

Animal Law Coalition

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June 22, 2010

The Honorable Senator Tom Udall
The Honorable Representative Ed Whitfield
Congress of the United States
Washington, D.C. 20510

Re: Comments on the responses by racing industry organizations to April 29, 2010 letters

Dear Senator Udall and Representative Whitfield:

I thank you for the April 29, 2010 letters following up with the racing industry organizations to determine the adequacy of guidelines for use of medications and drugs, the states or racing commissions and tracks that follow Racing Commissioners International (RCI) rules and Racing Medication and Testing Consortium (RMTC) recommendations; any penalties and enforcement; injuries suffered by horses and collection of information about injuries and death. I had an opportunity to review the letters as well as the responses and offer the following additional information for your consideration.

By way of introduction, I am the founder and executive director of Animal Law Coalition, www.animallawcoalition.com, a 501c4 non-profit with thousands of members and volunteers nationwide, many of which are very concerned about horse welfare. Animal Law Coalition website has anywhere from 85,000-120,000 unique visitors each month and issues a quarterly newsletter. We provide resources and also analysis of the legal issues that affect animals; we are actively involved in drafting and passing legislation and litigation at the federal, state and local level including efforts related to stopping horse slaughter and cruelty to horses and the plight of the wild horses and burros. I am a member of the Board of Directors and General Counsel for Equine Welfare Alliance and Executive Board Member for Saving America's Horses - A Nation Betrayed, and a regular guest on animal protection issues on Big Blend radio, Animals Today and WFL Endangered Stream Live radio and on the advisory boards of Companion Animal TV and Animal Advocate Television. Animal Law Coalition is a member of the Wild Horse Preservation Campaign Coalition. I also regularly write on equine issues for Big Blend magazine, tailsinc.com and change.org, and organize or speak at equine seminars including 4 coming up in the next few months.

Barbaro's death in 2007 and the spectacle of the Eight Belles' collapse in 2008 on the track after crossing the finish line at the Kentucky Derby pushed the underbelly of horse racing into the

public consciousness for the first time. For the first time many of our members and the public became aware of the abuse of horses in the racing industry, i.e., steroids, drugs, racing with injuries, whippings and other abusive treatment and slaughter. The Congressional subcommittee hearing held on June 19, 2008, *Breeding, Drugs, and Breakdowns: The State of Thoroughbred Horseracing and the Welfare of the Thoroughbred Horse*,¹ was to have served as a wakeup call to the industry that there must be changes to avoid Congressional oversight. After reviewing the responses and efforts of the industry's "alphabet soup" organizations, National Thoroughbred Association (NTRA), the Jockey Club, the RCI and the RMTC, Animal Law Coalition offers the following in response:

The alphabet soup organizations claim they "regulate" racing and moved swiftly to call for reform; they have kept busy with new "standards", "accreditations" and the like, their efforts calculated to forestall Congressional oversight.

It bears repeating that though racing enthusiasts, owners and track operators like to refer to the horses as "athletes"; they are, in fact, animals, victims, that have no choice in the matter of racing. They are animals bred in recent decades for speed rather than sturdiness with the result that the limbs of racing thoroughbreds are fragile, prone to fracture. The widespread use of drugs and steroids in racing that began in the 1970's and 1980's has facilitated the weakness of Thoroughbreds. The Jockey Club Online Fact Book shows the dramatic decline in the number of racing starts today's Thoroughbreds can endure.²

Susan M. Stover, DVM, PhD, said in her testimony before the Congressional subcommittee in 2008, *"Musculoskeletal injuries are the greatest cause of racehorse death and attrition....Musculoskeletal injuries resulted in 19-33% of racehorses leaving training within a 3 month or less period in the United States."*

Dr. Stover explained "many catastrophic, fatal musculoskeletal injuries" result from pre-existing, less severe injuries that occur from "repetitive, overuse". In other words, horses continue to train and race despite injuries or damage which may be untreated or does not heal sufficiently. There are simply not enough regulatory veterinarians doing adequate pre-race exams to scratch these horses from racing. The result is further injury and damage, many times catastrophic or fatal.

On top of that, the horses are pumped up with drugs still including steroids to increase speed and, worse, mask injuries. They have no choice in the drugs administered to them. They have no choice but to race with injuries masked with steroids and other drugs.

The "athletes" have no choice in whether they will be sold to a kill buyer and sent to slaughter when they can no longer race.

