

STATEMENT OF JOHN BENNETT, DVM

HOUSE ENERGY AND COMMERCE COMMITTEE

SUBCOMMITTEE ON MANUFACTURING, COMMERCE AND TRADE

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Chairman Terry, Ranking Member Schakowsky and Members of the Subcommittee:

I appreciate the opportunity to provide my statement regarding H.R. 1518 and the negative impacts this proposed legislation would have on the Tennessee Walking Horse as well as the industry, communities and families which depend on this horse for survival.

I have been a licensed veterinarian for 33 years and am currently licensed by the State(s) of Tennessee, Kentucky, Mississippi, Alabama, and Florida. I am a member of AAEP, AVMA, KVMA, TVMA, FAEP, MTAEP (Past President for two years), TCVM and TWHBEA. My current practice is located in Shelbyville, Tennessee, and consists primarily of an equine practice focused on the care of Tennessee Walking Horses, Quarter Horses, Saddlebreds and Hunter Jumpers. Approximately 60% of my current practice involves the care and treatment of Tennessee Walking Horses. A copy of my curriculum vitae has been attached as Exhibit 1.

In addition to working for horse owners and trainers, I have been hired by the Human Society of the United States (“HSUS”) to examine and treat horses under their care. Specifically, I was called in to examine and care for Tennessee Walking horses seized by HSUS from the barns of Jackie McConnell and Larry Wheelon in those highly-publicized cases. While these cases involving the HSUS implicated serious animal cruelty issues, which are very important to address, they were not situations controlled by the Horse Protection Act. The HPA applies only if a horse is being transported, exhibited, shown or publicly sold. As a result, neither the HPA as currently written, or as proposed, would address those situations.

Obviously, as a veterinarian, the welfare of the horse is my primary concern. I, along with industry leaders, recognize the history of the Tennessee Walking Horse necessitated enactment of the Horse Protection Act in 1970. However, my personal experience with this breed, as confirmed by the USDA reported 98+% compliance rate over the past several years, confirms the HPA has been effective in achieving its goals. While 100% compliance is of course the goal, a 98+% rate of compliance based on the subjective inspections performed on these animals as part of a competitive event indicates that the industry takes this issue very seriously and has made great strides in eliminating soring.

In November 2012, I along with David Thompson met with Congressman Whitfield concerning the legislation which he and HSUS now propose. During that meeting we discussed the multi-faceted issues that face the industry and the complex nature of those

issues. As a result of that meeting we agreed the industry needed to be a part of the solution and present solutions to move the industry forward

## **EFFECTS OF THE PROPOSED BILL ON THE TENNESSEE WALKING HORSE INDUSTRY**

The legislation being proposed in H.R. 1518:

- (1) eliminates self regulation by the industry by removing the Horse Industry Organization (“HIO”) system and places responsibility for ALL inspection and enforcement with the USDA; and
- (2) eliminates all “weighted shoes” and all action devices from being worn by Tennessee Walking Horses.

### EFFECTS OF ELIMINATION OF HIO SYSTEM:

The impacts associated with H.R. 1518 are enormous. First, the USDA will be required to scale up its HPA enforcement staff substantially in order to take over the functions now being performed by HIOs. The USDA will be required to hire, train and supervise inspectors to be present at all events. In 2012 alone, there were 403 separate events which affiliated with an HIO – some of which were multi-day events. Based on the

USDA's reports, in 2012 the USDA was present at only 78, or 19%, of those affiliated events.

Under the Whitfield/HSUS proposal, based on 2012 USDA reports, the USDA will have the responsibility of providing trained inspectors for approximately 400 additional events each year which are now currently inspected by USDA certified HIOs. If the USDA increases the costs charged to show managers for providing these inspectors, show managers will likely either (1) choose not to put on a horse show in which case the communities and charities which the shows support will suffer; or (2) choose to not have inspectors present at the event in which case the welfare of the horses will suffer if inspections are not performed.

#### EFFECTS OF ELIMINATION OF WEIGHTED SHOES AND ACTION DEVICES:

H.R. 1518 also calls for the banning of "weighted shoes" as well as action devices for all Tennessee Walking Horses. The impact of this ban would be to decimate the TWH show industry.

The shoes and action devices currently worn by the TWHs while competing in the show ring, define the breed's gait and classifications. As reflected on the document attached as Exhibit 2, several divisions of show horses will be eliminated which represents **the elimination of 85% of the Tennessee Walking Horses currently showing**. This reduction in the numbers and types of horses allowed to compete would economically

devastate the entire industry. Hundreds of millions of dollars invested in horses, farms and homes would be rendered virtually worthless.

