

Testimony of Wayne Pacelle

President & CEO

The Humane Society of the United States

before the

House Subcommittee Commerce, Manufacturing and Trade

H.R. 2012, "The Horseracing Integrity and Safety Act"

November 21, 2013

On behalf of The Humane Society of the United States (HSUS), the nation's largest animal protection organization, I submit this testimony in support of H.R. 2012, the Horseracing Integrity and Safety Act of 2013. I express my sincere thanks to Chairman Lee Terry and Ranking Member Jan Schakowsky for conducting this hearing, and offer special thanks to Representatives Joe Pitts, Ed Whitfield, Schakowsky, and Anna Eshoo for introducing this important pro-horse, pro-industry measure. This hearing builds on the testimony and other information gathered during the 2012 hearing conducted before the Senate Committee on Commerce, Science and Transportation on horse racing legislation introduced by Senator Tom Udall.

I want to underscore that The HSUS does not oppose horse racing. We join with many horse owners, breeders, trainers, and racing enthusiasts in speaking out on the broader topic of the welfare of horses within the industry. We seek to promote the proper care of the horses and to minimize on- and off-track risks to the horses, including catastrophic injuries sustained during racing.

Only when the industry takes the necessary steps to put the horses' welfare first will the industry thrive. Any gaming industry that takes shortcuts on animal welfare and that cheats or misleads the public will see an erosion in public support and consequently in the future viability of the sport. Indeed, for a variety of reasons, the horse racing industry is in decline, and in a new social environment where citizens have a wider array of gaming options than ever, it is critical that the industry strive to meet the highest standards of animal care and honesty. This goal is achievable for the horse racing industry, and it's a great hope of mine that it responds to that call.

It was nearly a quarter century ago that I wrote a cover story for an animal welfare magazine about problems in the horse racing industry. As I probed the issue, visiting tracks and talking to horsemen and others within the industry, I was surprised to learn not only of the absence of a national regulatory body for an industry operating on a big geographic plane and engaging in interstate commerce and wagering, but also of the disparity between racing regulation in the U.S. and those in Australia, Canada, France, the United Kingdom, and other nations also with proud racing traditions. At the time, I wrote about the balkanization by state in horse racing industry oversight, the drugging of horses on race day, the racing of very young horses, unforgiving track surfaces, unacceptable rates of catastrophic injuries, and the declining number of starts per year per horse.

Sadly, these issues have not been settled, and some would argue that some of the problems are even more acute. Now, 24 years later, there have been additional concerns raised about breeding practices that produce faster but more fragile horses who are more vulnerable to breakdowns than more genetically sound horses of earlier generations. And in the years since I wrote that piece, Congress has for the past decade seriously wrestled with the problem of healthy American horses being funneled into the slaughter pipeline, including horses coming from the racing industry. That latter problem highlights both excessive breeding among racing breeds and the challenge of dealing with “surplus horses” cast aside by owners and trainers who don’t want to bear the expense of providing lifetime care for the horses. They sell horses to “kill buyers” and make a couple of hundred dollars, or they pass on the cost to the animal welfare community by turning the animal over to a sanctuary or rescue organization.

The Horseracing Integrity and Safety Act of 2013 does not seek to remedy all of these problems. It focuses more narrowly on the drugging of horses in the racing industry and creates an oversight system to develop and implement rules related to drugging of horses. This change in policy is urgently needed because the administering of performance-enhancing drugs is unfair to just about everyone involved in racing – to clean trainers and owners and to the fans who wager on the outcome of races, as well as to the horses themselves. The ethical issues are closely related to concerns raised about doping in a variety of Olympic competitions, professional bicycling, and professional baseball (except that the horses are not willing participants and have no say in the practice). All of these industries have policies against certain types of drug use, and high-profile incidents have left the public concerned about the extent of the problem in sports. It has clouded the legacy of a number of athletes, and caused titles, prize money, and medals to be relinquished.

In addition, reckless use of drugs – used to allow injured animals to compete rather than to rest – creates unnecessary risks for the animals. Rampant drugging of horses to get them into the gate when they should be in the stall may be part of the explanation for the inordinately high rates of breakdowns, compared to the rates of catastrophic injuries tabulated in other racing nations.

This industry has had decades to clean up its act, but it hasn't done so. We are here today precisely because of the failure of self-regulation. This is neither a precipitous government intervention nor an unnecessary one. It comes after the premature deaths of tens of thousands of horses, declining fan interest in horse racing, and a general crisis of confidence in the sport. It is a national industry, and it demands consistent standards rather than the current patchwork of racing regulations. There are 38 pari-mutuel racing jurisdictions in the U.S., with about 100 racetracks, that include Thoroughbred, Quarter Horse, Arabian, and Standardbred (harness) racing. Each state sets up its own rules with respect to medicating of horses, yet horses and their trainers routinely move between the states for races.

Dr. Rick Arthur, the equine medical director for the California Racing Board has stated: "It's hard to justify how many horses we go through. In humans, you never see someone snap their leg off running in the Olympics. But you see it in horseracing."