Only Congress has the power to demand changes that will truly protect the horses and the wagering public who naively believe each race consists of sound horses and an equal field. After

¹ U.S. House Subcommittee on Commerce, Trade and Consumer Protection, <http://www.animallawcoalition.com/horse-slaughter/article/543>

² <http://www.jockeyclub.com/factbook.asp>

all, horse racing is about gambling dollars. Simulcast betting permitted across state lines pursuant to the Interstate Horse Racing Act, 15 U.S.C. §3001 et seq. has made horse racing a \$50 billion a year industry. Congress has also exempted internet gambling on horse racing from restrictions on online gambling under the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA), 31 U.S.C. §§5361–5367. These are substantial giveaways to an industry. If we plan to continue to support horse racing in this way, then we should make sure this industry is not a front for animal cruelty, a fraud on the betting public.

Self-regulation

In October, 2008, NTRA created the optimistically named Safety and Integrity Alliance, “*comprised of the largest tracks and horsemen's groups in the U.S. and Canada*”.³ The task of the Alliance was ostensibly to implement reforms. Former Wisconsin Governor and Secretary of Health and Human Services for President George W. Bush, Tommy G. Thompson was tapped as independent counsel for the Alliance. According to NTRA, Thompson will “*conduct an ongoing review and provide an annual independent and public assessment of the health and safety of horses used for racing*”.

The Alliance serves as a self-appointed NTRA “*certification/accreditation body*”. (Who could not feel good about racing with names like “*safety*” and “*integrity*”?) Indeed, the Alliance touted a number of reforms.

A Code of Standards⁴ was developed that relies principally on Association of Racing Commissioners International (ARCI) rules though they did not, for example, adopt the ARCI rule limiting front toe grabs to 2 mm. The Alliance then moved quickly to offer “*accreditation*” to a number of tracks, 16 so far.⁵ The goals were said to be to improve safety, limit use of drugs and improve testing and also reporting of injuries and deaths.

But there are 109 tracks devoted exclusively to Thoroughbred racing in the U.S.⁶ In 2009 Equibase.com listed 122 pari-mutuel racetracks in the United States that conduct Thoroughbred races either exclusively or as mixed meets. At this rate, it will be years, even decades before even exclusively Thoroughbred tracks, let alone all tracks with Thoroughbred races, are “*accredited*”.

Also, the number of “*accredited*” tracks is actually 11 given Churchill Downs, Inc. and Delaware Park have *already formally withdrawn* from the Alliance’ accreditation.⁷ When asked about the loss of the tracks from the accreditation list, NTRA's Mike Zeigler told Joanne Normile, a former racehorse owner and founder of CANTER, a Michigan rescue for slaughter-bound thoroughbreds used for racing, “*they are still accredited for 2 years*”. It's apparently more important to have as

³ <http://www.ntra.com/content/safetyalliance>

⁴ http://www.ntra.com/images/2010_Code_of_Standards_041410.pdf

⁵ <http://www.ntra.com/content/safetyalliance/view/ODE=>

⁶ http://www.usatoday.com/sports/horses/2010-06-03-racing-uncertain-future_N.htm

⁷ <http://www.drf.com/drfLogin.do?type=news>

many tracks as possible on an "accreditation" list than whether the tracks are actually following the standards set for accreditation.

How is it possible to enforce standards of accreditation, such as they are, upon tracks that will not agree to be bound by them?

It is important to note that these so-called standards as well as other pronouncements from the alphabet soup organizations are more encouragement or hopes and promises than strict guidelines. They are not enforceable at all unless a state has adopted these pronouncements as statutes or regulations. In fact, the Code of Standards only describes what the industry would like to see happen, using phrases like "shall support", "shall be petitioned", "shall advocate", "adopt a house rule" and adoption of a "substantially" similar rule. It is, in effect, far from clear as to what it means to be "accredited" particularly if a track can simply withdraw from compliance and yet still be considered "accredited".

As an example, the new standards call for post-mortem exams on horses, something California law has required since the 1990s. The NYRA has already said post mortems will not be required at its tracks and there appears to be no consequence.⁸

To the extent states have codified the industry "standards" or substantially similar rules, there still remains the problem of enforcement. The ARCI claims its website lists violations, but a quick look shows only a few states even participate and it is not known whether even in those states the reporting is complete.⁹ Of course, this assumes owners or trainers are even charged with violations.

The scheme for enforcement is based on a system of race disqualifications, forfeiture of purses, civil fines and license denials, suspensions or revocations. The idea is to encourage compliance not strictly penalize violators and eliminate them from horse racing. In another context, the mistreatment and abuse of animals and violation of drug laws would be a criminal matter. In racing, it's usually a civil matter, and whether laws are followed is left largely to track stewards, trainers and veterinarians.

