Case No. 13-11043

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ABRAHAM &VENEKLASEN JOINT VENTURE;
ABRAHAM EQUINE INCORPORATED; JASON ABRAHAM,
Plaintiffs-Appellees,

v.

AMERICAN QUARTER HORSE ASSOCIATION,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
AMARILLO DIVISION

BRIEF OF AMICI CURIAE

Phillip A. Wittmann, Bar No. 13625
pwittmann@stonepigman.com
Lesli D. Harris, Bar No. 28070
lharris@stonepigman.com
Stone Pigman Walther Wittmann L.L.C.
546 Carondelet Street
New Orleans, Louisiana 70130-3588
(504) 581-3200
(504) 581-3361 (Facsimile)

Attorneys for Amici Curiae, the American Kennel Club, the American Morgan Horse Association, the American Paint Horse Association, the Appaloosa Horse Club, the Arabian Horse Association, The Cat Fanciers' Association, Inc., The Jockey Club, the Pinto Horse Association, and the U.S. Trotting Association

CERTIFICATE OF INTERESTED PERSONS

Pursuant to FED. R. APP. P. 26.1 and 5th CIR. R. 28.2.1, Appellant American Quarter Horse Association offered a Certificate of Interested Persons, which the *Amici Curiae* adopts as follows:

(1) Number and Style of the Case: Case No. 13-11043; *Abraham & Veneklasen Joint Venture; Abraham Equine Incorporated; Jason Abraham v. American Quarter Horse Association.*

(2) The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualifications or recusal.

Appellant:	American Quarter Horse Association
Counsel for Appellant:	David E. Keltner Marianne M. Auld Mary H. Smith
Appellees:	Abraham & Veneklasen Joint Venture Abraham Equine, Incorporated Jason Abraham
Counsel for Appellees:	Nancy J. Stone Samuel L. Stein Ron Nickum

/s/ Phillip A. Wittmann
Phillip A. Wittmann
Attorney of Record for Amici Curiae

CORPORATE DISCLOSURE STATEMENT OF THE AMERICAN KENNEL CLUB

Pursuant to Federal Rules of Appellate Procedure 29(c)(1) and 26.1, the American Kennel Club submits its corporate disclosure statement. The American Kennel Club is not owned by a parent company. No publicly traded company owns 10% or more of the stock of the American Kennel Club.

CORPORATE DISCLOSURE STATEMENT OF THE AMERICAN MORGAN HORSE ASSOCIATION

Pursuant to Federal Rules of Appellate Procedure 29(c)(1) and 26.1, the American Morgan Horse Association submits its corporate disclosure statement. The American Morgan Horse Association is not owned by a parent company. No publicly traded company owns 10% or more of the stock of the American Morgan Horse Association.

CORPORATE DISCLOSURE STATEMENT OF THE AMERICAN PAINT HORSE ASSOCIATION

Pursuant to Federal Rules of Appellate Procedure 29(c)(1) and 26.1, the American Paint Horse Association submits its corporate disclosure statement. The American Paint Horse Association is not owned by a parent company. No publicly traded company owns 10% or more of the stock of the American Paint Horse Association.

CORPORATE DISCLOSURE STATEMENT OF THE APPALOOSA HORSE CLUB

Pursuant to Federal Rules of Appellate Procedure 29(c)(1) and 26.1, the Appaloosa Horse Club submits its corporate disclosure statement. The Appaloosa Horse Club is not owned by a parent company. No publicly traded company owns 10% or more of the stock of the Appaloosa Horse Club.

CORPORATE DISCLOSURE STATEMENT OF THE ARABIAN HORSE ASSOCIATION

Pursuant to Federal Rules of Appellate Procedure 29(c)(1) and 26.1, the Arabian Horse Association submits its corporate disclosure statement. The Arabian Horse Association is not owned by a parent company. No publicly traded company owns 10% or more of the stock of the Arabian Horse Association.

