No. 24A287

In the Supreme Court of the United States

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

Applicants,

v.

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

OPPOSITION TO APPLICATION FOR STAY BY GULF COAST RACING L.L.C.; LRP GROUP, LIMITED; VALLE DE LOS TESOROS, LIMITED; GLOBAL GAMING LSP, L.L.C.; TEXAS HORSEMEN'S PARTNERSHIP, L.L.P.

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RULE 29.6 DISCLOSURE

Pursuant to Rule 29.6, 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. (the "Gulf Coast Racing Plaintiffs") respectfully disclose the following:

1. Gulf Coast Racing L.L.C. has no parent corporation, and no publicly held company has a 10% or greater ownership interest in it.

2. LRP Group, Limited has no parent corporation, and no publicly held company has a 10% or greater ownership interest in it.

3. Valle de Los Tesoros, Limited has no parent corporation, and no publicly held company has a 10% or greater ownership interest in it.

4. Global Gaming LSP, L.L.C. is 51% owned by Racing Partners of Texas, LLC, and 49% owned by Global Gaming Solutions, LLC. No publicly held company has a 10% or greater ownership interest in it.

5. Texas Horsemen's Partnership, L.L.P. has no parent corporation, and no publicly held company has a 10% or greater ownership interest in it.

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INTRODUCTION

In 2020, Congress established a new and unique regulatory agency: the Horseracing Integrity and Safety Authority (the "Authority"), with power to make regulations, conduct adjudications, and engage in enforcement actions for the horseracing industry nationwide. *See* Horseracing Integrity and Safety Act ("HISA"), 15 U.S.C. §§ 3051 *et seq*. Instead of applying the usual constitutional rules applicable to such an agency, including those relating to the appointment and removal of officers, Congress circumvented these constitutional requirements by claiming that the Authority, which had incorporated itself under the laws of Delaware weeks before Congress's enactment, is a private nonprofit corporation to which the Constitution does not apply.

This Court has made clear that the Constitution cannot be so easily evaded. "The Constitution deals with substance, not shadows." *Cummings* v. *Missouri*, 71 U.S. 277, 325 (1866); *Lebron* v. *Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 397 (1995) ("It surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form."). To reach that conclusion here, one need simply apply established law to this novel attempt at circumvention: the Authority exercises significant authority under the laws of the United States and its officers must therefore be appointed under the Appointments Clause. *Lucia* v. *Sec. & Exch. Comm'n*, 585 U.S. 237 (2018).

The Fifth Circuit below upheld the Authority's rulemaking authority but enjoined its enforcement activities. It did so not on the grounds of the Appointments

Clause, but rather on the grounds of the private nondelegation doctrine. The Gulf Coast Racing Plaintiffs agree with the Authority that this Court is likely to grant certiorari and that the Court should do so and resolve this case this term. They further agree that there is a fair prospect the Court will modify the judgment below, but not in the direction the Authority seeks, instead holding that HISA is unconstitutional in its entirety for violating the Appointments Clause. There is therefore no valid basis for staying the mandate. Moreover, any stay will cause irreparable harm to the Gulf Coast Racing Plaintiffs. They therefore oppose the application to stay the mandate.

If the Court treats the Authority's application as a petition for certiorari, it should treat this opposition as a cross-petition. The relevant questions, however, are as follows:

1. Whether Congress can empower a purportedly private nonprofit entity to regulate the horseracing industry nationwide through rulemaking, adjudication, and enforcement powers, and therefore to exercise significant authority pursuant to the laws of the United States, without proper appointments under the Appointments Clause.

2. In the alternative, whether Congress's empowering a private nonprofit corporation to regulate the horseracing industry nationwide through rulemaking, adjudication, and enforcement violates the private nondelegation doctrine.

The Court should grant certiorari in this case, whether now or when a regular petition is filed in due course, because the Gulf Coast Racing Plaintiffs brought both

an Appointments Clause challenge to HISA in addition to their alternative argument under the private nondelegation doctrine. The Gulf Coast Racing petition thereby presents, or will present, the full range of issues necessary to resolve the relevant constitutional questions.[1]

STATEMENT

1. HISA purports to bestow powers upon a "private, independent, self-regulatory, nonprofit corporation, to be known as the 'Horseracing Integrity and Safety Authority.'" 15 U.S.C. § 3052(a). This "Authority" was incorporated in Delaware on September 8, 2020, Gulf Coast App. 1a, weeks before HISA passed in the House of Representatives on September 29, 2020.[2] On September 30, 2020, the Authority filed its bylaws. Gulf Coast App. 7a-29a. Those bylaws provide, as does HISA itself, for a Board of Directors and a Nominating Committee that appoints the Directors. 15 U.S.C. § 3052(b) (Board); *id.* § 3052(d) (Nominating Committee); Gulf Coast App. 11a-18a. The bylaws themselves name the initial members of the Nominating Committee. Gulf Coast App. 17a-18a. They also provide that the

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[1] Contrary to the assertion in the petition for rehearing in No. 23-402, there is no potential jurisdictional defect in any of the cases arising out of the Fifth Circuit. It is true that the clerk of that court asked the parties to brief the issue of the finality of the District Court's order, but the matter was so trivial that the Fifth Circuit opinion does not even address the question. This Court should therefore grant certiorari in this case if it agrees that it presents all the relevant constitutional questions, such as those involving the Appointments Clause, which no other petition presents and no other party asserts. Certainly, the forthcoming certiorari petitions from the State of Texas and the National Horsemen plaintiffs, focused on the private nondelegation doctrine, should be granted whether or not the Court decides to consider the Appointments Clause.

[2] References to "Gulf Coast App." are to the appendix filed with this opposition.

Directors can only be removed by other Directors. Gulf Coast App. 14a ("Directors shall be removable, for cause, by the affirmative vote of all Directors then in office.").

2. HISA empowers the Authority to "develop[] and implement[] a horseracing anti-doping and medication control program and a racetrack safety program for covered horses, covered persons, and covered horseraces." 15 U.S.C. § 3052(a); *see also id.* § 3055(a)(1). A "covered horserace" is "any horserace involving covered horses that has a substantial relation to interstate commerce." *Id.* § 3051(5). "[C]overed persons" means "all trainers, owners, breeders, jockeys, racetracks, veterinarians," or other persons "engaged in the care, training, or racing of covered horses." *Id.* § 3051(6). "[C]overed horse" is any "Thoroughbred horse," but the statute provides for the expansion of the Authority's jurisdiction to other breeds. *Id.* § 3051(4).

HISA authorizes the Board to make rules for accessing documents, issuing subpoenas, and undertaking investigations. *Id.* § 3054(c). It grants the Authority "subpoena and investigatory authority with respect to civil violations committed under its jurisdiction." *Id.* § 3054(h). It grants the Authority power to "commence a civil action against a covered person or racetrack" that has violated the Act and to commence such actions "to enjoin . . . acts or practices" that violate the Act. *Id.* § 3054(j)(1). HISA provides that the Authority "shall issue" or "shall establish" rules regarding "safety, performance, and anti-doping and medication control rule violations," *id.* § 3057(a)(1), (c)(1), adjudicatory processes, *id.* § 3057(c), and "civil sanctions" for violations, *id.* § 3057(d).

The Authority has promulgated a registration rule, requiring all covered persons to register with the Authority and consent to searches and seizures, Rule 9000, 87 Fed. Reg. 29,862, 29,866-67 (May 17, 2022); a legislative rule relating to racetrack safety, Rule 2000 *et seq.*, 87 Fed. Reg. 435, 445-59 (Jan. 5, 2022); rules on civil sanctions, enforcement, and adjudicatory processes, Rule 8000 *et seq.*, 87 Fed. Reg. 4023, 4028-31 (Jan. 26, 2022); a rule on fee assessments, Rule 8500 *et seq.*, 87 Fed. Reg. 9349, 9352-53 (Feb. 18, 2022); and a legislative rule on anti-doping and medication control, Rule 1010 *et seq.*, 88 Fed. Reg. 5070, 5084-5201 (Jan. 26, 2023).

3. HISA provides for strictly limited oversight by the Federal Trade Commission ("FTC"). Under HISA, the Authority's rules do not become effective without FTC approval, but the FTC "shall"—that is, it *must*—approve the rules if they are "consistent with" the Act and with "applicable rules approved by the Commission." 15 U.S.C. § 3053(c)(2)(B). The FTC-promulgated rules are procedural, detailing the Authority's rulemaking process. *Id.* § 3053(a) ("The Authority shall submit to the Commission, in accordance with such rules as the Commission may prescribe . . . ."). When Congress first enacted HISA, it was clear that the FTC could consider neither the policy merits of the Authority's rules, nor public comments on them. When considering several rules, the FTC specifically refused to address their policy merits.

4. On March 15, 2021, the National Horsemen Plaintiffs filed a lawsuit in the Lubbock Division of the Northern District of Texas. They and the Defendants filed cross motions on private nondelegation and due process claims. On April 25, 2022,

Judge Hendrix entered final judgment against the National Horsemen Plaintiffs and the Texas intervenors. On November 18, 2022, a panel of the Fifth Circuit reversed the District Court and held HISA invalid under the private nondelegation doctrine in part because, unlike the Securities and Exchange Commission ("SEC") in the Maloney Act context, the FTC did not have the power to abrogate, modify, or add to the Authority's rules. *Nat'l Horsemen's Benev. & Protective Ass'n* v. *Black*, Case No. 22-10387, Doc. 187-1, 53 F.4th 869 (5th Cir. 2022) ("*NHBPA I*").

In December 2022, HISA was amended in response to the Fifth Circuit's decision. The amendment granted the FTC power to "abrogate, add to, and modify" the Authority's rules "as the Commission finds necessary or appropriate to ensure the fair administration of the Authority, to conform the rules of the Authority to requirements of this Act and applicable rules approved by the Commission, or otherwise in furtherance of the purposes of this Act." Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. O, tit. VII, § 701, 136 Stat. 4459, 5231-32 (2022); 15 U.S.C. § 3053(e) (as amended).

On January 31, 2023, the Fifth Circuit panel remanded the case to the District Court and provided that any further appeal shall be to the same panel. Case No. 22-10387, Doc. 223-1. On March 3, 2023, the U.S. Court of Appeals for the Sixth Circuit upheld HISA on private nondelegation grounds in light of Congress's amendment. *Oklahoma* v. *United States*, Case No. 22-5487, Doc. 81-2, 62 F.4th 221 (6th Cir. 2023). On April 17, 2023, the plaintiffs in that case petitioned for rehearing en banc, which was denied on May 18, 2023. This Court denied certiorari in the Sixth Circuit case on

June 24, 2024. A petition for rehearing was filed on July 25, which is currently pending and has been distributed for conference on September 30.

5. While these proceedings, centered on private nondelegation challenges, were ongoing, the Gulf Coast Racing Plaintiffs filed a separate lawsuit in the Amarillo Division of the Northern District of Texas on July 29, 2022, where they made different claims. They argued—and continue to argue—that HISA violates the Constitution because it contradicts the Appointments Clause and the vesting of the removal power in the President. In the alternative, they assert that HISA also violates the private nondelegation doctrine.

On April 6, 2023, Judge Kacsmaryk transferred the Gulf Coast Racing Plaintiffs' case to the Lubbock Division. On April 11, Judge Hendrix consolidated the case with the National Horsemen's case. On April 26, Judge Hendrix held a half-day bench trial. On May 4, 2023, Judge Hendrix issued a final order and judgment upholding HISA and dismissing all Plaintiffs' and Intervenors' claims. On May 17, 2023, the Gulf Coast Racing Plaintiffs filed their notice of appeal.

6. The Fifth Circuit issued its decision in this case on July 5, 2024. *Nat'l Horsemen's Benev. & Protective Ass'n* v. *Black*, Case No. 23-10520, Doc. 198-1, 107 F.4th 415 (5th Cir. 2024) ("*NHBPA II*"). The Fifth Circuit agreed with the Sixth Circuit that, because of Congress's amendment, the National Horsemen's argument that the Authority's rulemaking powers violated the private nondelegation doctrine must be rejected. Unlike the Sixth Circuit, however, the Fifth Circuit panel concluded that the Authority's enforcement functions must be enjoined under the private

nondelegation doctrine because those functions were insufficiently supervised by the FTC.

The Fifth Circuit then rejected the Gulf Coast Racing Plaintiffs' independent Appointments Clause challenge. The Fifth Circuit reasoned that "[t]he Supreme Court and circuit courts have . . . used *Lebron*'s analysis to discern whether corporations are part of the government for constitutional purposes." 107 F.4th at 438. In *Lebron*, *supra*, this Court held that Amtrak, which at the time (pre-2008) exercised no government power whatsoever, was nevertheless "the government" for First Amendment purposes because it was a government-created and -controlled corporation. 513 U.S. 374.

Relying on that case, the Fifth Circuit concluded that "the Authority is not a federal instrumentality for purposes of the Appointments Clause" because it was not "created by the federal government" nor created to further "governmental objectives," and because the federal government does not control the operation of the Authority through the appointment of its Directors. 107 F.4th at 438.

The Fifth Circuit recognized that the Gulf Coast Racing Plaintiffs argued that *Lebron*'s analysis is not "the only way" to determine whether a particular entity is governmental, and that the more appropriate test in these circumstances was *Lucia*'s significant-authority test. Yet the Fifth Circuit asked, "How can we, as an inferior court, simply bypass *Lebron*? We cannot." *Id.* at 439.

The Fifth Circuit disagreed that the test for determining who are officers of the United States applied because in *Lucia* and previous cases under the Appointments

Clause the individuals in question were "already part of the government." *Id.* (emphasis deleted). The panel recognized that a 2007 Office of Legal Counsel memorandum maintained that the Appointments Clause "applies to someone with significant and continuing government authority, whether he is a private or a government employee." *Id.* at 439 n.26 (quoting *Officers of the United States Within the Meaning of the Appointments Clause*, 31 Op. O.L.C. 73, 121-22 (2007)). But, the Fifth Circuit stated, "If the opinion was suggesting its analysis as an alternative to *Lebron* . . . , that is a suggestion only the Supreme Court could act upon." *Id.*

7. On August 19, 2024, the Authority and the FTC filed a petition for *en banc* rehearing, which was denied on September 9. On September 16, the Authority and the FTC then filed a petition to stay the mandate, which the Fifth Circuit denied the next day. The Authority then filed in this Court an emergency application to stay the mandate and suggested that this Court may wish to treat the application as a petition for certiorari. The Gulf Coast Racing Plaintiffs oppose the application to stay the mandate but, because the Fifth Circuit did not grant them full relief, agree that this Court should hear the case. If the Court treats the Authority's application as a petition, it should treat this response as a cross-petition.

ARGUMENT

1. The Gulf Coast Racing Plaintiffs agree the Court is likely to grant certiorari and will themselves seek certiorari. But there is no fair prospect that this Court will need to reverse the mandate; if anything, it will expand the mandate and invalidate HISA in its entirety because HISA represents a novel attempt at circumventing the

Appointments Clause. The Authority's Directors exercise significant authority pursuant to the laws of the United States on an ongoing basis, and their duties are established by law. That is sufficient to conclude that they are officers of the United States notwithstanding that the statute labels them private actors.