To facilitate an understanding of the patchwork of state laws, Animal Law Coalition is creating a database for all statutes and regulations related to horse racing and horse care and treatment in the U.S.

Reporting and tracking injuries and deaths

An Equine Injury database has been organized and is administered by Mary Scollay, DVM, equine medical director for the Kentucky Horse Racing Commission. The idea behind the database is to capture "any situation where a regulatory veterinarian has to intervene - a scratch

⁸ "New York Lags in Exams of Dead Horses",

<http://www.nytimes.com/2009/06/05/sports/05racing.html?scp=1&sq=joe%20drape%20necropsies&st=nyt>

⁹ <http://www.arci.com/>

in the morning because of soundness, a post parade scratch, flipping in the starting gate, a horse who fails to finish and is injured or is injured or lame after the finish. The data base is set up to separate fatalities from non-fatalities.” This assumes the tracks will participate and that vets will actually report injuries or lameness or even diagnose them accurately. The Jockey Club has issued a report that from Nov. 1, 2008-Nov. 1, 2009, based on an analysis of 378,864 starts, 2.04 horses broke down and died for every 1,000 starts. That’s 774 horses that died just from starts and based on sketchy reporting that, of course, does not include every track.

Jo Anne Normile points out, “*Julia Wilson, DVM, epidemiologist in the Department of Clinical and Population Sciences from the University of MN attempted an ‘Equine Racing Injury Reporting System’*”. The actual reporting form stated: “*This project was initiated in 1991 by the AAEP Racing Regulatory Committee to characterize and measure the number of injuries that are sustained during racing’*. The tracks were assured their submissions would be ‘*highly confidential and protected by law’*, yet even anonymously, the Thoroughbred racing industry did not want to participate and that study failed. Others have tried to track injury and death rates, including reporters using the Freedom of Information Act but the racing industry itself has generally refused to keep track of horses that suffer injury or death, whether in training or racing.

The current study being attempted is no different.

In fact, the current database will not collect large numbers of injuries or fatalities. Injuries or fatalities sustained during training, for example, will remain generally unknown. According to Dr. Stover in her 2008 Congressional testimony, “*Although most fatal injuries occur during racing, over 32% of injuries occur during training activities”*.

The Equine Injury Database will also not include the thousands of horses that are simply taken to rescues or sanctuaries with injuries so severe they require in excess of six months recuperation for suspensory injuries, require surgery to repair fractures, or tendon damage, or the horses are so unsalvageable that euthanasia is the only humane option. Rescues are forced to spend tens of thousands of dollars each year with the majority of the funding coming from compassionate non-race individuals or non-race related foundations. Just one rescue, CANTER MI, for example, spent \$50,000-\$100,000 annually on horses that were rescued from just one track with horrific injuries and often near death. This one rescue was forced to euthanize an average of 30% of over 100 horses rescued each year from one racetrack. In addition, the much touted injury database does not include the horses rescued by hundreds of individuals using blogs, message boards, and email groupings to combine their funds informally to pay the claiming price for horses racing when injuries are obvious or buy them at auction. Invariably, these rescued horses go to a private home, are examined by a farm veterinarian and found to have injuries so severe that full use is impossible and frequently they must be euthanized.

Patricia Hogan, DVM, elaborates in her article “Putting the Horse First”: “*Veterinarians who work with any of the racetrack retirement programs can tell you that the physical condition of many of those horses “donated” (a clear misuse of the word) render second careers or even adoption as pets next to impossible. Yet, these horses were actually racing often just days prior*

to entering these programs—how is that able to happen? And is there a veterinary role in this? The public seems to think so.”¹⁰

It would be a simple matter to report horses that are injured or die during training or that end up at rescues or sanctuaries. Apparently, however, there are no plans to include any of these injured or dead horses in the database.

The database will also not count the numerous horses sold at auction or directly to kill buyers for slaughter. The tracks are well aware of licensed trainers that are actually kill buyers. The industry is facilitating slaughter by allowing these kill buyers, also onsite trainers, to have ready access to horses they can send to the slaughter pipeline. *Surely, these are horses that did not survive Thoroughbred racing and deserve to be included as death statistics?*

In effect, the voluntary Equine Injury Reporting System as conceived will be so lacking of data that it is and will continue to be statistically irrelevant.