CORPORATE DISCLOSURE STATEMENT OF THE CAT FANCIERS' ASSOCIATION, INC.

Pursuant to Federal Rules of Appellate Procedure 29(c)(1) and 26.1, The Cat Fanciers' Association, Inc. submits its corporate disclosure statement. The Cat Fanciers' Association, Inc. is not owned by a parent company. No publicly traded company owns 10% or more of the stock of The Cat Fanciers' Association, Inc.

CORPORATE DISCLOSURE STATEMENT OF THE JOCKEY CLUB

Pursuant to Federal Rules of Appellate Procedure 29(c)(1) and 26.1, The Jockey Club submits its corporate disclosure statement. The Jockey Club is not owned by a parent company. No publicly traded company owns 10% or more of the stock of The Jockey Club.

CORPORATE DISCLOSURE OF THE PINTO HORSE ASSOCIATION

Pursuant to Federal Rules of Appellate Procedure 29(c)(1) and 26.1, the Pinto Horse Association submits its corporate disclosure statement. The Pinto Horse Association is not owned by a parent company. No publicly traded company owns 10% or more of the stock of the Pinto Horse Association.

CORPORATE DISCLOSURE STATEMENT OF THE U.S. TROTTING ASSOCIATION

Pursuant to Federal Rules of Appellate Procedure 29(c)(1) and 26.1, the U.S. Trotting Association submits its corporate disclosure statement. The U.S. Trotting Association is not owned by a parent company. No publicly traded company owns 10% or more of the stock of the U.S. Trotting Association.

STATEMENT REGARDING ORAL ARGUMENT

Amici Curiae, the American Kennel Club, the American Morgan Horse Association, the American Paint Horse Association, the Appaloosa Horse Club, the Arabian Horse Association, The Cat Fanciers' Association, Inc., The Jockey Club, the Pinto Horse Association, and the U.S. Trotting Association believe that the Court's decisional process would be aided significantly by oral argument.

TABLE OF CONTENTS

Page

CERTIFICATE OF INTERESTED PERSONS ii

CORPORATE DISCLOSURE STATEMENT OF THE AMERICAN KENNEL CLUB iii

CORPORATE DISCLOSURE STATEMENT OF THE AMERICAN MORGAN HORSE ASSOCIATION iv

CORPORATE DISCLOSURE STATEMENT OF THE AMERICAN PAINT HORSE ASSOCIATION v

CORPORATE DISCLOSURE STATEMENT OF THE APPALOOSA HORSE CLUB vi

CORPORATE DISCLOSURE STATEMENT OF THE ARABIAN HORSE ASSOCIATION vii

CORPORATE DISCLOSURE STATEMENT OF THE CAT FANCIERS' ASSOCIATION, INC. viii

CORPORATE DISCLOSURE STATEMENT OF THE JOCKEY CLUB ix

CORPORATE DISCLOSURE OF THE PINTO HORSE ASSOCIATION x

CORPORATE DISCLOSURE STATEMENT OF THE U.S. TROTTING ASSOCIATION xi

STATEMENT REGARDING ORAL ARGUMENT xii

TABLE OF CONTENTS xiii

TABLE OF AUTHORITIES xv

IDENTITY OF AMICI CURIAE xvii

I. STATEMENT OF FACTS 1

II. ARGUMENT 3

A. The District Court Erred In Adopting A Judgment Holding that the AQHA Conspired in Violation of § 1 of the Sherman Act. 3

1. Single Entities Are Incapable of Conspiracy And Violation of The Sherman Act. 3

2. The AQHA and Its Stud Book Registration Committee ("SBRC") Are Neither Separate Competing Entities Nor Separate Centers of Decision-Making. 5

3. Breed Registries, Their Affiliates, and Boards Operate as a Single Entity Incapable of Conspiracy. 7

4. The Breed Registries Are Different From the Entities Discussed By the Supreme Court in *American Needle*. 9

B. The District Court's Judicial Intervention in the Rule-Making of the AQHA, A Private Organization, Violates the Non-Intervention Doctrine. 10

