
MEMORANDUM

TO: National HBPA Executive Committee

FROM: PETER ECABERT, GENERAL COUNSEL
NATIONAL HBPA, INC.

RE: HBPA Attorney Group Zoom Meeting

DATE: NOVEMBER 21, 2022

I. What do we do now in light of the decision of 5th Circuit Court of Appeals that HISA is unconstitutional?

Today, we discussed in detail the various options and current status of HISA after the 5th Circuit's decisions. There are options on the table that the FTC or the HISA Authority Corporation may take to delay the implementation of the unconstitutionality decision. During this time frame, horsemen will have to continue to comply with HISA regulations as HISA is currently the law of the land.

It will take time for the decision on unconstitutionality to be final - it likely will be sometime in mid-January 2023 before it is finalized unless the FTC or Authority take actions asking the court to reconsider or take action to appeal the decision. This type of action would have the effect of delaying the time when HISA is shut down.

The bottom line is during this time period HISA remains the law and we must respect it as such even though we have a solid opinion from the 'Court that it is unconstitutional. Horsemen should consult with their State Racing Commission and State Attorney General to determine HISA's validity in the particular jurisdiction.

II. Louisiana Case (#3 Filed) - Louisiana, West Virginia, Louisiana HBPA, Jockey's Guild and others.

In this case federal Judge Doughty of the Western District of Louisiana granted an injunction against the implementation of various HISA rules based

upon violation of the Administrative Procedure Act. The decision was limited to application within Louisiana and West Virginia but since the Jockey Guild was a party to the suit there is a pending motion to ask the court whether it applies to Jockey Guild members outside of these two states. Before further clarification could be issued, the injunction was stopped by the 5th Circuit to allow it time to review the matter. The 5th Circuit issued an order on same day as above case and lifted the stay and send the matter back to Judge Doughty. In this case, there are a number of Affiliates who have moved to intervene.

It is likely that this matter will be heard in December, 2022 with a decision before end of year. If the Judge grants a permanent injunction and intervention, this case could have nation-wide effect in shutting down much of HISA as HISA would be enjoined from enforcing much of the safety rules currently in effect.