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before the

House Subcommittee on Digital Commerce and Consumer Protection

H.R. 2651, “Horseracing Integrity Act of 2017”

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On behalf of the Humane Society of the United States (HSUS), the nation’s largest animal protection organization, and its affiliate the Humane Society Legislative Fund, I submit this testimony in support of H.R. 2651, the Horseracing Integrity Act. I express my sincere thanks to Chairman Bob Latta and Ranking Member Jan Schakowsky for conducting this hearing, and offer special thanks to Representatives Andy Barr, and Paul Tonko for introducing this important pro-horse, pro-business legislation.

First, I want to clarify the Humane Society of the United States’ position on horse racing and our interest in this legislation. We are not, in principle, opposing horse racing. As an animal protection organization, our interest is in improving the welfare and treatment of all animals—including racehorses. In 2016, we formed a National Horse Racing Advisory Council to serve as a connection between the HSUS and the industry. With the formation of this council, our goal was to facilitate the exchange of information and knowledge between people who have spent a lifetime in the industry and those of us focused on equine welfare. Our council includes industry experts from The Jockey Club, racehorse breeders, former state racing commission officials and

two Hall of Fame jockeys, and is chaired by the former owner of Pimlico Racetrack. We believe that everyone who makes or has made a living from the horse racing industry has a moral obligation to take all reasonable steps necessary to protect and enhance the welfare of the horses who are the heart and soul of the sport and the business. Together with our HSUS advocates, council members, and members of the equine community, we seek to promote the proper care of racehorses both during and after their racing careers, including minimizing risks during training and racing.

The HSUS has probed these issues for decades, visiting tracks and talking to horsemen and women and others within the industry, and has been 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. I also serve as president of Humane Society International, the HSUS' global affiliate, so am keenly aware that the U.S. is lagging behind. In particular, Humane Society International has offices in the U.K. and Australia, where the horse racing industry is successful without the use of race day medications which are not permitted on the basis that they are considered to be performance enhancing. In the U.S., these drugs are administered to virtually every horse that races, a circumstance at odds with standards imposed virtually everywhere else in the world.¹

¹ Finley, B. (May 17, 2013). A Painful Truth: A six-part series on medication and the reform movement in U.S. racing, Part III, The International Difference, *Thoroughbred Daily News*, pp. 1-7, available at <http://www.thoroughbreddailynews.com/pdf/magazine/Magazine-Drugs%20in%20Racing-Part%20III.pdf> ("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.' . . . 'Welfare in Europe and welfare in the U.S. is same word,

While many professional sports have taken crucial steps to rid their sports of illegal drugging, the racing industry continues to lag behind—not because of a lack of leadership, but because too many players want to maintain the status quo, which allows them to circumvent regulatory oversight. The ethical issues in horse racing 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.

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 administered too close to a race can 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 may be undercut by drugging, and horses and jockeys incur a significantly greater risk of injury and death.² An analysis of data from the Jockey Club’s Equine Injury Database (EID) released on March 19, 2018 shows an increase in the rate of fatal injury in 2017 (1.61 per 1,000 starts) compared to

but welfare in Europe means to train the horse without any chemicals and make him race if he can face the challenge,’ said Dr. Roland Devolz, a veterinarian with France Galop. . . ‘[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.’”).

² Bogdanich, W., Drape, J., Miles, D.L., & Palmer, G. (March 24, 2012). Mangled Horses, Maimed Jockeys, *The New York Times*, available at <https://www.nytimes.com/2012/03/25/us/death-and-disarray-at-americas-racetracks.html> (“‘It’s hard to justify how many horses we go through,’ said Dr. Rick Arthur, the equine medical director for the California Racing Board has stated. ‘In humans, you never see someone snap their leg off running in the Olympics. But you see it in horseracing.’”).

2016 (1.54 per 1,000 starts).³ The widespread use of both legal and illegal drugs imperils an industry that employs 400,000 Americans.

The lack of strong and consistent national oversight of this industry and the existing fragmented state regulatory system which exists in its place jeopardizes the safety of horses and jockeys, leads to inconsistent and confusing rules and decreases vital public support for the industry. The Horseracing Integrity Act would address the pervasive drug use in the industry, and—as its name suggests—begin to restore some integrity to horseracing, helping both the horses and the business.

The Horseracing Integrity Act focuses on the regulation of the use of drugs and medication in horses in the racing industry. This legislation would create the Horseracing Anti-Doping and Medication Control Authority (HADA), a private, not-for-profit self-regulatory authority that will be under the governance control of the United States Anti-Doping Agency (USADA). 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. HADA would create rules regarding the use of permitted and prohibited substances and develop anti-doping education, research, testing, and adjudication programs. The bill expressly preempts state law on the regulation of medication and drugs in horse racing, thereby ensuring centralized and consistent rulemaking and enforcement in those areas. Further, the enforcement activities envisioned by this legislation would cost the taxpayers nothing as the industry would, rightfully, bear all costs.

