Statement of the North Carolina Walking Horse Association
House Energy and Commerce Committee
Subcommittee on Consumer Protection and Commerce
May 26, 2022

Chairperson Schakowsky, Ranking Member Bilirakis and Members of the Subcommittee:

The North Carolina Walking Horse Association appreciates the opportunity to provide a statement regarding the Subcommittee's Legislative Hearing regarding H.R. 5441 (the PAST Act) and the negative impacts this legislation would have on the Tennessee Walking Horse industry and the communities and families that work in and depend on this industry.

The North Carolina Walking Horse Association includes members from North Carolina, South Carolina, Virginia, Tennessee, and West Virginia ; trainers, owners, breeders and other long-time participants in the walking horse industry. The North Carolina Walking Horse Association has been existence since 1969. Our goals are to work within the industry and with the industry's regulators and with the Congress to bring common-sense and realistic reforms that will protect the horse and save the industry through legislation that Congressman Scott Desjarlais has introduced in the House, H.R. 6341, and that Sen. Bill Hagerty has introduced in the Senate, S. 4005.

The entire equine world is built on the beauty of the horse, its abilities and the desire of its owners to show, exhibit, and compete to win. By and large, the Tennessee Walking Horse industry stems from a family-based hobby for most owners who love this breed of horse and enjoy the community, tradition and competition the horse show industry provides. The Tennessee Walking Horse is an extremely gentle and docile breed which allows amateur riders of all ages to participate and enjoy this sport.

And why is this legislation and the severe economic impacts associated with it being proposed? Because the Humane Society of the United States (HSUS) has an agenda to eliminate the horse as a farm and sport animal. They have an agenda to eliminate the horse from all competitive arenas. All horses. Their goal is to make the horse a companion animal. Make no mistake - this is an HSUS bill that has significant impacts beyond the Tennessee Walking Horse.

<u>THE PAST ACT IS NO SOLUTION</u>

The PAST Act is legislation with the supposed purpose of eliminating "soring" and protecting horses. It does this by simply eliminating the equipment that is used by the Tennessee Walking Horse as part of its performance. This legislative elimination of equipment is importance because many other breeds of show horses utilize pads and other equipment that is similar to, or greater than, the pads and equipment utilized by the Tennessee Walking Horse. As the PAST Act requires significant new rulemaking from the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), the entity Congress has authorized to enforce the Horse Protection Act, and as APHIS has emphasized in a proposed rulemaking action in 2016 that "(t)he Horse Protection Act applies to ALL breeds of horses…..", other breeds can expect the provisions of the PAST Act to apply to them just as HSUS wishes.

The PAST Act also eliminates the Designated Qualified Persons (DQPs) that are utilized by the Horse Industry Organizations that Congress established to assist the industry and shows across the country with inspection so walking horses. APHIS also attends various shows and often conducts their own

inspections and this DQP inspection process, along with the APHIS inspectors, makes the Tennessee Walking Horse the most inspected horse in the world. This horse is inspected before a performance and, quite often, right after a performance. And even though the inspection methodology currently employed by APHIS and, by extension the DQPs since the DQPs are trained by APHIS, is 100% subjective, the industry, over the past three (3) years has maintained between a 96% and 99% compliance rate with the Horse Protection Act requirements. That compliance rate alone calls into question the HSUS push for the PAST Act as it would appear to be a "solution" in search of a problem and, therefore, is simply a legislative initiative to eliminate the walking horse industry and bring other equine breeds into the APHIS inspection and penalties regime and these points are discussed in more detail below.

NO FACTUAL SUPPORT FOR ELIMINATION OF WEIGHTED SHOES AND ACTION DEVICES:

One of the changes called for in the proposed Whitfield/HSUS bill is the elimination of all "weighted" shoes for Tennessee Walking Horses. It is indisputable that this provision alone would eliminate approximately 85% of the show and performance horses. The stated reason for eliminating 85% of the Industry show horses is the allegations that "all horses are sore." This incorrect statement is continually reinforced by using undocumented and inaccurate inflammatory language that "rampant soring continues", and there is "massive abuse" in the industry which our compliance rates with the Horse Protection Act absolutely contradict. The organizations representing both general veterinarians and equine veterinarians have stated publicly that "there is little scientific evidence to indicate that the use of action devices below a certain weight are detrimental to the health and welfare of the horse…" (AAEP/AVMA joint statement June 14, 2012).

Proponents of this bill also claim the weighted shoes used by 85% of the Tennessee Walking horses currently competing are used to "hide" abuse. They claim such soring techniques are "regularly used" and have been "documented". However, the only documented instance of "pressure shoeing" in the last four or five years was detected through inspections performed by an HIO inspector – not the USDA. We are unaware of the USDA ever prosecuting any individual for allegations related to "pressure shoeing" abuse despite the hundreds of digital x-rays performed by USDA inspectors over the years.

