GALLOPING TOWARD REFORM: WHY FEDERAL REGULATION IS REQUIRED TO ENSURE THE FUTURE OF THOROUGHBRED RACING SAFETY

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INTRODUCTION

Due to its popularity with British royalty and aristocrats, Thoroughbred racing is often referred to as the "Sport of Kings".[1] While Thoroughbred racing has evolved, its exclusivity remains constant due to its high barriers to entry.[2] For those who cannot afford to attend or participate, top Thoroughbred races draw millions of viewers on television and streaming platforms each year.[3] The Kentucky Derby, affectionately referred to as "The Most Exciting Two Minutes in Sports,"[4] set its highest average viewership record since 1989 this year, with an average of 17.7 million viewers.[5] But Thoroughbred racing has an ugly side – prevalent fatalities. From 2009 to 2021, over 7,200 racehorses died or were euthanized due to racing-related illnesses or injuries.[6] While stating that the death tolls are unacceptable, horse and track ownership groups alike are still often quick to respond to concerns by stating there is "no single factor" identified as a potential cause of the fatalities.[7] Animal advocacy groups however, describe Thoroughbred racing as "a world of injuries, drug abuse, gruesome breakdowns, and slaughter," calling for it to be abolished.[8] With thirty-eight state racing commissions each responsible for regulating the sport in their own individual state[9], the Thoroughbred industry has had a patchwork of rules that were exploited by owners, trainers, and veterinarians, to the detriment of the horses.[10]

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[1] Mariano Specogna, *Become a Winner Claiming Thoroughbred Racehorses* 1 (2005) (describing the English history of Thoroughbred racing and the ownership of horses by kings and nobility).

[2] *Why Horse Racing Still Holds an Aura of Elite Exclusivity*, RacingBetter (Nov. 13, 2025) https://www.racingbetter.co.uk/news/2025/11/rb430_horse_racing_exclusivity.html (explaining the factors contributing to Thoroughbred racing's continued exclusivity).

[3] Ray Paulick, *No Triple Crown Try Means Low Viewership For Belmont Stakes On FOX* (June 10, 2025) https://paulickreport.com/news/triple-crown/no-triple-crown-try-means-low-viewership-for-belmont-stakes-on-fox (outlining the viewership split amongst the Triple Crown races and the various television networks in 2025).

[4] *About*, The Kentucky Derby (last visited Dec. 15, 2025) https://www.kentuckyderby.com/about/ (describing the Kentucky Derby's history beginning in 1875).

[5] NBC Sports, *Kentucky Derby Sets Record for NBC, Peacock* (May 4, 2025) https://www.bloodhorse.com/horse-racing/articles/284317/kentucky-derby-sets-record-for-nbc-peacock (describing the record television viewership for the 2025 Kentucky Derby across NBC and Peacock).

[6] Rachel Fobar, *Why horse racing is so dangerous* (June 9, 2023) https://www.nationalgeographic.com/animals/article/horse-racing-risks-deaths-sport (summarizing the most prevalent risks in Thoroughbred racing and the recently introduced reform).

[7] *See id.*

[8] *Horse Racing*, PETA (last viewed Dec. 14, 2025) https://www.peta.org/issues/animals-in-entertainment/horse-racing-2/ (explaining the multiple facets of animal cruelty in Thoroughbred racing and PETA's attempts to eliminate them from the racing industry).

[9] The Coalition for Horse Racing Integrity, *CHRI Applauds Introduction of Bipartisan "Horseracing Integrity Act of 2019"* (Mar. 14, 2019) https://www.prnewswire.com/news-releases/chri-applauds-introduction-of-bipartisan-horseracing-integrity-act-of-2019-300812711.html (outlining the Coalition for Horse Racing Integrity's support for the "horse-first" bill introduced to bring federal regulation to Thoroughbred racing).

[10] *See generally Understanding the Horseracing Integrity and Safety Act and a New Era of Racing Regulation*, ALB. L. SCH. (May 27, 2021) https://www.albanylaw.edulgovernment-law-center/news/understanding-the-

In 2020, federal regulation was brought to Thoroughbred racing for the first time with the introduction of the Horseracing Integrity and Safety Act (HISA), managed by the Horseracing Integrity and Safety Authority (the "Authority").[11] Though it has proven to be successful in reducing racing-related fatalities[12], the constitutionality of the HISA has been challenged in three Circuit Courts, with opponents arguing that Congress impermissibly delegated power to the Authority, therefore violating the Private Nondelegation Doctrine.[13] After the Fifth Circuit found the HISA to be an illegal delegation of power, Congress amended the HISA to more explicitly give oversight power to the Federal Trade Commission (FTC).[14] The Supreme Court agreed to hear all three Circuit Court cases, but then refused to rule on them in light of its newly released precedent this year.[15] Each case was vacated and remanded back to its respective Circuit.[16]

This paper will examine the history of Thoroughbred racing, safety concerns leading towards the proposition of federal law and eventual introduction of the Horseracing Integrity and Safety Act (2020), the effect the HISA has had on the sport thus far, as well as legal challenges to the HISA and the Supreme Court's current refusal to rule on the matter. It will then propose reasoning as to why the HISA should be upheld as constitutional under the Supreme Court's new Federal Communications Commission (FCC) precedent and suggest incentive plans to encourage more racetracks across America to adopt HISA rules before a Supreme Court decision, specific to the HISA, is eventually made.

BACKGROUND

The History of Thoroughbred Racing in the United States

The Thoroughbred horse, a specific breed that has been primarily developed for racing, was first imported to the United States in 1730.[17] Although Thoroughbred racing can either be on an

horseracing-integrity-and-safety-act-and-new-era (explaining the changes that the introduction of the Horseracing Integrity and Safety Act will bring to the Thoroughbred racing industry).

[11] *See id.*

[12] *Horseracing Integrity and Safety Authority 2024 Annual Metrics Report*, Horseracing Integrity and Safety Authority (Mar. 17, 2025) https://hisaus.org/news/hisa-releases-2024-annual-metrics-report (summarizing data from tracks using the Horseracing Integrity and Safety Act rules in 2024).

[13] Dick Downey, *Sixth Circuit Puts HISA Legality Back on Front Burner* (Nov. 13, 2025) https://www.bloodhorse.com/horse-racing/articles/288594/sixth-circuit-puts-hisa-legality-back-on-front-burner (summarizing the Circuit Court cases challenging the constitutionality of the Horseracing Integrity and Safety Act).

[14] Thomas A. Berry, *Government Power Is Just as Dangerous in "Private" Hands* (Jul. 13, 2023) https://www.cato.org/blog/government-power-just-dangerous-private-hands (explaining the Congressional amendment in response to the Fifth Circuit decision and the author's belief that the Horseracing Integrity and Safety Act should remain unconstitutional).

[15] Downey, *supra* note 13.

[16] *See id.*

[17] *Breeding Thoroughbreds*, PBS, (last visited Dec. 12, 2025) https://www.pbs.org/wgbh/americanexperience/features/seabiscuitbreeding/#:~:text=The%20first%20Thoroughbred%20to%20reach,owners%20have%20bred%20ever%20since (explaining the history and lineage of the Thoroughbred breed in America).

entirely flat track or have jumps throughout (in a steeplechase format)[18], for the purposes of this paper, "Thoroughbred racing" will refer only to flat racing.

