No. 26-430

In the Supreme Court of the United States

NATIONAL HORSEMEN'S BENEVOLENT
AND PROTECTIVE ASSOCIATION, ET AL.,
v.
HORSERACING INTEGRITY AND
SAFETY AUTHORITY, INC., ET AL.

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

BRIEF OF SCOTT DILWORTH AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

PETER J. SACOPULOS
Counsel of Record
Sacopulos & Sacopulos
676 Ohio Street
Terre Haute, IN 47807
(812) 238-2565
pete_sacopulos@sacopulos.com

Counsel for Amicus Curiae,
Scott Dilworth

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii
INTEREST OF AMICUS CURIAE 1
SUMMARY OF ARGUMENT 2
ARGUMENT 4
I. HISA's Rules Governing Adjudication of Disputes Violates the Fifth and Fourteenth Amendments of the United States Constitution..... 4
II. HISA's Rules Governing Adjudication Of Disputes Violates the Seventh Amendment of The United States Constitution..... 8
III. HISA Rules Governing Adjudication of Disputes Violate the Fourth Amendment of the United States Constitution 10
CONCLUSION 13

TABLE OF AUTHORITY

CASES Page

Armstrong v. Manzo, 380 US 545, 552 (1965).. 6,7
Barry v. Barchi, 433 U.S. 55 (1979) 2
Frank v. Mangum 237 US 309, 347 (1915) 4
Jarkesy v. SEC, 51 F.4th 644 (2022) 10

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV 2,11
U.S. Const. amend. V 4
U.S. Const. amend VII 2
U.S. Const. amend. XIV 4

STATUTES AND RULES

5 U.S.C. §702 6
5 U.S.C. § 706 6
15 U.S.C. § 3051(6) 1
15 U.S.C. § 3053 5
15 U.S.C. § 3057(d)(2) 9
15 U.S.C. § 3058(c)(2)(c) 5
HISA Rule 5730 (b)(1) 11
HISA Rule 5730(b)(2) 12
HISA Rule 5730(d)(2) 12
HISA Rule 7000 7
HISA Rule 7020(A).....7
HISA Rule 7170 6
HISA Rule 7170(f) 6
HISA Rule7260(b) 5
HISA Rule 7260(d) 7
HISA Rule 7410 5,9

INTEREST OF AMICUS CURIAE[1]

Amicus, Scott Dilworth, is a thoroughbred horseman. He resides in the state of Texas. He is and has been, since 2005, an owner, breeder and investor in thoroughbred racehorses. He also owns and operates a thoroughbred farm in Versailles, Kentucky. Amicus Dilworth owns and has owned multiple stakes winning thoroughbred horses and has started thoroughbred horses in multiple jurisdictions.

Amicus Dilworth is a covered person under 15 U.S.C. § 3051(6). Amicus Dilworth's interest is that the Horseracing Integrity and Safety Act (HISA) violates his, and other persons in the thoroughbred industry similarly situation, constitutionally protected right to due process. HISA's rules governing adjudication of alleged violations deny thoroughbred owners, trainers, veterinarians, and others of their guaranteed right to be heard in a meaningful way and in a meaningful time.

HISA's Series 7000 Rules governing adjudication violate his rights to due process guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution. Further, HISA's rules violate the constitutional right afforded to him by the Fourth Amendment prohibiting unauthorized

---

[1] No counsel for a party authored this brief in whole or in part, and no entity or person other than Scott Dilworth made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for all parties received notice of Scott Dilworth's intent to file this brief at least 10 days before its due date pursuant to and in compliance with this Court's Rule 37.2.

search and seizures and the Seventh Amendment right to have a dispute involving monetary damages decided by a jury.(U.S. Const. amend. IV)(U.S. Const. amend. VII).

SUMMARY OF ARGUMENT

A horseman's state issued occupational license, that one must have to participate in thoroughbred racing, is: "… a property interest sufficient to invoke the protection of the due process clause…." See *Barry v. Barchi, 433 U.S. 55 (1979)*. Therefore, a license issued by a state racing commission, allowing the licensee to participate in a state thoroughbred racing program, may not be taken or suspended without providing both procedural and substantive due process. HISA's rules governing the adjudication process violate the constitutionally guaranteed right to due process, and, therefore, HISA is unconstitutional.