III. CONCLUSION 14

IV. CERTIFICATE OF SERVICE 15

V. CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS. 17

TABLE OF AUTHORITIES

Page

Cases

American Needle v. National Football League, 560 U.S. 183, 130 S.Ct. 2201, 176 L.Ed.2d 947 (2010).....1, 4, 6, 9, 10

Armstrong v. Tygart, 886 F. Supp. 2d 572 (W. D. Tex. 2012).....12

City of Mt. Pleasant v. Associated Elec. Corp., 838 F.2d 268 (8th Cir. 1988).....6

Crouch v. Nat'l Ass'n for Stock Car Auto Racing, 845 F.2d 397 (2nd Cir. 1988).....12

Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752, 104 S.Ct. 2731, 81 L.Ed.2d 628 (1984).....2, 3, 4, 5, 6, 7, 10

e360 Insight v. The Spamhaus Project, 500 F.3d 594 (7th Cir. 2007).....11

Filco v. Amana Refrigeration, Inc., 709 F.2d 1257 (9th Cir. 1983).....1

Hatley v. American Quarter Horse Association, 552 F.2d 646 (5th Cir. 1977).....7, 8, 11, 15

Hollon v. Mathis Indep. Sch. Dist., 491 F.2d 92 (5th Cir. 1974).....11

Jack Russell Terrier Network v. American Kennel Club, 407 F.3d 1027 (9th Cir. 2005).....4, 7

Jessup v. American Kennel Club, 61 F. Supp. 2d 5 (S.D. N.Y. 1999).....8

John Doe #1 v. Veneman, 380 F.3d 807 (5th Cir. 2004).....11

M'Baye v. World Boxing Ass'n, 429 F. Supp. 2d 660 (S.D. N.Y. 2006).....12

Ridgely v. FEMA, 512 F.3d 727 (5th Cir. 2008).....11

Ruiz v. Sauerland Event GmbH, 801 F. Supp. 2d 118 (S.D. N.Y. 2010).....12

Schultz v. United States Boxing Ass'n., 105 F.3d 127 (3d Cir. 1997).....11, 12

Weinberger v. Romero-Barceló, 456 U.S. 305, 102 S.Ct. 1798,
72 L.Ed.2d 91 (1982).....11

Statutes

15 U.S.C. § 1 .....1, 3, 4, 6, 7, 8

15 U.S.C. § 2 .....1, 4

Other Authorities

Wright, Miller & Kane, Federal Practice and Procedure:
Civil 2d § 2942 11

IDENTITY OF AMICI CURIAE

This *amici curiae* brief is submitted by the American Kennel Club, the American Morgan Horse Association, the American Paint Horse Association, the Appaloosa Horse Club, the Arabian Horse Association, The Cat Fanciers' Association, Inc., The Jockey Club, the Pinto Horse Association, and the U.S. Trotting Association (collectively "*Amici Curiae*"). Each of the A*mici Curiae* is an entity that provides breed registry services for animals and serves as an information clearinghouse for owners and persons interested in these animals.

Although the *Amici Curiae* have no direct interest in this particular appeal, issues raised by this case and discussed in this brief are extremely important to them. Specifically, the *Amici Curiae* have an interest in protecting their single entity organizational status, which is jeopardized by the district court's adoption of the jury verdict finding that the American Quarter Horse Association ("AQHA") is not a single entity and, instead, is capable of conspiring with one of its committees in violation of § 1 of the Sherman Antitrust Act. 15 U.S.C. § 1. The *Amici Curiae's* interests are also jeopardized by the district court's issuance of a final judgment requiring the AQHA to include eleven specifically-worded amendments to its rules and regulations in contravention of the non-intervention doctrine. Finally, the district court's judgment in this case inhibits independent determination of whether or not to allow registration of cloned animals and their

offspring. For those reasons, the *Amici Curiae* respectfully submit that their perspective may assist the Court with the determination of this case.