Organized Thoroughbred racing did not begin in the United States until 1868, when The American Stud Book, a registry of all Thoroughbred foals born in America, was first published.[19] Thoroughbred racing soared in popularity over the next several decades, with 314 racetracks operating in the United States by 1890.[20] Widespread regulation was first brought to the sport in 1894, when The Jockey Club was incorporated.[21] Dedicated to improving Thoroughbred breeding and racing, The Jockey Club adopted a purpose statement listing its mission as "not only to encourage the development of the Thoroughbred horse, but to establish racing on such a footing that it may command the interests as well as the confidence and favorable opinion of the public."[22] One of The Jockey Club's primary responsibilities from its inception has been to maintain The American Stud Book to ensure the integrity of the breed is upheld.[23]

Thoroughbred racing was nearly eliminated entirely from the United States in the early 1900s when an anti-gambling wave swept across the nation, leading almost all states to ban bookmaking.[24] Only twenty-five racetracks remained in 1908.[25] However, that same year, pari-mutuel betting, in which patrons contribute to a betting pool by selecting which competitors they believe will finish in the top three places and then share the total monetary amount from the pool, was introduced, creating a turning point for the sport.[26] In return for a cut of the total money wagered, many states agreed to legalize pari-mutuel betting, which led to Thoroughbred racetracks opening once again.[27]

In 1930, the concept of the American "Triple Crown" was popularized by Charles Hatton, a popular sports journalist for the Daily Racing Form.[28] A Triple Crown winner refers to a three-year old Thoroughbred that won the Kentucky Derby, the Preakness Stakes, and the Belmont Stakes in the same season.[29] On average, between 1930 and 1948, there was one Triple Crown

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[18] *Racing Explained All About the Thoroughbred*, The Jockey Club, (last visited Dec. 12, 2025) https://www.thejockeyclub.co.uk/the-racing/racing-explained/racehorses/all-about-the-thoroughbred/ (detailing the purpose and specificity of Thoroughbred breeding).
[19] *The History of Horse Racing in America*, Bluegrass Provisions Co., (Oct. 23, 2020) https://bluegrassprovisionsco.com/blogs/whats-new/the-history-of-horse-racing-in-america (outlining the history of Thoroughbred racing in America).
[20] *See id.*
[21] *History of The Jockey Club*, The Jockey Club, (last visited Dec. 10, 2025) https://www.jockeyclub.com/default.asp?section=About&area=0 (detailing the history and formation of The Jockey Club and rules regarding The American Stud Book).
[22] *See id.*
[23] *See id.*
[24] *The History of Horse Racing in America*, *supra* note 19.
[25] *See id.*
[26] *See id.*
[27] *See id.*
[28] Marvin Drager, *Triple Crown American thoroughbred horse racing*, Britannica (Nov. 5, 2025) https://www.britannica.com/sports/Triple-Crown-American-thoroughbred-horse-racing (outlining the Triple Crown history, races, prestige, and winners).
[29] *See id.*

winner every two and a half years.[30] The Triple Crown was formally declared a title by the Thoroughbred Racing Association in 1950.[31] There were no Triple Crown winners between 1948 and 1973, which likely contributed to another downturn in the sport's popularity.[32] However, with Secretariat, Seattle Slew, and Affirmed each winning the Triple Crown in the 1970s, the sport's success reached an all-time high.[33] In 1973, the American Graded Stakes Committee was founded for the purpose of grading races based on their quality to signify the superior bloodlines of the Thoroughbreds competing in them.[34] Races can receive four different rankings, from most to least prestigious, respectively: Grade I, Grade II, Grade III, and Listed.[35] Each of the Triple Crown races are Grade I races.[36]

The Triple Crown "had long been considered one of the most coveted and celebrated achievements in all of sports."[37] However, Thoroughbred racing's popularity has declined sharply in more recent years, leading the Triple Crown to become significantly less prestigious in the public eye.[38] While the sport's decline may be attributed to the fact that there was no Triple Crown winner between 1978 and 2015, it is also attributable to a significant increase in awareness surrounding animal welfare concerns.[39]

The Industry's Dark Side: Animal Welfare and Injury Concerns

Many Thoroughbred horses begin racing at just two years old, while some retire as early as four years old.[40] Each of the Triple Crown races are limited to three-year old Thoroughbreds.[41] This age restriction was adopted from early English Thoroughbred racing in the 1700 and 1800s, which limited the "Old World's Triple Crown" to three-year old Thoroughbreds.[42] In contrast,

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[30] *See id.*
[31] *See id.*
[32] *See id.*
[33] *The History of Horse Racing in America*, *supra* note 19.
[34] *Member Guide*, Thoroughbred Owners and Breeders Association, (last visited Dec. 1, 2025) https://toba.org/graded-stakes/ (summarizing the guide to the American Graded Stakes races and origin process).
[35] *See id.*
[36] *How It Works*, Kentucky Derby (last visited Nov. 27, 2025) https://www.kentuckyderby.com/prep-races/how-it-works/; *Thoroughbred Aftercare Alliance to be Present During Preakness Week*, Preakness (May 8, 2025) https://www.preakness.com/news/thoroughbred-aftercare-alliance-to-be-present-during-preakness-week; *Official Belmont Stakes Visitor Guide*, NYRA Bets (last visited Nov. 27, 2025) https://www.nyra.com/belmont-stakes/event-info/ (stating that each Triple Crown race is a Grade I race).
[37] Drager, *supra* note 28.
[38] *See id.*
[39] Drager, *supra* note 28; *Decline and Rebirth of American Horse Racing: Can Tradition Survive the Modern Era*, HorseRaceInsider (July 28, 2025) https://www.horseraceinsider.com/horse-racing-enjoying-a-rebirth-in-america/#:~:text=A%20one%2Dtime%20jewel%20of,a%20relic%20of%20the%20past.&text=The%20sport's%20decline%20was%20also,huge%20reputational%20toll%20on%20it (outlining animal welfare issues, doping, and track safety as reasons for horseracing's decline in popularity).
[40] *Racing Explained All About the Thoroughbred*, *supra* note 18.
[41] Brendan Koerner, *Why 3-Year-Olds Rule the Triple Crown* (June 3, 2004) https://slate.com/news-and-politics/2004/06/why-do-3-year-olds-rule-the-triple-crown.html (explaining the history of the three-year old age restriction for Thoroughbreds in Triple Crown races).
[42] *See id.*

most other horse riding disciplines do not begin light training for horses until they are three or four years old, due to alignment with mental and physical development.[43]

Horses do not reach skeletal maturity until age five or six, with the growth plates in the spine being the last to close.[44] Although the growth plates in horses' legs typically close around two to three years old, "[w]hen pushed to race at high speeds, a horse's leg can fracture beneath them in an event called a breakdown."[45] Selective breeding in modern Thoroughbreds to enhance speed has "resulted in limbs that operate at an anatomical and biomechanical extreme," which in turn has led to an unusually high frequency of leg fractures.[46] Due to the fragility of horses' limbs, fractures in the leg can cause severe or irreparable tissue damage, typically resulting in the horse having to be euthanized.[47] Notably, in the 2008 Kentucky Derby, second place finisher Eight Belles suffered compound fractures in both front ankles while being slowed after the finish line.[48] Due to the severity of her trauma, she was euthanized on the track "in front of 157,770 fans and a live television audience."[49]

Horseracing Wrongs, a prominent non-profit "committed to ending the cruel and deadly horseracing industry in the United States" was founded by Patrick Battuello in 2013.[50] Since its founding, Horseracing Wrongs has documented over 11,000 "kills" on their website, and has estimated that approximately 2,000 horses die at United States race tracks each year – or roughly six per day.[51] The non-profit lists multiple causes of deaths at the track including cardiovascular collapse, pulmonary hemorrhage (bleeding out from the lungs), blunt-force head trauma from collisions, broken necks, severed spines, ruptured ligaments, shattered legs, colic, laminitis (acute inflammation in the hooves), respiratory infections, neurological disorders, and parasitic infestations, while stating that necropsy reports may sometimes merely state "found dead in the

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[43] Alan Ruggles, *When is a Young Horse Ready to Ride?* (Aug. 24, 2016) https://thehorse.com/115040/when-is-a-young-horse-ready-to-ride/ (comparing the ages at which people being training horses in different riding disciplines).

[44] Allyson Hall, *At What Age Can A Horse Be Ridden?* (Dec. 15, 2024) https://www.huntleyequestrian.com/blogs/press/at-what-age-can-a-horse-be-ridden (describing the physical and mental development of horses and comparing them to a suitable age to begin training).

