



Statement of the Performance Show 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 Performance Show Horse Association (PSHA) 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.

Our Association represents trainers, owners, breeders, and other long-time participants in the walking horse industry. 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 PAST ACT IS NO SOLUTION

The PAST Act is legislation with the supposed purpose of eliminating "soring" and protecting horses. It attempts to do this by simply eliminating the equipment that is used by the Tennessee Walking Horse. This legislative elimination of equipment is important because many other breeds of show horses utilize pads and similar equipment to the Tennessee Walking Horse. The PAST Act will require 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...." Will the elimination of equipment associated with soring, according to HSUS, be applied to all breeds in the PAST Act or just the Tennessee Walking Horse?

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 of 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. Every Tennessee Walking Horse is inspected before its 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.

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

One of the changes called for in the proposed 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 USDA has never found nor prosecuted any offender of such abuse. The HIOs have been the only entities to identify any alleged abuse of this manner and those parties were removed from competition.

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 even have a world championship division for horses 15 years of age and older. Tennessee Walking Horses regularly compete longer in their careers than most other show breeds.

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.

These compliance reports 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. This same conclusion was reached by the National Academies of Sciences (NAS) in their independent review of the inspection process which found a need for better and more objective methods to be utilized. The PAST Act ignores all of the finding of the NAS study that was jointly funded by USDA and the Tennessee Walking Horse industry.

THE CURRENT SUBJECTIVE INSPECTION PROCESS:

As noted, the current inspection process utilized by APHIS and its inspectors is an overwhelmingly subjective process. It allows for bias and other variables that creates unacceptable inconsistencies in what is or is not a violation of the Horse Protection Act requirements. To emphasize this subjectivity, please find attached to this Statement a letter from attorneys representing the National Celebration to the United States Department of Agriculture's Office of General Counsel. During the 2016 National Celebration horse show, APHIS inspectors disagreed with themselves almost 23% of the time on whether a horse was "sore" and over 50% of the time, these inspectors disagreed with each other on the reason. No other industry that is regulated could accept this type of subjectivity or level of inconsistency and that documented inconsistency is the reason our industry has asked APHIS repeatedly to utilize objective science-based inspection protocols and why our alternative legislation to the PAST Act requires a 100% objective inspection process.

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. For example, in the 2021 show season, the Tennessee Walking Horse Trainers Association partnered with APHIS to conduct swabbing inspections in order to check for masking agents and other foreign substances. These swabs were then sent to a USDA laboratory for analysis. Over 1,200 horses were swabbed through this program and only 14 horses were identified as "not in compliance". That means that over 98% of the horses inspected using this completely objective inspection method were in compliance with the requirements of the Horse Protection Act.

The statements, therefore, by the Humane Society of the United States and their supporters that "all horses are sore", 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 sore and/or that the shoes and actions devices should be removed is absurd.

ADDITIONAL EXPENSE TO FEDERAL GOVERNMENT OF PROPOSED LEGISLATION:

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 ensuring 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 most 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 considering that most of the shows occur on the weekends when most busy professionals want and need personal time with their families. ***The cost of all 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 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 and confirmed in the recent NAS study, unworkable as it utilizes subjective testing and foreign substance policies that are not realistic, defined or scientifically valid.

PSHA 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.

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 PSHA 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.