I. STATEMENT OF FACTS

The district court erred by entering a final judgment adopting the jury's verdict that the AQHA violated §§ 1 and 2 of the Sherman Antitrust Act and the analogous state antitrust law and by imposing eleven enumerated amendments to the AQHA's rules and regulations to remedy the alleged violation.

First, the Sherman Antitrust Act prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce." 15 U.S.C. § 1. A contract, combination, or conspiracy, however, requires the concerted action of more than a single entity and cannot be based on the unilateral activity of or within a single organization. *American Needle v. National Football League*, 560 U.S. 183, 190, 130 S.Ct. 2201, 176 L.Ed.2d 947 (2010); *Filco v. Amana Refrigeration*, *Inc.*, 709 F.2d 1257, 1261 (9th Cir. 1983). An organization, its board and its committees are deemed under the Sherman Act to be a single, collective entity and incapable of supplying the multiplicity of actors necessary for concerted action. Accordingly, as a single entity organization, the AQHA is presumed to act independently. *Id.* Appellants did not rebut that presumption and did not establish that the AQHA is capable of conspiring with itself for purposes of § 1 of the Sherman Act.

While it is unclear to the *Amici Curiae* who the alleged conspirators are for the purposes of Appellees' § 1 Sherman Act claim, a conspiracy could not have

existed, as a matter of law, because the decision to retain the rule disallowing the registration of clones and their offspring was made on behalf of and for the benefit of the AQHA. Appellants did not and cannot establish that the AQHA and its standing committee -- or any of the *Amici Curiae* non-profit breed registry associations and their committees -- are separate actors that pursue divergent economic interests from one another. *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 769, 104 S.Ct. 2731, 81 L.Ed.2d 628 (1984). Instead, as will be discussed below, the AQHA as well as the *Amici Curiae* are voluntary membership organizations that promote the interests and quality of their particular animal breeds.

These organizations are not owners, breeders, exhibitors or racers of the animals they register and therefore, do not compete with their committees, their registrants, their members or others. Further, boards and committees within these breed registry organizations have common rather than disparate objectives -- that is, the best interests of their animal breeds, including maintaining the health and welfare of the breeds, as determined by each organization's breed standards. Because the AQHA and its committees constitute a single entity and cannot conspire, this Court should reverse the district court's incorrect adoption of the jury's verdict for want of proof of concerted action.

Second, assuming *arguendo* that the district court's judgment on violation of the law was correct, the court's judgment imposing eleven specifically-worded amendments to the AQHA's rules and regulations goes beyond what is necessary to remedy the violation and, instead, violates the well-recognized non-intervention doctrine that allows private organizations like the AQHA and the *Amici Curiae* to govern themselves by drafting, adopting, administering, interpreting and enforcing their own rules. Judicial intervention by rewriting such rules improperly interferes with the internal affairs of these private organizations. Although a court must remedy a proven wrong, it may not go beyond what is necessary to do so. Thus, the district court's judgment imposing specific language amending the AQHA's rules and regulations was improper and should be reversed.

II. ARGUMENT

A. The District Court Erred In Adopting A Judgment Holding that the AQHA Conspired in Violation of § 1 of the Sherman Act.

1. Single Entities Are Incapable of Conspiracy And Violation of The Sherman Act.

Section 1 of the Sherman Act prohibits only those "contracts, combinations, and conspiracies" that unreasonably restrain trade. 15 U.S.C. § 1. This requires a multiplicity of actors and, as a matter of law, single entities "are incapable of conspiring with [themselves] for the purposes of § 1 of the Sherman Act." *Copperweld Corp.*, 467 U.S. at 777, 104 S.Ct. 2731, 2745. "The officers of a single firm are not separate economic actors pursuing separate interests, so

agreements among them do not suddenly bring together economic power that was previously pursuing divergent goals." *Id.* at 769, 104 S.Ct. 2731, 2740-41. Accordingly, the single entity rule excludes from the Sherman Act unilateral conduct by an organization. *Id.* Further, actions taken by a single organization are presumed to be independent action rather than concerted action and, thus, are not prohibited under § 1 of the Sherman Act.[1] *American Needle*, 560 U.S. at 201, 130 S.Ct. 2201, 2215. As the U.S. Supreme Court noted in *American Needle*, only in *rare* cases does that presumption not hold. *Id*.