[45] *See id*; *Research Story Tip: Horse Skeletons Provide Clues to Preventing Racehorse Injuries on the Track*, Johns Hopkins Medicine (Aug. 18, 2020) https://www.hopkinsmedicine.org/news/newsroom/news-releases/2020/08/research-story-tip-horse-skeletons-provide-clues-to-preventing-racehorse-injuries-on-the-track (summarizing a research study analyzing the bone structure of Thoroughbreds and suggesting training strategies to prevent fractures in their legs).

[46] Deanna Goldstein et al., *Locomotion on the edge: Structural properties of the third metacarpal in Thoroughbred and Quarter Horse racehorses and feral Assateague Island ponies* (Aug. 17, 2020) https://doi.org/10.1002/ar.24485 (describing research findings regarding the correlation between Thoroughbred bone structure and their propensity for leg fractures).

[47] *Research Story Tip: Horse Skeletons Provide Clues to Preventing Racehorse Injuries on the Track*, *supra* note 45.

[48] *Well-known horse deaths in races from the Kentucky Derby to Breeders' Cup*, CBS News (June 1, 2023) https://www.cbsnews.com/philadelphia/news/race-horse-deaths-kentucky-derby-churchill-downs-breeders-cup/ (summarizing the deaths of prominent Thoroughbred racehorses at high level races).

[49] *See id.*

[50] *Who We Are*, Horseracing Wrongs (last visited Dec. 9, 2025) https://horseracingwrongs.org/about-contact/ (describing the mission of Horseracing Wrongs and outlining its executive members).

[51] *The Wrongs*, Horseracing Wrongs (last visited Dec. 9, 2025) https://horseracingwrongs.org/the-wrongs/ (summarizing the main protocols and industry standards in horseracing that are animal welfare concerns).

morning."[52] Additionally, racehorses are kept in twelve foot by twelve foot stalls for the vast majority of each day – sometimes upwards of twenty-three hours.[53] Dr. Kraig Kulikowski, a prominent equine veterinarian, states this is as cruel as keeping a child in a four foot by four foot closet for the same time period.[54] Due to the various claims of abuse, protests are commonplace at Thoroughbred racetracks across the country, with Horseracing Wrongs sponsoring protests at twenty-one tracks in sixteen states, alone.[55]

Early Attempts to Enact Federal Legislation

On May 16, 2013, former Senator Tom Udall (D-NM) and former Representative Joseph Pitts (R-PA-16) introduced the first version of the Horseracing Integrity and Safety Act to Congress ("HISA 2013").[56] HISA 2013 focused on implementing an independent anti-doping organization tasked with publishing rules restricting "substances, methods, and treatments that may not be administered to a horse," increasing the severity of drug-related suspensions for trainers, and implementing programs related to anti-doping education, research, and testing.[57] HISA 2013 was referred to the Subcommittee on Commerce, Manufacturing, and Trade, but did not receive a vote and ultimately died in Congress.[58]

On July 17, 2015, Representatives Andy Barr (R-KY-6) and Paul Tonko (D-NY-20), Co-Chairs of the Congressional Horse Caucus, introduced the Thoroughbred Horseracing Integrity Act of 2015 ("HISA 2015"). HISA 2015 sought to establish the Thoroughbred Horseracing Anti-Doping Authority and grant it exclusive jurisdiction for all anti-doping matters including developing and administering an anti-doping program.[59] HISA 2015 did not make it to a Congressional subcommittee.[60]

Representatives Barr and Tonko introduced another iteration, the Horseracing Integrity Act of 2017 ("HISA 2017"), on May 25, 2017.[61] HISA 2017 sought to establish the Horseracing Anti-Doping and Medication Control Authority (ADMCA) as an independent authority responsible for developing and administering an anti-doping program, similarly to what was proposed in HISA 2015.[62] However, HISA 2017 stated for the first time that the Federal Trade

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[52] *See id.*
[53] *See id.*
[54] *See id.*
[55] *Protest Help*, Horseracing Wrongs (last visited Dec. 9, 2025) https://horseracingwrongs.org/protest-help/ (outlining the guidelines and contacts to help host a successful protest).
[56] Horseracing Integrity and Safety Act, H.R. 2012, 113th Cong. (2013); S. 973, 113th Cong. (2013) (summarizing the text of the initial Horseracing and Integrity Safety Act bills presented to the House and the Senate).
[57] *See id.*
[58] *Horseracing Integrity and Safety Act of 2013,* GOvTRACK, https://www.govtrack.us/congress/bills/113/s973 (detailing the history and treatment of the initial Horseracing Integrity and Safety Act bill in Congress).
[59] Thoroughbred Horseracing Integrity Act, H.R. 3084, 114th Cong. (2015) (summarizing the text of the Thoroughbred Horseracing Integrity Act of 2015 as presented to the House).
[60] John T. Wendt, *Third Time's the Charm? The Horseracing Integrity Act of 2019,* 36 ENT. & SPORTS LAWYER 4, 4 (2020) (explaining the progression of the Thoroughbred Integrity Act of 2015 in the House).
[61] Horseracing Integrity Act, H.R. 2651, 115th Cong. (2017) (summarizing the text of the Horseracing Integrity Act of 2017 as presented to the House).
[62] *See id.*

Commission (FTC) "shall have exclusive jurisdiction over all horse racing anti-doping and medication control matters."[63] The Subcommittee on Digital Commerce and Consumer Protection heard hearings on HISA 2017 and it garnered 131 co-sponsors – eighty-one Democrats and fifty Republicans.[64] Despite its widespread bipartisan support, HISA 2017 still failed to pass either house of Congress.[65]

Industry-Wide Scandals Leading to the Approval of Federal Legislation

Animal welfare and injury concerns reached their peak in Thoroughbred racing between 2018 and 2020. Each of these racing seasons in particular featured high-profile equine fatalities and/or significant doping scandals, leading to public outrage.

Justify(ing) a Failed Drug Test

The 2018 season featured the second Triple Crown winner in the past four years: Justify.[66] En route to the Triple Crown races, Justify won the Santa Anita Derby on April 7, 2018.[67] This win awarded him 100 qualifying points for entry into the Kentucky Derby, therefore securing his place in the starting gates in May.[68] Unbeknownst to the public at the time, Justify tested positive for scopolamine, a banned, potentially performance enhancing substance, after winning the Santa Anita Derby.[69] Ordinarily, a failed drug test would result in a disqualification and subsequent removal of the Kentucky Derby entry.[70] However, the California Horse Racing Board (CHRB) waited until April 26, just nine days before the Kentucky Derby, to inform Justify's trainer, Bob Baffert, of the positive test.[71] Baffert then requested independent testing of a second sample, which confirmed the results on May 8, three days after Justify had already won the Kentucky Derby – a race he should no longer have been permitted to enter.[72] The CHRB then diverted from its typical procedure, which should have consisted of filing a complaint and holding a hearing.[73] Instead, the CHRB took no action until August 23, two months after Justify had completed his Triple Crown victory by winning both the Preakness Stakes and the Belmont

[63] *See id.*
[64] Wendt, *supra* note 60.
[65] Horseracing Integrity Act, H.R. 2651, 115th Cong. (2017) (summarizing the text of Horseracing Integrity Act of 2017 as presented to the House).
[66] *The Triple Crown: Race Winners, History & Locations*, Twinspires (last visited Nov. 10, 2025) https://www.twinspires.com/triple-crown/ (listing the past winners of the Triple Crown).
[67] *Report: Justify failed drug test before Triple Crown*, ESPN (Sept. 11, 2019) https://www.espn.com/horse-racing/story/_/id/27596093/report-justify-failed-drug-test-triple-crown (explaining that Justify's win in the Santa Anita Derby qualified him for the Kentucky Derby).
[68] *Kentucky Derby Prep Races*, Bloodhorse (last visited Nov. 23, 2025) https://www.bloodhorse.com/horse-racing/triple-crown/kentucky-derby-prep-races/2018 (outlining the list of races awarding qualifying points for the Kentucky Derby).
[69] *Report: Justify failed drug test before Triple Crown*, *supra* note 67.
[70] *See id.*
[71] *See id.*
[72] *See id.*
[73] *See id.*