Under the Series 7000 Rules for Adjudication, Amicus Dilworth and similarly situated participants in the thoroughbred industry are not afforded adequate time to retain counsel and experts necessary to mount a proper defense. Additionally, they are denied/prohibited from conducting discovery and from taking depositions of both lay and expert witnesses. Amicus Dilworth and his fellow thoroughbred participants are compelled to arbitrate disputes involving alleged violations of the Antidoping Medication Control (ADMC) rules before a HISA selected arbitrator. In cases adjudicated to date, HISA selected arbitrators have been flown in

from Canada at a cost of nearly $15,000.00 per day. The cost to defend is prohibitively expensive. As a result, they are being priced out of their guaranteed right to due process under the constitution.

Further, HISA's rules violate thoroughbred industry participant's constitutionally guaranteed rights by the Fourth Amendment of the US Constitution. HISA's rules provide for a search and seizure without a court order or warrant. And, despite the Seventh Amendment's guaranteed right to a trial by jury in matters involving monetary damages, HISA's rules provide for no trial by jury, resulting in a violation of Amicus Dilworth and his fellow thoroughbred industry participants Seventh Amendment rights.

In conclusion, the legal maxim: "No man should be condemned unheard." is the basis of the right to due process; the right to be heard. HISA, by and through its private and self-selected members, have propagated rules that violate and deprive those in the thoroughbred industry of that right.

ARGUMENT

I. HISA's Rules Governing Adjudication of Disputes Violates the Fifth and Fourteen Amendments of the United States Constitution

> "Whatever disagreement there may be as to the scope of the phrase 'due process of law there can be no doubt that it embraces the fundamental concept of a fair trial, with opportunity to be heard." Oliver Wendell Holmes, *Frank v. Mangum 237 US 309, 347 (1915)*

The legal maxim that no man should be condemned unheard is so important and fundamental to the tenants of democracy and justice that it is guaranteed by both the Fifth Amendment and the Fourteenth Amendment. The Fifth Amendment guarantees: "nor shall any person… be deprived of life, liberty, or property without due process of law…." (U.S. Const. amend. V). The right to due process is also guaranteed by the Fourteenth Amendment that states: "… nor shall any state deprive any person of life, liberty, or property without due process of law…." (U.S. Const. amend. XIV).

For decades states have governed and regulated thoroughbred racing by way of the state racing commissions. Each state jurisdiction had slightly different rules regarding procedures and penalties, all states utilized an administrative process of adjudication allowing the accused to be heard.

Under the states regulated system, owners, trainers, jockeys, and equine veterinarians were afforded the right to be heard. This right to be heard included a hearing conducted by the state stewards followed by a hearing before an administrative law judge, and finally in a hearing before the state racing commission. Also provided was the right to judicial review before a state trial court. That changed in December of 2020.

Amicus Dilworth and his fellow horsemen and those under the jurisdiction of HISA, now face a far different adjudication system. For example, before HISA, if Amicus Dilworth was accused of a violation, his case would be presented before an administrative law judge provided for and selected by the state regulator. Conversely, he is compelled to arbitrate the allegations of wrongdoing under HISA. (See HISA Rule 7410). Also, prior to December 2020, Mr. Dilworth was offered the right to conduct discovery and schedule and take depositions in connection with mounting a defense. Under HISA, his right to serve discovery, and/or to dispose witnesses, lay or expert, has been taken away and denied. (See HISA Rule 7260(b)). So too, under HISA, has Amicus Dilworth's right to review by the ultimate administrative authority – the Federal Trade Commission (See 15 U.S.C. § 3053). A right to review filed by a covered person, such as Amicus Dilworth, may or may <u>not</u> be accepted. (See 15 U.S.C. § 3058(c)(2)(c)). And, although while Amicus Dilworth has a right to judicial review pursuant to HISA's Series 7000 Rules, it is not to a local state trial court with a required filing fee of a few hundred dollars. Instead, it is an

appeal directly to a United States Federal Court of Appeals at a far greater costs (See 5 U.S.C. §702 and 5 U.S.C. §706).

To illustrate the lack of due process afforded one in Amicus Dilworth position, pursuant to HISA's Series 7000 Rules, assume Amicus Dilworth is alleged to have an equine antidoping (EAD) violation. HISA Rule 7170.