The relevant test to determine whether an organization's activity constitutes concerted action is whether there is a contract, combination, or conspiracy among separate economic actors pursuing separate economic interests such that the agreement between those actors deprives the marketplace of independent centers of decision-making and diversity of entrepreneurial interests. *Id.* at 195, 130 S.Ct. 2201, 2212. Appellees in this case had the burden of proving that the AQHA and its standing committee were not a single entity and instead had the capacity to conspire under § 1. *Jack Russell Terrier Network v. American Kennel Club*, 407 F.3d 1027, 1034, n. 14 (9th Cir. 2005). Appellees did not meet that burden.

---

[1] The prohibitions of Sherman Act § 2 include conspiracies to monopolize. 15 U.S.C. § 2. Appellees' failure to prove a conspiracy for purposes of § 1 applies equally to § 2.

2. The AQHA and Its Stud Book Registration Committee ("SBRC") Are Neither Separate Competing Entities Nor Separate Centers of Decision-Making.

In order to uphold the judgment, this Court must conclude that (1) the AQHA and its standing committee, the Stud Book Registration Committee ("SBRC") were separate economic actors pursuing separate economic interests when the AQHA adopted the ban on the registration of cloned quarter horses; and (2) the alleged adoption of the ban by the AQHA deprives the marketplace of independent centers of decision-making and diversity of entrepreneurial interests.

Like most non-profit organizations, however, the AQHA is an organization made up of a board of directors, committees, and general membership. The SBRC is a standing committee of the AQHA that recommends the AQHA's rules and regulations relative to quarter horse registration standards. The SBRC is not a *legally* separate entity from the AQHA. It is part of and subsumed within the AQHA organization. The SBRC is not a separate *economic* entity and it does not compete in any manner against the AQHA, or indeed, participate in the market for owning, breeding, racing, buying or selling quarter horses. Nor did the SBRC have economic interests that were separate from the AQHA, but were suddenly merged upon the passage of the cloned horse rules. *Copperweld* Corp., 467 U.S. at 771, 104 S.Ct. 2731, 2741. Thus, the AQHA, its Board of Directors, and the SBRC act

as a single "firm" unified in a single interest. *Id.* That is also the case with *Amici Curiae*.

Further, the SBRC is not an independent entity that makes decisions separately from the AQHA. The SBRC recommends amendments to the AQHA Board of Directors. The SBRC cannot independently determine whether a rule is amended or a certain horse is registered. The AQHA Board of Directors either adopts or rejects amendments proposed by the SBRC. Whether or not those amendments are adopted or rejected, they become a unified action by the AQHA, a single organization whose actions are not distinct from the SBRC's actions. Accordingly, the AQHA and the SBRC are not independent centers of decision-making. *American Needle*, 560 U.S. at 195-196, 130 S.Ct. 2201, 2212.

Finally, the AQHA and the SBRC share a "unity of purpose," namely, the promotion and preservation of the quarter horse breed. *See, e.g., Copperweld*, 467 U.S. at 771, 104 S.Ct. 2731, 2742 (parent company and wholly-owned subsidiary agreement to implement "a single, unitary firm's policies does not raise the antitrust dangers that § 1 was designed to police"); *City of Mt. Pleasant v. Associated Elec. Corp.*, 838 F.2d 268 (8th Cir. 1988) (rural electricity cooperative was a single entity because members shared the common goal of providing low-cost energy). Under the appropriate legal analysis, the AQHA and the SBRC are not separate entities capable of concerted action under § 1 of the Sherman Act.