2. The courts below did not apply the Appointments Clause, however, in deference to this Court's analysis in *Lebron*. That case, however, involved a government-created corporation that did not exercise government power, while the Authority exercises significant authority pursuant to its enabling statute. The courts below and other courts also analyzed HISA under the private nondelegation doctrine and cases involving the Financial Industry Regulatory Authority ("FINRA"), a self-regulatory organization ("SRO"). None of these doctrines conflicts with the Appointments Clause, however, and as a result there is a fair prospect this Court will (as it should) expand the mandate and invalidate HISA in its entirety.

3. If a stay is issued, significant irreparable harm will indeed result, but it will result to the Gulf Coast Racing Plaintiffs.

The Court should deny the application to stay the mandate, and, if it treats the application as a petition for certiorari, should treat this response as a cross-petition and grant the questions presented above.

I. The Court is likely to expand the mandate because the Authority's officers must be appointed under the Appointments Clause.

The two criteria that characterize an officer of the United States are that the individual occupies "a 'continuing' position established by law" and exercises "significant authority pursuant to the laws of the United States," that is, "'significant

discretion' when carrying out . . . 'important functions.'" *Lucia*, 585 U.S. at 244-47 (quoting *Freytag* v. *Comm'r*, 501 U.S. 868, 878 (1991)). Because the Authority and its Directors meet those criteria, three related conclusions are inescapable: the Directors are officers of the United States; HISA necessarily is unconstitutional in its entirety; and this Court is likely to expand, not reverse, the mandate.

1. The Directors occupy a "continuing position established by law." HISA establishes that "[t]he Authority shall be governed by a board of directors." 15 U.S.C. § 3052(b)(1). The Authority itself, as directed by the Board, engages in numerous statutory duties, including "developing and implementing" and "establish[ing]" a horseracing anti-doping and medication control program and a racetrack safety program with punishments for violations. *Id.* §§ 3052(a), 3055(a)(1), 3056(a)(1), 3057(a)(1), (c), (d). The Act bestows "powers and responsibilities under this chapter" upon the "Authority." *Id.* § 3054(a). It authorizes the Board to make rules for accessing documents, issuing subpoenas, and engaging in investigations. *Id.* § 3054(c). It grants the Directors "subpoena and investigatory authority with respect to civil violations committed under its jurisdiction." *Id.* § 3054(h). It grants the Authority power to "commence a civil action against a covered person or racetrack" that has violated the Act. *Id.* § 3054(j)(1).

In the courts below, the Authority argued that the Directors' offices are not established by law, but rather by the Authority's own incorporation documents. But if Defendants were correct that the Authority can escape the Appointments Clause by self-incorporating before HISA was enacted, then every government agency could

evade the clause that same way. Congress, in coordination with industry members, could encourage a group of "private" individuals to create the "environmental protection authority" as a nonprofit organization that drafts environmental regulations with which members of the coal industry must comply. It could collude with "private" individuals to create the "federal communication authority," a private non-profit organization that regulates anyone who wants to transmit over the airwaves. That cannot be right. The relevant question is whether the duties are established by law because it is the duties that create the "office." Noah Webster, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 236 (New York, S. Converse 1828) (defining officer as "[a] person commissioned or authorized to perform any public duty"); Giles Jacob, A NEW LAW-DICTIONARY [653] (10th ed., London: W. Strahan & W. Woodfall 1782) ("[E]very man is a public officer who hath any duty concerning the public.").

2. The Directors also exercise significant authority. As in *Lucia* and *Freytag*, the Board can "take testimony," "receive evidence," and "examine witnesses at hearings"; it can "conduct trials" (hearings), and specifically "administer oaths, rule on motions, and generally regulate the course of a hearing, as well as the conduct of parties and counsel"; and it can "rule on the admissibility of evidence" and "thus critically shape the administrative record (as they also do when issuing document subpoenas)." *Lucia*, 585 U.S. at 248 (cleaned up); *see* 15 U.S.C. §§ 3057(c)(2)(A)-(F), 3058(a)-(b); Rule 8340(a), (c)-(i), 87 Fed. Reg. at 4029-30. The Directors' adjudicatory powers are the same as the ALJ's powers in *Lucia*. The fact that another

adjudicator—an FTC ALJ—can later review the Directors' work does not make them any less officers, just as SEC review did not make the SEC ALJ any less an officer. Indeed, the SEC had more power of review in *Lucia* because it could always take a case away from an ALJ altogether and hear it in the first instance. *Lucia*, 585 U.S. at 241 ("By law, the Commission may itself preside over such a proceeding."). Under HISA, the FTC has no mechanism whatsoever to do so. The Authority always gets to adjudicate. 15 U.S.C. § 3058.

The Authority is also identical in many respects to the Public Company Accounting and Oversight Board ("PCAOB") from *Free Enterprise Fund* v. *PCAOB*, 561 U.S. 477 (2010). This Court held that the PCAOB exercised "significant executive power," *id.* at 514, and that its members were officers, *id.* at 486, despite Congress having declared it a private entity. Just as "[e]very accounting firm" had to "register with the Board, pay it an annual fee, and comply with its rules and oversight," *id.* at 485, so too here every covered person and racetrack must register with the Board, pay it an annual fee, and comply with its rules and oversight. 15 U.S.C. §§ 3054(d) (registration and compliance requirement); 3052(f)(3) (funding). Just as the PCAOB "is charged with enforcing the Sarbanes-Oxley Act, the securities laws, the Commission's rules, its own rules, and professional accounting standards," 561 U.S. at 485, the Authority is charged with enforcing HISA, the Commission's rules, and its own rules. *E.g.*, 15 U.S.C. §§ 3054(e)-(f), (h)-(j).

Just as the PCAOB "may regulate every detail of an accounting firm's practice," 561 U.S. at 485, the Authority here regulates essentially every detail of

horseracing. And just as the PCAOB "promulgates auditing and ethics standards, performs routine inspections of all accounting firms, demands documents and testimony, and initiates formal investigations and disciplinary proceedings," *id.*, the Authority "promulgates [racetrack safety and medication control] standards, performs routine inspections of all [racetracks and covered persons], demands documents and testimony, and initiates formal investigations and disciplinary proceedings." 15 U.S.C. §§ 3054(c), (h), 3057(a)(1), (c).

And just as PCAOB "can issue severe sanctions in its disciplinary proceedings, up to and including the permanent revocation of a firm's registration, a permanent ban on a person's associating with any registered firm, and money penalties of . . . $750,000 for a natural person," 561 U.S. at 485, here the Authority "can issue severe sanctions in its disciplinary proceedings, up to and including [lifetime bans on horseracing], and money penalties" at the Authority's own discretion (which it has currently set at $50,000-$100,000 per violation). 15 U.S.C. § 3057(d)(3)(A); Rule 8200(b)(2), 87 Fed. Reg. at 4028. And in this respect the Authority has even more power than does the PCAOB: the Authority can commence public prosecutions in district court, 15 U.S.C. § 3054(j), a core executive power. 1 William Blackstone, Commentaries on the Laws of England 257-59 (Oxford: Clarendon Press 1765).

3. Subordination does not matter to this analysis. Under the Appointments Clause, subordination determines whether an officer is a principal or inferior officer—not whether an individual is an officer at all. *Edmond* v. *United States*, 520 U.S. 651, 663 (1997). Thus, in *Lucia*, the Supreme Court held that the SEC ALJ was an officer

even though the ALJ's decisions had to be approved by the SEC, and the SEC could reverse the ALJ, or could even take a case away from the ALJ.

Even more telling, the review structure in the Sarbanes-Oxley Act, at issue in *Free Enterprise Fund*, is identical to the review structure of HISA. No rule of the PCAOB can "become effective without prior approval of the Commission [SEC]." 15 U.S.C. § 7217(b)(2). The SEC "shall approve a proposed rule, if it finds that the rule is consistent with the requirements of this Act." *Id.* § 7217(b)(3) (emphasis added). And the SEC can "abrogat[e], delet[e], or add[ ]" to the rules of the PCAOB. *Id.* § 7217(b)(5). Yet the PCAOB members are still officers.

4. The sole question that should have resolved this case below was whether Congress can circumvent the rule of *Lucia* and similar cases by empowering a preexisting, private corporation. In this case that corporation incorporated itself mere weeks before Congress enacted the law, in overt collusion with legislators in anticipation of legislative action. But that does not matter for the principle. As noted above, it is the duties that make the office. Therefore, even if the Authority had engaged in private activity before (it did not), its Directors would now be officers to the extent they executed statutory duties.

As this Court has said, "It surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form." *Lebron*, 513 U.S. at 397. And yet that is exactly what Congress did here. If the Court grants certiorari, it is likely to confirm that the Constitution's separation of powers cannot be so easily evaded, that "[t]he

Constitution deals with substance, not shadows." *Cummings*, 71 U.S. at 325. It should therefore deny the Authority's application to stay the mandate.

II. Cases involving government-created corporations, the private nondelegation doctrine, and self-regulatory organizations do not compel a different result.

The courts below, as well as several other courts around the country, resisted application of the Appointments Clause because three other lines of cases appear to be in tension with this Court's appointments jurisprudence: those involving government-created corporations; those involving the private nondelegation doctrine; and those involving self-regulatory organizations. None of these lines of cases applies, however, to an entity that exercises significant authority pursuant to the laws of the United States.

1. The District Court and Fifth Circuit in this case believed that *Lebron*, *supra*, and its progeny precluded an Appointments Clause challenge. This line of cases stands for the proposition that certain government-created corporations, even if they do not exercise government power—or at least not significant authority pursuant to the laws—are nevertheless the government for certain constitutional purposes. These cases have nothing to do with government agencies exercising regulatory power. If Congress vests power in a person or an entity to exercise "significant authority pursuant to the laws of the United States," that person or the officials of that entity are officers of the United States, full stop.

In *Lebron*, this Court held that the First Amendment applied to Amtrak even though Amtrak was just a train service. "[I]t is not for Congress to make the final determination of Amtrak's status as a Government entity for purposes of determining

the constitutional rights of citizens affected by its actions," this Court held. "If Amtrak is, by its very nature, what the Constitution regards as the Government, congressional pronouncement that it is not such can no more relieve it of its First Amendment restrictions than a similar pronouncement could exempt the Federal Bureau of Investigation from the Fourth Amendment." 513 U.S. at 392. "It surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form." *Id.* at 397.

In the proceedings below, both the District Court and the Fifth Circuit perversely applied *Lebron* to assist in evading the "most solemn obligations imposed in the Constitution by simply resorting to the corporate form." The Fifth Circuit reached its conclusion by applying *Lebron*'s three-part test for determining whether Amtrak was part of the government.

First, the Fifth Circuit incorrectly held that the Authority, unlike Amtrak, was not created by statute. 107 F.4th at 438. On this reasoning, the First Amendment would not have applied to Amtrak if only Amtrak had incorporated itself under Delaware law a few weeks in advance. That obviously cannot be the correct answer. The question, as it is with the Appointments Clause, is whether the duties of the corporation or entity were created or imposed by statute.[3]

[3] Although for this reason the Appointments Clause would apply regardless, even the Authority acknowledged it was created by the government. HISA provides that "[t]he private, independent, self-regulatory, nonprofit corporation, *to be known as* the 'Horseracing Integrity and Safety Authority', is recognized for purposes of developing and implementing" a nationwide regulatory program. 15 U.S.C. § 3052(a)

Second, the Fifth Circuit mistakenly held that the Authority "was not created to further 'governmental objectives,' but instead as a private association to address doping, medication, and safety issues in the thoroughbred racing industry." 107 F.4th at 438 (quoting *Lebron*, 513 U.S. at 399). It contrasted this with Amtrak, "which Congress created 'to avert the threatened extinction of passenger trains in the United States' and for other goals Congress itself 'establish[ed].'" *Id.* (quoting *Lebron*, 513 U.S. at 383). That cannot be right for the same reason the prior argument fails. Creating a national regulatory program is obviously a governmental objective, even more so than simply ensuring the survival of passenger rail. And if the Fifth Circuit's argument were correct, then the First Amendment would not have applied to Amtrak if only it had incorporated itself as a private corporation and declared its objectives, which Congress then co-opted in a later statute.

Third, and most significantly, the Fifth Circuit erroneously held that unlike in *Lebron*, here "the government has no role in appointing the Authority's Board" and therefore does not control the operations of the Authority. 107 F.4th at 438. *But that is the whole question in this case*. The Fifth Circuit's entire analysis was question

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(emphasis added). If the Authority had truly already existed, it would already have been known as that. And as the Gulf Coast Racing Plaintiffs showed at trial, in three of the Authority's own documents the Authority stated that it was "created" or "established" by HISA. *See, e.g.*, Gulf Coast App. 30a ("The 2020 Horseracing Integrity and Safety Act ('HISA') created the Authority as the independent governing structure charged with proposing and enforcing health-and-safety standards."). Moreover, the Authority's Directors were not empaneled and did not meet until May 27, 2021. That is, until half a year into HISA's enactment, the Authority did not do anything. The only activities the Authority ever did were those HISA required and empowered it to do.

begging: it held that the Authority was not the government and therefore did not require constitutional appointments because its Directors were not appointed by the government.

This third factor explains why the *Lebron* test cannot apply to the Authority: the Authority exercises significant authority pursuant to the laws of the United States. That is, it exercises government powers, pursuant to statute, on a continuing basis. Why government appointments matter for government-created corporations like Amtrak is because they do not otherwise exercise regulatory power, or power that would be recognized as governmental. Amtrak was, at the time, just a train service.[4]

In other words, *Lebron* and its progeny deal with a different question than do *Lucia* and the Appointments Clause: whether certain entities that do not exercise any governmental power—or at least not significant authority pursuant to the laws—such as Amtrak, the Smithsonian, the Bank of the United States, or Reagan National Airport, are nevertheless part of the "government" for certain constitutional purposes. *See, e.g.*, *Kerpen* v. *Metro. Wash. Airports Auth.*, 907 F.3d 152, 158-60 (4th Cir. 2018) (applying *Lebron* analysis to the question of whether Reagan and Dulles airports are governmental entities). These entities all engage in activities in which private market actors engage, viz. operating a train service, a museum, a bank, or an airport. The Secretary of the Smithsonian may not need to be removable by the

[4] The Fifth Circuit also noted incorrectly that Amtrak exercised governmental power. Amtrak had no governmental power when *Lebron* was decided. The Passenger Rail Investment and Improvement Act, which granted Amtrak some regulatory authority and was at issue in this Court's decision in *Department of Transportation* v. *Ass'n of American Railroads*, 575 U.S. 43 (2015), was not enacted until 2008.

President because the Smithsonian has and exercises no "executive power"; but that hardly means the Smithsonian can engage in viewpoint or race discrimination at the museum.