The hearing on the pending alleged violation against Amicus Dilworth is required to be conducted within sixty (60) days (See HISA Rule 7170(f)). Amicus Dilworth must immediately seek and retain counsel and, most likely, an expert witness. He must then secure the laboratory test results, as well as the results from any confirmatory test and provide the same, as well as other investigative information, to his expert(s). Counsel for Mr. Dilworth will further need to interview witnesses, meet and consult with expert witness, and prepare a defense strategy. All of this together with preparing for the merits hearing must occur within sixty (60) days. HISA Rule 7170(f). In contrast, HISA has had an indefinite period to prepare its case before filing. HISA has no time limit to interview witnesses, conduct repeated testing, consult and seek expert witnesses, and to prepare all pretrial filings. A horseman, such as Amicus Dilworth, facing the potential of a lifetime ban/career ending decision is provided inadequate time to mount and assert a defense. Result: violation of Amicus Dilworth's constitutional protected right to be heard in a meaningful time and a meaningful manner. *Armstrong v. Manzo,* 380 US 545, 552 (1965).

Once filed the administrative complaint is then assigned to a HISA selected arbitrator. HISA Rule 7020(A). Amicus Dilworth has no input or say in the selection of the arbitrator. Significantly, HISA's rule regarding arbitration ignores, and is not consistent with, the American Arbitration Association rules. For example, arbitration is mandatory; Amicus Dilworth has no right to a trial by jury. Pursuant to HISA's rules, arbitration is binding. Additionally, under the American Arbitration Association rules parties have the right to decide what issues are to be arbitrated. Amicus Dilworth has no say whether certain or all issues are subject to arbitration. Finally, and perhaps most importantly, Amicus Dilworth has no say or right to be heard regarding what rules will govern the arbitration process. HISA Rule 7000.

Section 7260 of HISA states, in part, that: "… the federal rules of evidence may be used as guidance…." See HISA Rule 7260(d). However, the first case adjudicated under HISA's rules regarding arbitration was govern not by the Federal Rules of Evidence, but rather by the World Antidoping Association Code. This was done without prior notice that the World Antidoping Association rules would apply. Conclusion, horsemen such as Amicus Dilworth, facing potential lifetime or career ending decisions, have no input in the arbitration process including the rules that govern the process and determine the future of their interest, careers, and investments in thoroughbred racing. Result: violation of Amicus Dilworth's right to be heard in a meaningful time and a meaningful manner. *Armstrong v. Manzo,* 380 US 545, 552 (1965).

II. HISA's Rules Governing Adjudication of Disputes Violates the Seventh Amendment of the United States Constitution

The Seventh Amendment of the United States Constitution codifies the right to a trial by jury. Specifically, the Seventh Amendment states:

> "…In suites at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise be re-examined in any Court of the United States, thus according to the rules of the common law" (See U.S. Const. amend. VII)

While there are limitations to ones right to a trial by jury, these limitations do not apply to Amicus Dilworth or his fellow thoroughbred horsemen. This is because a cause of action, pursuant to HISA, is a civil claim and because HISA provides no written agreement of waiver whereby one surrenders his or her right to have an allegation/claim decided otherwise. Finally, HISA is a set of federal rules and regulations, as opposed to state law, that is overseen by a federal agency, the FTC. The Seventh Amendment guarantees a right to trial by jury where the dispute is one governed by federal rules or regulations and civil in nature. HISA, Series 7000 rules, involves the arbitration of federal rules and regulations. One charged with violating these rules

and regulations should be allowed to exercise his or her right to a jury trial.

HISA may seek all remedies available pursuant to its rules and regulations that include monetary penalties. In many cases, the monetary penalty for an alleged violation is tens of thousands of dollars and includes both a direct and indirect monetary penalty.

The direct monetary penalty is the fine associated with the alleged violation that often is tens of thousands of dollars. The indirect monetary penalty is the horse being disqualified and being deemed ineligible for racing for a period of time. 15 U.S.C. § 3057(d)(2). Despite seeking monetary penalties in nearly all actions initiated under HISA's rules, there is no right to a trial by jury as constitutionally required by the Seventh Amendment of the United States. In fact, it specifically prohibits the same. HISA Rule 7410.