3. Breed Registries, Their Affiliates, and Boards Operate as a Single Entity Incapable of Conspiracy.

Other decisions agree that breed registries like the AQHA and the *Amici Curiae* and their respective committees are incapable of conspiring within the purview of § 1 because they act as a single unit pursing a common interest. Most recently and analogously, the Ninth Circuit, in *Jack Russell Terrier Network of Northern California,* 407 F.3d at 1035-1036, held that a national breed registry and its local affiliates did not and could not conspire because they did not have divergent economic interests or goals. The court held instead that the national organization and its local affiliates had the same goal of protecting its breed through maintenance of uniform breed registry standards. *Id.* The court noted that the affiliates "are best understood as extensions of the national club rather than independent economic actors" that "share a unity of all relevant interests and policies, which are controlled entirely by [the national organization]." *Id.* at 1035. In the instant case, the AQHA's organizational structure is even closer than that of a national affiliate, because the SBRC is merely a committee within the AQHA.

In *Hatley v. American Quarter Horse Association*, 552 F.2d 646, 654, n. 7 (5th Cir. 1977), this Court dismissed a Sherman Act § 1 conspiracy claim against AQHA, members of its Executive Committee and an employee relating to enforcement of its breed registration rules. Although decided before *Copperweld,* the reasoning was in line with that decision. The *Hatley* court noted that "there can

be no conspiracy or agreement between a corporation and its officers to violate the antitrust laws." *Id.* Instead, the AQHA, its committee, and its employees "were at all pertinent times acting on behalf of the corporation and not as individuals" even though some of the individual defendants maintained independent breeding, showing and racing operations.

Another decision, *Jessup v. American Kennel Club*, 61 F. Supp. 2d 5, 11 (S.D.N.Y. 1999), also involved rule-making actions similar to those in this case. In *Jessup,* the American Kennel Club ("AKC") and the Labrador Retriever Club ("LRC") passed a rule restricting the height of Labrador Retrievers allowed to compete in shows. The effect of the restriction excluded shorter Labrador Retrievers of English bloodlines from competing in shows. The plaintiffs in *Jessup* alleged that the AKC and the LRC conspired to exclude the plaintiffs from the market. The court found that, as with the AQHA and the *Amici Curiae*, the organizations (AKC and LRC) were not participants in the market or competitors with one another. Thus, as with the AQHA and the *Amici Curiae*, the organizations had no economic motive to participate in anticompetitive conduct and the court rejected the plaintiff's antitrust claims. *Id.*

The same is true here. Individual members of breed organizations may own animals that compete against one another in shows, races or other events. But the goals and economic interests of the organizations and their constituent parts are

unified and the rules adopted govern all registrants and would-be registrants. Like the AQHA, the *Amici Curiae* are organized to maintain the standards and welfare of their individual breeds. There is no anticompetitive animus or concerted behavior when the entity, its Board and its committees act in unison to adopt breed registry standards.

4. The Breed Registries Are Different From the Entities Discussed By the Supreme Court in *American Needle.*

The constituent parts of the AQHA and the *Amici Curiae* are distinguishable from the independent NFL football teams that were the subject of the Supreme Court's decision in *American Needle*, 560 U.S. at 183, 130 S.Ct. 2201. There, the Supreme Court concluded that the 32 teams of the NFL were independent entities and separate centers of decision-making with separate economic interests even though they had pooled each team's intellectual property for collective licensing. *Id.* at 196, 130 S.Ct. 2201, 2212. The Court held that the fact that the teams formed and jointly owned a single entity to carry out their licensing activities did not obviate the fact that each team had a separate interest in economic competition with the other teams. Factors that weighed in favor of finding that the teams were separate entities for antitrust purposes included the facts that each team was "a substantial, independently owned, and independently managed business"; that each team competed for fans, gate receipts, and contracts; and that by licensing its intellectual property, each team acted on its own behalf. *Id.* at 197, 130 S.Ct.