In fact, professional equine veterinarians that regularly treat Tennessee Walking Horses credit the use of pads with the decrease in laminitis issues found in competition Tennessee Walking Horses as compared to other competitive breeds. Also, Tennessee Walking Horses regularly compete into mid-teen ages and the World Championship Horse show has a class designated for Classic Horses, which are those 15 years of age and older and in this year's Celebration, 32 Classic horses competed.

Even with these facts and their own statements, the leadership of the American Association of Equine Practitioners (AAEP) has refused to meet with walking horse industry representatives even though our legislation calls for the use of veterinarians or veterinary technicians for the inspection process whenever possible and for utilizing only objective science-based inspection methods versus the current 100% subjective inspection process. This opposition to discuss these issues or provide constructive and useful suggestions or solutions to one of the major components of their own profession certainly calls into question the motivations and professional integrity of these organizations as they continually attack and malign a horse that, as noted, is the most inspected horse in the world and that maintains an extremely high compliance rate with the Horse Protection Act and yet remains strangely quiet about the abuses and deaths that occur on a daily basis within the Thoroughbred Industry.

The travesties associated with last year's Kentucky Derby and the hundreds of unacceptable deaths of thoroughbreds either racing or training to race last year alone should have resulted in significant actions by AAEP to stop this horrific cheating and abuse. But they remained quiet. As noted by the New York Times expose, during the period of 2009-2011, over 3000 thoroughbred horses died because of racing, or the training connected to racing. It is also very significant to note that during this same time of 2009-2011, there was one death of a performing Tennessee Walking Horse.

Further proof of the PAST Act being unnecessary is the documented compliance reports of both the DQP inspections and the APHIS inspections. For the years 2019-2021, these two organizations charged with the inspection of the Tennessee Walking Horse reported a compliance rate with the requirements of the Horse Protection Act at between 96% and 99% and the reports are attached to this statement for your review. Most importantly, these compliance rates are by and large a result of SUBJECTIVE testing methods, subject to human bias and mistakes, rather than science-based OBJECTIVE testing.

We have not been able to find any other Industry, either government-regulated or self-regulated, that maintains this high level of compliance that are also being achieved through clearly subjective inspection protocols. By way of example, based on publicly reported numbers generated by the U.S. Department of Agriculture, its Food Safety and Inspection Service (FSIS) branch reports an approximately 98% compliance rate for 2010 and 2011, using we hope objective inspections as they are dealing with our country's food supply. If APHIS, charged with enforcement of the Horse Protection Act under current law, the PAST Act if enacted and our legislation if enacted, is to be believed, only a very small percentage of Tennessee Walking Horses are out of compliance with the HPA. These compliance FACTS are direct and irrefutable counters to the claims and misrepresentations of the PAST Act supporters. At the same time, we and other leaders within the Tennessee Walking Horse industry believe this extremely high compliance rate can be even better through the industry's continued request for APHIS to utilize objective inspections and the requirement of which is contained in our legislation.

THE CURRENT SUBJECTIVE INSPECTION PROCESS:

As noted, even with the Walking Horse being the most inspected horse in the world and having an extremely high compliance rate with the Horse Protection Act requirements, it is extremely important that you as a Member of Congress understand the subjective inspection process and methodology placed upon the industry by APHIS. Under the Horse Protection Act, both Designated Qualified Persons (DQPs), inspecting on behalf of the HIOs, and APHIS inspectors utilize subjective testing methods. The subjectivity creates significant inconsistencies, allows for the introduction of personal bias and creates constant problems and conflicts. What other industry goes through a series of inspection stations by both DQPs and Government VMOs prior to competition and can pass that inspection but fail an inspection 30 or 45 minutes later after it competes? Or must contend with variations or inconsistencies with an inspection process that, for example, results in APHIS inspectors disagreeing approximately 25% of the time on whether a horse is in compliance. Attached for your consideration is a letter from the industry's premier horse show, the National Celebration, to the U.S. Department of Agriculture's Office of General Counsel outlining these extreme inconsistencies.

CLAIMS REGARDING "FOREIGN SUBSTANCE" TESTING:

Another claim made by our industry's opponents is that in one instance of testing, 52 out of 52 horses tested positive for the presence of foreign substances and, therefore, must be sore. Under current regulation and the testing methodologies used by the USDA inspectors, the Department has a zero-

tolerance policy. The current testing methods essentially require a horse's foot area to be sterile with the exception of certain lubricants identified in the regulations– despite the fact that the Act only prohibits foreign substances which are intended to alter the gait of the horse or mask the inspection process.