The bill also includes stiff penalties for cheating that apply nationwide, with possible sanctions including possible lifetime bans from horseracing, disgorgement of purses and

³ The Jockey Club (March 19, 2018). *The Jockey Club Releases Data from the Equine Injury Database for 2017*, available at <http://jockeyclub.com/default.asp?section=Resources&area=10&story=1039>.

monetary fines and penalties. The bill will ban race-day medication of horses. 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.

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, and importantly to the horses themselves.

This industry has had decades to clean up its act, but has been unable to do so. This is neither an impulsive government intervention nor an unnecessary one. It comes after the premature deaths of thousands of horses, declining fan interest in horse racing, and a general crisis of confidence in the sport. Horseracing 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 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.

This patchwork of state laws has proven 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 “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.”⁴

It is not reasonable to expect each state to develop its own drug-monitoring apparatus to keep up with the drug users in the industry who are constantly trying to stay ahead of testing protocol. 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 an alarming mindset by some racehorse trainers who appear to believe the status quo involves illegal drug use. During the doping trial last summer for two-time Penn National leading trainer Murray Rojas, another trainer, Stephanie Beattie, who also trained at Penn National, admitted she routinely had her horses illegally treated with medications on race day by the same veterinarians who provided drugs to Rojas. “Almost everybody did. 95 to 98%. It was a known practice. We wanted to win and they weren't testing for those drugs at that time.”⁵ In our view, the current regulatory scheme does not sufficiently weed out bad actors.

In addition to disparate rules regarding drug use, state regulation varies in other critical ways. 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 New York Times, state

⁴ Fortus, B. (June 15, 2012). New testing by Louisiana State Racing Commission results in 10 drug positives. *The Times-Picayune*, available at

https://www.nola.com/horseracing/index.ssf/2012/06/louisiana_state_racing_commiss_1.html.

⁵ Robinson, W. (June 29, 2017). Trainer testifies that she and nearly all of her colleagues drugged horses at Penn National: report. *Penn Live*, available at

https://www.pennlive.com/news/2017/06/trainer_testifies_that_she_and.html.

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.⁶

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. Many race horses that have been negatively impacted by drugs, and have injuries, are often sent to slaughter to for disposal once the horses are no longer able to run. In fact, Quarter horses are the most common breed sent to slaughter. This 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 or are unable 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.

Responsibly retiring and ensuring quality of life for racehorses at the conclusion of their racing careers is an industry and owner responsibility. While too many horses still lack a sufficient safety net after their racing careers, we are encouraged by some of the industry initiatives for Thoroughbred aftercare including the Thoroughbred Aftercare Alliance and

⁶ Bogdanich, W., Drape, J., & Ruiz, R. (Sept. 21, 2012). At the Track, Racing Economics Collide With Veterinarians' Oath. *The New York Times*, available at <https://www.nytimes.com/2012/09/22/us/at-the-track-racing-economics-collide-with-veterinarians-oath.html>.

Thoroughbred Charities of America. There is still work to do, but we are optimistic about the prospects for even better and more innovative programs for aftercare in the racing industry. The key to a former racehorse's prospects for successful transition to a new career is retiring from racing without health and lameness issues that prevent them from participating in their next careers. Horses generally live well into their 20's or early 30's and their racing careers generally span only their first five years. Horses who are healthy when they retire from racing are in a far better position to transition to second careers and far less likely to end up in the slaughter pipeline. 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 on stall rest 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. If you agree with the 80% of Americans who oppose the slaughter of American horses for human consumption,⁷ support for this bill will diminish the number of broken down racehorses unable to transition to new careers.

It is past time that all members of the horse racing industry, including trainers and veterinarians, accept the fact that policing themselves is not working and that the integrity of the sport is at a crossroads. Without reform, including the passage of the Horseracing Integrity Act, horses and jockeys will continue to be at risk, and fans will increasingly support clean sports where champions are determined based on athletic prowess, not a syringe loaded with performance enhancing drugs.

⁷ American Society for the Prevention of Cruelty to Animals (Feb. 1, 2012), *ASPCA Research Confirms Americans Strongly Oppose Slaughter of Horses for Human Consumption*, available at <https://www.aspca.org/about-us/press-releases/aspca-research-confirms-americans-strongly-oppose-slaughter-horses-human>.

As we have seen repeatedly across a wide range of industries, any industry that takes shortcuts on animal welfare or cheats or misleads the public will see a loss in public support. Undeniably, for a variety of reasons, the horse racing industry is in decline and people 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—an achievable goal for the horse racing industry. I urge you to do what's best for an industry that needs Congress' help establishing comprehensive national standards to prevent widespread cheating within its ranks. We shouldn't put horses' lives at risk when there is an alternate path. Thank you.