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NCLA Asks Supreme Court to Rope in Horseracing Authority’s Unconstitutional Executive Power

Bill H. Walmsley; Jon Moss; Iowa Horsemen’s Benevolent and Protective Association v. Federal Trade Commission, et al.

Washington, DC (November 14, 2024) – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) urging the U.S. Supreme Court to hear *Walmsley, et al. v. Federal Trade Commission, et al.* and eliminate the private Horseracing Integrity and Safety Authority’s unfettered regulatory enforcement power over the horseracing industry. Congress passed the Horseracing Integrity and Safety Act allowing the Authority to write and enforce nationwide rules that govern doping, medication control, and track safety in horseracing, directing the organization to subcontract with the private U.S. Anti-Doping Agency (USADA) to enforce anti-doping and mediation rules. This unconstitutional arrangement must be overturned.

The Constitution requires *all* executive power to be vested in the President. Congress thus may not vest executive power in private entities like the Authority or USADA that the President does not control. The President does not appoint and cannot remove any member of the Authority’s Board of Directors, yet Congress authorized the Authority and USADA to exercise executive power by conducting investigations and enforcing federal law. The Horseracing Integrity and Safety Act also empowers the Authority to appoint “impartial hearing officers or tribunals” to decide in-house adjudications, a task the Authority has assigned to the for-profit company Judicial Arbitrary and Mediation Services.

The U.S. Court of Appeals for the Eighth Circuit ruled in this case that Congress solved the problem of vesting executive power in the Authority by amending the Act in 2022 to give FTC “pervasive oversight and control of the Authority’s enforcement activities.” But the 2022 amendment only grants FTC oversight over the Authority’s rulemaking powers, not its investigative, enforcement, and adjudication powers. NCLA asks the Supreme Court to solve the Eighth and Sixth Circuits’ split with the Fifth Circuit on this issue.

NCLA released the following statements:

“The Supreme Court should settle whether Congress can give private organizations governmental power to enforce the law against private citizens.”

— **Sheng Li, Litigation Counsel, NCLA**

“HISA’s enforcement regime empowers unaccountable private subcontractors to investigate and punish alleged violations of federal law with virtually no oversight by any governmental official, much less the President or one of his Senate-confirmed appointees. This profoundly violates Article II of the Constitution and the Executive Branch accountability it was designed to ensure.”

— **Russ Ryan, Senior Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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