Stakes.[74] At this time the CHRB's executive director neglected to follow typical procedure yet again by presenting the case directly to the board's commissioners.[75] The commissioners voted unanimously to drop the case, claiming that Justify's positive test could have come as a result of him eating contaminated food.[76] In direct contradiction, Rick Sams, former drug lab chief for the Kentucky Horse Racing Commission, told the New York Times that "the amount of scopolamine in Justify's system suggested it 'has to come from intentional intervention'".[77] To make the bias of this case even more damning, the CHRB adjusted the penalty for a failed scopolamine test from a disqualification to a "fine and possible suspension".[78]

On March 30, 2024, the CHRB officially disqualified Justify from his 2018 Santa Anita Derby win.[79] The CHRB previously ruled that it lacked jurisdiction to conduct a disqualification hearing on the matter.[80] However, in a December 2023 Los Angeles Superior Court ruling, Judge Mitchell L. Beckloff disagreed, stating there was "'no doubt' the stewards would have disqualified Justify if they understood that they had the authority to do so" and directed the CHRB to issue a disqualification.[81]

Santa Anita Park Fatalities

Located in Arcadia, California, Santa Anita Park ("Santa Anita") hosts dozens of graded stakes races each year.[82] During the 2018-19 racing season, Santa Anita was the focal point of immense controversy. Santa Anita was home to forty-six Thoroughbred racing deaths between December 2018 and March 2020.[83] Part way through the season, protestors gathered at Santa Anita calling for closure of the track.[84] Kathy Guillermo, Senior Vice President of PETA stated, "the only responsible action is for the track to close immediately to stop this spiral of deaths."[85]

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[74] *See id.*
[75] *See id.*
[76] *See id.*
[77] *See id.*
[78] *See id.*
[79] *Justify Officially Disqualified From Santa Anita Derby Win*, Paulick Report (Apr. 1, 2024) https://paulickreport.com/news/the-biz/justify-officially-disqualified-from-santa-anita-derby-win (explaining the California Horse Racing Board's decision to disqualify Justify nearly six years after the 2018 Santa Anita Derby).
[80] *See id.*
[81] *See id.*
[82] *Stakes*, Santa Anita Park (last visited Dec. 3, 2025) https://www.santaanita.com/racing-information/stakes/ (listing the graded stakes races hosted at Santa Anita Park).
[83] *Report Finds No Evidence That Illegal Drugs Contributed To 23 Horse Deaths At Santa Anita*, CBS LA (Mar. 10, 2020) https://www.cbsnews.com/losangeles/news/report-finds-no-evidence-that-illegal-drugs-contributed-to-23-horse-deaths-at-santa-anita/ (summarizing the California Horse Racing Board report finding no drug related causes of death in the Santa Anita investigation).
[84] *Protestors converge on California racetrack following 20th horse death*, CBS News (Mar. 4, 2019) https://www.cbsnews.com/news/santa-anita-park-20th-horse-dies-california-racetrack-animal-rights-activists/ (describing the protest at Santa Anita Park following the death of Eskenforadrink, the twentieth Thoroughbred death in the past two months).
[85] *See id.*

Twenty-three of the Santa Anita deaths occurred between December 30, 2018, and March 31, 2019, leading to an investigation by the Los Angeles County District Attorney's Office.[86] The state investigation found no evidence that illegal medication or procedures contributed to the deaths of any of the twenty-three horses and the report noted that the investigation "did not find evidence of criminal animal cruelty or unlawful conduct relating to the equine fatalities at Santa Anita Park."[87] The CHRB concurrently completed an investigation into the Santa Anita fatalities.[88] Following its investigation, the CHRB published a seventy-seven page report noting a correlation between track surfaces affected by heavy rain and fatalities.[89] Despite a lack of findings of abuse or drug use correlation, the large number of deaths at Santa Anita sparked heightened scrutiny of Thoroughbred racing across the nation.[90] Animal welfare activists and politicians alike intensified their calls for Thoroughbred racing to be eliminated in California and Governor Gavin Newsom signed a bill (SB 469) authorizing the CHRB to halt all racing at Santa Anita if it so chose.[91] Governor Newsom called the fatalities "unacceptable" and stated "[w]e must hold the horse racing industry to account. If we can regulate horse race meets, we should have the authority to suspend licenses when animal or human welfare is at risk."[92]

Large-Scale Doping Scheme

In March 2020, twenty-seven people – drug distributors, trainers, and veterinarians – were charged in carrying out related conspiracies to provide performance-enhancing drugs (PEDs) to Thoroughbred racehorses.[93] Notably, one of the people charged was Jason Servis – trainer of Maximum Security, one of the top racehorses in the world at the time.[94] Maximum Security won the 2019 Kentucky Derby but was disqualified for impeding another horse; the disqualification had no relation to PED use.[95] Maximum Security did however go on to win four

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[86] *Report Finds No Evidence That Illegal Drugs Contributed To 23 Horse Deaths At Santa Anita*, *supra* note 83.
[87] Cheri Mossburg & Steve Almasy, California panel finds no criminal activity to horse deaths at Santa Anita Park (Dec. 19, 2019) https://www.cnn.com/2019/12/19/us/santa-anita-horse-deaths-no-criminal-activity (detailing the findings from the Los Angeles District Attorney's Office investigation into the Santa Anita Park fatalities between December 30, 2018, and March 31, 2019).
[88] *Report on Fatalities at Santa Anita Park from 12/30/18 through 3/31/19*, California Horse Racing Board (Mar. 10, 2020) https://www.chrb.ca.gov/veterinary_reports/CHRB-Santa-Anita-Fatalities-Report-3-10-20.pdf (detailing the veterinary findings on the twenty-three Thoroughbred fatalities at Santa Anita Park between December 30, 2018, and March 31, 2019).
[89] *See id.*
[90] *Report Finds No Evidence That Illegal Drugs Contributed To 23 Horse Deaths At Santa Anita*, *supra* note 83.
[91] *See id.*
[92] *Governor Gavin Newsom Announces Support for Legislation to Suspend Horse Racing Licenses*, California State Portal (May 30, 2019) https://www.gov.ca.gov/2019/05/30/newsom-support-for-legislation-to-suspend-horse-racing-licenses/ (outlining Governor Newsom's support for SB 469 and introducing additional safety regulations for horseracing in California).
[93] Sonia Moghe & Eric Levenson, *Trainer of champion horse Maximum Security among 27 people indicted in horse-racing doping scheme* (Mar. 10, 2020) https://www.cnn.com/2020/03/09/us/racehorse-doping-indictments (outlining the indictments unsealed by prosecutors in large scale doping scheme unveiled in 2020).
[94] Benjamin Weiser & Joe Drape, *More Than Two Dozen Charged in Horse Racing Doping Scheme* (Mar. 9, 2020) https://www.nytimes.com/2020/03/09/sports/horse-racing-doping.html (summarizing the indictments and news conference with United States attorney Geffrey S. Berman).
[95] *See id.*

of his next five races, including the Saudi Cup, which paid $10 million to the winner, all while being trained by Servis.[96] According to the indictment, Servis entered horses in more than 1,000 races between 2018 and February 2020, while administering PEDs to "virtually all of the racehorses under his control."[97] Participants in the scheme manufactured and distributed "adulterated and misbranded drugs" and "secretly administer[ed] them to racehorses under their control."[98] Additionally, the indictment states that in order to avoid detection, "defendants routinely defrauded and misled federal and state regulators 'and the betting public.'"[99] When announcing the charges, Geoffrey S. Berman, United States attorney in Manhattan, stated that the case was the "most far-reaching prosecution of racehorse doping in the history of the Department of Justice."[100]

In December 2022, Servis entered a guilty plea and was later issued a lifetime ban from racing in Saudi Arabia.[101] Servis was sentenced to four years in federal prison on July 26, 2023.[102] In 2024, following an inquiry into the charges against Servis, The Jockey Club of Saudi Arabia recommended that Maximum Security be disqualified from the 2020 Saudi Cup, despite not having a positive drug test in the event.[103] Maximum Security was subsequently disqualified on August 2, 2024.[104]

All three of these high-profile scandals placed a stain on the Thoroughbred racing industry, signifying that change was imperative. On September 12, 2019, prior to the large-scale doping scandal even being publicized, Pat Forde, a well-known horse racing journalist, wrote the following,

> Go ahead and mark down 2019 as the beginning of the end for horse racing . . . in terms of its ability to maintain an already tenuous position in the American sporting hierarchy, horse racing's days are numbered now. Too many terrible headlines. Too much erosion of public trust . . . The public doesn't want to watch athletes in a particular sport die in front of them – especially animals who cannot advocate for their own health and well-being . .