To summarize, the tests of *Lucia* and *Lebron* work together. They represent two different and complementary ways to determine governmental status. *Lucia* maintains that if one exercises significant authority pursuant to the laws of the United States, then one is an officer to whom the Appointments Clause and the rest of the Constitution, including the First Amendment, apply. *Lebron* then maintains that even if an entity does not exercise significant authority pursuant to the laws, that entity and those officials might still be the government for certain constitutional purposes if the government created the corporation, established its objectives, and controls its operations through the selection of its officials.

If the Court accepts certiorari, it is likely to harmonize these lines of cases and to confirm that Congress cannot evade the Appointments Clause by establishing a new regulatory agency in the guise of a preexisting, private nonprofit corporation. It is therefore likely to expand the mandate, not reverse it.

2. Both the Fifth Circuit below and the Sixth Circuit in *Oklahoma* addressed the constitutionality of HISA under the private nondelegation doctrine, which is how several parties in those lawsuits framed the issue. The FTC and Authority labored in the courts below to argue that the Gulf Coast Racing Plaintiffs' Appointments Clause challenge is inconsistent with the other plaintiffs' private nondelegation challenges, and the Fifth Circuit seemed to buy the argument. *NHBPA II*, 107 F.4th at 436-37

("Challenges based on private nondelegation, on the one hand, and the Appointments Clause, on the other, appear mutually exclusive.").

The doctrines at first glance do appear in tension. The central test for satisfying the private nondelegation doctrine—subordination to a government officer—is the test for an inferior officer under the Appointments Clause. In other words, subordination may satisfy the private nondelegation test, but that cannot determine whether the private nondelegation doctrine or the Appointments Clause applies in the first place.

The answer to this puzzle is straightforward. There is no conflict or incompatibility between the two doctrines. They apply in different circumstances. If one exercises significant authority pursuant to the laws of the United States, then there is no need to address the private nondelegation doctrine because that individual is already, by definition, an officer who must be constitutionally appointed. The private nondelegation doctrine only applies where someone exercises government power, but for whatever reason does not meet the test to be an officer. Normally that occurs when the individual exercises government power only episodically.

A classic example is the delegation of eminent domain power to private corporations such as railroads. Those railroads are not government agencies in any ordinary sense of the term. They have no duties established by law. They exercise no government power on an ongoing basis. But the power to condemn private property for public use is a sovereign, government function that alters parties' legal rights and duties. When these railroad corporations exercise that power, their officers need not

be appointed in accordance with the Appointments Clause, but surely their episodic exercise of sovereign power must be supervised at some level by those who are properly appointed government officers. *See, e.g.*, *Boerschig* v. *Trans-Pecos Pipeline, L.L.C.*, 872 F.3d 701, 708 (5th Cir. 2017) (considering whether a delegation of eminent domain power violates the private nondelegation doctrine and concluding not because, in that case, there was judicial review of the determination of public use).

The private nondelegation doctrine also serves another purpose: it prevents the government from giving some market actors power over their competitors. In more modern regulatory schemes, there are several examples where a private entity's exercise of government power may have been too episodic or insignificant to require application of the Appointments Clause, but the Due Process Clause would prevent the delegation of any amount of governmental power to a market actor to exercise over its competitors. That explains most of the private nondelegation cases. *See, e.g.*, *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 311 (1936) (invalidating price-fixing delegation "to private persons whose interests may be and often are adverse to the interests of others in the same business"); *Chiglades Farm, Ltd.* v. *Butz*, 485 F.2d 1125, 1134 (5th Cir. 1973) (addressing "a group of self-interested producers" denying competitor allowance to grow celery); *Ass'n of Am. R.R. v. U.S. Dep't of Transp.*, 721 F.3d 666, 670 (D.C. Cir. 2013), *vacated and remanded sub nom. Dep't of Transp.*, 575 U.S. at 43 (addressing whether "empowering Amtrak to regulate its competitors violates the Fifth Amendment's Due Process Clause").

Indeed, this understanding of the cases makes sense of the doctrine's origins: the private nondelegation doctrine grew out of police power cases in which states had given some neighbors power over other neighbors. *Eubank* v. *City of Richmond*, 226 U.S. 137, 143-44 (1912) (holding that a municipal government delegating to property owners the right to impose new and additional restrictions on street, if two-thirds agree, without any standards governing the decision, and no obvious relation to health or welfare, was not a reasonable exercise of the police power); *Cusack Co.* v. *City of Chicago*, 242 U.S. 526, 530 (1917) (allowing a majority of residents in neighborhood to waive a general prohibition on billboards upheld as reasonable exercise of the police power because the residents would be giving more rights to the business than would otherwise exist); *Washington ex rel. Seattle Title Tr. Co.* v. *Roberge*, 278 U.S. 116, 121 (1928) (a general prohibition on houses for the poor and aged that could be waived only by two-thirds of nearby residents invalidated as unreasonable exercise of police power because such homes not a threat to health or safety).

In sum, there is no incompatibility between the doctrines. If one exercises significant authority under the laws of the United States, that person is an officer. Under this test, just as any private person such as William Barr or Janet Yellen *becomes* a government officer requiring constitutional appointments when he or she assumes statutory duties, the Authority's officials also become government officers requiring constitutional appointments when they assume such duties. If they do not exercise significant authority pursuant to the laws, then any episodic exercise of

government power may nevertheless require government supervision. If the Court grants certiorari, it is likely to clarify that the private nondelegation doctrine is a stopgap doctrine, applicable to exercises of government power where the Appointments Clause does not otherwise apply. The Court is therefore likely to expand the mandate, not reverse it.[5]

3. Related to the private nondelegation doctrine, the Authority and the FTC argue that Congress modelled HISA after the Maloney Act, and the Authority after FINRA, which they claim is a "self-regulatory organization" supervised by the SEC. A handful of circuit courts in the mid-twentieth century, with cursory analysis, upheld this model against nondelegation challenges. *Sorrell v. SEC*, 679 F.2d 1323, 1325-26 (9th Cir. 1982); *First Jersey Secs., Inc. v. Bergen*, 605 F.2d 690, 697 (3d Cir. 1979); *Todd & Co.* v. *SEC*, 557 F.2d 1008, 1012-13 (3d Cir. 1977); *R.H. Johnson & Co.* v. *SEC*, 198 F.2d 690, 695 (2d Cir. 1952).

In one respect, these organizations appear like government agencies, exercising ongoing regulatory authority over certain members of an industry. That has led D.C. Circuit Judge Justin Walker to conclude that they likely violate the Appointments Clause. *Alpine Sec. Corp. v. Fin. Indus. Reg. Auth.*, No. 23-5129 (D.C. Cir. July 5, 2024) (Walker, Circuit Judge, concurring). The Sixth Circuit in

[5] The Gulf Coast Racing Plaintiffs have also preserved their alternative argument that if the Appointments Clause does not apply, then the private nondelegation doctrine should invalidate the Authority's powers. That is another reason why the Gulf Coast Racing petition is ideal for granting certiorari: it presents all the relevant constitutional avenues to resolve this case.

Oklahoma, however, found the FINRA analogy persuasive, and the Fifth Circuit found it partly persuasive below.

But that model, even assuming its constitutionality, is inapplicable here. FINRA does not have a monopoly on government power. The relevant statute authorizes industry members to be part of any self-regulatory organization, and they all vote and participate in the governance of such organizations. 15 U.S.C. §§ 78o, 78s. The Authority, however, has a statutorily granted, ironclad monopoly on regulating horseracing nationwide, and the regulated industry members have no say whatsoever in the governance of the Authority. They have no choice but to be regulated by the Authority. The Authority, in other words, is not a self-regulatory organization at all but is rather an other-regulatory organization. That means it is just a government agency—and therefore that the Appointments Clause and other constitutional strictures apply. As a result, this Court is likely to expand the mandate, not reverse it.

III. A stay of the mandate will cause significant irreparable harm to the Gulf Coast Racing Plaintiffs.

The requirements for staying the mandate cannot be met here. Staying the mandate pending a petition for certiorari is warranted only where, among other things, there is a fair prospect that the applicant may prevail on the merits and where the equities favor the applicant. *See, e.g.*, *California* v. *Am. Stores Co.*, 492 U.S. 1301, 1307 (1989) (O'Connor, J., in chambers). There is no right to such a stay merely because one is seeking certiorari, *Nken* v. *Holder*, 556 U.S. 418, 433 (2009); and an applicant's burden is "particularly heavy" where—as here—"a stay has been denied

by the [lower courts]." *New York Times Co.* v. *Jascalevich*, 439 U.S. 1304, 1305 (1978) (Marshall, J., in chambers) (alteration in original) (citation omitted). For the many foregoing reasons, this Court is likely to expand rather than reverse the mandate.

Equally important, the equities militate against a stay because of the substantial irreparable harm that the Gulf Coast Racing Plaintiffs and their many stakeholders will suffer if a stay is granted.[6]

First, irreparable harm results when horsemen are subject to suspensions, scratches, and other orders barring them and their horses from participating in races. It is impossible in the context of sports to make up a race that is only run once, or to provide financial compensation after-the-fact when there is no way to know where a horse would have placed if allowed to run. *See Nat'l Horsemen's Benev. & Protective Ass'n v. Black*, No. 5:21-cv-071, 2023 WL 2753978, at *6 (N.D. Tex. Mar. 31, 2023) ("Other courts have concluded that plaintiffs can 'make a sufficient showing of irreparable harm' by demonstrating that they 'remain restricted under an illegal system' or rule in a sporting event that would lead to disqualification," collecting cases). A court can no more order a replay of the Super Bowl with a banned player allowed back in than the rerunning of the Belmont Stakes.

Second, a stay of the mandate pending Supreme Court review will mean many months or even years will pass with the Authority's active and ongoing violation of horsemen's and racetracks' constitutional rights. They will continue to be subject to

[6] Of course, whether or not a stay is granted, the Court should grant certiorari as soon as practicable and resolve the case this term.

searches without warrants, interrogations without attorneys, and blood draws without consent. *See NHBPA II*, 107 F.4th at 430 n.12 (listing examples of Authority investigative practices).

"Courts have regularly found that being subjected to an unconstitutional search causes irreparable harm." *Herrera v. Santa Fe Pub. Sch.*, 792 F. Supp. 2d 1174, 1182 (D.N.M. 2011) (collecting cases). Such unconstitutional investigative practices are irreparable in part because "monetary damages do not adequately compensate unconstitutional searches and seizures," *ACS Enters. v. Comcast Cablevision, L.P.*, 857 F. Supp. 1105, 1111 (E.D. Pa. 1994), and in part because there is no office one can visit to get his reputation or privacy back. *See* Joseph P. Fried, "Raymond Donovan, 90, Dies; Labor Secretary Quit Under a Cloud," THE NEW YORK TIMES (June 5, 2021) (quoting acquitted former cabinet secretary: "Which office do I go to to get my reputation back?"). More generally, "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Mitchell* v. *Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984) (quoting 11 C. Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE, § 2948, at 440 (1973)). Thus, "[i]rreparable harm is often presumed where a constitutional injury is at stake." *Donohue* v. *Paterson*, 715 F. Supp. 2d 306, 314-15 (N.D.N.Y. 2010).

Third, there are significant compliance costs for the Texas Horsemen, who are among the Gulf Coast Racing Plaintiffs. Horsemen must hire additional staff or professional support, take additional training, buy additional equipment or modify current equipment, and build additional facility space to comply with HISA's rules.

These compliance costs cannot be calculated or recovered, and thus constitute irreparable harm. *BST Holdings, L.L.C.* v. *OSHA*, 17 F.4th 604, 618 (5th Cir. 2021) ("[C]omplying with a regulation later held invalid almost always produces the irreparable harm of nonrecoverable compliance costs."); *cf. Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200, 220-21 (1994) (Scalia, J., concurring) ("[C]omplying with a regulation later held invalid almost always produces the irreparable harm of nonrecoverable compliance costs.").

Fourth, in addition to all of the foregoing irreparable harms, the Gulf Coast Racing Plaintiffs and all similarly situated stakeholders that own and operate racetracks further suffer at the hands of the Authority's bar on the out-of-state export of racing simulcast signals by which valuable and substantial revenues are generated for these tracks and various third parties who participate in or rely on interstate export of thoroughbred pari-mutuel simulcast signals. Gulf Coast App. 37a-40a. "Out-of-state simulcast wagering accounts for the bulk of betting at most tracks" and "[h]andle[, the amount of money wagered,] plunged . . . and cratered" when tracks did not simulcast. Dick Downey, *Lone Star Signal Export in Question after Court Ruling*, BLOODHORSE (Apr. 11, 2023).[7] For one track in Texas, betting dropped "probably 90% . . . when we lost the export signal." Eric Mitchell, *Sam Houston Race Park Puts Simulcasting on Hold*, BLOODHORSE (Feb. 3, 2023).[8] Indeed, the losses for some of

[7] https://tinyurl.com/ycyw8avv.
[8] https://tinyurl.com/38mahfta.

these tracks amount to as much as $1.5 million per race day, which losses almost certainly cannot be recouped from the Authority or the FTC. Gulf Coast App. 39a.

All of this irreparable injury contrasts with the minimal, if any, injury to the Authority. The Authority voluntarily delayed implementation of the Anti-Doping and Medication Control (ADMC) program three times. First, the Authority was unable to secure an anti-doping agency partner by the deadline set by Congress, so the Authority submitted the first proposed ADMC with an effective date six months after the statutory deadline. 87 Fed. Reg. 65,292, 65,292 (Oct. 28, 2022). Second, the FTC declined that rule, delaying it until the "legal uncertainty" was resolved. F.T.C., Order Disapproving the Anti-Doping and Medication Control Rule Proposed by the Horseracing Integrity and Safety Authority (Dec. 12, 2022), at 2. After Congress amended the law, the FTC decided to voluntarily delay the ADMC's implementation date another three weeks, until after the first two legs of the Triple Crown, because the Authority's ADMC implementation was not ready for prime time. Horseracing Integrity and Safety Act: Anti-Doping and Medication Control Rule, 88 Fed. Reg. 27,894, 27,895 (May 3, 2023) ("[I]mplementing new testing requirements just days before the start of the Triple Crown creates an appreciable risk of errors, confusion, and inconsistent treatment of similarly situated horses.").

Nor is there some imminent disaster looming as a result of a state patchwork. As the Applicants themselves acknowledge, HISA is already enjoined in a handful of states or otherwise not implemented. More still, to this very day, the Authority still chooses to exclude Louisiana and West Virginia from the ADMC even though no court

order protects them from it (the states' APA challenge in Louisiana district court is specific to the racetrack safety rule).

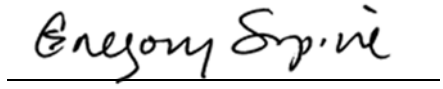
The Applicants' clear pattern of behavior belies any assertion that continued universal enforcement of the Authority's regulatory regime is an absolute imperative. In contrast, irreparable harm is likely to result to the Gulf Coast Racing Plaintiffs if the mandate is stayed.

CONCLUSION

The Court should deny the stay application. If it treats that application as a certiorari petition, it should treat this response as a cross-petition and grant certiorari on the questions presented in this response.