Drugs to enhance performance and mask injuries

At the time of Eight Belles' death, few of the 33 racing states (NV and WI with no tracks, and WY, AL and KS with no current races, are no longer included as racing states) banned or limited even anabolic steroids which are generally classified by the DEA as Schedule III drugs. The NTRA and its President and CEO Alex Waldrop, and The Jockey Club promised reform.

Most states in the past 2 years were pushed to adopt a RMTC model or substantially similar law restricting use of anabolic steroids. This move was touted as if this is all that is needed to take care of the problem of drugs and steroids in racing. Eventually, most of the racing states, though not all, have restricted the use of anabolic steroids, still allowing the therapeutic use of the anabolic steroid, nandrolone (Durabolin) and permitting trace levels of Boldenone (Equipose) and testosterone which the industry claims are naturally occurring. (Independent veterinarians have questioned the pronouncement that these steroids are naturally occurring or that the trace levels allowed are naturally occurring. Another example of why this industry should not be left to determine its own "rules".)

But anabolic steroids are the tip of the iceberg, so to speak.

Not one state prohibits the use of Non-Steroid Anti-Inflammatory drugs (NSAID) such as flunixin, furosemide (Lasix) and phenylbutazone (bute). In nearly every state furosemide (Lasix) can be administered on race day. Lasix and bute are the most popular: Bute is administered like aspirin, and Lasix is a performance enhancing drug, a diuretic, purportedly to be used only to control pulmonary hemorrhage, also called "*bleeding*". The racing program is supposed to indicate L for Lasix or B for bute or LB, in the Medication column next to a horse's name to let the betting public know the horse is on the drug on race day. Indeed, the program should even indicate whether this is the first time the horse has been on Lasix. Another commonly used NSAID is flunixin, an analgesic that can mask injuries, and there are more.

¹⁰http://cs.bloodhorse.com/blogs/finalturn/archive/2009/03/10/Putting-the-Horse-First_3F00_.aspx

In a recent survey of more than 1400 horse owners and trainers, 96% of respondents said they used NSAIDs for horses, and 82% administer NSAIDs without always consulting their veterinarian.¹¹

According to the Daily Racing Form, 99% of horses that started in California races in 2009 ran on bute.¹²

Every horse entered in this year's Triple Crown races ran on Lasix. *Are we to believe that each and every one of those horses suffered from exercise induced pulmonary hemorrhage?* Lasix is particularly debilitating. Horses have a harder time bouncing back after competing while under the influence of a drug that is essentially a diuretic that leaves them dehydrated. (How would anyone feel after running a 1 1/2 miles while dehydrated?). Lawrence R. Soma, VMD, Professor, School of Veterinary Medicine, New Bolton Center, University of Pennsylvania, testified at the 2008 subcommittee hearing regarding the use of Lasix: *“In summary, furosemide does not prevent bleeding, improves performance in some horses, can dilute urine to compromise detection of drugs, and violates the rules of most States that there should be no medication on race day”*. (page 96, line 2121)

Except that most racing states now specifically permit use of Lasix on race day. The use of these NSAIDs are theoretically regulated. Under most state laws, horses are only supposed to be given Lasix, for example, for bleeding and after they are placed on the veterinarian's list. Horses are typically prohibited from racing for increasing periods of time after each reported bleeding incident. But there are broad loopholes and vague standards that allow horses to race on Lasix regardless.

There has been no serious effort to prohibit the use of other drugs ostensibly administered for therapeutic purposes that actually mask injuries and pain. Some states have limited the use of most NSAIDs and these other drugs in the day or few days before a race, but even then trace levels are usually permissible in pre- and post-race testing. Catabolic corticosteroid injections directly into the joints mask injuries and pain so the horse can keep racing. These injections ultimately destroy bone, leaving horses with collapsed joints and frequently cause joint infections for which prognosis is poor at best. Painkillers like lidocaine and clenbutrin (also a bronchial dilator that induces muscle growth) are other examples of the host of drugs routinely used to mask injuries.

All of the drugs still permitted also have dangerous side effects that can have life-threatening effects on the health of the horse.

Again, enforcement is problematic, generally handled as a civil matter that impacts licensing. On top of that, penalties like disqualification from a race, loss of a purse and fines, are minimal and suspensions from racing are for a matter of days, not months or years. There are numerous examples of repeat offenders that continue to race. And those are just the ones that get caught.