Even a proponent of the PAST Act, the United States Equestrian Foundation, has said that "zero-tolerance" is an unacceptable protocol. Numerous experts in the field of mass spectronomy (the technology used by USDA inspectors) agree that, given the current technology and advances since its introduction in 1970, a zero-tolerance protocol is unacceptable. The technology has improved exponentially and detection on the level of 1 part per billion is possible.

An additional issue with the Department's Foreign Substance Policy is that they have not developed or identified any type of baseline or tolerance level. They have not established by policy or regulation which "foreign substances, and at what particle level, cause soring. The current "foreign substance" testing returns a "positive" result for <u>any</u> substance present on the horse's foot – including those which common sense would tell you are not intended to alter the horse's gait such as hoof paint, fly spray and other normal equine care products.

Additionally, in 2012, the Walking Horse Trainers' Association instituted a swabbing program aimed at protecting the welfare of the horse and increasing compliance by its member trainers. Both the AAEP and AVMA were approached in face-to-face meetings and through correspondence soliciting the organizations' involvement in development of the swabbing program and participation in its implementation. Neither the AAEP nor the AVMA chose to assist the industry in its efforts to eliminate soring and, instead, issued a statement supporting the ban on pad and action devices which was contradictory to their previous public statements. This voluntary compliance program has continued and, in fact, during last year's show season, APHIS and the Trainers' Association inspected approximately 1200 horses utilizing the swabbing protocol and were able to only identify 14 horses as being "out of compliance" with the Horse Protection Act which is a 99% compliance rate.

The statements, therefore, by the Humane Society of the United States and their supporters that "all horses are sored", that "rampant soring continues" and that there is "massive abuse" are, quite simply, factually incorrect and not backed up by any fact whatsoever. When an organization is pushing an agenda, the truth is not a concern. For any individual or group to attempt to use these findings as support for their claims that these horses are sored and/or that the shoes and actions devices should be removed is absurd.

<u>ADDITIONAL EXPENSE TO FEDERAL GOVERNMENT OF PROPOSED LEGISLATION:</u>

The Legislative History and records regarding creation of the Horse Protection Act and the amendments in 1976 indicate the clear intent of the legislation was to provide for industry self-regulation that was overseen by and partnered with the Department of Agriculture and APHIS. In fact, the amendments passed in 1976 were a response to the Department's failure to adequately inspect and Congress's recognition of the need to create industry inspection methodology through the creation of the Horse Industry Organizations. The PAST Act guts the very foundations of the Horse Protection Act because it eliminates the self-regulatory mechanics of the bill and turns over to the Department all control, oversight, authority and actions and it creates additional regulatory needs and burdens by insuring that all breeds of horses will come under the requirements of the Horse Protection Act and these amendments from 1976.

First and foremost, the elimination of the HIOs will require ALL tickets or notices of non-compliance written at shows to be adjudicated by the Department as, currently, the HIOs handle that process for the majority of the written tickets. Any ticket written for scar rule, foreign substance detection, soring, etc., must be dealt with by Government staff, attorneys, and support personnel as we certainly would not question the PAST Act's supporters of their belief in the sanctity of due process of law. These violations, therefore, must be provided that process.

Secondly, the legislation, if enacted, would require additional funding since the entire inspection resources of the HIOs will be eliminated and replaced with Government-selected inspectors. The Government, therefore, will have to recruit, manage and schedule for participating shows that remain, along with the other performance equine shows that will be subject to APHIS inspections.

All expenses associated with DQP training are currently paid for by the HIOs. This includes requirements for an all-day training session EACH year for EVERY inspector, additional sessions for those inspectors who could not attend the initial session, a recurrent session of at least 4 hours EACH year for EACH inspector. It also includes a continuation of the Department's regulatory requirement of APHIS oversight, monitoring and appraisal of the performance of new inspectors, the apprenticeship requirement of all new inspectors for 2 shows and, as the legislation provides a preference for veterinarians, have a ready schedule of extra inspectors due to professional requirements that conflict with show requirements.