September 30, 2024

Respectfully submitted,



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APPENDIX

Materials Filed in the United States District Court for the Northern District of Texas (Docket No. 5:21-cv-00071)

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "HORSERACING INTEGRITY AND SAFETY AUTHORITY, INC.", FILED IN THIS OFFICE ON THE EIGHTH DAY OF SEPTEMBER, A.D. 2020, AT 6:30 O`CLOCK P.M.

3558919 8100
SR# 20207163589

Authentication: 203618285
Date: 09-09-20

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:30 PM 09/08/2020
FILED 06:30 PM 09/08/2020
SR 20207163589 - File Number 3618358

STATE OF DELAWARE

CERTIFICATE OF INCORPORATION

OF

HORSERACING INTEGRITY AND SAFETY AUTHORITY, INC.

(a Delaware nonstock, nonprofit corporation)

THE UNDERSIGNED, for the purpose of forming a nonstock, nonprofit corporation pursuant to Section 101 of the General Corporation Law of the State of Delaware ("***DGCL***"), hereby certifies:

FIRST: The name of the corporation (hereinafter referred to as the "***Corporation***") is **Horseracing Integrity and Safety Authority, Inc.**

SECOND: The address of the registered office of the Corporation is 251 Little Falls Drive, Wilmington, New Castle County, State of Delaware, 19808. The name of the registered agent of the Corporation at that address is Corporation Service Company.

THIRD: A. The Corporation is organized and shall be operated as a nonprofit business league described in Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States federal tax law (the "***Code***") to accomplish the following objectives: (i) to establish safety and performance standards for horseracing to improve the safety and welfare of equine and human participants in Thoroughbred horseracing, and in horseracing with respect to such other equine breeds for which an election has been made to participate in the programs established by the Corporation, implemented through a comprehensive accreditation and compliance program, (ii) to develop and implement a horseracing anti-doping and medication control program and a racetrack safety program for covered horses, covered persons, and covered horseraces and (iii) to do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof to the extent consistent with its status as a nonprofit corporation organized under the DGCL and its qualification under Code Section 501(c)(6) and as otherwise provided by law.

B. In furtherance of its corporate purposes, the Corporation shall have all the general powers enumerated in Sections 121 and 122 of the DGCL as now in effect or as may hereafter be amended, including the power to solicit, receive, and administer dues, assessments, and contributions for such purposes, and may engage in any lawful activity for which corporations may be organized under the DGCL that are not inconsistent with its qualification under Code Section 501(c)(6) and as otherwise provided by law.

FOURTH: The Corporation is not organized for profit and shall not have authority to issue capital stock.

FIFTH: The Corporation shall have one or more classes of members ("***Members***"). The designation of each class of Members, the qualifications and rights of Members of each class, and the conditions of membership for each class of Members shall be set forth in the bylaws of the Corporation (the "***Bylaws***"). The Bylaws shall provide whether a class of Members has voting rights or no voting rights and each class of Members with voting rights shall be entitled to elect or appoint such number of members of the Corporation's Board of Directors (each, a "***Director***" and collectively, the "***Board of Directors***") to the extent and in the manner provided in the Bylaws. Except as otherwise provided in this Certificate of Incorporation or in the Bylaws or as otherwise required by law, Members of any class that do not have voting rights shall not be entitled to vote on any matter, including the election or appointment of Directors. A Director may be removed for cause by the member, or members of the class of membership, as the case may be, that elected or appointed the particular Director, and may also be removed for cause by the other Directors to the extent, and in the manner, provided in the Bylaws, with a replacement appointed in the manner provided in the Bylaws.

SIXTH: The name and mailing address of the sole incorporator is as follows:

Boris Belkin	c/o Akin Gump Strauss Hauer & Feld LLP One Bryant Park New York, NY 10036

SEVENTH: Except for those powers specifically reserved to the Members in this Certificate of Incorporation or in the Bylaws, and except as otherwise provided by law, this Certificate of Incorporation or the Bylaws, including the rights as set forth in the Bylaws to an initial nominating committee (the members of which committee shall be appointed by the initial temporary Directors, who are appointed by the incorporator), to nominate those individuals eligible to serve as the first full (non-temporary) Board of Directors, the business and affairs of the Corporation shall be managed and all of the powers of the Corporation shall be exercised by the Board of Directors of the Corporation. The qualifications, election, number, tenure, powers, and duties of the members of the Board of Directors shall be as provided in the Bylaws.

EIGHTH: The duration of the existence of the Corporation is perpetual.

NINTH:

A. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, any Director or officer of the Corporation ("***Officer***") or any other private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation and to make payments and distributions in furtherance of the purposes set forth in Article THIRD hereof.

B. Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not directly or indirectly carry on any activity that would prevent it from obtaining exemption from Federal income taxation as a corporation described in Code Section 501(c)(6) or cause it to lose such tax-exempt status.

TENTH: In the event of dissolution or final liquidation of the Corporation, all of the remaining assets and property of the Corporation shall be applied and distributed in accordance with the Plan of Dissolution adopted by the Board of Directors, provided, however, that such Plan is not inconsistent with any provision of the DGCL as it applies to nonprofit corporations or any Code provision applicable to a corporation described in Code Section 501(c)(6).

ELEVENTH: To the fullest extent permitted by the DGCL, as now in effect or as hereafter may be amended, no person who is or was a Director, Officer or Member of the Corporation shall be personally liable to the Corporation or to any Member for monetary damages for any breach of fiduciary duty by such Director, Officer or Member. Notwithstanding the foregoing sentence, a person who is or was a Director, Officer or Member of the Corporation shall be liable to the Corporation to the extent provided by applicable law (i) for breach of the duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or (iii) for any transaction from which the Director, Officer or Member derived an improper personal benefit. Moreover, such relief from liability shall not apply in any instance where such relief is inconsistent with any provision of the Code applicable to corporations described in Section 501(c)(6) of the Code. No amendment to or repeal of this Article ELEVENTH shall apply to or have any effect on the liability or alleged liability of any Director, Officer, or Member of the Corporation for or with respect to any acts or omissions of such Director, Officer, or Member occurring prior to such amendment.

TWELFTH: Except to the extent limited in the Bylaws, the Corporation shall indemnify, advance expenses and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person ("***Indemnified Party***") who was or is a party or is threatened to be made a party to, or is otherwise involved in any threatened, pending or completed action, suit or proceeding, ("***Proceeding***") whether civil, criminal, administrative or investigative in nature, by reason of the fact that such Indemnified Party is or was the legal representative, is or was a Director, Officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Director, Officer, employee or agent of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such person in connection with such Proceeding, and the Corporation may adopt bylaws or enter into agreements with any such person for the purpose of providing for such indemnification. Except to the extent otherwise provided in the Bylaws and except for claims for indemnification (following the final disposition of such Proceeding) or advancement of expenses, the Corporation shall be required to indemnify a Indemnified Party in connection with a Proceeding (or part thereof) commenced by such Indemnified Party only if the commencement of such Proceeding (or part thereof) by the Indemnified Party was authorized in the specific case by the Board of Directors of the Corporation. Except to the extent otherwise provided in the Bylaws, the payment of expenses incurred by a Indemnified Party in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Party to repay all amounts advanced if it is ultimately determined that the Indemnified Party is not entitled to be indemnified under this Article or otherwise. Any amendment, repeal or modification of this Article shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification. Moreover, the Corporation shall not indemnify, reimburse, or insure any person in any instance where such indemnification,

reimbursement, or insurance is inconsistent with any provision of the Code applicable to corporations described in Code Section 501(c)(6).

THIRTEENTH: The Corporation reserves the right to amend, alter, change, or repeal any provision contained in this Certificate of Incorporation or in the Bylaws in the manner now or hereafter set forth in the Bylaws, and except as set forth in Articles ELEVENTH and TWELFTH, all rights conferred upon Members, Directors or any other persons by and pursuant to this Certificate of Incorporation are granted subject to this reservation.

[Signature Page Follows]

I, THE UNDERSIGNED, being the sole incorporator, do make and file this Certificate of Incorporation, hereby declaring and certifying that the facts herein stated are true, and accordingly hereunto have set my hand and seal this 8th day of September, 2020.

/s/ Boris Belkin
Boris Belkin, Incorporator

BYLAWS

OF

HORSERACING INTEGRITY AND SAFETY AUTHORITY, INC.

September 30, 2020

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BYLAWS

OF

HORSERACING INTEGRITY AND SAFETY AUTHORITY, INC.

(a Delaware nonstock, nonprofit corporation)

ARTICLE I

NAME, ORGANIZATION, OFFICES AND PURPOSES

Section 1.1 Name. The name of the corporation is Horseracing Integrity and Safety Authority, Inc. (hereinafter, the "***Corporation***").

Section 1.2 Organization. The Corporation is incorporated in Delaware under Section 101 of the General Corporation Law of the State of Delaware ("***DGCL***") as a nonstock, nonprofit corporation that is intended to qualify as a nonprofit business league under Section 501(c)(6) of the Internal Revenue Code of 1986, as amended (the "***Internal Revenue Code***").

Section 1.3 Business Offices. The initial principal office of the corporation shall be located within or outside the State of Delaware, at such place as the Board of Directors (each such director, a "***Director***" and collectively, the "***Board***") shall from time to time designate. The Corporation may at any time and from time to time change the location of its principal office. The Corporation may have such other offices, either within or outside the State of Delaware, as the Board may designate or as the affairs of the corporation may require from time to time.

Section 1.4 Registered Office. The Corporation shall have and maintain within the State of Delaware and within any jurisdiction in which it is doing business a registered agent whose business address is identical with the registered office of the Corporation in that jurisdiction. The registered office in any jurisdiction may be changed from time to time by the Board, provided that the street addresses of the registered office and of the business office or home of the registered agent of the Corporation are identical.

Section 1.5 Purposes. The Corporation's purpose, to the extent not inconsistent with the Corporation's purpose as stated in the Certificate of Incorporation, as may be amended from time to time, is (i) to establish safety and performance standards for horseracing to improve the safety and welfare of equine and human participants in Thoroughbred horseracing, and in horseracing with respect to such other equine breeds for which an election has been made to participate in the programs established by the Corporation, implemented through a comprehensive accreditation and compliance program, (ii) to develop and implement a horseracing anti-doping and medication control program and a racetrack safety program for covered horses, covered persons, and covered horseraces and (iii) to do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof to the extent consistent with its status as a nonprofit corporation organized under the DGCL and its qualification under Code Section 501(c)(6) and as otherwise provided by law. In furtherance of its corporate purposes, the Corporation shall have all

the general powers enumerated in Sections 121 and 122 of the DGCL as now in effect or as may hereafter be amended, including the power to solicit, receive, and administer dues, assessments, and contributions for such purposes, and may engage in any lawful activity for which corporations may be organized under the DGCL that are not inconsistent with its qualification under Code Section 501(c)(6) and as otherwise provided by law.

ARTICLE II

MEMBERS

Section 2.1 Members. The Corporation shall have one class of membership. The members of the Corporation (the "***Members***") shall be the Directors of the Corporation. If at any time and for any reason any Member shall cease to be a Director, such person shall simultaneously cease to be a Member. Any action that otherwise would require approval by the Members shall require approval only by the Board. All rights that would otherwise vest in the Members, including, without limitation, the right to elect Directors, shall vest in the Board.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1 General Powers. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed by, the Board, except as otherwise provided in the DGCL, the Certificate of Incorporation of the Corporation (the "***Certificate***") or these Bylaws.

Section 3.2 Qualifications, Number, Classification, Election and Tenure.

(a) Qualifications. Each Director must be a natural person who is eighteen years of age or older. A Director need not be a resident of Delaware.

(b) Number; Initial Board; Establishment of Full Board.

(i) The initial number of Directors of the Corporation shall be two. Thereafter, subject to **Section 3.2(b)(ii)**, the number of Directors may be increased or decreased from time to time by amendment to these Bylaws or by action of the Board; provided, however that, other than any temporary vacancies created by resignation or removal pursuant to Section 3.3, the number of Directors elected to serve on the Board shall not be less than nine (9) unless these Bylaws are amended pursuant to these Bylaws.

(ii) The initial Directors shall be appointed by the incorporator and shall serve until such time as the Full Board (as defined below) has been appointed in accordance with this **Section 3.2(b)(ii)**. Prior to the first annual meeting of the Board, the initial Directors shall: (1) set the size of the Board at nine (9) Directors; (2) appoint the nine (9) replacement Directors (the "***Replacement Directors***"), who (A) meet the qualifications of Independent Directors and Industry Directors in **Section 3.2(c)(i)** and **Section 3.2(c)(ii)**, as applicable, and (B) were recommended to the initial Directors by the Nominating Committee for election and appointment in accordance with **Section 3.10(c)(iv)**; (3) appoint the seven (7) initial members of the Anti-Doping and

Medication Control Standing Committee who were recommended by the Nominating Committee for election and appointment in accordance with **Section 3.10(c)(v)**; (4) appoint the seven (7) initial members of the Racetrack Safety Standing Committee who were recommended by the Nominating Committee for election and appointment in accordance with **Section 3.10(c)(v)**; and (5) following such appointments, the initial Directors shall resign as Directors in accordance with **Section 3.3**, with the result that there shall be nine (9) Directors in office meeting the qualifications of Independent Directors and Industry Directors in **Section 3.2(c)(i)** and **Section 3.2(c)(ii)**, as applicable (the "***Full Board***"). At all times, at least a majority of the Directors must be Independent Directors and upon establishment of the Full Board, shall be apportioned among the classes (Class 1, Class 2, and Class 3) consistent with **Section 3.2(d)** below as closely as possible.

(iii) Upon the establishment of a Nominating Committee (and other than with respect to the election, appointment, and establishment of the initial Full Board in accordance with **Section 3.2(b)(ii)**), Directors shall be elected at the annual meeting by plurality vote of the Directors from among those persons nominated by the Nominating Committee or nominated by the Board by a majority vote of the Independent Directors and a majority vote of the Industry Directors (as defined below), in each case, meeting the requirements for Independent Directors or Industry Directors in **Section 3.2(c)(i)** and **Section 3.2(c)(ii)**, as applicable.

(c) Composition of the Full Board.

(i) Five Independent Directors (as defined below). Five Directors shall be elected by the Board from among individuals recommended by the Nominating Committee or nominated by the Board by a majority vote of the Independent Directors and a majority vote of the Industry Directors (as hereinafter defined) from slates of candidates who are from outside the equine industry (each such Director, an "***Independent Director***", and collectively as a class, the "***Independent Directors***"). At least one Independent Director shall have expertise in anti-doping and medication control regulation and Independent Directors may have experience in any of the following industries, among others: (1) law enforcement; (2) a national governing body or sports governing body; (3) sports science; (4) academic research; and (5) communications experts.

(ii) Four Industry Directors (as defined below). Four members shall be elected by the Board from among individuals recommended by the Nominating Committee or nominated by the Board by a majority vote of the Independent Directors and a majority vote of the Industry Directors who shall be representative of: (i) Owners and Breeders, (ii) Trainers, (iii) Racetracks, (iv) Veterinarians, (v) State Racing Commissions, and (vi) Jockeys (collectively, the "***Equine Constituencies***" and each, an "***Equine Constituency***"; each such Director, an "***Industry Director***" and collectively as a class the "***Industry Directors***"). The Industry Directors shall be representative of the various Equine Constituencies, and the Board shall not include more than one Industry Director from any one Equine Constituency.