¹¹ <http://www.thehorse.com/ViewArticle.aspx?ID=14073>

¹² <http://www.paulickreport.com/blog/keeping-bute-out-of-the-foodchain/>

The industry has continued to ignore calls for strict regulations that would ban all steroids, drugs or medication except to treat a diagnosable condition or injury and prohibit horses to run at all while receiving such treatment.

Then there is the practice known as posterior digital neurectomy. In this procedure the posterior digital nerves of an injured horse are cut with a scalpel or laser or some other means which then de-sensitizes part of the foot. To date, only a handful of states ban heel nerved horses. The NTRA Code of Standards does not even mention this, let alone call for a ban. Again, those that wager across state lines have no idea which horses are racing with this distinct advantage over their competitors. Pain is nature's way of letting an animal or human know when to rest to avoid further damage. Once desensitized, the horse will not feel or show on pre-race examination that the original condition for which the horse was heel nerved has worsened.

Preventing catastrophic injuries

The alphabet soup organizations have done nothing to address the problem of breeding horses for speed rather than durability.

There has also been no effort to adopt the horse welfare recommendations of the American Association of Equine Practitioners (AAEP) Racing Task Force including but not limited to such things as: longer time between races, strict actions related to the yearling and 2-year-old in training sales, elimination of toe grabs, elimination of the practice of racing secretaries to increase field size, the development of rehabilitation programs at all racetracks, and major changes to claiming and condition races which account for 70 percent of all races.

Indeed, tracks have actually been increasing the numbers of races over the years, forcing horses to run more and more often. And, there is no restriction at all on the use of "claiming" races. The use of "claiming" races allows those with injured horses to dump them on some unsuspecting new owner or trainer as soon as the horse leaves the gate. (The previous owner, however, gets any purse money plus the claiming price paid.) A horse that may have won \$250,000 previously is not allowed retirement but is instead forced to run, injured and drugged, in a claiming race at a cheap track.

Toe grabs

Also, it is well-established that any use of front toe grabs increases the risk of injury and catastrophic injury.¹³ Studies have established that the longer the toe grab, the greater the likelihood of a catastrophic injury to the horse.

1. In fact, a Power Point presentation at The Jockey Club Roundtable indicated in Number 4, "*The Solution*" to safer racing would be to "*Eliminate the use of toe grabs*" and "*Encourage additional state racing commissions and racetracks to ban use of toe grabs*".
2. The ARCI model rule calls for a 2 mm limit on front toe grabs.

¹³ http://www.jockeyclub.com/roundtable_08.asp?section=8

3. The American Association of Equine Practitioners (AAEP) Racing Task Force White Paper, "*Putting the Horse First*" recommended the elimination of toe grabs greater than 2 mm.
4. The original NTRA Code of Standards did not agree to ban all toe grabs but did ban the use of toe grabs 2 mm or greater.

Yet, when Delaware Park indicated it would not comply with the "*standard*" of a 2 mm front toe grab, the NTRA changed the accreditation and Code of Standards to permit the more dangerous 4 mm toe grab. NTRA now touts the 4 mm front toe grab despite this statement: "*The Thoroughbred Safety Committee continues to believe that the recommendation limiting traction devices on front shoes of Thoroughbreds to toe grabs no greater than 2 mm is in the best interests of the welfare and safety of the horse.*"

Pre- and post-race lameness exams

NTRA Code of Standards recommendations for pre- and post-race lameness exams consist of little more than "*take a look as the horse walks by*". The standards are vaguely worded to recommend "*passive flexion test of the foreleg*". It is not clear what this means. The most basic exam for lameness, flexion tests including active flexion, of the major joints of the legs, are not recommended. Passive flexion of the foreleg could mean no more than simply watching a horse walk. This is not enough to detect most arthritis, injuries and joint damage. Indeed, the failure to detect injuries with thorough lameness exams precipitated a boycott at Penn National by jockeys who pointed out one owner's horses broke down routinely from racing while injured.

If the alphabet soup organizations are truly serious about preventing horses from running with injuries, why not specify "*active and passive flexion tests of all of the joints*" should be performed? Specifically, as any newly graduating veterinarian is aware, a lameness exam includes flexion of the joints of all 4 legs. Each joint is flexed tightly by the veterinarian for 45 to 60 seconds. With a notice to the handler, the leg is released and the horse is strongly encouraged to trot off immediately. The inability to trot off sound can be spotted much easier when the joint is forced to remain flexed for a short period. This typical lameness exam done thousands of times by non-track veterinarians across the country -- even for horses intended for only walking on trail rides -- is not routinely performed on horses compromised with joint injections, medications, and forced into continual training and performance in racing, a discipline with the highest fatality rate of any other.