Imagine a professional sport in which 24 athletes die each week, which is the number cited by reporters with The New York Times after examining racing records for 150,000 horse races from 2009 to 2011. The HSUS believes this data makes an unmistakable case for a national regulatory authority, as the National Football League, Major League Baseball, and other major sports have. This legislation does not call for the creation of such a body, given the budget pressures facing Congress and the anticipated industry reaction to that proposal. Instead, it provides for national standards and independent monitoring of drug use through the existing U.S. Anti-Doping Association (USADA).

The Horseracing Integrity and Safety Act would designate the USADA as the independent anti-doping organization for interstate horse races. USADA, a non-profit, non-governmental agency, is recognized by Congress as the official anti-doping agency for Olympic, Pan American, and Paralympic sports in the United States. This agency would create rules regarding the use of permitted and prohibited substances and develop anti-doping education, research, testing, and adjudication programs. Any racetrack that chooses to offer "simulcast" wagering, where most of the industry's money is made, would first need to have an agreement with USADA. That agreement would include covering the costs of the anti-doping measures. This legislation would cost the taxpayers nothing.

The bill also includes stiff penalties for cheating that apply nationwide: a "once and done" lifetime ban for the most severe types of doping, a "three strikes and you're out" for other serious medication violations, and suspensions for rules violations. Currently each state's racing commission sets its own rules, allowing trainers to escape oversight by simply moving to another state. The bill will ban race-day medication of horses and would be phased in over two years to allow for the industry to make a more comfortable transition. Horses who need drugs to race should not be enlisted into competition with a cocktail of legal or illegal drugs that could put their safety in jeopardy. Good trainers show restraint when horses are fit to run, and that's the simple idea behind this proposal.

The states have varying rules on medicating of horses, and that patchwork has proved dangerous to horses and unfair to racing fans and to responsible owners and trainers. Even the best testing in the United States falls constantly behind as the cheaters in the industry are known to experiment with anything that might give them an edge including Viagra, blood-doping agents, stimulants, cancer drugs, cocaine, “pig juice,” and last year’s new craze – “frog juice,” an amino acid found naturally in certain species of frogs. “Frog juice” (dermorphin) is 40 times more powerful than morphine and is used to mask an injured horse’s pain. Steven Barker, a chemist and the head of the state testing laboratory at Louisiana State University has stated, “This drug in horses is an abuse of the horse. It puts the horse’s life in danger. It puts the jockey’s life in danger. This is an attempt to cheat. This is bad stuff. This is doping.”

How can each state develop its own drug-monitoring apparatus to keep up with the drug users in the industry? A single expert association is needed that is both independent and capable of conducting cutting-edge research and rigorous enforcement. We cannot ask each state to develop this kind of resource center. It is impractical and costly and it has proved unworkable.

The failure to adopt proper and comprehensive standards has produced very tragic case incidents and troubling fact patterns:

- According to one racing blog, “[d]uring the 6 week career of one horse, Coronado Heights, he raced 3 times. During the last 25 days of his life, he was given 24 separate injections and 9 different drugs before he suffered a fatal injury on January 12, 2013 during a race at Aqueduct. Between his last start and the start in which he died he was treated with xylazine, dormosedan, DepoMedrol, hyaluronic acid, flunixin, bute, Estrone, Adequan, vitamin B1 and calcium. Everything done to the horse was 100% legal.”
- On January 21, 2010, Melodeeman, a seasoned veteran horse who had amassed over \$250,000 in earnings, entered the gate at Penn National. Racino wagering had allowed this horse to run for \$18,000 in a \$4,000 claiming race. According to an exercise rider, the Thoroughbred was “clearly lame” prior to the race (*NY Times*, 4/30/12). Melodeeman broke his cannon bone on the homestretch and was euthanized at the track. The necropsy revealed that not only did the horse have degenerative joint disease in the lower part of both front legs, but the fatal fracture was alongside an earlier bone break that had been mended with three screws. They also found the banned sedative fluphenazine in his system. It is highly unlikely that Melodeeman’s owner (his sixth) and trainer were unaware of the horses’ condition before forcing him to race.
- Doug O’Neill, who trained the 2012 Kentucky Derby winner, is perhaps one of the highest profile examples of what’s wrong with racing. According to published reports, over the past 14 years and in four different states, O’Neill has been cited for more than a dozen violations for using performance-enhancing drugs. And these violations represent only the number of times he was caught doping horses, not the number of times he likely

drugged them. Not surprisingly, the horses he trains are prone to breakdowns that endanger both the horses and jockeys. Despite his disturbing record, O'Neill continues to train at tracks around the country. The current regulatory scheme does not weed out bad actors.

- Rick Dutrow, who trained the 2008 Kentucky Derby winner, Big Brown, has been cited for nearly 70 violations at 15 tracks in nine states, including for using powerful painkillers on horses he raced. If the top trainers in the industry are resorting to widespread drugging of horses for performance-enhancement purposes or to allow injured horses to race, it's clear that these abuses are happening in the lower-stakes races, too, especially the claiming races that The New York Times investigation examined.