(iii) Equine Conflicts of Interest. The following individuals shall not be selected as a Director or as an independent member of a Standing Committee: (1) an individual who has a financial interest in, or provides goods or services to, Covered Horses; (2) an official or officer of any Equine Industry Representative, or who serves in a governance or policymaking capacity for an Equine Industry Representative; (3) an employee of, or an individual who has a business or commercial relationship with, an individual described in (1) or (2); or (4) an Immediate Family

Member of an individual described in (1) or (2) (collectively, each of the circumstances referenced in (1) through (3) of this **Section 3.2(c)(iii)**, the "***Equine Conflicts of Interest***" and each, an "***Equine Conflict of Interest***").

(d) Classification; Term Limits. At the first meeting of the Board at which all nine Directors have been appointed, classification of the Directors shall be made by dividing such Directors into three classes in accordance with the following:

(i) The first class ("***Class 1***") shall consist of two Independent Directors and one Industry Director. The initial term of this first class shall run through the end of the annual meeting of the Board held in 2024;

(ii) The second class ("***Class 2***") shall consist of two Independent Directors and one Industry Director. The initial term of this second class shall run through the end of the annual meeting of the Board held in 2025; and

(iii) The third class ("***Class 3***") shall consist of one Independent Director and two Industry Directors. The initial term of this third class shall run through the end of the annual meeting of the Board held in 2026.

No Director shall serve more than two (2) consecutive full (three-year) terms.

(e) Election and Tenure.

(i) Independent Directors. At each annual meeting of the Board after the classification described in **Section 3.2(d)**, the Nominating Committee will recommend nominee(s) for Independent Directors for the class whose term expires at the end of such meeting and the Board may also nominate other individuals to serve as Director by a majority vote of the Independent Directors and a majority vote of the Industry Directors. Except with respect to the initial terms of the first Full Board described in **Section 3.2(d)**, the Independent Directors shall be elected by the Board to hold office until the end of the third succeeding annual meeting and thereafter until such Director's successor shall have been elected and qualified, or until such Director's earlier death, resignation or removal.

(ii) Industry Directors. At each annual meeting of the Board after the classification described in **Section 3.2(d)**, the Nominating Committee will recommend nominee(s) for Industry Directors for the class whose term expires at the end of such meeting and the Board may also nominate other individuals to serve as Director by a majority vote of the Independent Directors and a majority vote of the Industry Directors. Except with respect to the initial terms of the first Full Board described in **Section 3.2(d)**, the Industry Directors shall be elected by the Board to hold office until the end of the third succeeding annual meeting and thereafter until such Director's successor shall have been elected and qualified, or until such Director's earlier death, resignation or removal.

(iii) Elections Held Before Annual Meeting. Notwithstanding **Section 3.2(e)(i)** and **Section 3.2(e)(ii)** above, the Board may choose to elect new Board members at a special meeting held before the annual meeting, from among individuals recommended by the Nominating Committee or nominated by the Board by a majority vote of the Independent Directors and a

majority vote of the Industry Directors; provided, that any new Directors so elected may attend the annual meeting as guests but shall not take office until the end of the annual meeting.

Section 3.3 Resignation; Removal; Vacancies. Any Director may resign at any time by giving written notice to the chair of the Board (the "***Chair***") or to the secretary of the Corporation. A Director's resignation shall take effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Directors shall be removable, for cause, by the affirmative vote of all Directors then in office (excluding the applicable Director subject to the vote). A Director elected to fill a vacancy created by resignation or removal shall hold the office for the unexpired term of such Director's predecessor in office. Any vacancy created by resignation, removal or an increase in the number of Directors may be filled by the affirmative vote of seventy-five percent (75%) of the Directors then in office (with such Director to be selected from among individuals recommended by the Nominating Committee or nominated by the Board by a majority vote of the Independent Directors and a majority vote of the Industry Directors), but the Board shall always have at least one more then-serving Independent Director than Industry Director, and a Director so chosen shall hold office until the next election of the Directors and thereafter until such Director's successor shall have been elected and qualified, or until such Director's earlier death, resignation or removal. A vacancy that will occur at a specific later date may be filled before the vacancy occurs, but the new Director may not take office until the vacancy occurs. As used herein, "cause" shall mean any act that (i) constitutes, on the part of the Director, fraud or gross malfeasance of duty, including, but not limited to, the conviction of a Director of a felony involving moral turpitude; (ii) is demonstrably likely to lead to material injury to the Company or resulted, or was intended to result, in direct or indirect gain to or personal enrichment of the Director, including, but not limited to, the Director's violation of the prohibition against Equine Conflicts of Interest or the violation of the Conflicts of Interest Policy set forth in Section 5.3 of these Bylaws; or (iii) otherwise constitutes a material breach of these Bylaws.

Section 3.4 Regular Meetings. A regular annual meeting of the Board shall be held at the time and place, either within or outside the State of Delaware, determined by the Board, for the purpose of electing Directors and Officers and for the transaction of such other business as may come before the meeting. The Board may provide by resolution the time and place, either within or outside Delaware, for the holding of additional regular meetings.

Section 3.5 Special Meetings. Special meetings of the Board may be called by or at the request of the Chair or the Chief Executive Officer (the "***CEO***"), or by no less than two-thirds (2/3) of the Directors. The Chair of the Board may fix the time and place, either within or outside the State of Delaware, for holding any special meeting of the Board called by them.

Section 3.6 Notice of Meetings. Notice of each meeting of the Board stating the date, time and place of the meeting shall be given to each Director at such Director's business or residential address at least five days prior thereto by the mailing of written notice by first class, certified or registered mail, or at least two days prior thereto by personal delivery or private carrier of written notice or by facsimile, electronic transmission or any other form of wire or wireless communication (and the method of notice need not be the same as to each Director). Written notice, if in a comprehensible form, is effective at the earliest of: (a) the date received; (b) five days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly

addressed and with first class postage affixed; and (c) the date shown on the return receipt, if mailed by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee. If transmitted by facsimile, electronic transmission or by other form of wire or wireless communication, notice shall be deemed to be given when the transmission is complete. A Director may waive notice of any meeting before or after the time and date of the meeting stated in the notice. A Director's attendance at or participation in a meeting waives any required notice to that Director of the meeting except as otherwise provided in the DGCL.

Section 3.7 Quorum and Voting. A majority of the Directors in office immediately before a meeting begins shall constitute a quorum for the transaction of business at any meeting of the Board (provided, that a majority of the Directors present are Independent Directors), and the vote of a majority of the Directors present in person at a meeting at which a quorum is present shall be the act of the Board, unless otherwise required by the DGCL, the Certificate or these Bylaws. If less than a quorum is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice other than an announcement at the meeting, until a quorum shall be present. Notwithstanding the foregoing, the affirmative vote of at least two-thirds (2/3's) of the Directors then in office shall be required to approve (1) the initial annual budget of the Corporation, and (2) any subsequent annual budget that exceeds the budget of the preceding calendar year by more than 5%.

Section 3.8 Compensation. Directors may authorize by resolution the payment to a Director of reasonable compensation for their services as a Director and/or for services rendered to the Corporation in a non-Director capacity, as approved by a majority of the Directors (but a majority of the disinterested Directors for, or with regard to, any compensation being approved for less than all of the Directors) present at a meeting and voting when a quorum is present in accordance with the Corporation's conflicts of interest policy. The Corporation may pay or reimburse reasonable expenses incurred by Directors in connection with their Director services such as costs to attend Board or committee meetings. Additionally, the reasonable expenses of Directors of attendance at meetings of the Board or committee meetings may be paid or reimbursed by the Corporation.

Section 3.9 Committees. By one or more resolutions adopted by the affirmative vote of at least two-thirds (2/3's) of the Directors then in office, the Board may designate from among its members one or more committees, each of which, to the extent provided in the resolution establishing such committee, shall have and may exercise all of the authority of the Board, except as prohibited by the DGCL ("***Board Committees***"). The delegation of authority to any Board Committee shall not operate to relieve the Board or any member of the Board from any responsibility or standard of conduct imposed by law or these Bylaws. Rules governing procedures for meetings of any Board Committee shall be the same as those set forth in the DGCL, the Certificate or these Bylaws for the Board unless the Board or the committee itself determines otherwise. Each Board Committee shall keep minutes of its proceedings, and actions taken by a Board Committee shall be reported to the Board.

Section 3.10 Advisory Committees. The Board may from time to time form one or more advisory boards, committees or other bodies composed of such members (including Directors or non-Directors), having such rules of procedure, and having such chairperson, as the Board shall designate (each, an "***Advisory Committee***"). Each Advisory Committee member shall serve a two (2) year term and may be elected to successive terms, but may be removed at any time, with or

without cause, by the Board. The name, objectives and responsibilities of each such Advisory Committee, and the rules and procedures for the conduct of its activities, shall be determined by the Board. An Advisory Committee may provide such advice, service and assistance to the Corporation, and carry out such duties and responsibilities for the Corporation as may be specified by the Board; provided, that, such Advisory Committee may not exercise any power or authority reserved to the Board by the DGCL, the Certificate or these Bylaws, and shall be restricted to making recommendations to the Board or Board Committees, and implementing Board or Board Committee decisions and policies under the supervision and control of the Board or Board Committee. Further, no Advisory Committee shall have authority to incur any corporate expense or make any representation or commitment on behalf of the Corporation without the express approval of the Board, a Board Committee, or the CEO. The purposes, composition, duties and obligations of the standing Advisory Committees of the Corporation ("***Standing Committees***") shall be as follows and the following Standing Committees shall be formed:

(a) Anti-Doping and Medication Control Standing Committee. The Anti-Doping and Medication Control Standing Committee shall provide advice and guidance to the Board on the development and maintenance of the Horseracing Anti-Doping and Medication Control Program, and shall be comprised of seven (7) members meeting the following qualifications:

(i) Independent Members. A majority of the members of the Anti-Doping and Medication Control Standing Committee shall be independent members selected from outside the equine industry and free of all Equine Conflicts of Interest to the same extent required of Directors.

(ii) Industry Members. A minority of the members of the Anti-Doping and Medication Control Standing Committee shall be industry members selected from among the various Equine Constituencies and shall not include more than one committee member from any one Equine Constituency.

(iii) Qualification. A majority of individuals selected to serve on the Anti-Doping and Medication Control Standing Committee shall have significant, recent experience in medication control rules.

(iv) Chairman. The chair of the Anti-Doping and Medication Control Standing Committee shall be an Independent Director.

(v) Initial Committee. The initial members of the Anti-Doping and Medication Control Standing Committee shall be appointed by the Board in accordance with **Section 3.2(b)(ii)(3)**, subject to the recommendations of the Nominating Committee pursuant to **Section 3.10(c)(v)**.

(vi) Vacancies. After the initial Anti-Doping and Medication Control Standing Committee, any vacancies shall be filled by the Board, subject to the recommendations of the Nominating Committee pursuant to **Section 3.10(c)(v)**.

(b) Racetrack Safety Standing Committee. The Racetrack Safety Standing Committee shall provide advice and guidance to the Board on the development and maintenance of the Racetrack Safety Program, and shall be comprised of seven (7) members meeting the following qualifications:

(i) Independent Members. A majority of the members of the Racetrack Safety Standing Committee shall be independent members selected from outside the equine industry and free of all Equine Conflicts of Interest to the same extent required of Directors.

(ii) Industry Members. A minority of the members of the Racetrack Safety Standing Committee shall be industry members selected from among the various Equine Constituencies.

(iii) Chairman. The chair of the Racetrack Safety Standing Committee shall be an Industry Director.

(iv) Initial Committee. The initial members of the Racetrack Safety Standing Committee shall be appointed by the Board in accordance with **Section 3.2(b)(ii)(4)**, subject to the recommendations of the Nominating Committee pursuant to **Section 3.10(c)(v)**.

(v) Vacancies. After the initial Racetrack Safety Standing Committee, any vacancies shall be filled by the Board, subject to the recommendations of the Nominating Committee pursuant to **Section 3.10(c)(v)**.

(c) Nominating Committee. The Nominating Committee will seek nominations for vacancies and/or impending Board member or Standing Committee member vacancies, interview candidates for all vacancies and/or impending Board member or Standing Committee member vacancies, and make to the Board such recommendations on nominations as the Nominating Committee deems appropriate in its discretion. The Nominating Committee will use reasonable efforts to ensure that individuals nominated (i) have the highest personal and professional integrity and have demonstrated exceptional ability and judgment, (ii) are qualified to serve as set forth under these Bylaws, and (iii) shall be effective in working with other nominees and existing members of the Board and/or Standing Committee, as applicable, in carrying out the purposes of the Corporation. The Nominating Committee will also oversee the governing structure and governance policies of the Corporation, and shall from time to time make recommendations to the Board as to the governing structure and governance policies needed to ensure the best operation of the Corporation and fulfillment of its mission. The Nominating Committee shall be comprised of seven (7) independent members in accordance with the following:

(i) In General. The Nominating Committee shall be comprised of seven (7) independent members selected from business, sports, and academia.

(ii) Co-Chairs. The two (2) initial Directors of the Corporation shall serve as the initial Co-Chairs of the Nominating Committee. Thereafter, the Co-Chairs of the Nominating Committee shall be selected by the Nominating Committee from among its members.

(iii) Full Initial Nominating Committee. The full initial Nominating Committee shall consist of:

(A) Leonard S. Coleman, Jr. (Co-Chair)

(B) Dr. Nancy M. Cox (Co-Chair)

(C) Katrina M. Adams

(D) Dr. Jerry B. Black

(E) Gen. Joseph F. Dunford, Jr. (Ret.)

(F) Francis Anthony Keating II; and

(G) Ken Schanzer.

(iv) Recommendation of Directors. The full initial Nominating Committee shall recommend to the two (2) initial Directors the initial nominees for election and appointment as Replacement Directors in accordance with **Section 3.2(b)(ii)(2)** upon the affirmative vote of five (5) members of the Nominating Committee. Thereafter, the Nominating Committee shall recommend nominees for election and appointment as Directors upon the affirmative vote of five (5) members of the Nominating Committee or in accordance with such procedures as may be adopted by the Board.

(v) Recommendation of Standing Committee Members. The full initial Nominating Committee shall recommend to the two (2) initial Directors the nominees for election and appointment as the members of (A) the initial Anti-Doping and Medication Control Standing Committee in accordance with **Section 3.2(b)(ii)(3)** and (B) the initial Racetrack Safety Standing Committee in accordance with **Section 3.2(b)(ii)(4)**, in each case, upon the affirmative vote of five (5) members of the Nominating Committee. Thereafter, upon any vacancy in any Standing Committee, the Nominating Committee shall recommend nominees for election and appointment to fill such vacancy upon the affirmative vote of five (5) members of the Nominating Committee or in accordance with such procedures as may be adopted by the Board.