## **INDUSTRY SELF REGULATION IS WORKING**

The current compliance rates reported by the USDA indicate the welfare of the horse is being protected and the industry is achieving the goal of eliminating soring. According to the USDA's APHIS, the HPA compliance rate for HIO-affiliated Tennessee Walking Horse shows was 98.5% over the period from 2009-2012.

The HIO system currently in place allows for the immediate disqualification of a horse found to be noncompliant. Additionally, as private entities, HIOs are able to more quickly enforce penalties against alleged violators since they are not required to follow the due process requirements for public actors such as the USDA.

The AAEP White Paper, "Putting the Horse First: Veterinary Recommendations for Ending Soring of Tennessee Walking Horses", published in August 2008, made several recommendations to address the issue of soring. One recommendation was to eliminate the use of the HIOs' Designated Qualified Persons ("DQP") program which existed in 2008 "since acknowledged conflicts of interest which involve many of them cannot be reasonably resolved, and these individuals should be excluded from the regulatory process." (AAEP White Paper attached as Exhibit 3, p.5).

In response to the AAEP White Paper, SHOW HIO was activated in 2009 and has been responsible for inspecting the majority of horse shows since that time. In 2013, SHOW HIO, one of 13 USDA certified HIOs, has inspected 147 events which represent 44% of affiliated events held this year. One of the many reforms implemented by SHOW HIO was to eliminate the use of DQP inspectors with a conflict of interest. SHOW DQPs are not allowed to have any financial interest in the TWH industry and are required to execute a Statement of No Conflict of Interest each year as part of their certification training. SHOW HIO implemented the most stringent inspection process ever put in place by an industry organization. At the Tennessee Walking Horse National Celebration alone, between 2009 and 2011, SHOW reduced the number of HPA violations at that event alone from 13.7% to 1.1% based on USDA reports.

While the White Paper recommended the use of veterinarians instead of DQPs because of the alleged conflicts of interest which existed in 2008, the use of veterinarians as the primary inspectors is not a simple solution. Veterinarians who treat TWHs as part of their practice would be subject to the same conflicts of interest experienced by the DQPs as discussed in the White Paper. Additionally, the USDA has recently attempted to recruit veterinarians for their HPA enforcement program with very little response. Veterinarians who are currently practicing have little incentive to perform inspections at TWH events which are typically held on weekends given the minimal income generated. As a result, the number of veterinarians who would agree to take on the inspector role would likely not be able to provide coverage for the number of events held each year.

**ELIMINATION OF WEIGHTED SHOES AND ACTION DEVICES NOT  
SCIENTIFICALLY AND/OR FACTUALLY SUPPORTED**

The only comprehensive scientific study concerning the effect of the weighted shoes and action devices worn by Tennessee Walking Horses was performed at the University of Auburn (“the Auburn Study”). The Auburn Study was conducted by veterinarians with a wealth of equine knowledge and included three (3) former presidents of the AAEP, the then Dean of the School of Veterinary Medicine at Auburn University as well as veterinarians practicing in the states of Alabama and Tennessee. The study concluded that the shoeing requirements and action device limits currently set out in the HPA and its Regulations were not harmful to the horse. A copy of the Auburn Study has been attached as Exhibit 4.

As recently as June 14, 2012, in a joint statement released by the AAEP and AVMA, the organizations acknowledged “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 horses. . . .” Nevertheless, the AAEP and AVMA have joined with HSUS in supporting H.R. 1518 to eliminate weighted shoes and action devices – despite all scientific evidence to the contrary.

Additionally, the current inspection process which includes digital palpation of the horse's pastern as well as examination of the "scar rule" is entirely subjective which can lead to inconsistency. The subjective nature of the inspection process incorporates not only the human element of the inspector but also the unpredictability of the horses being inspected in a busy horse show environment. In 1991, some of the same veterinarians involved in the Auburn Study attempted to address the subjective inspection process and issued the Atlanta Protocol which called for an overall assessment of the horse to include freedom of movement in locomotion and called for inspectors not to rely solely on digital palpation to diagnose soring. This Protocol is not being utilized by USDA inspectors or DQPs despite its recommendations. A copy of the Atlanta Protocol, together with an executive summary of same, has been attached as Exhibit 5.

#### SHOEING REQUIREMENTS:

The shoes currently worn by TWHs are similar to those utilized in other breeds. (Exhibit 6). In fact, the TWH experiences **fewer** incidents of forelimb lameness than is seen in other breeds. This fact, combined with the findings of the Auburn study, indicates there is no scientifically viable basis to support the ban called for in H.R. 1518.

