cba/1638907810893/HISA+Proposed+ADMC+Implementation+Date+Release+12.7.21.pdf>, attached as Exhibit E.

⁶ *HISA Regulations*, Horseracing Integrity and Safety Authority, <https://www.hisaregs.org/pdf-viewer?file=%2Fpdf%2FRegulation-PDF-01-18-2022-03-11-01-PM.pdf> (last visited Jan. 18, 2022), attached as Exhibit F. On December 23, 2021, the Authority and the U.S. Anti-Doping Agency (“USADA”) announced they were suspending negotiations for USADA to implement the Authority’s anti-doping and medication control program. *Statement from USADA CEO Travis T. Tygart on Equine Anti-Doping and Medication Control Program Negotiations*, USADA (Dec. 23, 2021) <https://www.usada.org/statement/equine-negotiations/>, reprinted as Exhibit G.

⁷ *Horseracing Integrity and Safety Authority Appoints Lisa Lazarus as Chief Executive Officer*, Horseracing Integrity and Safety Authority (Jan. 11, 2022)

<https://static1.squarespace.com/static/604f6ab712afe14e11227976/t/61ddcac56be8353b9c9b2bd9/1641925318051/HISA+Lazarus+Announcement+1.11.22.pdf>, attached as Exhibit H.

the case is not justiciable by saying, “the Authority has not yet recommended any standards” (Authority Opp. to MSJ, Dkt. 56, 8.) The FTC echoed, “No such rules have even been proposed.” (FTC Opp. to MSJ, Dkt. 58, 5.) Now, both the racetrack safety regulation and the anti-doping and medication control regulation have been proposed, and the racetrack safety regulation has been definitively published in the Federal Register; therefore, this case is ripe, and Plaintiffs have standing to bring their claims.

For the foregoing reasons, Plaintiffs give notice to the Court of the extensive actions that the Authority and the FTC have undertaken in an effort to implement HISA, so the Court will be fully informed of the disposition of the statute when it conducts its hearing on dispositive motions on February 16, 2022.

Respectfully Submitted,

Dated: January 18, 2022

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