

Nos. 26-332, 26-335, 26-430

In the Supreme Court of the United States

GULF COAST RACING LLC, ET AL., PETITIONERS

v.

HORSERACING INTEGRITY AND SAFETY AUTHORITY,
INCORPORATED, ET AL.

TEXAS, ET AL., PETITIONERS

v.

JERRY BLACK, ET AL.

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

v.

HORSERACING INTEGRITY AND SAFETY AUTHORITY,
INCORPORATED, ET AL.

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

**MEMORANDUM FOR THE FEDERAL RESPONDENTS
IN OPPOSITION**

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QUESTIONS PRESENTED

The Horseracing Integrity and Safety Act of 2020 (Act), 15 U.S.C. 3051 *et seq.*, allows the Horseracing Integrity and Safety Authority (Authority), a private entity, to assist the Federal Trade Commission in the enforcement of the statute. The questions presented are as follows:

1. Whether the Act's rulemaking provisions violate the private nondelegation doctrine.
2. Whether the Authority's directors are officers of the United States who must be appointed in accordance with the Appointments Clause.

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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, 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 parties that have challenged the statute's constitutionality 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.

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. But those additional issues do not warrant this Court's review.

1. Texas and the National Horsemen contend (Texas Pet. 16-32; National Horsemen Pet. 8-11) that the Act's rulemaking provisions violate the private nondelegation doctrine on their face. For the reasons given in the brief for the federal respondents in *Oklahoma v. United States*, No. 25-1325, that contention lacks merit and does not warrant further review. Both courts of appeals to have considered the issue since *FCC v. Consumers' Research*, 606 U.S. 656 (2025)—the Fifth Circuit in this case and the Sixth Circuit in *Oklahoma*—agree that the Act's rulemaking provisions are constitutional.

Texas argues (Texas Pet. 28-29) that the Fifth Circuit's decision in this case conflicts with decisions of the Third, Fourth, and Ninth Circuits. See *United States v. Frame*, 885 F.2d 1119 (3d Cir. 1989), cert. denied, 493 U.S. 1094 (1990); *Pittston Co. v. United States*, 368 F.3d 385 (4th Cir. 2004), cert. denied, 544 U.S. 904 (2005); *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479 (9th

Cir.), cert. denied, 506 U.S. 999 (1992). But those decisions were issued long before Congress enacted the Horseracing Act; they involved other federal statutes; and all three courts ultimately upheld the challenged statutes against private nondelegation claims. See *Frame*, 885 F.2d at 1128-1129; *Pittston*, 368 F.3d at 393-398; *Riverbend*, 958 F.2d at 1488. The courts' decisions upholding other statutes provide no basis for inferring that the courts would have struck down this statute.

Texas and the National Horsemen also argue (Texas Pet. 27-28; National Horsemen Pet. 9-10) that the decision below conflicts with the D.C. Circuit's decision in *Association of American Railroads v. United States Department of Transportation*, 721 F.3d 666 (2013), vacated and remanded on other grounds, 575 U.S. 43 (2015). But that case, too, did not involve the Horseracing Act. And this Court vacated the D.C. Circuit's decision after determining that the entity at issue was not actually a private body. See *Department of Transportation v. Association of American Railroads*, 575 U.S. 43, 46 (2015). Given the absence of a circuit conflict, the challenge to the Act's rulemaking provisions does not warrant this Court's review.

2. Gulf Coast Racing contends (Gulf Coast Pet. 15-36) that the Horseracing Authority's directors are officers of the United States who must be selected in accordance with the Appointments Clause, U.S. Const. Art. II, § 2, Cl. 2. That contention likewise lacks merit and does not warrant further review.

The Appointments Clause requires that "Officers of the United States" be appointed by the President with the advice and consent of the Senate; by the President alone; by the courts of law; or by the heads of departments. U.S. Const. Art. II, § 2, Cl. 2. To be an officer

of the United States, a person must “occupy a ‘continuing’ position established by law” and “‘exercis[e] significant authority pursuant to the laws of the United States.’” *Lucia v. SEC*, 585 U.S. 237, 245 (2018) (citations omitted).

Gulf Coast Racing has not established a violation of the Appointments Clause. The Authority recommends rules that the Federal Trade Commission (FTC) may adopt, reject, or modify, and recommends sanctions that an FTC administrative law judge and the FTC itself may review de novo. See Gov’t Br. at 7-12, *Oklahoma*, *supra* (No. 25-1325). Such purely recommendatory functions do not amount to “significant authority pursuant to the laws of the United States.” *Lucia*, 585 U.S. at 245 (citation omitted).

At least in the circumstances of this case, moreover, Gulf Coast Racing’s Appointments Clause claims add nothing to its private nondelegation claims. The Authority’s recommendatory functions do not entail the exercise of governmental power at all. See Gov’t Br. at 7-12, *Oklahoma*, *supra* (No. 25-1325). *A fortiori*, they do not entail the “*significant* authority” needed to establish a violation of the Appointments Clause. *Lucia*, 585 U.S. at 245 (emphasis added; citation omitted).

The Fifth Circuit’s decision rejecting Gulf Coast Racing’s Appointments Clause challenge does not conflict with any decision of another court of appeals; no Appointments Clause issue was raised in the Sixth Circuit case. Further review of that challenge is not warranted.

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

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