

Nos. 24-429 & 24-433

In the Supreme Court of the United States

HORSERACING INTEGRITY AND SAFETY AUTHORITY,
INCORPORATED, ET AL., PETITIONERS

v.

NATIONAL HORSEMEN'S BENEVOLENT AND PROTECTIVE
ASSOCIATION, ET AL.

FEDERAL TRADE COMMISSION, ET AL., PETITIONERS

v.

NATIONAL HORSEMEN'S BENEVOLENT AND PROTECTIVE
ASSOCIATION, ET AL.

*ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

**BRIEF OF THE GULF COAST RACING
PLAINTIFFS IN OPPOSITION**

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BRIEF OF THE GULF COAST RACING PLAINTIFFS IN OPPOSITION

Respondents Gulf Coast Racing L.L.C.; LRP Group, Limited; Valle de Los Tesoros, Limited; Global Gaming LSP, L.L.C.; and Texas Horsemen's Partnership, L.L.P. (collectively, the "Gulf Coast Racing Plaintiffs") oppose the petitions for writs of certiorari filed by the Horseracing Integrity and Safety Authority (the "Authority") and the Federal Trade Commission (the "FTC"). Their petitions present an unduly narrow issue to this Court, and the sole issue on which the Authority and FTC lost in the court below.

As explained in the Gulf Coast Racing Plaintiffs' own certiorari petition filed on October 28, 2024, the Authority is unconstitutional in its entirety because the Authority's directors exercise ongoing statutory duties of significance, and therefore are officers of the United States who must be properly appointed pursuant to the Appointments Clause of the U.S. Constitution. Resolving this case in that manner will further allow the Court to explain the connection between the Appointments Clause and the private nondelegation doctrine, while obviating the need to undertake the highly statute-specific analysis necessary for the latter.

Moreover, if for whatever reason the Court disagrees on the merits of the Appointments Clause issue, then for the reasons explained in the State of Texas's petition, No. 24-465, as well as the National Horsemen's petition, No. 24-472, the Horseracing Integrity and Safety Act ("HISA") would be unconstitutional for improperly delegating legislative rulemaking authority to a private entity. As explained in those petitions,

the Authority's legislative rules automatically take effect if "consistent with" the extraordinarily broad standards in the statute. The FTC may choose, but has no statutory duty whatsoever, to promulgate substantive rules of its own.

Only if this Court answers both questions presented by these petitions in the negative will it need to address the unhelpfully narrow question presented in the Authority and FTC petitions.

For these reasons, the Gulf Coast Racing Plaintiffs oppose the Authority and FTC petitions, and respectfully request that the Court instead grant the Gulf Coast Racing Plaintiffs' petition, filed on October 28. The Gulf Coast Racing Plaintiffs also acquiesce in the petitions filed by Texas and the National Horsemen. These petitions cover the full range of issues necessary to resolve all the relevant constitutional issues (*i.e.*, Appointments Clause and private nondelegation).

If, however, this Court were to grant the question presented by the Authority and FTC petitions, the Court should still grant the Gulf Coast Racing Plaintiffs' certiorari petition filed on October 28 for the many reasons stated therein. If this Court addresses the question whether the enforcement provisions of HISA facially violate the private nondelegation doctrine, it should also resolve the questions involving rulemaking and the Appointments Clause. At a minimum, the Gulf Coast Racing Plaintiffs oppose this Court granting the Authority and FTC petitions without considering the additional, and almost certainly dispositive, questions that their own certiorari petition presents.

CONCLUSION

The petitions for writs of certiorari filed by the Authority and the FTC should be denied.

Respectfully submitted.

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