Additionally, regulations require a significant amount of reporting for each show, proper training and actions associated with their enforcement responsibilities and proper consideration and actions related to the provision of due process of law for those charged or ticketed with violating the Horse Protection Act. And since these new inspectors are federal government employees or subcontractors the security currently required by APHIS will need to be extended to every inspector at every show – not an insignificant cost. All of this while taking into account that the majority of the shows occur on the weekends when most busy professionals want and need personal time with their families. ***The cost of all of these items will be the responsibility of the United States government.***

The USDA itself has recognized the significant costs associated with the undertakings proposed by this legislation. During the rulemaking process of adopting the Regulations implementing the industry self-regulation HIO program, the USDA stated the following:

> "[comments] suggested that the DQP program should be operated by the Department and the applicants should be trained and licensed directly by the Department. **The Department has neither the personnel nor the funds to carry out such an extensive undertaking and feels that the DQP program should remain in the realm of industry self-regulation."**

44 Fed. Reg. 1158, 1160 (emphasis added).

- Additionally, as part of the 2011 rulemaking regarding the adoption of mandatory minimum penalties, the USDA stated the following:

> “The Act provides us with the authority to pursue civil and criminal penalties against persons who violate the Act. However, **such proceedings may be time-consuming and expensive, and our resources for prosecuting such cases are limited.”**

76 Fed. Reg. 30864, 30865 (May 27, 2011) (emphasis added).

The Office of the Inspector General’s Audit Report of September 2010 also found the following regarding expenses of HPA enforcement:

- Page 113: “Given its limited resources – which APHIS regards as inadequate to send its own veterinarians to the approximately 500 horse shows that are held each year – the agency implemented the program by collaborating with horse industry organizations sponsoring the shows.”

- Page 126: “According to the Horse Protection Act, APHIS employees have the authority to inspect horses and initiate civil proceedings against individuals who are suspected of having abused their horses. Because **these proceedings can be long, expensive, and have unpredictable results, APHIS has structured its enforcement process so that horse industry organizations and DQPs are the primary parties responsible for issuing immediate penalties to individuals for violating the Horse Protection Act.”** (emphasis added).

With the Horse Protection Act amendments passed in 1976, Congress recognized that the Department of Agriculture could not manage and did not have the capabilities to inspect all of the walking horse shows. Congress, therefore, set up the DQP Program. This legislation eliminates that program, establishes a government-selected and managed program and proposes to pass the inspection costs on to the show manager. If a show manager, however, chooses NOT to utilize this government inspector, he or she assumes the risk and personal liability of an HPA violation and the associated criminal or civil liability.

CONCLUSION:

As we have noted throughout this statement, the PAST Act would eliminate approximately 85% of the current Tennessee Walking Horse industry and 85% of the industry’s economic value to the communities and families that make up this industry. It is also important to note that the PAST Act, if enacted, would **result in the unconstitutional taking of over $1.3 billion in property without just compensation through the elimination of the value of these performance horses.** It would result in a negative economic impact of over $3.2 billion and the loss of thousands of jobs in each of the affected areas.

It would have a significant cost to the Government through the new requirements and tasks that would have to be assumed by the Department of Agriculture. It violates the intent and spirit of the original Horse Protection Act. It seeks to prohibit weighted shoes and action devices that have been found to have no harmful effect under current regulation. It continues an inspection process that is, by definition, unworkable as it utilizes subjective testing and foreign substance policies that are not realistic, defined or scientifically valid.

The North Carolina Walking Horse Association is committed to the elimination of the small minority of people who sore horses for competitive advantage. As the industry has, as noted, a 96% to 99% compliance rate, that number is a small minority. But this elimination must occur in a common-sense, realistic manner that recognizes the original intent of the Horse Protection Act by maintaining the HIO system, requiring shows to be a part of that system, by instituting scientifically valid testing protocols and inspection methods, by eliminating the conflicts of interest and, in so doing, show these magnificent animals in a competitive, but safe, manner.

Our industry is not perfect and more work remains. We can say, however, that we have made, and will continue to make, great strides in eliminating the small minority of bad actors in our sport. No other component of the equine industry can say that. The Tennessee Walking Horse industry did not have hundreds of its horses die last year as a result of performing or training to perform or have, for the period of 2009-2011, 3,000 horses die as the New York Times reported.

This legislation, if enacted, will destroy the proud and historic Tennessee Walking Horse industry and this Subcommittee, after consideration of our organization's statement and the testimony and statements of others, will agree with that result and realize the PAST Act is an unacceptable option. We do, however, remain committed to work with Congress, the Department of Agriculture and APHIS and other reasonable people on realistic common-sense reforms and revisions that eliminates the sore horse, not the show horse.

Thank you for your time and attention to this Statement and The North Carolina Walking Horse Association appreciates your consideration of this material. We hope that after the consideration of these facts and supporting material, rather than our opponent's continued uses of misinformation and inflammatory language, you will understand and appreciate the progress we have made. But we know more needs to be done and we would encourage the Subcommittee to consider the solutions outlined in H.R. 6341, which represent a common-sense and realistic approach that can make our industry achieve our goal of protecting our horses and saving our industry.