(vi) Vacancies. After the initial Nominating Committee members are appointed in accordance with the foregoing, any vacancies in the Nominating Committee shall be filled by the Board.

Section 3.11 Meetings by Electronic Means. Members of the Board or any committee thereof may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Directors participating may hear and communicate with each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 3.12 Action Without a Meeting. Unless otherwise restricted by the DGCL, the Certificate, or these Bylaws, any action required or permitted to be taken at any meeting of the Board or any committee of the Board may be taken without a meeting if all the Directors consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board or such committee.

ARTICLE IV

OFFICERS AND AGENTS

Section 4.1 Designation and Qualifications.

(a) The elected Officers of the Corporation shall be the Chair, the CEO, a Vice-Chair, a Secretary and a Treasurer. The Board may also appoint, designate or authorize such other Officers, Assistant Officers and agents, including a President, a Controller, Assistant Secretaries and Assistant Treasurers, as it may consider necessary. One person may hold more than one office at a time. Except as required by **Section 4.1(b)**, Officers need not be Directors of the Corporation. All Officers and all employees of the Corporation must be natural persons who are eighteen years of age or older and must be free of all Equine Conflicts of Interest to the same extent required of all Directors and all independent members of a Standing Committee; provided, that compensation from the Corporation to an Officer or employee shall not be deemed to disqualify such Officer or employee for purposes of these requirements.

(b) The Officers are divided into two classifications – Board Officers and Staff Officers. The Board Officers shall include the Chair, Vice-Chair, Secretary and Treasurer, each of which shall be a Director of the Corporation. The Staff Officers shall include all other Officers, none of whom need be a Director of the Corporation. When used generally herein, the term "***Officer***" or "***Officers***" includes both Board Officers and Staff Officers.

Section 4.2 Election and Term of Office.

(a) Board Officers. The Corporation's Board Officers shall be elected by the Board at or in conjunction with annual meetings of the Board. At such annual meeting, the Board shall elect from among the Independent Directors a person to serve in each of the board offices to become open at the end of such annual meeting. Board Officers shall serve from the end of the annual meeting at which they were elected, until the end of the annual meeting immediately following their election, and until such Board Officer's successor shall have been duly elected and qualified, or until such Board Officer's earlier death, resignation or removal. A Director may be removed from the position of Chair at any time by the affirmative vote of two-thirds (2/3) of the Board.

(b) Staff Officers. The Board (in the case of the CEO), or an Officer or committee to which such authority has been delegated by the Board, shall elect or appoint the Staff Officers from time to time. Each Staff Officer shall hold office from the time in which such Staff Officer was elected or appointed until such Staff Officer's successor shall have been duly elected or appointed and shall have qualified, or until such Staff Officer's earlier death, resignation or removal.

Section 4.3 Compensation. The compensation, if any, of each Officer shall be as determined from time to time by the Board, or by an Officer or a committee to which such authority has been delegated by the Board. To the extent reasonably feasible, the person or persons determining compensation shall obtain data on the compensation of officers holding similar positions of authority within comparable organizations, shall set the compensation based on such data and an

evaluation of the Officer's performance and experience as related to the requirements of the position, and shall document the basis for the determination, including the comparison data used, the requirements of the position, and the evaluation of the Officer's performance and experience. No Officer shall be prevented from receiving a salary by reason of the fact that the Officer is also a Director of the Corporation.

Section 4.4 Removal. Any Officer or agent may be removed by the Board at any time, with or without cause, but such removal shall not affect the contract rights, if any, of the person so removed. Election, appointment or designation of an Officer or agent shall not itself create contract rights.

Section 4.5 Vacancies. Any Officer may resign at any time, subject to any rights or obligations under any existing contracts between the Officer and the Corporation, by giving written notice to the Chair or to the Board. An Officer's resignation shall take effect upon receipt by the Corporation unless the notice specifies a later effective date, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office, however occurring, may be filled by the Board, or by any Officer or committee to which such authority has been delegated by the Board, for the unexpired portion of the term, if any. If a resignation is made effective at a later date, the Board may permit the Officer to remain in office until the effective date and may fill the pending vacancy before the effective date with the provision that the successor does not take office until the effective date, or the Board may remove the Officer at any time before the effective date and may fill the resulting vacancy.

Section 4.6 Authority and Duties of Officers. The Officers of the Corporation shall have the authority and shall exercise the powers and perform the duties specified below and as may be additionally specified by the Board, these Bylaws, or as prescribed by law, as well as such authority, powers, and duties which generally pertain to their respective offices.

(a) Chair of the Board. The Chair shall (i) preside at all meetings of the Board; (ii) see that all orders and resolutions of the Board are carried into effect and (iii) perform all other duties incident to the office of chair of the board and as from time to time may be assigned to the Chair by the Board.

(b) Chief Executive Officer. The CEO shall (i) be the Chief Executive Officer of the Corporation and have general and active control of its affairs and business and general supervision of its Officers, agents and employees; (ii) in conjunction with the Chair, see that all orders and resolutions of the Board are carried into effect; and (iii) perform all other duties incident to the office of Chief Executive Officer and as from time to time may be assigned to the CEO by the Board.

(c) Vice-Chair. The Vice-Chair shall assist the Chair and shall perform such duties as may be assigned by the Chair or by the Board. The Vice-Chair shall, at the request of the Chair, or in the Chair's absence or inability or refusal to act, perform the duties of the Chair and when so acting shall have all the powers of and be subject to all the restrictions on the Chair.

(d) Secretary. The Secretary (or his or her delegate) shall (i) keep or cause to be kept the minutes of the proceedings of the Board and any committees of the Board; (ii) give or cause to

be duly given all notices in accordance with the provisions of these Bylaws or as required by law; (iii) be custodian of the corporate records and of the seal of the Corporation; and (iv) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to such office by the Chair or the CEO, or by the Board. Assistant Secretaries, if any, shall have the same duties and powers, subject to supervision by the Secretary.

(e) Treasurer. The Treasurer (or his or her delegate) shall (i) be the Chief Financial Officer of the Corporation and have the care and custody of all its funds, securities, evidences of indebtedness and other personal property and deposit the same in accordance with the instructions of the Board; (ii) unless there is a controller, be the principal accounting officer of the Corporation and as such prescribe and maintain or cause to be prescribed and maintained the methods and systems of accounting to be followed, keep or cause to be kept complete books and records of account, prepare and file or cause to be prepared and filed all local, state and federal tax returns and related documents, prescribe and maintain or cause to be prescribed and maintained an adequate system of internal audit, and prepare and furnish to the Chair and the Board statements of account showing the financial position of the Corporation and the results of its operations; (iii) upon request of the Board, make such reports to it as may be required at any time; and (iv) perform all other duties incident to the office of Treasurer and such other duties as from time to time may be assigned to such office by the Chair, the CEO or the Board. Assistant Treasurers, if any, shall have the same powers and duties, subject to the supervision by the Treasurer.

Section 4.7 Surety Bonds. The Board may require any officer or agent of the Corporation to execute to the Corporation a bond in such sums and with such sureties as shall be satisfactory to the Board, conditioned upon the faithful performance of such person's duties and for the restoration to the Corporation of all books, papers, vouchers, money and other property of whatever kind in such person's possession or under such person's control belonging to the Corporation.

ARTICLE V

FIDUCIARY MATTERS

Section 5.1 Indemnification.

(a) General Authority. To the maximum extent permitted by Delaware law, the Corporation shall indemnify any current or former Director or Officer of the Corporation, and may indemnify any employee or agent (including any Advisory Committee member) of the Corporation, who, when acting within the scope of his or her duties for the Corporation, was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action, suit, or proceeding by or in the right of the Corporation) by reason of the fact that such person is or was a Director, an Officer, or employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, from and against any and all out-of-pocket expenses (including, but not limited to, attorneys' and experts' fees and costs), judgments, fines and amounts paid in settlement that are actually and reasonably incurred by such person in connection with any such action, suit, or proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in the best interests of the Corporation, in the case of conduct in an

official capacity, or in all other cases, at least not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful, provided, however, that the Corporation shall not indemnify any such person in relation to matters as to which such person shall be adjudged in a final, non-appealable order of a court of competent jurisdiction to be liable for willful misconduct or receipt of a financial benefit to which such person is not entitled. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner that such person reasonably believed to be in or not opposed to the best interests of the Corporation, or acted with gross negligence or willful conduct and, with respect to any criminal action or proceeding, had reason to believe that such person's conduct was unlawful.

(b) Proceeding By or in the Right of the Corporation. To the maximum extent permitted by Delaware law, the Corporation shall indemnify any current or former Director or Officer of the Corporation, and may indemnify any employee or agent (including any Advisory Committee member) of the Corporation who, when acting within the scope of his or her duties for the Corporation, was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a Director, an Officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, from and against any and all out-of-pocket expenses (including, but not limited to, attorneys' and experts' fees and costs), judgments, fines and amounts paid in settlement that are actually and reasonably incurred by such person in connection with any such action, suit, or proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in the best interests of the Corporation, in the case of conduct in an official capacity, or in all other cases, at least not opposed to the best interests of the Corporation; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged in a final, non-appealable order of a court of competent jurisdiction to be liable to the Corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the Court of Chancery or such other court shall deem proper.

(c) Mandatory Indemnification. To the extent that a present or former Director, Officer, employee or agent (including any Advisory Committee member) of the Corporation has been successful in the final disposition on the merits or otherwise in defense of any action, suit or proceeding referred to in **subsection (a)** or **(b)** of this **Section 5.1** or in defense of any claim, issue or matter therein, such person shall, or may, as applicable, be indemnified against out-of-pocket expenses (including but not limited to, attorneys' and experts' fees and costs) actually and reasonably incurred by such person in connection therewith.

(d) Discretionary Indemnification. Any indemnification under **subsection (a)** (unless ordered by a court of competent jurisdiction) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director, Officer, employee

or agent (including any Advisory Committee member) is proper in the circumstance because such person has met the applicable standard of conduct set forth in **subsection (a)**.

(e) Advances. Out-of-pocket expenses (including, but not limited to, attorneys' and experts' fees and costs) that are actually and reasonably incurred by a Director, Officer, employee or agent (including any Advisory Committee member) in defending any civil, criminal, administrative or investigative action, suit, or proceeding may be paid or incurred by the Corporation in advance of the final disposition of such action, suit, or proceeding upon receipt of an affirmation of such person's good faith belief that he or she has met the relevant standard of conduct set forth in **subsection (a)** or **(b)** of this **Section 5.1** and an appropriate undertaking by or on behalf of such Director, Officer employee or agent to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this **Section 5.1**. Such out-of-pocket expenses (including, but not limited to, attorneys' and experts' fees and costs) reasonably incurred by former Directors, Officers, employees or agents may be paid upon such terms and conditions, if any, as the Corporation deems appropriate.

(f) Other Proceedings. To the maximum extent permitted by Delaware law, the Corporation shall pay or reimburse expenses incurred by any Member, Director, Officer, or Advisory Committee member, who is eligible to be indemnified pursuant to this **Section 5.1**, in connection with his or her appearing as a witness or other participant in a proceeding at a time when he or she is not a named defendant or respondent in the proceeding, upon request by such person.

(g) Authority. The indemnification and advancement of expenses provided by or granted pursuant to this **Section 5.1** shall, unless otherwise provided when authorized or ratified, be applicable to claims, actions, suits or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after adoption hereof, and shall continue as to a person who has ceased to be a Director, Officer, employee or agent (including any Advisory Committee member), and shall inure to the benefit of the heirs, executors and administrators of such a person.

(h) Non-Exclusivity. The indemnification provided by this **Section 5.1** shall not be exclusive of any other rights to which a person may be entitled by law, agreement, vote of the Board, these Bylaws or otherwise, and shall not restrict the power of the Corporation to make any indemnification permitted by law.

(i) Savings Clause; Limitation. If any provision of the DGCL or these Bylaws dealing with indemnification shall be invalidated by any court on any ground, then the Corporation shall nevertheless indemnify each party otherwise entitled to indemnification hereunder to the fullest extent permitted by law or any applicable provision of the DGCL or these Bylaws that shall not have been invalidated. Notwithstanding any other provision of these Bylaws, the Corporation shall neither indemnify any person nor purchase any insurance in any manner or to any extent that would jeopardize or be inconsistent with the qualification of the Corporation as an organization described in section 501(c)(6) of the Internal Revenue Code.

(j) Insurance. The Corporation shall purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director or Officer, and may purchase

and maintain insurance, at its expense, to protect any Advisory Committee member, employee, or agent of the Corporation, or who is or was serving at the request of the Corporation as a Director, Officer, Advisory Committee member, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any expense, liability, or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability, or loss under the laws of Delaware.

Section 5.2 General Standards of Conduct for Directors and Officers.

(a) Discharge of Duties. Each Director or Officer shall discharge such Director's duties as a Director, including the Director's duties as a member of a Board Committee, and each Officer with discretionary authority shall discharge the Officer's duties under that authority (i) in good faith; (ii) with the care an ordinarily prudent person in a like position with respect to a similar corporation would exercise under similar circumstances; and (iii) in a manner the Director or Officer reasonably believes to be in the best interests of the Corporation. In performing his or her duties, a Director shall disclose or cause to be disclosed to his or her fellow Directors all information not already known by them but known by such Director to be material to the Board's decision-making or oversight functions, except to the extent the Director reasonably believes that such disclosure would violate a legal duty, a legally enforceable obligation of confidentiality, or a professional ethics rule. An Officer shall inform his or her superior Officer (if any), or the Board, of any actual or probable material violation of law or breach of duty to the Corporation by a Director, Officer, employee, or agent of the Corporation that the Officer believes has occurred or is likely to occur.

(b) Reliance on Information, Reports, Etc. In discharging duties, a Director or Officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by: (i) one or more Officers or employees of the Corporation whom the Director or Officer reasonably believes to be reliable and competent in the matters presented; (ii) legal counsel, a public accountant or another person as to matters the Director or Officer reasonably believes are within such person's professional or expert competence; or (iii) in the case of a Director, a Board Committee of which the Director is not a member if the Director reasonably believes the Board Committee merits confidence. A Director or Officer shall not be considered to be acting in good faith if the Director or Officer has knowledge concerning the matter in question that makes reliance otherwise permitted by this Section 5.2(b) unwarranted. A person who so performs his or her duties shall have no liability to the Corporation by reason of such reliance.

(c) Liability to Corporation. The liability of a Member, Director, or Officer of the Corporation for damages is limited to the extent provided in the Certificate, or if not so provided, or not otherwise inconsistent with the Certificate, to the maximum extent allowed by the laws of Delaware.

(d) Trustee; Property Rights. A Member, Director, or Officer, regardless of title, shall not be deemed to be a trustee with respect to the Corporation or with respect to any property held or administered by the Corporation including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property.

Section 5.3 Conflicts of Interest.