In May of 2022, the United States Court of Appeals for the Fifth Circuit issued an opinion confirming the constitutional right to a jury trial in the case of *George R. Jarkesy, Jr.; Patriot28, L.L.C. v. Securities and Exchange Commission*, 51 F4th 644 (2022). This case involved an action by the SEC against Mr. Jarkesy for alleged security fraud. Mr. Jarkesy was denied a jury trial and received an unfavorable decision from a Security Exchange Commission's Administrative Law Judge. Mr. Jarkesy appealed, asserting that his constitutional right to a jury trial had been violated. Mr. Jarkesy's

argument was both persuasive and successful. The Court held, in part: "…the SEC's in-house adjudication… violated their (Petitioner's) Seventh Amendment right to a jury trial…." See *Jarkesy v. SEC, 51 F.4th 644*.

HISA's Series 7000 Rules are an "in house adjudication" system without a right to a jury trial. The court in Jarkesy, supra, further held, in pertinent part, that:

> "Trial by jury is a "fundamental" component of the legal system "and remains one of the most vital barriers to governmental arbitrariness"…Indeed, the right to trial by jury was probably the only one universally secured by the first American state constitutions... Because maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence... any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care" (Jarkesy, supra, at pages 6 and 7)

There is no dispute; HISA does not provide for or allow a jury trial. HISA violates the Seventh Amendment of the United States Constitution. HISA is unconstitutional.

III. HISA Rules Governing Adjudication of Disputes Violate the Fourth Amendment of the United States Constitution

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized" (U.S. Const. amend. IV)

Although the Fourth Amendment of the United States Constitution protects Amicus Dilworth and similarly situated thoroughbred horsemen, from unreasonable searches and seizures. HISA Rule 5730(b)(1) provides that a private entity (HISA) shall have access and authority to search and seize Mr. Dilworth's: "….books, records, offices, and… places of business of a Covered Person that are used in the care, treatment, training, or racing of Covered Horses…." HISA Rule 5730(b)(1). Amicus Dilworth's place of business is his personal private home. HISA's rule permits the search and seizure of Mr. Dilworth's home without court order or warrant.

The right/rule to search another's place of business/home without court order or warrant violates the Fourth Amendment of the United States Constitution. So too does HISA's rule governing what may be seized as part of a warrantless search.

HISA Rule 5730(b)(2) provides what may be seized. The list includes not only medication and paraphernalia, but also: "…any object or device reasonably believed to have been used in furtherance of a violation or suspected violation…." See HISA Rule 5730(b)(2). This includes Amicus Dilworth's personal computer and personal cellular phone that is used not only in connection with his thoroughbred business but also in connection with his other unrelated business interests. See HISA Rule 5730(d)(2). These seizures of Mr. Dilworth's personal property are allowed without any order issued by a court of law to determine if such search is reasonable and without a warrant.

The Fourth Amendment enforces the notion that each man's home is his castle. HISA ignores that notion. The Fourth Amendment states: "No warrants shall issue, but upon probable cause." HISA's rules require no probable cause, or oath or affirmation. Nor do HISA's rules require a specific description or identity of the place to be searched or the items to be seized. HISA also violates Amicus Dilworth's constitutional rights by failing to require the specific particular person or thing to be seized and fails to require the same be particularly described. Instead, HISA's rules governing search and seizures allow for seizures of any "information that may be relevant to an investigation…." HISA Rule 5730(d)(2).

The Fourth Amendment of our constitution was adopted December 15, 1791. It came about because of infringement of privacy in the colonies.

Writs of Assistance allowed government officials to track down and conduct warrantless searches. HISA's rules provide a private entity with that power, the power to operate with "Writs of Assistance." Such warrantless searches and seizures have been constitutionally prohibited for nearly 250 years. HISA violates the Fourth Amendment of the Constitution of the United States.

CONCLUSION

In conclusion in the reasons stated above, the Petitioner's Writ of Certiorari should be granted.

Dated: October 30, 2026

Respectfully submitted,

PETER J. SACOPULOS
Counsel of Record
Sacopulos & Sacopulos
676 Ohio Street
Terre Haute, IN 47807
(812) 238-2565
pete_sacopulos@sacopulos.com