There also does not appear to be any commitment to increase the number of veterinarians available for these critical exams or to utilize "*independent*" veterinarians for pre- and post-race veterinary examinations. Regulatory veterinarians either do not have sufficient time to perform a normal lameness examination which would greatly reduce track injuries or they fail to scratch horses when they should be in order to assure a full field for bettors.

Horse slaughter

If there is an aspect of horse racing where Congress must take action, it is to end the sale and shipment of horses to slaughter particularly for human consumption. This is the responsibility of Congress and the president. It cannot be left to the industry to agree

voluntarily not to send horses to slaughter. That hasn't worked, and it won't work. For example, though industry testimony before the Subcommittee in 2008 indicated NTRA opposition to horse slaughter, shortly after the hearing, NTRA withdrew whatever support it may have had for the Prevention of Equine Cruelty Act, H.R. 503/S.B. 727. Nationally renowned equine orthopedic surgeon, Patricia Hogan, DVM, has expressed frustration at the NTRA's refusal even to respond to her pleas that the organization take a stand against horse slaughter.¹⁴

The availability of slaughter has created a secondary or salvage market that provides a financial incentive to over breeding in the search for the fastest horse. Slaughter provides a profitable tax free way for owners to dispose of their “athletes”, the horses too slow, ready to retire or too injured to run even with masking drugs. In doing so, slaughter enables and has facilitated the overbreeding, the breeding that has left horses unsound and at substantial risk for catastrophic injury.

According to the USDA, 20% of American horses sent to slaughter are Thoroughbreds. In 2009, Patricia Hogan, DVM, again came forward as a veterinary advocate for racing's horses when she reported that “*half of the annual Thoroughbred foal crop goes to slaughter each year*”.¹⁵

From the moment horses enter the slaughter pipeline at auction, they suffer terribly. Michael Blowen, a rescuer from Old Friends reported seeing a horse at auction with a fractured leg that was held together with duct tape. It is illegal in most states to transport a horse in that condition, but the racing owner was intent on dumping the animal. The horse was sold in that condition and then crammed into a trailer for the arduous journey to the slaughterhouse. The pain and suffering this animal endured is unimaginable. The entire incident went unreported by to the authorities. This is just one example.

The veterinarians present at auctions pull coggins tests on the horses even racing horses that just left the track where there was a veterinarian. By having the kill buyer or other person pay for the coggins, the identity of the racing owner is protected.

The alphabet soup organizations and tracks have done nothing to change any of this in line with the alleged zero tolerance policies.

No one can seriously suggest the slaughter process is anything but terribly cruel. Investigation after investigation has documented the astonishing cruelty and terrible suffering endured by horses. Horses are flight animals, very sensitive to unusual noises or movements, especially around their heads and when they are trapped or cornered. It is impossible to hold horses' heads still to stun them effectively as required before slaughter. Repeated shots may be required, and it is no secret that, not only in Canada or Mexico, but also when horse slaughter occurred in the U.S., horses were still conscious when they were slaughtered.

Indeed, the U.S. Government Accountability Office found in 2004 the most frequent violation noted by inspectors in slaughter houses was ineffective stunning, meaning “*in many cases ... a*

¹⁴ <http://www.paulickreport.com/blog/ntra-is-anyone-home/>

¹⁵ http://cs.bloodhorse.com/blogs/finalturn/archive/2009/03/10/Putting-the-Horse-First_3F00.aspx

conscious animal reach[ed] slaughter." GAO also noted there had been no effort made to stop the ineffective stunning and the records kept by inspectors were so poor, it was impossible to tell in a follow up investigation that there had been any improvement.¹⁶

There is a bill pending in Canada's Parliament that would prohibit the import or export of horses for slaughter and horsemeat for human consumption.¹⁷ The European Union has just announced an investigation of the Jerez horse slaughter facility in Mexico.¹⁸ Thousands of American horses are slaughtered there each year, some ending up as horsemeat sold in the EU. The investigation was prompted by results of an undercover study by Animals' Angels that revealed horrific abuse. The EU Animal Health and Welfare Director wrote, "*As you know, the European Commission attaches great importance to animal welfare. Animals are recognized as sentient beings by Article 13 of the Treaty on the Functioning of the European Union*". The director goes on to state after analyzing the Animals' Angels report, the EU would consider the conditions at the Jerez plant as "*not equivalent*" to Article 13 requirements. Practices at the plant, such as "*when unfit horses are dragged on the floor causing additional pain'...would be clear violations of EU requirements.*"

Shouldn't the U.S. set the example here for humane treatment of its "*athletes*" and prohibit their cruel, brutal slaughter?