(a) Definition. A "***Conflict of Interest***" arises when any Responsible Person or any Party Related to a Responsible Person has an Interest Adverse to the Corporation. A "***Responsible Person***" is any individual in a position to exercise substantial influence over the affairs of the Corporation, and specifically includes, without limitation, Directors, Officers, and Advisory Committee members of the Corporation. A "***Party Related to a Responsible Person***" includes his or her extended family (including spouse, ancestors, descendants and siblings, and their respective spouses and descendants), an estate or trust in which the Responsible Person or any member of his or her extended family has a beneficial interest or a fiduciary responsibility, or an entity in which the Responsible Person or any member of his or her extended family is a Director or Officer or has a financial interest. An "***Interest Adverse to the Corporation***" includes: (1) any interest in any contract, transaction or other financial relationship with the Corporation, (2) any interest in an entity whose best interests may be impaired by the best interests of the Corporation including, without limitation, an entity providing any goods or services to or receiving any goods or services from the Corporation, an entity in which the Corporation has any business or financial interest, and an entity providing goods or services or performing activities similar to the goods or services or activities of the Corporation.

(b) Disclosure. If a Responsible Person is aware that the Corporation is about to enter into any transaction or make any decision involving a Conflict of Interest (a "***Conflicting Interest Transaction***"), such Responsible Person shall: (i) immediately inform those charged with approving the Conflicting Interest Transaction on behalf of the Corporation of the interest or position of such person or any party related to such person; (ii) aid the persons charged with making the decision by disclosing any material facts within the Responsible Person's knowledge that bear on the advisability of the Corporation entering into the Conflicting Interest Transaction; and (iii) not be entitled to vote on the decision to enter into such transaction.

(c) Approval of Conflicting Interest Transactions. The Corporation may enter into a Conflicting Interest Transaction only if (x) the material facts as to the Responsible Person's relationship or interest and as to the Conflicting Interest Transaction are disclosed or are known to the Board or to a Board Committee charged with authorizing, approving or ratifying the Conflicting Interest Transaction, and (y) the Board or Board Committee, in good faith and after reasonable inquiry, authorizes, approves or ratifies the Conflicting Interest Transaction by the affirmative vote of a majority of the disinterested Directors on the Board or Board Committee (even though the disinterested Directors are less than a quorum) and determines that:

(i) The Conflicting Interest Transaction is fair and reasonable as to the Corporation;

(ii) After consideration of available alternatives, if deemed necessary or appropriate, the Corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances;

(iii) The Conflicting Interest Transaction furthers the Corporation's mission and purposes; and

(iv) The transaction or arrangement is not prohibited under state law and does not result in private inurement or impermissible private benefit under laws applicable to tax exempt business league.

This **Section 5.3(c)** shall not apply to compensation being paid to all Directors in accordance with **Section 3.8**.

Section 5.4 Loans to Officers . The Corporation shall not lend money to or guarantee the obligation of a Director or Officer of the Corporation; provided, however, that this prohibition shall not apply to (i) an advance to pay reimbursable expenses reasonably expected to be incurred by a Director or Officer, or (ii) advances pursuant to **Section 5.1** hereof.

ARTICLE VI

RECORDS OF THE CORPORATION

Section 6.1 Minutes, Etc. The Corporation shall keep at its offices correct and complete books and records of account, the activities and transactions of the Corporation, minutes of the proceedings of the Board and any Board Committee of the Corporation, and a current list of the Members, Directors, and Officers of the Corporation and their business or residence addresses. Any of the books, minutes, and records of the Corporation may be in written form or in any other form capable of being converted into written form within a reasonable time.

Section 6.2 Accounting Records. The Corporation shall maintain appropriate accounting records.

Section 6.3 Records in Written Form. The Corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

Section 6.4 Records Maintained at Principal Office. The Corporation shall keep a copy at its principal office of all records required to be maintained by either the DGCL or the Internal Revenue Code.

Section 6.5 Reports. The Corporation shall comply with all Delaware and U.S. federal tax reporting requirements, including filing a Form 990 with the IRS.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Fiscal Year. The fiscal year of the Corporation shall be as established by the Board.

Section 7.2 Conveyances and Encumbrances. Property of the Corporation may be assigned, conveyed or encumbered by such Officers of the Corporation as may be authorized to do so by the Board, and such authorized persons shall have power to execute and deliver any and all instruments of assignment, conveyance and encumbrance; however, the sale, exchange, lease or other disposition of all or substantially all of the property and assets of the Corporation shall be authorized only in the manner prescribed by applicable statute.

Section 7.3 Amendments. The Corporation's Certificate may be amended, altered, changed or repealed, in whole or in part, by unanimous consent of the Board. The Board may at any time and from time to time amend, alter, change or repeal these Bylaws and/or adopt new bylaws by an affirmative vote of two-thirds of the entire Board, except any amendment, alteration, change or repeal to the following Sections shall require unanimous consent of the Board: Sections 1.2, 1.5, 2.1, 3.1, 3.2, 3.3, 3.5, 3.6, 3.7, 3.9, 3.10, 4.1, 4.2, 5.1, 7.3, 7.7, and 7.9.

Section 7.4 References to Internal Revenue Code. All references in these Bylaws to provisions of the Internal Revenue Code are to the provisions of the Internal Revenue Code of 1986, as amended, and to the corresponding provisions of any subsequent federal tax laws.

Section 7.5 Severability. The invalidity of any provision of these Bylaws shall not affect the other provisions hereof, and in such event these Bylaws shall be construed in all respects as if such invalid provision were omitted.

Section 7.6 Compliance with Laws. The Corporation and its Members, Directors, Officers, agents and employees shall at all times act in conformity with applicable laws and regulations, including, without limitation, competition and antitrust laws, in their participation in the Corporation.

Section 7.7 Certain Definitions. For purposes of these Bylaws, the following definitions shall apply; provided, that, upon enactment of the contemplated Horseracing Integrity and Safety Act of 2020 or a substantially similar act (as may be ultimately enacted, modified, amended, and supplemented) (the "***Act***"), such terms below (i) shall have the meanings as ascribed to them in the Act, and (ii) shall be deemed automatically amended and supplemented to include such additional terms as defined in the Act.

(a) The term "***Covered Horse***" means any Thoroughbred horse, or any other horse made subject to the Act by election of the applicable State Racing Commission or the breed governing organization for such horse, during the period (A) beginning on the date of the horse's first timed and reported Workout at a Racetrack that participates in Covered Horseraces or at a Training Facility; and (B) ending on the date on which the Corporation receives written notice that the horse has been retired.

(b) The term "***Covered Horserace***" means any horserace involving Covered Horses that has a substantial relation to interstate commerce, including any Thoroughbred horserace that is the subject of Interstate Off-Track Wagers or advance deposit wagers.

(c) The term "***Covered Persons***" means all Trainers, Owners and Breeders, Jockeys, Racetracks, Veterinarians, persons (legal and natural) licensed by a State Racing Commission and the agents, assigns, and employees of such persons and other horse support personnel who are engaged in the care, training, or racing of Covered Horses.

(d) The term "***Equine Constituencies***" means, collectively, Owners and Breeders, Trainers, Racetracks, Veterinarians, State Racing Commissions, and Jockeys who are engaged in the care, training, or racing of Covered Horses.

(e) The term "***Equine Industry Representative***" means an organization regularly and significantly engaged in the equine industry, including organizations that represent the interests of, and whose membership consists of, Owners and Breeders, Trainers, Racetracks, Veterinarians, State Racing Commissions, and Jockeys.

(f) The term "***Horseracing Anti-Doping and Medication Control Program***" means the anti-doping and medication control program established under section 6(a) of the Act.

(g) The term "***Immediate Family Member***" shall include a spouse, domestic partner, mother, father, aunt, uncle, sibling, or child.

(h) The term "***Interstate Off-Track Wager***" has the meaning given such term in section 3 of the Interstate Horseracing Act of 1978 (15 U.S.C. 3002).

(i) The term "***Jockey***" means a rider or driver of a Covered Horse in Covered Horseraces.

(j) The term "***Owners and Breeders***" means those persons who either hold ownership interests in Covered Horses or who are in the business of breeding Covered Horses.

(k) The term "***Racetrack***" means an organization licensed by a State Racing Commission to conduct Covered Horseraces.

(l) The term "***Racetrack Safety Program***" means the program established under section 7(a) of the Act.

(m) The term "***Stakes Race***" means any race so designated by the Racetrack at which such race is run, including, without limitation, the races comprising the Breeders' Cup World Championships and the races designated as graded stakes by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association.

(n) The term "***State Racing Commission***" means an entity designated by State law or regulation that has jurisdiction over the conduct of horseracing within the applicable State.

(o) The term "***Trainer***" means an individual engaged in the training of Covered Horses.

(p) The term "***Training Facility***" means a location that is not a Racetrack licensed by a State Racing Commission that operates primarily to house Covered Horses and conduct official timed Workouts.

(q) The term "***Veterinarian***" means a licensed veterinarian who provides veterinary services to Covered Horses.

(r) The term "***Workout***" means a timed running of a horse over a predetermined distance not associated with a race or its first qualifying race, if such race is made subject to the Act by election of the horse's breed governing organization or the applicable State Racing Commission.

Section 7.8 Confidentiality. Deliberations, materials, and related communications of the Corporation specifically designated as confidential, privileged, not for distribution, or otherwise labeled or designated to similar effect, orally or in writing (including any draft proposed rules and regulations), shall be considered "***Confidential Information***." Confidential Information, however, does not include: (a) any information received by a Director, Officer, member of an Advisory Committee, employee, agent, or volunteer of the Corporation or any representative of such Director, Officer, Advisory Committee member, employee, agent, or volunteer (collectively, a "***Representative***"), from the Corporation that: (i) was known to the Representative prior to disclosure by the Corporation and as to which the Representative has no obligation not to disclose or use such information; (ii) is lawfully obtained by the Representative from a third party under no obligation of confidentiality; (iii) is or becomes generally known or available, other than by unauthorized disclosure; or (iv) is independently developed by the Representative; or (b) the final minutes of the proceedings of the Board and any Board Committee kept at the offices of the Corporation pursuant to **Section 6.1** hereof. Except to the extent that Confidential Information is required to be disclosed by law, order, or other legal compulsion, no Member, Director, Officer, Advisory Committee member, employee, agent, or volunteer (nor any Representative thereof), may disclose any Confidential Information received in connection with the Corporation to any persons without the express written consent of the Board.

Section 7.9 Dissolution. It is intended that the Corporation shall be perpetual in existence. However, the Corporation may be dissolved by the affirmative vote of all of the Directors at a meeting called for that purpose. Upon the dissolution or the winding up of the affairs of the Corporation, the property of the Corporation shall be distributed in accordance with the Certificate of Incorporation.

(END)

HISA Nominating Committee Announces Board, Standing Committee Members to Comprise the Horseracing Integrity and Safety Authority

May 5, 2021 – The Horseracing Integrity and Safety Authority's (the "Authority") nominating committee announced today members of its board of directors and standing committees. The process was led by Nancy Cox, University of Kentucky vice president for land-grant engagement and dean of the College of Agriculture, Food and Environment, and Leonard Coleman, former president of the National League of Professional Baseball Clubs.

The 2020 Horseracing Integrity and Safety Act ("HISA") created the Authority as the independent governing structure charged with proposing and enforcing health-and-safety standards subject to consideration and adoption by the Federal Trade Commission over Thoroughbred racing in the United States. The independent nominating committee reviewed more than 160 nominations, evaluating nominees from within and outside of the industry. In addition to ensuring a diversity of professional backgrounds, the committee took into consideration geographic, racial and gender diversity.

Under the authority and oversight of the Federal Trade Commission, the Authority board and standing committee members are responsible for developing, implementing and enforcing a series of uniform anti-doping, medication control, racetrack safety and operational rules to enhance equine safety and protect the integrity of the sport.

Board of Directors
The nine-person board includes five members from outside of the Thoroughbred industry and four industry representatives. The two chairs of the Authority's standing committees serve on the board of directors, and the board is expected to select the board chair at its first meeting. The board of directors includes:

- Steve Beshear, Kentucky (independent director)
- Leonard Coleman, Florida (independent director)
- Ellen McClain, New York (independent director)
- Charles Scheeler, Maryland (independent director)
- Adolpho Birch, chair of the Anti-Doping and Medication Control standing committee, Tennessee (independent director)
- Joseph De Francis, Maryland (industry director)
- Susan Stover, chair of the Racetrack Safety standing committee, California (industry director)
- Bill Thomason, Kentucky (industry director)
- DG Van Clief, Virginia (industry director)

"Over the past several months, the nominating committee carefully reviewed each nominee with a deep and enduring understanding of the important responsibility entrusted to them in selecting the inaugural board and standing committees of this essential entity charged with standardizing safety in the industry" said nominating committee co-chair Nancy Cox. "Thanks to the time and effort of the committee, we have a diverse board and standing committees with broad expertise who will bring the thoughtfulness and skill needed in implementing the Horseracing Integrity and Safety Act."

Anti-Doping and Medication Control Standing Committee
The committee is comprised of four independent members and three industry members:

- Adolpho Birch, chair (Tennessee, independent director)

- Jeff Novitzky, Nevada (independent member)
- Kathleen Stroia, Florida (independent member)
- Jerry Yon, Florida (independent member)
- Jeff Blea, California (industry member)
- Mary Scollay, Kentucky (industry member)
- Scott Stanley, Kentucky (industry member)

Racetrack Safety Standing Committee
The committee is comprised of four independent members and three industry members:

- Susan Stover, chair (California, industry director)
- Lisa Fortier, New York (independent member)
- Peter Hester, Kentucky (independent member)
- Paul Lunn, North Carolina (independent member)
- Carl Mattacola, North Carolina (independent member)
- Glen Kozak, New York (industry member)
- John Velazquez, New York (industry member)

“The overwhelming response to the call for nominees is a clear example of the industry’s interest in and commitment to addressing the safety needs in this sport,” said Leonard Coleman, co-chair of the nominating committee and incoming board member. “The members of the Authority’s two standing committees bring extraordinary knowledge to the process of developing uniform standards in anti-doping and medication control and racetrack safety—a critical need for the horseracing industry.”

Members of the board of directors and standing committees underwent a comprehensive screening process, and the members of the board of directors and any independent member of a standing committee are subject to HISA’s strict conflict of interest restrictions to ensure the Authority’s independence and integrity.

“On behalf of the Authority, we want to thank the lawmakers who sponsored and supported this legislation in Congress, as well as the members of the nominating committee for their time, effort and professionalism,” said Cox.

Today’s announcement received praise and support from Congressional leaders who shepherded the passage of the Horseracing Integrity and Safety Act last December.

“The official formation of the Horseracing Integrity and Safety Authority is the critical next step in safeguarding this cherished sport. I’m grateful to University of Kentucky Vice President Nancy Cox, and the other members of the nominating committee for their diligence in selecting respected individuals to serve on thoroughbred racing’s independent governing body, said U.S. Senate Republican Leader Mitch McConnell (R-KY), who introduced the Horseracing Integrity and Safety Act in the Senate and led it to enactment. “With uniform, national standards for medication-use and track safety, we can address the challenges facing horse racing and preserve one of Kentucky’s signature industries for generations to come. Along with all horse racing fans, I look forward to the Authority’s work to protect horses and jockeys and to give every competitor a fair shot at the winner’s circle.”