2201, 2212-13. The Court concluded that absent the agreement to jointly license their intellectual property, each team had the capability to independently enter into agreements relating to the purchase and sale of team apparel and licensing of their team trademarks. *Id.* Thus, the Court found that the teams' agreement to collectively market their intellectual property through the NFLP deprived the market of independent centers of decision-making.

By contrast, breed registry organizations, their boards and committees are not independent from one another and do not compete with one another. They do not pursue goals separate from the mission to promote their respective breeds' interests. Rather than being separate, independent competitors as in *American Needle*, these breed registries are like the parent/wholly-owned subsidiary in *Copperweld.*

Accordingly, this Court should reverse the judgment of the district court and render judgment in favor of the AQHA, finding that it did not violate the Sherman Act.

B. The District Court's Judicial Intervention in the Rule-Making of the AQHA, A Private Organization, Violates the Non-Intervention Doctrine.

Even if this Court were to hold that the district court was correct in finding that the AQHA violated the Sherman Act, the district court abused its discretion by imposing an injunction that went far beyond what was necessary to remedy the

violation. The district court, instead, wrote and mandated inclusion of eleven specifically-worded amendments to the AQHA's rules. In doing so, the district court violated settled law on the scope of injunctions and the non-intervention doctrine.

Injunctive relief is an extraordinary remedy. *Weinberger v. Romero-Barceló,* 456 U.S. 305, 311-12, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982) (an injunction is an "extraordinary remedy" which does not issue "as of course" or for "trifling injuries"); *Ridgely v. FEMA,* 512 F.3d 727, 734 (5th Cir. 2008); *see generally* Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2942 (noting that courts describe such requests as "drastic" and "extraordinary"). Therefore, an injunction must be narrowly tailored to remedy the specific conduct which gives rise to the order. *John Doe #1 v. Veneman,* 380 F.3d 807, 818 (5th Cir. 2004). If the injunctive relief is overbroad, this Court must find that the district court abused its discretion. *Hollon v. Mathis Indep. Sch. Dist.*, 491 F.2d 92, 93 (5th Cir. 1974) (district court abused discretion by failing to narrowly tailor the scope of injunctive relief); *e360 Insight v. The Spamhaus Project,* 500 F.3d 594, 604-605 *(*7th Cir. 2007).

Private associations like the AQHA and the *Amici Curiae* possess a judicially-recognized right to adopt, administer, interpret and enforce their own rules without judicial interference. *Hatley,* 552 F.2d at 656; *Schultz v. United*

States Boxing Ass'n., 105 F.3d 127, 132 (3d Cir. 1997). Thus, a long line of decisions establishes that courts will not intervene to rewrite the rules or by-laws adopted by a private organization. *M'Baye v. World Boxing Ass'n*, 429 F. Supp. 2d 660 (S.D. N.Y. 2006) (collecting cases); *Crouch v. Nat'l Ass'n for Stock Car Auto Racing,* Inc., 845 F.2d 397, 402 (2d Cir. 1988); *see also Armstrong v. Tygart,* 886 F. Supp. 2d 572, 586 (W. D. Tex. 2012) (refusing to interfere in organization's disciplinary proceedings); *Ruiz v. Sauerland Event GmbH*, 801 F. Supp. 2d 118, 125 (S.D.N.Y. 2010) (same). Here, by requiring the AQHA to adopt specifically-worded amendments to eleven of its rules, the district court impermissibly intruded on the AQHA's rule-making powers in violation of long-standing precedent. The non-intervention doctrine allows organizations like the AQHA and *Amici Curiae* the right to decide -- with input, review and acquiescence by their members or governing authorities -- how to express rules that achieve their goals while adhering to the law. The district court deprived the AQHA of that right without any findings or holding to support its intervention.