On top of that, a recent study published in Food and Chemical Toxicology, [*Association of Phenylbutazone Usage With Horses Bought for Slaughter: A Public Health Risk*](#), brings home just how dangerous American horsemeat is for consumers, particularly racing horses.¹⁹ The study examines the presence of bute in American horses sent for slaughter for human consumption. PBZ is a known carcinogen and can cause aplastic anemia (bone marrow suppression) in humans. The study shows when bute was used in humans, there were side effects, like bone marrow suppression leading to death, in over 90 percent of the cases. And traces of PBZ remain a contaminant in horses "for a very long and as yet undetermined period of time". That means PBZ is there when people eat the horsemeat.

The Food and Drug Administration bans bute in horses that are to be used for food. Yet, American horses used for racing and filled with bute and other dangerous drugs are routinely sent to the slaughter pipeline for human consumption. It is difficult to understand why Congress has not taken action to prohibit the slaughter of American horses at least for human consumption. This serious health and food safety as well as animal welfare issue created by slaughter can be easily remedied, something Congress can and should do immediately by passing the Prevention of Equine Cruelty Act, H.R. 503/S.B. 727.

The European Union will begin enforcing restrictions on slaughter of horses with certain drugs and steroids. These precautions may mean most, if not all, American horses could not be slaughtered for consumption in the EU. Shouldn't Congress also take action to protect consumers from this known danger by prohibiting slaughter of American horses? If we want to continue to

¹⁶ <http://www.animallawcoalition.com/horse-slaughter/article/958>

¹⁷ <http://www.animallawcoalition.com/horse-slaughter/article/1370>

¹⁸ <http://www.animallawcoalition.com/horse-slaughter/article/1371>

¹⁹ <http://www.animallawcoalition.com/horse-slaughter/article/1368>

allow drugs to be given to racing horses, isn't stopping the substantial health risk to consumers of horsemeat the least we can do?

In the past year a handful of the 122 tracks that race Thoroughbreds, including New York Racing Association, Churchill Downs, Illinois' Fairmount Park, Philadelphia Park, Penn National, Beulah, West Virginia's Mountaineer Casino Racetrack and Resort, and California tracks where the sale of horses for slaughter is illegal anyway, have declared "*zero tolerance*" policies for slaughter that they say will mean permanent revocation of stall privileges for any owner or trainer caught selling a horse for slaughter that was stabled at the track. But Suffolk Downs, for example, despite its much celebrated zero tolerance policy, reinstated 3 trainers the very next racing season after their privileges were revoked when they were caught selling a horse for slaughter.²⁰

The NYRA just announced it may change its policy to require the owner or trainer must have "*knowingly*" sent a horse to slaughter before the zero tolerance policy would apply.²¹ In fact, NYRA just exonerated owner Fred Robinson and trainer John Campo Jr. of charges of violating the zero tolerance policy when their horse, Ultimate Journey, was saved from slaughter by a rescue. Campo had authorized placement of the horse too injured to keep racing, with the "*Amish*" and the horse was from there sent to auction where he was rescued.

Zero tolerance doesn't mean much given the ease with which horses can be moved around and end up at auction. There has been no serious effort that the tracks intend to enforce the policy by tracking the horses or monitoring the auctions. It would not be difficult to monitor the auctions which are generally located within easy driving distance of a racetrack and typically only auction horses one morning or afternoon per week. It would be a simple matter for a track to have an employee at the auction to flip the lips of horses in the kill pen and locate the Thoroughbreds. Yet, no tracks have done anything to monitor the auctions. There appears to be no plan as to what action a track would take if officials received reports of horses sent to auctions or those already en route to slaughter. The zero tolerance policies seem to be a gimmick, publicity stunts that mislead the public into thinking the horses do not end up at the slaughter house.

Regardless, a voluntary "*zero tolerance*" policy is hardly a substitute in any sense for Congressional action to protect consumers and horses by stopping the sale and shipment of horses for slaughter. Congress cannot abandon its responsibility to a voluntary industry program.

Along these same lines, the NTRA has made much of its plans for "*retirement*" programs, use of rescues and sanctuaries for horses. But there are few specifics. And, there is no plan to report numbers of horses sent to rescues or sanctuaries; there is not even a recommendation that tracks make that information available.