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[96] *See id.*
[97] *See id.*
[98] *See id.*
[99] *See id.*
[100] *See id.*
[101] Byron King, *Maximum Security Disqualified From 2020 Saudi Cup* (Aug. 2, 2024) https://www.bloodhorse.com/horse-racing/articles/278667/maximum-security-disqualified-from-2020-saudi-cup (explaining The Jockey Club of Saudia Arabia's decision to disqualify Maximum Security from the 2020 Saudi Cup four years after the race).
[102] Nicholas Biase, *Thoroughbred Racehorse Trainer Jason Servis Sentenced To Four Years In Prison*, U.S. Attorney's Office, Southern District of New York (July 26, 2023) https://www.justice.gov/usao-sdny/pr/thoroughbred-racehorse-trainer-jason-servis-sentenced-four-years-prison (detailing Jason Servis's sentencing and charges).
[103] King, *supra* note 101.
[104] *See id.*

. Strikes one, two and three for horse racing. The past year has been a succession of body blows to the credibility of the sport.[105]

At the end of 2020, federal law was introduced to govern Thoroughbred racing for the first time. In the years prior, thirty eight separate state regulatory entities governed the sport, allowing for scandals and inconsistencies in the Thoroughbred industry as described above.[106]

ANALYSIS

Understanding the Horseracing Integrity and Safety Act (2020) and its Effectiveness

On March 14, 2019, Representatives Andy Barr and Paul Tonko introduced a third proposal, The Horseracing Integrity and Safety Act of 2020 ("HISA"), with a companion bill in the Senate co-sponsored by Senators Kirsten Gillibrand (D-NY) and Martha McNally (R-Ariz.).[107] The HISA passed House on September 29, 2020 and was signed into law by President Donald Trump at the end of the year.[108] The bill purports to develop, implement, and enforce rules surrounding anti-doping, medication control, and racetrack safety.[109] The Horseracing Integrity and Safety Authority (the "Authority") is recognized as responsible for the creation of the aforementioned rules under the oversight of the Federal Trade Commission (FTC).[110] The required elements of the racing safety program under the HISA include "sets of training and racing safety standards consistent with the humane treatment of horses, a system to maintain track surface quality, programs for injury and fatality analysis, investigation and disciplinary procedures, and an evaluation and accreditation program."[111] The bill also includes provisions regarding topics such as program enforcement, rule violations and sanctions, funding, drug testing laboratories, and agreements with state racing commissions.[112] At participating Thoroughbred racing facilities, the HISA implemented uniform, federal rules for the first time ever.[113]

Since its inception, the HISA has implemented two programs: the Racetrack Safety Program, which went into effect on July 1, 2022, and the Anti-Doping and Medication Control (ADMC) Program, which went into effect on May 22, 2023.[114] The Racetrack Safety Program

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[105] Pat Forde, *Justify drug controversy pushes horse racing toward the end* (Sept. 12, 2019) https://sports.yahoo.com/let-this-be-the-end-of-horse-racing-195812563.html (discussing the stain placed on the Thoroughbred racing industry by Justify's Santa Anita Derby disqualification and the large number of Thoroughbred fatalities at Santa Anita Park).

[106] Lucy McAfee, *The Rise and Fall of the Horseracing Integrity and Safety Act: How Congress Could Save the "Sport of Kings"*, 25 *Vanderbilt Journal of Entertainment and Technology Law* 783 (2023) (describing Thoroughbred racing regulations prior to the implementation of the Horseracing Integrity and Safety Act).

[107] Horseracing Integrity and Safety Act, H.R. 1754, 116th Cong. (2019); S. 1820, 116th Cong. (2019) (summarizing the text and sponsors of the Horseracing Integrity and Safety Act bills presented to the House and the Senate).

[108] Horseracing Integrity and Safety Act, H.R. 1754, 116th Cong. (2019) (detailing the progression of the Horseracing Integrity and Safety Act in Congress).

[109] *See id.*

[110] *See id.*

[111] *See id.*

[112] *See id.*

[113] *Horseracing Integrity and Safety Authority 2024 Annual Metrics Report*, *supra* note 12.

[114] *See id.*

focuses on minimizing both equine and jockey injury by "expand[ing] veterinary oversight, impos[ing] surface maintenance and testing requirements . . . regulat[ing] riding crop use . . . ."[115] The ADMC Program is operated by an independent body, which "oversees testing, educates stakeholders on the ADMC Program, accredits laboratories, investigates potential ADMC violations and penalizes any such violations, subject to the FTC's plenary review."[116] As of 2024, HISA rules are in effect at forty-seven Thoroughbred racetracks in nineteen states.[117] Each of the racetracks that host the Triple Crown races (Churchill Downs, Pimlico, and Belmont Park) are governed by HISA rules.[118] Additionally, each racetrack that hosts at least one Grade I race is governed by HISA rules except for Colonial Downs in Texas, which hosts the Arlington Million.[119]

In 2024, HISA governed racetracks recorded "an aggregate racing-related fatality rate of 0.90 per 1,000 starts, meaning that 99.91% of starts did not result in a fatality."[120] Since 2021, the last full year prior to the implementation of the Authority's Racetrack Safety Program, the racing-related fatality rate has decreased by 35%, proving the program's effectiveness.[121] Notably, racetracks that are not governed by the Authority's rules had a racing-related fatality rate of 1.76 per 1,000 starts – nearly double that of racetracks governed by the Authority.[122]

Legal Challenges to and Congressional Amendment of the HISA

Despite showing clear benefit to equine safety, many racetracks have resisted the HISA and even challenged its constitutionality. The Texas Racing Commission has gone so far as to prohibit all races that would normally fall under the HISA's jurisdiction from "conducting on-site pari-mutuel wagering or providing simulcast export signal" to other states to remain outside of the HISA's reach.[123] The most pertinent constitutional challenge to the HISA has been the allegation that it violates the Private Nondelegation Doctrine.[124] Under the Private Nondelegation Doctrine, Congress may only delegate its legislative powers to a private entity if Congress

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[115] *See id.*
[116] *See id.*
[117] *See id.*
[118] *See id.*
[119] *Grade I Stakes Races in the United States*, Twinspires (last visited Nov. 30, 2025) https://www.twinspires.com/edge/racing/major-horse-races/grade-1-stakes-races-in-the-united-states/ (listing all the Grade I Thoroughbred races in the United States).
[120] *Horseracing Integrity and Safety Authority 2024 Annual Metrics Report*, *supra* note 12.
[121] *See id.*
[122] *See id.*
[123] Amanda Weaver & Heidi McNeil Staudenmaier, *Texas Racing Commission to Cease Exporting and Importing Part-Mutuel Simulcast Signals of "Covered Horseraces" Under the Horseracing Integrity and Safety Act as of July 1, 2022* (Jun. 27, 2022) https://www.swlaw.com/publication/texas-racing-commission-to-cease-exporting-and-importing-pari-mutuel-simulcast-signals-of-covered-horseraces-under-the-horseracing-integrity-and-safety-act-as-of-july-1-2022/ (explaining the policy statement from the Texas Racing Commission implementing procedures to keep Texas races out of the Authority's jurisdictional reach).
[124] *Supreme Court sends horseracing authority's constitutionality cases back to lower courts*, American Veterinary Medical Association (July 15, 2025) https://www.avma.org/news/supreme-court-sends-horseracing-authoritys-constitutionality-cases-back-lower-courts (summarizing the Circuit Court cases and the Supreme Court decision not to rule on the constitutionality of the Horseracing Integrity and Safety Act).