Additionally, the claims by the proponents of this legislation that the current shoeing package is used to hide "pressure shoeing" or other painful techniques is not supported by the documented facts, nor my personal experience and observations. The USDA has

performed digital x-rays on hundreds of horses at the shows it has attended. To my knowledge, the USDA has never found and prosecuted any alleged violator for a pressure shoeing violation.

#### ACTION DEVICES:

The 98+% compliance rate as documented by the USDA does not support that use of soring chemicals is “widespread” as HSUS and other the supporters of this legislation would have the public believe. Additionally, the “foreign substance” results argued in support of elimination of the action device are fatally flawed and can provide no support for this position.

The HPA prohibits only those substances designed to “sore” or alter the horse’s gait, or those which mask the findings of an inspection process. The only exceptions are a small number of lubricants identified in the Regulations. The current USDA swabbing “protocol” has a zero-tolerance standard for ALL chemicals – even those you would expect to find on a horse such as shampoo and fly spray. There has been no attempt to set a baseline for those substances which might impact the gait of the horse or create a masking effect. The current protocol essentially calls for a sterile horse’s pastern which is not a scientifically-based standard and is wholly unrealistic. As a result, the numbers thrown around by the supporters of this Bill are unscientific, wholly misleading and provide no support for their position.

Additionally, H.R. 1518 supporters argue the action devices cause “scars” on the horse’s pasterns in violation of the “scar rule” regulation adopted in 1979, amended in 1988. The language of the scar rule regulation is outdated as written in light of the conditions of the horses’ pasterns considered at the time its was implemented. The regulation’s language creates a completely subjective examination and results in inconsistent results in its application. At a USDA training session, USDA VMOs disagreed 26% of the time when examining the same horse, at the same time, for scar rule compliance. A copy of an Affidavit and the VMO findings is attached as Exhibit 7.

By way of example, in 2010 the horse The Golden Sovereign was determined by a VMO to be in violation of the “scar rule”. The horse was immediately transported to Rood & Riddle, a Kentucky clinic recognized for its expertise in equine medicine, for examination and documentation. A copy of the Rood & Riddle report of the “scarred” horse is attached as Exhibit 8. As you will note, Dr. Scott Hopper vehemently disagreed with the USDA VMO’s findings and stated “In m opinion this horse should not have been rejected based upon the scar rule. This horse’s pasterns should serve as the poster child for what owners and trainers should strive for their horses to look like. There is no sensitivity to palpation and no hair loss anywhere on the pastern. I don’t understand how a horse can pass through the DQP and then be rejected a short time later.”

**COMMON SENSE REFORMS ARE NEEDED TO CONTINUE TO IMPROVE COMPLAINCE AND PROMOTE THE WELFARE OF THE HORSE**

First, as recognized by the AAEP in its White Paper, there exists a “critical” need for one HIO system “for the effective resolution of conflict and the establishment and enforcement of uniform standards and regulations. The current system arrangement of multiple Horse Industry Organizations (HIOs) fails to accomplish this vital need and has resulted in competing interest.” (AAEP White Paper, Exhibit. 3, p.6). The multiple HIOs currently certified by the USDA allow for different levels of inspection and enforcement and caters to the lowest possible denominator instead of holding all participants to the same high standard. In a letter dated June 28, 2012, Dr. Chester Gipson, APHIS Deputy Administrator, documented the fact that HIOs are not required to honor each other’s penalties. Dr. Gibson stated:

This notice clarifies that individuals found to be in violation by an HIO are only suspended from participating in the shows, exhibitions, sales, or auctions that the HIO issuing the suspension is affiliated with, and are not precluded under the final rule from participating in shows affiliated with other HIOs. (Exhibit 9).

As a result, a violator on suspension with one HIO can simply show at events affiliated by a different HIO. This situation actually punishes the HIOs which have the most stringent inspection and enforcement process – a result which severely weakens an HIO’s ability to promote compliance.

Secondly, the use of **OBJECTIVE**, scientifically-accepted testing must be developed and implemented in order to truly bring an end to soring. This need was also recognized by

the AAEP in its White Paper which called for “establishment of objective methods to detect soring.” (White Paper, Exhibit. 3, p.5). These objective testing standards should be accompanied by harsh penalties for those found to be in violation.

Lastly, cooperation between the USDA and the established one HIO will further carry out the purposes of the Horse Protection Act to promote the welfare of the horse.