Abuse and mis-treatment of horses bred and used for racing

²⁰ <http://www.thoroughbredtimes.com/national-news/2009/April/10/Banned-Suffolk-Downs-trainers-get-licenses-reinstated.aspx>

²¹ <http://www.drf.com/drfLogin.do?type=news>

There is also the issue of other cruel treatment of horses used for racing. Ernie Paragallo, longtime Thoroughbred owner and breeder in New York, for example, was found guilty this spring on 33 counts of animal cruelty and just sentenced to 2 years in jail and a \$33,000 fine, the maximum allowable under state law.

Rescuers who uncovered the abuse described it as “*horrific*”; horses were dying, starving, malnourished and covered with infestation. The New York State Racing and Wagering Board have stated it will bar Paragallo from the state’s track and the Jockey Club has said it will not recognize his horses. Plans to improve horse owner regulations are in the works. Alex Waldrop has stated it is “*unacceptable*” to abdicate responsibility for the welfare of one’s horses either directly or indirectly. Yes, but how did the abuse and suffering get to that point? Where was the NY State Racing and Wagering Board, Jockey Club, NTRA?

This is just one example of serious abuse uncovered by rescuers.

Some states exempt horses from animal cruelty laws typically to the extent they are treated according to commonly accepted husbandry practices or some similar standard. But even in states where animal cruelty laws apply to horses or certain cruelty to racing horses is prohibited, racing horses are still vulnerable. The problem is enforcement. Animal control, humane agents or other law enforcement authorities typically leave any enforcement of humane laws to the racing commissions or tracks. The enforcement mechanism is usually a fine or suspension if it is enforced at all. Again, there is no reliable central reporting system or database to track violations of cruelty laws.

Conclusion and recommendations

As we have seen in the financial sector in the last few years and the oil industry as it has operated in the Gulf of Mexico, government cannot simply abandon regulatory oversight to the industry that is to be regulated. In this situation, unless Congress takes action, vulnerable animals, our Thoroughbred “*athletes*” will continue to be abused, forced to race on injuries, filled with dangerous drugs and in the end sold for slaughter. It is no longer the sport of kings, but instead America’s shame.

We can and must do better. We can protect these magnificent animals and still enjoy racing - and gambling. It is really up to Congress to take the lead and set the standards for the health, safety and welfare of our animal “*athletes*”:

1. Pass the Prevention of Equine Cruelty Act, H.R. 503/S.B. 727 and end the slaughter of American horses for human consumption and also eliminate an incentive for overbreeding. Until that happens, ensure USDA enforcement of the regulation requiring completion and filing of the owner/shipper certificate Form 10-13 prior to loading any horses at auctions or elsewhere. If this form is filed as required, there would be an accurate count of Thoroughbreds leaving this country for slaughterhouses or live transport for slaughter overseas.
2. Implement a uniform enforcement scheme with criminal penalties and mandatory long term license suspensions or revocations along with disqualifications and purse forfeiture, with the goal

of deterrence and removing from racing those who fail to comply. There should be cross-reporting requirements among states and tracks or a central database that tracks violators.

3. Implement a no tolerance drug policy similar to that found in the European Union and its partners like Hong Kong, meaning drugs and medication are administered to horses only to treat a diagnosable condition or injury and the horse is prohibited from racing or training at all while receiving such treatment. It's time American horses returned to racing on hay, oats and water. It is clear that attempts, such as they are, to regulate NSAIDs and a number of other drugs, simply don't work to protect horses; far too many drugs are still allowed that continue to enhance performance, mask injuries and ultimately leave the horses with substantial risk of injury and death. The testing would be less complicated and ultimately probably far less costly with a simple pass/fail system. Except for a very limited number of naturally occurring substances to be determined by independent veterinarians, there would be no threshold levels whatsoever. The testing should be coupled with detailed pre-and post-race veterinary exams.

4. Implement a mandatory injury reporting database available to the public on a website and that applies to all tracks and includes all injuries and deaths and requires that online access to report injuries and deaths be made available to veterinarians that work with nonprofit rescues or any person to treat or euthanize injured horses removed from racing, including the innumerable people who pay claiming price or work out a deal with trainers or owners of horses that should be retired to purchase them. The database should include names of the horses and the racetracks where they were training or racing at the time of their removal.

5. Implement humane treatment requirements such as no whips, no toe grabs, that will ensure the health and well-being of the horse.

Thank you for the opportunity to provide information and recommendations about regulation of horse racing. I am happy to provide additional resources and information as needed.

Best regards,

/s/Laura Allen/s/

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