In the United States, there are over three dozen racing jurisdictions, all with different medications permitted and different levels of those medications allowed, different penalties for violations, different rules on which horses are tested for drugs, and different laboratories used to do the testing. Additionally, it is perfectly legal for owners or trainers – the only people who could be in a position to know if a horse had been legally or illegally doped – to bet on their horses. They might lose the purse money and receive a fine, but neither the cheating trainers nor their connections who bet on their highly doped-up horses ever have to give back the money they won through the betting windows.

The use of illegal substances is not the only problem. Legal therapeutic drugs are also problematic as they can allow a horse to push through pain, intensifying an injury which can lead to breakdowns, career ending injuries, and death. In addition to side effects and unfair advantages, overuse and abuse of legal drugs can mask the presence of more dangerous drugs or hide existing injury or lameness. Just as in humans, pain is a biological mechanism that allows horses to protect themselves from further injury. This compensatory function is undercut by doping, and horses and jockeys incur a significantly greater risk of injury and death.

About two-thirds of Thoroughbred races are known as claiming races, which are really dumping grounds for horses who have injuries too severe to let them continue to run at a higher level. As the horses drop through the ranks, amateur trainers pick up these horses and see what they can get from them in the way of performance. If drug doping and injections into fractured joints occur in the racing competitions with higher purse levels, the bottom level, end-of-the-line races are saturated with it. Racetracks have increasingly added casino gambling to their operations, resulting in higher purses but also providing an incentive for trainers to race unfit horses, the majority at the lowest tier-claiming races. According to The New York Times, as many as 90 percent of horses who break down had pre-existing injuries. The Times analysis found that horses in claiming races have a 22 percent greater chance of breaking down or showing signs of injury than horses in higher-grade races.

Each state's racing commission sets rules for its state, resulting in a patchwork of confusing regulations. For instance, necropsies are considered vital to assessing if an existing injury caused a deadly breakdown. Unfortunately, only 11 states require them. Additionally, not all states require the publication of horse racing deaths, and rules that specify allowable drug levels or how close to race time a drug can be administered vary as well. According to the Times, state veterinary boards rarely discipline veterinarians who violate racing rules. In New York, only two of the board's 125 disciplinary actions over the last 10 years involved racehorse veterinarians. In Kentucky, Dr. Rodney Stewart's racing license was suspended after he brought cobra venom, a banned nerve-deadening agent, onto the grounds of Keeneland racetrack. Dr. Stewart retained his veterinary license. Dr. Phillip Kapraun kept his Illinois veterinary license after he, too, was fined for possessing snake venom. The following states do not require pre-race inspections of horses and do not perform post-mortem inspections on horses that die while racing or training: Arizona, Arkansas, Nebraska, Ohio, and Oregon.

Although national standards on which drugs can be administered and when vary around the globe, there is no ambiguity when it comes to the United States' philosophy on racing. In the U.S., performance-enhancing drugs such as Lasix are administered to virtually every horse that races, a circumstance at odds with standards imposed virtually everywhere else in the world. Unlike the U.S., many countries do not allow horses to race with any drugs in their systems on the day of the race. On race day, it's hay, oats, and water for them. In the United States, however, Lasix and a multitude of other drugs are allowed to be used on the same day as the race as long as the amount of the drug in the horse's system is under the threshold level set for each medication in that state.

"The major difference between the U.S. and the rest of the world, and especially Europe, is that here you back up the veterinary truck to the barn after the horse is entered," said Dr. Rick Arthur, the equine medical director for the California Horse Racing Board. "We did an analysis at Hollywood Park last year and found that the average horse got 5 ½ injections after entering the race before they got their Lasix shot. You don't get that in the rest of the world, where there is a much different way of doing things." Dr. Roland Devolz, a veterinarian with France Galop, said, "Welfare in Europe and welfare in the U.S. is same word, but welfare in Europe means to train the horse without any chemicals and make him race if he can face the challenge....[M]aybe they [U.S. trainers] are frightened that without medication, they will need to do more work, take more care in their training. In Europe, we are of opinion that medication and drugs are not a tool of training. In your country, when there is a problem during training they use medication to mask or solve the question. They forget about the concept of horsemanship."

Racing without same-day medications is thriving around the globe, while here in the United States doped horses are pushed to race and are breaking down with unacceptable frequencies. Between 2005 and 2011, wagering in North America decreased by 25.5 percent, while it increased 20.7 percent in France, where race-day medications are illegal. Statistical data shows that the average starts per year for horses in countries that do not allow doping is increasing

while the average field size and starts per year are decreasing in North America. There is no question that the horses who are forced to race under the influence of various performance-enhancing drugs are not only being pushed beyond their physical limits but are unable to perform as well as their drug-free counterparts in numerous countries around the globe who do not share our culture of doping.

The racing industry has resisted significant reform efforts, and it is damaging the reputation of the industry. I fear that continued obstructionism will produce more high-profile incidents and damaging exposés and not a stronger position for the industry. I hope you will help do what's best for an industry that has failed to establish comprehensive national standards to prevent widespread cheating within its ranks. We shouldn't put horses' lives at risk when there is an alternate path for this industry. I hope you will work on a lasting and meaningful solution. Thank you.