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Texas Racing Commission Reaffirms Proposed Federal Grant Model to Replace Statute Declared Unconstitutional

AUSTIN, Texas (Nov. 18, 2022) – In February, Texas challenged the constitutionality of the *Horseracing Integrity and Safety Act of 2020* (HISA). In this controversial legislation, Congress delegated legislative and regulatory authority to a private entity - a violation of the established non-delegation doctrine.

Today, in New Orleans, the U.S. Court of Appeals for the Fifth Circuit issued an opinion in the *National Horsemen's Benevolent and Protective Association, et al, v. Black*, concluding that “*HISA is facially unconstitutional. A cardinal constitutional principle is that federal power can be wielded only by the federal government. ... The end result is Congress has given a private entity the last word over what rules govern our nation’s thoroughbred horseracing industry. The Constitution forbids that. For good reason, the Constitution vests federal power only in the three branches of the federal government. Congress defies this basic safeguard by vesting government power in a private entity not accountable to the people.*” (See: Full Opinion, [22-10387-CV0.pdf \(uscourts.gov\)](#))

“We appreciate the tremendous support from Governor Greg Abbott's office and Attorney General Ken Paxton's team in challenging the federal government's attempt to remove Texans from the critical leadership role they play in ensuring the fairness, integrity, and safety of the sport of horseracing in our great state,” said Amy F. Cook, Executive Director, Texas Racing Commission.

Now that HISA has been declared unconstitutional, Texas expects Congress will need to modify the statute for it to be enforced. The agency’s view is that the resourcing of federal horseracing regulation be based on the federal, cooperative agreement grant program model used in many other areas to achieve nationwide standards, such as public safety, transportation, and agricultural programs. (See: Federal Trade Commission comment filed on March 3, 2022, [FTC-2022-014-0006](#)). A grantor-grantee relationship is far more effective than attempting to implement a one-size-fits-all federal regulatory scheme that typically results in a constitutional challenge.

“Not considering recommended solutions from the industry experts really means that we are wasting precious time arguing over the implementation of HISA, rather than protecting the amazing animals engaged in the sport of horseracing by coming together to design the appropriate models to implement nationwide standards,” Cook said. “The best solutions in any field, are derived from collaborative, not adversarial approaches. This is the best way to achieve the shared goal of promoting the integrity of the sport and the safety of all horseracing breeds and participants.”

The Texas Racing Commission is charged with regulating and supervising pari-mutuel racing pursuant to the Texas Racing Act. The Commission is composed of nine members, seven of whom are appointed by the Governor with the advice and consent of the Senate, and the Commissioner of Agriculture and Chair of the Public Safety Commission serve as ex officio members.