explicitly gives the delegee an "intelligible principle" upon which to form its regulations.[125] Early legal challenges to the HISA alleged that the Authority's ability to create, regulate, and enforce its rules without oversight was a violation of the Private Nondelegation Doctrine.[126] In response, Congress amended the HISA.[127] Following the amendment, legal challenges have then alleged that the FTC has a mere ceremonial oversight role over the Authority, rather than a functional oversight role.[128]

Initial Circuit Court Ruling on the HISA: Unconstitutional

In *National Horsemen's Benevolent & Protective Association v. Black* (*Horsemen's I*), multiple states and horseracing organizations filed suit challenging the constitutionality of the HISA on several grounds.[129] Following a finding in the District Court that the HISA was constitutional and did not violate the Private Nondelegation Doctrine, the Horsemen and the State of Texas appealed to the Fifth Circuit.[130] The Fifth Circuit reversed the case and remanded it back to the District Court, holding that the HISA did in fact violate the Private Nondelegation Doctrine, stating, "the Authority is not subordinate to the FTC. The reverse is true. The Authority, rather than the FTC, has been given final say over HISA's programs."[131] The Fifth Circuit's ruling prompted Congress to amend the HISA such that the oversight power of the FTC was made more explicit.[132]

The HISA's Congressional Amendment

Previously, the Authority had the sole power to create, regulate, and enforce the HISA's rules.[133] In late 2022, Congress amended the HISA to grant the FTC greater control over the Authority's actions.[134] The amendment clarified the FTC's powers, stating that it "may abrogate, add to, and modify the rules of the Authority . . . as The Commission finds necessary . . . ."[135]

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[125] McAfee, *supra* note 106 (citing J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928)).
[126] Erik L. Pedersen, *Ready, Set, Go: The Race Between The Government, The Constitution, and Racehorses*, 35 Marq. Sports L. Rev. 439 (2025) (outlining the early legal history of the Horseracing Integrity and Safety Act and its Congressional amendment as a result).
[127] *Id.*
[128] *See id.* at 439.
[129] *See Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 2022 WL 974335 (N.D. Tex. Mar. 31, 2022).
[130] *See Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 53 F.4th 869 (5th Cir. 2022).
[131] *Id.* at 872.
[132] Berry, *supra* note 14.
[133] Pedersen, *supra* note 126.
[134] Dick Downey, *Oral Arguments Return in Fifth Circuit HISA Challenge* (Oct. 4, 2023) https://www.bloodhorse.com/horse-racing/articles/272349/oral-arguments-return-in-fifth-circuit-hisa-challenge#:~:text=Reversing%20a%20ruling%20from%20a,no%20meaningful%20oversight%20by%20a (summarizing the oral arguments in the Fifth Circuit regarding the Horseracing Integrity and Safety Act's constitutionality for the second time).
[135] 15 U.S.C. § 3053(e) (2022) (Section 3053(e) states "[t]he Commission, by rule in accordance with section 553 of title 5, may abrogate, add to, and modify the rules of the Authority promulgated in accordance with this chapter 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 chapter and applicable rules approved by the Commission, or otherwise in furtherance of the purposes of this chapter."); H.R. 2617, 117th Cong. §701 (2022) (providing that the

The amended version of the HISA created a circuit split amongst the Fifth, Sixth, and Eight Circuits.[136]

Circuit Court Rulings Following the HISA's Congressional Amendment

The Sixth Circuit was the first Appellate Court to issue a ruling on the HISA following its Congressional amendment.[137] In *Oklahoma v. United States*, the Appellate Court examined whether the Authority is now subordinate to the FTC's power under the amended HISA.[138] The Sixth Circuit held that, because "the Authority wields materially different power from the FTC, yields to FTC supervision, and lacks the final say over the content and enforcement of the law," the Authority is subordinate to the FTC.[139] The Sixth Circuit therefore held that the HISA is constitutional and does not violate the Private Nondelegation Doctrine.[140] A Sixth Circuit decision has particularly significant implications on Thoroughbred racing as it is home to Kentucky[141], a state featuring the "Horse Capital of the World" in Lexington[142], and responsible for hosting the third-most Grade I Thoroughbred races each year[143].

The Fifth Circuit heard *National Horsemen's Benevolent & Protective Association v. Black (Horsemen's II)*, in 2024, now interpreting the HISA's Congressional amendment. Notably, the Fifth Circuit held that the FTC's "new rule making oversight" means it is no longer bound by the Authority's policy choices, therefore eliminating the previous nondelegation issue.[144] However, the Fifth Circuit found a separate violation of the Private Nondelegation Doctrine.[145] The Appellate Court held that the HISA still violates the Private Nondelegation Doctrine because of the Authority's ability to "investigate, issue subpoenas, conduct searches, levy fines, and seek injunctions" without the FTC's approval.[146] The Fifth Circuit declared the enforcement provisions of the HISA unconstitutional because the FTC's power to modify and add to the Authority's rules does not "authorize basic and fundamental changes in the scheme designed by Congress."[147]

FTC "may abrogate, add to, and modify the rules" proposed by the Authority).

[136] T.D. Thornton, *Three Separate HISA Constitutionality Cases Now Vying for Supreme Court's Attention* (Oct. 16, 2024) https://www.thoroughbreddailynews.com/three-separate-hisa-constitutionality-cases-now-vying-for-supreme-courts-attention/ (explaining the split decisions from the Fifth, Sixth, and Eighth Circuits and the Authority's request to file for a writ of certiorari with the Supreme Court of the United States).

[137] Downey, *supra* note 133.

[138] *Oklahoma v. United States*, 62 F.4th 211, 229 (6th Cir. 2023).

[139] *Id.* at 230.

[140] *Id.* at 233.

[141] *Circuits*, USLegal (last visited Dec. 15, 2025) https://system.uslegal.com/us-courts-of-appeals/circuits/ (explaining the state composition of each Federal Judicial Circuit).

[142] *Horses*, VisitLex (last visited Dec. 15, 2025) https://www.visitlex.com/things-to-do/horses/ (detailing the farms present and things to do in Lexington, Kentucky).

[143] Carter Wilkie, *Wilkie: Should Races Be Grades On A Geographic Curve?* (Jul. 8, 2025) https://paulickreport.com/news/ray-s-paddock/wilkie-should-races-be-graded-on-a-geographic-curve#:~:text=Name%20the%20state%20(other%20than,holds%20a%20one%20percent%20share. (explaining the disproportionate geographic split of Grade I races amongst states).

[144] *Horsemen's II*, 107 F.4th 415, 420 (5th Cir. 2024).

[145] *Id.* at 421.

[146] *Id.* at 435.

[147] *Id.* at 432.

