

No. 26-201

In the Supreme Court of the United States

FEDERAL TRADE COMMISSION, ET AL., PETITIONERS

v.

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

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

REPLY BRIEF FOR THE PETITIONERS

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In the decision below, the Fifth Circuit held that the enforcement provisions of the Horseracing Integrity and Safety Act of 2020 (Act), 15 U.S.C. 3051 *et seq.*, violate the private nondelegation doctrine. The federal government and the Horseracing Integrity and Safety Authority have both filed petitions for writs of certiorari seeking review of that holding. The challengers all agree that this Court should grant those petitions. See Gulf Coast Cert. Resp. 3-6; Texas Cert. Resp. 1; National Horsemen Cert. Resp. 13-20.

One set of challengers objects (National Horsemen Cert. Resp. 36-38) to the government’s question presented: “Whether the enforcement provisions of the [Act]—which authorize the Horseracing Integrity and Safety Authority, a private entity, to assist the Federal Trade Commission in enforcing the statute—violate the

private nondelegation on their face.” Pet. I. But contrary to those challengers’ suggestion (National Horsemen Cert. Resp. 36), the phrasing of the question presented would not preclude the challengers from arguing that “the Authority does far more than ‘assist’ the FTC in enforcing the statute.” Regardless, the government has no objection to the challengers’ alternative formulation of the question presented (*id.* at 38): “Whether the enforcement provisions of the Horseracing Integrity and Safety Act are facially unconstitutional under the private-nondelegation doctrine.”

The challengers have also filed their own petitions for writs of certiorari, which present additional questions. See Gulf Coast Pet. i; Texas Pet. i; National Horsemen Pet. i. The government plans to explain, in a consolidated response to those petitions, why those questions do not warrant this Court’s review.

Petitioners in *Oklahoma v. United States*, No. 25-1325, observe (Oklahoma Cert. Reply Br. at 3) that the parties in this case briefed a jurisdictional issue: whether the challengers here intended to preserve claims that the district court had not resolved, thereby preventing the court’s order from qualifying as a final judgment and depriving the Fifth Circuit of appellate jurisdiction. The district court found, however, that the challengers had “voluntarily withdr[awn]” any such additional claims. Judgment 1. The challengers subsequently eliminated any uncertainty on that point by confirming on appeal that they had abandoned those claims. See Gulf Coast C.A. Reply Br. 5-9.

This Court should therefore grant certiorari in this case, so that it can directly review the decision of the only court of appeals that has held the statute facially unconstitutional. But if the Court remains concerned

about jurisdiction in this case, it should grant the petition for a writ of certiorari in *Oklahoma*, limited to the only question that warrants review: whether the Act's enforcement provisions violate the private nondelegation doctrine on their face.

* * * * *

This Court should grant and consolidate the petitions for writs of certiorari filed by the federal government (No. 26-201) and the Authority (No. 26-199). The Court should deny the petitions filed by the Gulf Coast Racing Plaintiffs (No. 26-332) and Texas (No. 26-335). The Court should hold the petition filed by Oklahoma (No. 25-1325).

Respectfully submitted.

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SEPTEMBER 2026