Upholding the district court's injunction jeopardizes the right of the AQHA and the *Amici Curiae* to govern their respective organizations free from judicial interference except as minimally needed to remedy a violation of law. The district court did not find that eleven amendments were needed or that narrower, simpler remedies were unavailable. Upholding the district court's judgment would

contravene the fundamental precepts of injunctions and of judicial non-interference with the internal affairs of private organizations. Thus, if this Court were to affirm the district court's judgment holding that the AQHA's actions violated the Sherman Act, it nevertheless should strike that portion of the district court's judgment mandating the implementation of the judicially-written revisions to the AQHA's rules. The Court should instead allow the AQHA, its board, committees and members to determine the manner and language to implement the judgment.

III. CONCLUSION

The *Amici Curiae* respectfully ask this Court to reverse the district court's judgment and render a verdict in favor of the AQHA. In the alternative, the *Amici Curiae* request that the Court strike the injunctive relief as written and permit the AQHA and its members to revise its own rules to achieve the judgment requiring registration of cloned quarter horses.

Respectfully submitted,

/s/ Phillip A. Wittmann
Phillip A. Wittmann, 13625 (T.A.)
pwittmann@stonepigman.com
Lesli D. Harris, 28070
lharris@stonepigman.com
STONE PIGMAN WALTHER
WITTMANN L.L.C.
546 Carondelet Street
New Orleans, LA 70130
Tel: (504) 581-3200
Fax: (504) 581-3361

Attorneys for the American Kennel Club, the American Morgan Horse Association, the American Paint Horse Association, the Appaloosa Horse Club, the Arabian Horse Association, The Cat Fanciers' Association, Inc., The Jockey Club, the Pinto Horse Association, and the U.S. Trotting Association

IV. CERTIFICATE OF SERVICE

I certify, pursuant to Rule 5(a)(1), Fed. R. App. P. that on January 2, 2014, I served true and correct copies of the attached Amicus Curiae Brief upon counsel for Plaintiff-Appellees, by electronic mail and by U.S. Mail, postage prepaid, addressed to:

David E. Keltner
Marianne M. Auld
Mary H. Smith
Kelly Hart & Hallman LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Counsel for the Appellant, American Quarter Horse Association

Nancy J. Stone
320 S. Polk Street
Amarillo, Texas 79101
Counsel for Abraham Veneklasen Joint Venture

Samuel Lee Stein
Whittenburg, Whittenburg, Stein & Strange
305 S. Grand
P.O. Box 223
Cherokee, Oklahoma 73728
Counsel for Abraham Equine, Incorporated

Ronald D. Nickum
610 S.W. 11th Avenue
Amarillo, Texas 79101
Counsel for Jason Abraham

Pursuant to 28 U.S.C. § 1746 I declare under penalty of perjury that the foregoing is true and correct.

Executed January 2, 2014

Respectfully submitted,

/s/ Phillip A. Wittmann
Phillip A. Wittmann, 13625 (T.A.)
pwittmann@stonepigman.com
Lesli D. Harris, 28070
lharris@stonepigman.com
STONE PIGMAN WALTHER
WITTMANN L.L.C.
546 Carondelet Street
New Orleans, LA 70130
Tel: (504) 581-3200
Fax: (504) 581-3361

Attorneys for the American Kennel Club, the American Morgan Horse Association, the American Paint Horse Association, the Appaloosa Horse Club, the Arabian Horse Association, The Cat Fanciers' Association, Inc., The Jockey Club, the Pinto Horse Association, and the U.S. Trotting Association

V. CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS.

1. This brief complies with the brief limitations proscribed by Fed. R. App. P. 29 as it contains 14 pages, not including the portions of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6). It has been prepared in proportionately spaced typeface using Microsoft Word 2010 in Times New Roman 14 point type.

January 2, 2014

/s/ Phillip A. Wittmann
Phillip A. Wittmann

Attorneys for the American Kennel Club, the American Morgan Horse Association, the American Paint Horse Association, the Appaloosa Horse Club, the Arabian Horse Association, The Cat Fanciers' Association, Inc., The Jockey Club, the Pinto Horse Association, and the U.S. Trotting Association