The Eighth Circuit also ruled on the HISA's constitutionality in 2024 in *Walmsley v. FTC*.[148] Here, the Eighth Circuit agreed with both the Fifth and Sixth Circuits that the Authority is subordinate to the Commission under the HISA's amended rulemaking structure and therefore the rulemaking structure does not violate the Private Nondelegation Doctrine, deeming it constitutional.[149] Additionally, the Eighth Circuit agreed with the Sixth Circuit that the HISA's enforcement provisions are constitutional on their face due to the Commission's "greater authority to 'add to' existing rules of the Authority, not merely to 'modify' them."[150]

Appeals to and Treatment by the Supreme Court of the United States

Each of the aforementioned Circuit Court rulings were accepted for review by the Supreme Court of the United States in 2025.[151] However, the Supreme Court remanded each case back to its respective Circuit for consideration under its new ruling discussing the Private Nondelegation Doctrine, *Federal Communications Commission v. Consumers' Research*, issued just three days prior.[152] Until new decisions are reached in the Circuit Courts, the HISA will continue regular operations.[153]

Supreme Court Precedent

Federal Communications Commission v. Consumers' Research, examines whether Congress's delegation to the Federal Communications Commission (FCC) and the FCC's subsequent delegation to a private entity violates the Private Nondelegation Doctrine.[154] The relevant section of the amended Telecommunications Act, Section 254, requires telecommunications carriers to contribute, in line with FCC rules, to the Universal Service Fund, which subsidizes service for underserved populations.[155] The FCC appointed the Universal Service Administrative Company (the "Administrator"), a private entity, to manage the Fund's operations and assist in creating its financial projections.[156] Consumers' Research argued that the universal-service contribution scheme violates the Nondelegation Doctrine.[157] The Supreme Court held that no "impermissible transfer of authority has occurred," neither because Congress gave its power to the FCC, nor because the FCC gave its power to a private entity.[158] The Court stated that, under their nondelegation precedents, "Congress sufficiently guided and constrained the discretion that it lodged with the FCC to implement the universal-service contribution

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[148] *Walmsley v. FTC*, 117 F.4th 1032 (8th Cir. 2024).
[149] *Id.* at 1038.
[150] *Id.* at 1040.
[151] Downey, *supra* note 13 (summarizing the Circuit Court cases challenging the constitutionality of the Horseracing Integrity and Safety Act and the Supreme Court Precedent issued in *Federal Communications Commission v. Consumers' Research*).
[152] *See id.*
[153] *Supreme Court sends horseracing authority's constitutionality cases back to lower courts*, *supra* note 124.
[154] *Fed. Commc'ns Comm'n v. Consumers' Rsch*., 606 U.S. 656 (2025).
[155] *Id.* at 656.
[156] *Id.* at 657.
[157] *Id.*
[158] *Id.* at 664.

scheme."[159] Additionally, the FCC retained all decision-making power and only relied on the Administrator for non-binding advice.[160]

Current Status of the Circuit Court Cases

As of completion of this paper, the Fifth and Eight Circuits have not begun oral arguments for *National Horsemen's Benevolent & Protective Association v. Black* or *Walmsley v. FTC*, respectively. The Sixth Circuit however, held oral arguments for *Oklahoma v. United States* under the *Federal Communications Commission v. Consumers' Research* precedent on November 12, 2025,[161] and released a new decision, upholding the HISA as constitutional for a second time, on December 17, 2025.[162] The Circuit Court stated that, under the new precedent, the question "is not whether a private entity performs what looks like an enforcement function," but instead "whether the private entity is subject to the agency's supervision."[163] In a unanimous opinion written by Chief Judge Jeffrey Sutton, the Sixth Circuit held that the Authority is subordinate to the Federal Trade Commission, stating, "[t]he Authority yields to FTC supervision and lacks the final say over rulemaking and enforcement of the law, all tried and true hallmarks of an inferior body."[164] Following the decision, the Authority released a statement expressing its singular focus on continuing to make Thoroughbred racing safer than ever before and pleasure with the Sixth Circuit's decision.[165]

Predicted Outcome: the HISA is Upheld as Constitutional in All Three Circuit Courts

When the *Horsemen's* and *Walmsley* cases return to the Fifth and Eighth Circuit Courts, respectively the constitutionality of the HISA will once again hinge on whether its Congressional amendment gives the FTC legitimate oversight power, as opposed to ceremonial oversight power. While opponents of the HISA are quick to argue that, even after amendment, the HISA impermissibly allows a private entity (the Authority) to solely create, enforce, and adjudicate its own rules,[166] under the newly decided FCC precedent, the HISA will likely be upheld as constitutional, as was decided in the Sixth Circuit[167]. Under the new FCC precedent, as long as the HISA proponents can demonstrate that the FTC retains all decision-making power and relies

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[159] *Id.*
[160] *Id.*
[161] *Supreme Court sends horseracing authority's constitutionality cases back to lower courts*, *supra* note 124.
[162] *Oklahoma v. United States*, No. 22-5487, 2025 WL 3653642 (6th Cir. Dec. 17, 2025) (holding that the Horseracing Integrity and Safety Act is a constitutional delegation of Congress's power and does not violate the Private Nondelegation Doctrine).
[163] *Id*. at *14 (citing *Consumers' Rsch.*, 606 U.S. at 695).
[164] *Id*. at *7.
[165] Dick Downey, *Sixth Circuit Again Holds HISA Constitutional* (Dec. 18, 2025) https://www.bloodhorse.com/horse-racing/articles/289155/sixth-circuit-again-holds-hisa-constitutional#:~:text=The%20Eighth%20Circuit%20Court%20of,entire%20statutory%20scheme%20facially%20unconstitutional (summarizing the Sixth Circuit's most recent decision in *Oklahoma v. United States* and statements from both the Horseracing Integrity and Safety Authority and Jockey Club in response).
[166] *Horsemen's II*, 107 F.4th 415 (5th Cir. 2024).
[167] *Oklahoma v. United States*, 2025 WL 3653642 (6th Cir. Dec. 17, 2025).

on the Authority for non-binding advice, the HISA will be upheld as constitutional. The Congressional amendment to the HISA "gave the FTC '. . . more supervisory power over the Authority than it had before. Now the FTC can issue its own rules that abrogate, add to, or modify the Authority's rules, including on questions of policy.'"[168] This language alone suggests that the FTC has the final say over the Authority's rules and therefore has not impermissibly delegated its power to a private entity.

Proposed Solution: HISA Regulations in All States

Article VI, Clause 2 (the Supremacy Clause) of the Constitution of the United States states, "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . ."[169] If the HISA is upheld as constitutional, then according to the Supremacy Clause, it will pre-empt individual state legislation on the matter.

The Thoroughbred racing industry, which has been prevalent in the United States for hundreds of years, has grown to "be worth over [one] hundred billion dollars and employ[] almost two million people."[170] It is imperative that the sport adjust with the times, as it did by initially implementing HISA regulations.[171] Mandating HISA regulations at tracks across the nation will continue the downward trend of Thoroughbred racing-related fatalities, which reached record-lows at HISA racetracks in 2024.[172] Ensuring that consistent and strict federal regulations are in place will help restore interest in the sport from those concerned with animal welfare and simultaneously allow the government more authority to penalize those who violate the rules.

A notable concern related to nationwide implementation is the regulatory and enforcement cost. As a non-profit organization, the Authority collects fees from HISA regulated racetracks to fund its operations.[173] However, on December 10th, 2025, the Authority proposed a "starts-only" fee assessment model, therefore lowering costs for tracks with high volumes of lower-level races – those that would suffer most from having to pay the Authority's annual fees.[174] One track, Emerald Downs in Washington, has been offered the opportunity to act as a pilot track for the new fee assessment procedure and earn "credits" to help make HISA enforcement at the track