“Today, the Horseracing Integrity and Safety Authority Nominating Committee put forward an impressive slate of individuals that will lead the Thoroughbred racing industry forward,” said Congressman Andy Barr (R-KY-06). “This group of regionally and professionally diverse

individuals will guide the implementation of uniform standards of safety and competition. I want to thank each member for volunteering their time and talents to serving this vital industry. The Horseracing Integrity and Safety Act is a historic reform that will strengthen Kentucky's signature industry for generations to come."

"Reforming the noble sport of horse racing—and implementing the high standards we established in our Horseracing Integrity and Safety Act—will require a deft, experienced and compassionate group of hands that can balance the historic and geographically diverse character of this sport's past with a resounding and ethical vision for its bright future. The group of leaders advanced by the nominating committee today has what it takes to meet that challenge, and I look forward to working with them to ensure they get the job done for the sake of our equine athletes and the many people and communities who depend on them," said Representative Paul Tonko (D-NY-20).

Additional information on HISA can be found at hisaus.org

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Biographical information

Horseracing Integrity and Safety Authority Board of Directors

- Steve Beshear is an independent director from Kentucky. He served two terms as the 61st governor of Kentucky. An attorney by trade, Beshear has an extensive background in public service in Kentucky, including terms as Lieutenant Governor, Attorney General and a member of the Kentucky House of Representatives.

- Adolpho Birch is an independent director from Tennessee who will chair the Anti-Doping and Medication Control Standing Committee of the Authority. Birch is senior vice president of business affairs and chief legal officer for the Tennessee Titans. Prior to joining the Titans, he spent 23 years at the National Football League's headquarters, with responsibilities that included administration and enforcement of the NFL's policies related to the integrity of the game, substance abuse, performance-enhancing drugs, gambling and criminal misconduct.

- Leonard Coleman is an independent director from Florida. Coleman is the former president of the National League of Professional Baseball Clubs. He joined Major League Baseball in 1992 as the executive director of market development. Previously, Coleman was a municipal finance banker for Kidder, Peabody and Company and served as commissioner of both the New Jersey Department of Community Affairs and Department of Energy. Coleman is also a former board member of Churchill Downs.

- Ellen McClain is an independent director from New York. McClain serves as the chief financial officer for Year UP, a nonprofit organization dedicated to closing the opportunity divide by ensuring that young adults gain the skills, experience and support that will empower them through careers and higher education. From 2009-2013, she served in various leadership roles with the New York Racing Association (NYRA), including as its president.

- Charles Scheeler is an independent director from Maryland. Scheeler is a retired partner at DLA Piper. He has an extensive legal career in the private and public sector. Prior to joining DLA Piper, Scheeler was a federal prosecutor in the US Attorney's Office and served as lead counsel to former Senator George Mitchell in his investigation of performance-enhancing substance use in Major League Baseball. Scheeler also has extensive experience investigating and monitoring Division I athletics programs' compliance with the National College Athletics Association.

- Joseph De Francis is an industry director from Maryland. De Francis is the managing partner of Gainesville Associates, LLC. Prior to this role, he was a senior executive for various Thoroughbred racing entities including the Maryland Jockey Club and Magna Entertainment Corporation. De Francis has served on several industry and charitable organization boards, including the National Thoroughbred Racing Association ("NTRA") and the Johns Hopkins Heart Institute, among others.

- Susan Stover is an industry director from California, and she will chair the Racetrack Safety Standing Committee of the Authority. Stover is a professor of surgical and radiological science and the University of California, Davis and an expert in clinical equine surgery and lameness. Her research investigates the prevalence, distribution and morphology of equine stress fractures, risk factors and injury prevention, as well as the impact of equine injuries on human welfare.

- Bill Thomason is an industry director from Kentucky. Thomason is the immediate past president of Keeneland, a role he served in from 2012 to 2020. Throughout his career, Thomason has been engaged with several industry organizations, including the NTRA and American Horse Council, as well as several civic and corporate boards, including the Kentucky Chamber of Commerce and the University of Kentucky Gluck Equine Research Foundation.

- DG Van Clief is an industry director from Virginia. Van Clief retired in 2006 from serving as president of the Breeders' Cup since 1996. A long-time racing executive, Van Clief was chairman of the Fasig-Tipton Company and a trustee of the Jockey Club Foundation. For several generations, his family operated Nydrie Stud in Virginia, and his grandmother bred 1947 Kentucky Derby winner Jet Pilot.

Anti-Doping and Medication Control Standing Committee Members

- Jeff Novitzky is an independent member from Nevada. Novitzky is Ultimate Fighting Championship's (UFC) vice president of athlete health and performance. In this role, he partnered with the United States Anti-Doping Agency to implement UFC's anti-doping program. Prior to UFC, Novitzky was a federal agent for the Food and Drug Administration and an investigator for the Internal Revenue Service.

- Kathleen Stroia is an independent member from Florida. Stroia is senior vice president of sport sciences and medicine and transitions for the Women's Tennis Association (WTA) and the WTA's representative on the board of the Society for Tennis Medicine and Science. Stroia has served on various committees related to her sport, including the International Tennis Federation Medical Commission, the Tennis Anti-doping Committee and the U.S. Tennis Association Sport Science Committee, among others.

- Jerry Yon is an independent member from Florida. Yon is a retired gastroenterologist and previous member of the Kentucky Horse Racing Commission ("KHRC"), where he helped establish the Kentucky Equine Medical Director position, and is a past chair of the Equine Drug Research Council, which advises the KHRC on drug testing, regulations and penalties.

- Jeff Blea is an industry member from California. Blea is equine medical director at the University of California, Davis School of Veterinary Medicine. He is also a partner/owner in Von Bluecher, Blea, Hunkin, Inc., an equine veterinary medicine and surgery practice. Blea has served on and led several equine industry organizations including the American Association of Equine Practitioners ("AAEP"), Southern California Equine Foundation and the NTRA's Safety and Integrity Alliance.

- Mary Scollay is an industry member from Kentucky. Scollay is the executive director and chief operating officer of the Racing Medication and Testing Consortium (RMTC), one of the industry's foremost scientific authorities on performance enhancing drugs, therapeutic medications and laboratory testing. She has served as a racing regulator since 1987 and is an active member in several industry and professional practice organizations including the AAEP and the International Group of Specialist Racing Veterinarians.

- Scott Stanley is an industry member from Kentucky. Stanley is a professor of analytical chemistry at the University of Kentucky's Maxwell H. Gluck Equine Research Center and director of the Equine Analytical Chemistry Laboratory. A research scientist with more than 30 years of regulatory drug testing experience, his work focuses on developing new anti-doping approaches and the establishment of the Equine Biological Passport project.

Racetrack Safety Standing Committee Members

- Lisa Fortier is an independent member from New York. Fortier is the James Law Professor of Surgery, Equine Park Faculty Director and associate chair for Graduate Education and Research at the Cornell University College of Veterinary Medicine. Her primary clinical and translational research interests are in equine orthopedic surgery, tendonitis, arthritis and regenerative medicine.

- Peter Hester is an independent member from Kentucky. Hester is an orthopedic surgeon specializing in sports medicine and previously worked for equine veterinary surgeon William Reed at Belmont Park. While in medical school, he was a night watchman at Ballindaggin Farm and has maintained a passion for the sport and rider safety.

- Paul Lunn is an independent member from North Carolina. Lunn is dean of the College of Veterinary Medicine at North Carolina State University. Previously he was a professor and administrator at Colorado State University and the University of Wisconsin-Madison. Lunn's scholarly interests are in equine immunology and infectious disease.

- Carl Mattacola is an independent member from North Carolina. Mattacola is dean of the University of North Carolina, Greensboro School of Health and Human Sciences. Prior to this, he was associate dean of academic and faculty affairs for the College of Health Sciences at the University of Kentucky. Mattacola's research has focused on neuromuscular, postural and functional considerations in the treatment and rehabilitation

of lower extremity injury.

- Glen Kozak is an industry member from New York. Kozak is senior vice president of operations and capital projects for the New York Racing Association's (NYRA) facility and track operations, which include Belmont Park, Saratoga Race Course, Aqueduct Racetrack and others. Prior to joining NYRA, Kozak worked for the Maryland Jockey Club as vice president of facilities and racing surfaces.

- John Velazquez is an industry member from New York. Velazquez is one of the most accomplished and respected jockeys in the history of horse racing, having won almost 6,250 races. He is North America's all-time leading money-earning jockey and holds the record for most graded stakes wins. He is a board member of the Permanently Disabled Jockeys' Fund and co-chairman of the Jockeys' Guild. He was inducted into the National Museum of Racing and Hall of Fame in 2012.

Nominating Committee Members:

- Len Coleman is the former president of the National League of Professional Baseball Clubs. He joined Major League Baseball in 1992 as the executive director of market development. Previously, Coleman was a municipal finance banker for Kidder, Peabody and Company and served as commissioner of both the New Jersey Department of Community Affairs and Department of Energy. Coleman is also a former board member of Churchill Downs.

- Nancy Cox is the vice president for Land-grant Engagement and the dean of the College of Agriculture, Food and Environment at the University of Kentucky. Prior to that, she served as associate dean for research and director of the Experiment Station at the University of Kentucky. Cox championed the formation of the UK Equine Initiative (now UK Ag Equine Programs), recognizing the importance of the horse industry and its significance to Kentucky.

- Katrina Adams is the immediate past president of the United States Tennis Association (USTA), following two consecutive terms as the USTA's chairman and president. A successful professional tennis player, Adams was elected vice president of the International Tennis Federation in 2015 and was appointed as chairman of the Fed Cup Committee in 2016.

- Jerry Black is a visiting professor at Texas Tech School of Veterinary Medicine and is an emeritus professor and Wagonhound Land and Livestock chair in Equine Sciences at Colorado State University. He is the former president of the American Association of Equine Practitioners and former chair of the board of trustees of the American Horse Council.

- Joseph Dunford is the former chairman of the Joint Chiefs of Staff, the nation's highest-ranking military officer, and was the principal military advisor to the president, Secretary of Defense, and National Security Council from Oct. 1, 2015, through Sept. 30, 2019. Prior to becoming chairman, General Dunford served as the 36th Commandant of the Marine Corps.

- Frank Keating is the former governor of Oklahoma. Prior to that role, his career in law enforcement and public service included time as a Federal Bureau of Investigation agent, U.S. Attorney and state prosecutor, and Oklahoma House and Senate member.

He served as assistant secretary of the U.S. Treasury, associate U.S. attorney general, and general counsel for the U.S. Department of Housing and Urban Development.

- Ken Schanzer served as president of NBC Sports from June 1998 until his retirement in September 2011. He also served as chief operating officer. During Schanzer's tenure, he secured the television rights to the Triple Crown races and Breeders' Cup for NBC. Before joining NBC Sports, he served as senior vice president of government relations for the National Association of Broadcasters.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

GULF COAST RACING LLC; LRP GROUP LTD.; VALLE DE LOS TESOROS LTD.; GLOBAL GAMING LSP, LLC; AND TEXAS HORSEMEN'S PARTNERSHIP LLP,	§	
Plaintiffs,	§	Civil Action No 2:22-cv-146-Z
v.	§	
HORSERACING INTEGRITY AND SAFETY AUTHORITY, INC., et al.,	§	
Defendants.	§	

DECLARATION OF MATTHEW VANCE

I, Matthew Vance, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am Executive Vice President for Global Gaming LSP, LLC ("Lone Star Park"). I am an individual over eighteen years of age. I have personal knowledge of the facts stated in this declaration and would be willing and able to testify to them if and when called upon to do so.

2. I have held my current positions for since June 2021. I have worked in the racing industry for 35 years. As Executive Vice President, I oversee all mutuels/simulcasting, operations, track maintenance and racing operations.

3. Lone Star Park operates a horseracing track and is an entertainment destination in Grand Prairie, Texas. Among other things, Lone Star Park features live races that are simulcast in other locations within and outside of Texas.

4. In order to simulcast and operate as a horseracing track, Lone Star Park is required to comply with regulations. The Texas Racing Commission is the Texas entity

PLAINTIFF'S EXHIBIT
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Gulf Coast Plaintiffs
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that regulates the state's horseracing industry. Lone Star Park is in all material respects in compliance with all applicable Texas Racing Commission rules and regulations.

5. The Horseracing Integrity and Safety Authority (the "Authority") has promulgated rules and/or regulations that impose additional and/or different regulatory compliance obligations on Lone Star Park. The Authority purports to supersede the Texas Racing Commission's rules and/or regulations in certain material respects. The constitutionality of the purported rules and/or regulations promulgated by the Authority are at issue in this and other lawsuits across the country.

6. As a result of the different and/or conflicting regulatory regimes imposed by the Texas Racing Commission and the Authority, Lone Star Park is uncertain as to its regulatory obligations and cannot reasonably comply with both regulatory regimes.

7. Because the statute establishing the Authority has been held unconstitutional by the Fifth Circuit Court of Appeals, and because its rules and/or regulations are also the subject of this lawsuit, the Texas Racing Commission's rules reflect the status quo and those with which Lone Star Park has been in compliance.

8. Lone Star Park will suffer irreparable harm if, before the merits of this lawsuit are decided, the Authority enforces its rules and/or regulations because it cannot reasonably operate in compliance with them and with the rules and regulations of the Texas Racing Commission. The Lone Star Park thoroughbred racing season will begin April 13, 2023 and will include races on the following dates: April 13-16, April 21-23, April 27-30, May 5-7, May 11-14, May 18-21, May 27-29, June 2-4, June 8-11, June 15-18, June 22-25, and July 1-4.

9. The Authority has confirmed that it will not defer enforcement of HISA during for the short period remaining in this matter until the parties' briefing is complete and the Court rules on their respective dispositive motions. The Authority has further confirmed that its enforcement would include acting to bar the out-of-state export of Lone Star Park's simulcast signal by which valuable revenue is generated for the horseracing track and various third parties who participate in or rely on interstate export of thoroughbred pari-mutuel simulcast signals from horseraces held at Lone Star Park. The monetary loss to Lone Star Park alone resulting from the Authority's interference with the interstate export of its simulcast signal could amount to as much as $1,500,000 per race day, which in all likelihood Lone Star Park cannot recoup in money damages from the Authority or the Federal Trade Commission.

10. In reliance on the original briefing schedule in this lawsuit, Lone Star Park anticipated having the benefit of the Court's guidance before the April 13, 2023 start of its season, so that Lone Star Park could appropriately manage its regulatory compliance obligations. Likewise, in reliance on the original briefing schedule, Lone Star Park never contemplated altering its 2023 thoroughbred racing season. However, as a result of the stay, which the Defendants indicated would allow for greater, not less, clarity to develop in the law surrounding the Authority's constitutionality, Lone Star Park now faces entering the 2023 thoroughbred racing season under two conflicting regulatory regimes.

11. Lone Star Park cannot now alter its racing season and meet schedule without incurring substantial costs and disrupting the countless third parties who also planned their operations around the Lone Star Park racing season and meet schedule.

[Signature Page Follows]

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of April, 2023.

Matthew Vance