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[168] Pedersen, *supra* note 126 (quoting Raffi Melkonian, Alexander Volokh, Anastasia Boden, Thomas Berry, *National Horsemen's Benevolent and Protective Association v. Black*, CATO INST. (July 12, 2023), https://www.cato.org/legal-briefs/national-horsemens-benevolent-protective-association-v-black).
[169] U.S. Const. art. VI, cl. 2.
[170] McAfee, *supra* note 106 (citing Letter from Stuart Janney III, Chair, Jockey Club, to Jan Schakowsky, Chair, H. Subcomm. on Consumer Affs. & Com. of the H. Comm. on Energy & Com., & Cathy McMorris Rodgers, Ranking Member, H. Subcomm. on Consumer Affs. & Com. of the H. Comm. on Energy & Com., https://www.congress.gov/116/meeting/house/110418/documents/HHRG-116-IF17-20200128-SD022.pdf).
[171] McAfee, *supra* note 106.
[172] *Horseracing Integrity and Safety Authority 2024 Annual Metrics Report*, *supra* note 12.
[173] Byron King, *HISA Aims to Shift Funding Away From Assessments* (Dec. 10, 2025) https://www.bloodhorse.com/horse-racing/articles/289045/hisa-aims-to-shift-funding-away-from-assessments (outlining the Horseracing Integrity and Safety Authority's adjusted budget plans for 2030 to 2035).
[174] *See id.*

more affordable.[175] While it is still yet to be determined whether the HISA will be upheld as constitutional, similar credit-earning programs could be offered as incentives for more, smaller tracks to adopt HISA regulations. This would help ease the transition from state to federal regulation and lead to more consistent guidance at the highest level. Most notably, a program such as this should be offered as a priority to Colonial Downs in Texas, the only track that currently hosts a Grade I race and does not abide by the Authority's regulations.[176] Mandating HISA regulations at all tracks is not a perfect solution. HISA racetracks reported increased fatalities in the Second Quarter of 2025 as compared to the Second Quarter of 2024.[177] However, due to increased health monitoring, the Authority has been able to observe multiple correlations between specific injury types and fatalities and suggest early screening techniques to help prevent these fatalities and improve safety outcomes.[178] Notably, multiple tracks recorded zero fatalities in the Second Quarter of 2025, with one of those being Santa Anita Park[179] – home to twenty-three fatalities over a three-month period just six years prior.[180] As best said by Lisa Lazarus, the Authority's CEO, "[p]rogress isn't always linear and it doesn't happen passively – it takes discipline, a commitment to transparency, and a shared daily focus on doing what's right for our horses and our sport."[181]

If the HISA is found to be entirely unconstitutional, the industry will revert back to inconsistent, state-specific regulations. The significant industry scandals and dramatic increase in Thoroughbred fatalities leading to implementation of the HISA showed the dire need for change. Though the Fifth Circuit in particular will likely search for a new way to show the HISA violates the Private Nondelegation Doctrine, it is unlikely to have success under *Federal Communications Commission v. Consumers' Research*.

CONCLUSION

Thoroughbred racing has been widely popular in the United States for hundreds of years[182] due to its excitement and exclusivity. However, despite its sophisticated royal roots[183], allegations of abuse and prominent scandals involving performance enhancing drugs have tainted the industry. Until 2020, the Thoroughbred racing industry in the United States was governed by thirty-eight individual state racing associations, each responsible for regulating racing within their own state.[184] The lack of consistency between states allowed Thoroughbreds to be exploited

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[175] *See id.*
[176] *Grade I Stakes Races in the United States*, *supra* note 119.
[177] HISA, *HISA Reports Increase in Second Quarter Equine Deaths* (Aug. 25, 2025) https://www.bloodhorse.com/horse-racing/articles/286771/hisa-reports-increase-in-second-quarter-equine-deaths (summarizing the press release from the Horseracing Integrity and Safety Authority on the increased Thoroughbred fatalities in the Second Quarter of 2025).
[178] *See id.*
[179] *See id.*
[180] *Report Finds No Evidence That Illegal Drugs Contributed To 23 Horse Deaths At Santa Anita*, *supra* note 83.
[181] HISA, *supra* note 176.
[182] *The History of Horse Racing in America*, *supra* note 19.
[183] Specogna, *supra* note 1.
[184] The Coalition for Horse Racing Integrity, *supra* note 9.

to the point of catastrophic injuries and even death, leading to calls for industry-wide change from animal welfare groups, protestors, and politicians alike. After multiple failed attempts, Representatives Andy Barr (R-KY-6) and Paul Tonko (D-NY-20), Co-Chairs of the Congressional Horse Caucus, succeeded in bringing federal legislation to Thoroughbred racing in 2020[185]. The Horseracing Integrity and Safety Act of 2020 (HISA) passed House on September 29, 2020, and was signed into law by President Donald Trump at the end of the year.[186] The HISA's two main programs, the Racetrack Safety Program and the Anti-Doping and Medication Control (ADMC) Program, went into effect on July 1, 2022, and May 22, 2023, respectively.[187] The HISA was challenged in the Fifth Circuit almost immediately after taking effect in 2022 and was held to be an unconstitutional delegation of Congress's power under the Private Nondelegation Doctrine.[188] Following the Fifth Circuit's decision, Congress amended the HISA to more clearly define the oversight role the Federal Trade Commission has over the Horseracing Integrity and Safety Authority (the Authority).[189] The HISA was then challenged in the Sixth Circuit, Fifth Circuit on remand, and Eighth Circuit following its amendment[190]. The Circuits were split in their decisions, with the Sixth and Eighth Circuits upholding the HISA as constitutional, and the Fifth Circuit once again finding the HISA to violate the Private Nondelegation Doctrine.[191] The Supreme Court of the United States accepted all three cases for review, but vacated and remanded each decision and directed the Circuit Courts to review the cases once again under the precedent it issued just three days prior.[192] While there is currently no timetable for the Fifth and Eighth Circuits to begin oral arguments again, the Sixth Circuit has already issued a new decision in *Oklahoma*, upholding the HISA as constitutional for a second time.[193]

Looking ahead, we are unfortunately forced to wait for *Horsemen's*, and *Walmsley* to each be heard again in the Fifth and Eighth Circuit Courts, respectively. With the Sixth Circuit upholding the Horseracing Integrity and Safety Act as constitutional for a second time[194], this suggests that the HISA will likely be upheld as constitutional in all three Circuit Courts. However, if the Circuit Courts remain split on whether the HISA is a constitutional delegation of Congress's power, the Supreme Court of the United States will likely be asked to rule on it again. Under *Consumers' Research*, the Supreme Court will likely uphold the HISA as constitutional, finally bringing consistent, federal regulation to Thoroughbred racing in the United States. In the

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[185] Horseracing Integrity and Safety Act, H.R. 1754, 116th Cong. (2019) (detailing the progression of the Horseracing Integrity and Safety Act in Congress).
[186] *See id.*
[187] *Horseracing Integrity and Safety Authority 2024 Annual Metrics Report*, *supra* note 12.
[188] *See Horsemen's I*, 53 F.4th 869 (5th Cir. 2022).
[189] H.R. 2617, 117th Cong. §701 (2022) (providing that the FTC "may abrogate, add to, and modify the rules" proposed by the Authority).
[190] Thornton, *supra* note 135.
[191] *See Oklahoma*, 62 F.4th 211 (6th Cir. 2023); *Horsemen's II*, 107 F.4th 415 (5th Cir. 2024); *Walmsley*, 117 F.4th 1032 (8th Cir. 2024).
[192] Downey, *supra* note 13.
[193] *Oklahoma v. United States*, 2025 WL 3653642 (6th Cir. Dec. 17, 2025).
[194] *Id.*

meantime, the "starts only" fee assessment model should be implemented and fee-lowering, incentive programs should be offered to encourage tracks to adopt HISA regulations. Because the Authority has proposed the "starts only" fee assessment model itself[195], it is a viable option to begin lowering operational costs for HISA racetracks. While the credit-based incentive program to lower track fees has only been proposed for one racetrack thus far[196], it is unclear whether this would be viable on a larger scale. However, the fact that it was proposed by the Authority at all suggests that it may be viable on a small scale and could therefore be offered to a number of high priority racetracks. Colonial Downs, which is currently the only Thoroughbred racetrack to host a Grade I race without operating under the Authority's regulations,[197] should be the highest priority to convert to the Authority's rules.

Under the Authority, Thoroughbred racing is the safest it has ever been. For the Thoroughbred racing industry to thrive once again, is imperative that the United States continues to move towards consistent, federal regulation.

[195] King, *supra* note 172.
[196] *Id.*
[197] *Grade I Stakes Races in the United States*, *supra* note 119.