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# WHEN CHEATERS PROSPER: A LOOK AT ABUSIVE HORSE INDUSTRY PRACTICES ON THE HORSE SHOW CIRCUIT

KJIRSTEN SNEED\*

In late summer, Shelbyville, Tennessee plays host to the Tennessee Walking Horse National Celebration (“Celebration”).<sup>1</sup> A staple on the Tennessee Walking Horse show circuit, the Celebration has been held annually without interruption since its 1939 debut, when Henry Davis first conceived it to showcase his county’s most valuable asset, the Tennessee Walking Horse.<sup>2</sup> Increasing in popularity over the decades and growing to over 2,000 horses in recent years, the Celebration is currently conducted on its own 100-plus-acre equestrian complex.<sup>3</sup> The World Grand Champion Tennessee Walking Horse’s emergence on the eve of Labor Day<sup>4</sup> commences the eleven-day festival, during which \$650,000 in prizes and awards is given away.<sup>5</sup>

In October, a similar event is held in Columbus, Ohio: the All-American Quarter Horse Congress.<sup>6</sup> As dawn breaks over the barns, there is a flourish of activity under the quiet rooftops as horses are primped and preened for the upcoming competitions. These horses, with their manes braided and coats polished until they shine, are laden with silver—sparkling on the saddles, bridles, and even the riders—and are ready to impress judges and spectators alike. Out in the show ring, one beautiful horse after another goes by, with seemingly perfect quiet strides and calm demeanors. Yet, despite this practiced and refined display, these horse shows shield far more sinister activities lurking behind the scenes.

Part I of this Article will discuss abusive training practices in breed industries such as the Tennessee Walking Horse and American Quarter

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<sup>1</sup> *The Celebration*, TENN. WALKING HORSE NAT’L CELEBRATION, <http://www.twhnc.com/celebration.htm> (last visited Feb. 11, 2014); *History of the Celebration*, TENN. WALKING HORSE NAT’L CELEBRATION, <http://www.twhnc.com/about.htm> (last visited Feb. 15, 2014) (the Celebration has been held annually without interruption since 1939).

<sup>2</sup> *History of the Celebration*, *supra* note 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *The Celebration*, *supra* note 1.

<sup>6</sup> *AAQHC Home*, ALL AM. QUARTER HORSE CONGRESS, <http://www.oqha.com/aaqhc> (last visited Feb. 11, 2014).

Horse, before briefly examining similar practices in other performance horse industries. Turning to federal efforts to eliminate the abuse, Part II examines the Horse Protection Act of 1970 (“HPA” or “Act”), including its legal history and current administration. Part III considers horse show industry attitudes toward horse treatment, particularly among trainers, owners, and exhibitors. Part IV deals with HPA’s inadequate protection of competition horses, while Part V suggests a solution that is further developed in the Proposal section.

## I. BACKGROUND

Abuse permeates the horse show industry on numerous levels.<sup>7</sup> It is not limited to the national stage, but is present at all levels of show competition, from local shows to national shows.<sup>8</sup> Nor is it unique to one discipline or one breed.<sup>9</sup> Instead, abusive equine practices plague nearly every area of equestrian competition.<sup>10</sup>

### A. Affected Breed Industries

Understanding the abuse afflicting the horse show industry requires a comparison of different breeds and disciplines through independent analysis of each. Because the ideal qualities of champion horses differ significantly among the various breed shows and disciplines,<sup>11</sup> the training techniques used to develop those qualities also differ between breeds and disciplines.<sup>12</sup>

<sup>7</sup> See Rachel McCart, *Horse Show Abuse: Growth of an Epidemic*, RATE MY HORSE PRO (May 16, 2012), <http://www.ratemyhorsepro.com/equine-court/horse-law/horse-show-abuse-growth-of-an-epidemic.aspx> (“I’ve been a horse show industry participant for over 30 years. Show horse abuse is NOT a new phenomenon. It’s NOT isolated . . . [a]nd, it’s getting worse.”).

<sup>8</sup> *Id.*

<sup>9</sup> See *What is Soring?*, HUMANE SOC’Y U.S. (May 13, 2013), [http://www.humanesociety.org/issues/tenn\\_walking\\_horses/facts/what\\_is\\_soring.html#UvWOFniR\\_w](http://www.humanesociety.org/issues/tenn_walking_horses/facts/what_is_soring.html#UvWOFniR_w) (describing the abusive practice of soring – injuring a horse’s limbs with chemicals to alter the animals gait via pain – in horse show training across gaited breeds).

<sup>10</sup> See *infra* notes 33-36 and accompanying text.

<sup>11</sup> Compare *Equitation Over Fences Score Sheet*, AM. QUARTER HORSE ASS’N, <http://www.aqha.com/Resources.aspx> (last visited Mar. 8, 2014) (follow “Equitation Over Fences” hyperlink under “Score Sheets” heading) (detailing standards for Quarter Horses competing in Equitation Over Fences competitions), with Sis Osborne, *Tennessee Walking Horses: The Basics*, TENN. WALKING HORSE BREEDERS’ & EXHIBITORS’ ASS’N, <http://www.twhbea.com/cms/cmsfiles/PDFs/BasicsBrochure.pdf> (last visited Mar. 11, 2014) (detailing standards for Tennessee Walking Horses).

<sup>12</sup> Compare TheBlackShiny, *TheBlackShiny Quarter Horse Training* אילוף סוסים – Stallion Show, YOUTUBE (May 8, 2011), <http://www.youtube.com/watch?v=pS4m5DDDVM4> (video of quarter horse training), with Ivy S., *Training a Trotting Tennessee Walking Horse to Gait – Part I*, YOUTUBE (Sept. 21, 2011), <http://www.youtube.com/watch?v=fLN28xSUIE8> (video of Tennessee Walking Horse training).

### 1. *The Tennessee Walking Horse Industry*

Further developing a champion Tennessee Walking Horse's high-stepping natural gait, known as the "running walk," can require careful training.<sup>13</sup> Implementing special shoeing, such as with rubber pads layered under the shoe to "add dimension to the hoof . . . and change certain angles and paths of the motion of the hoof," may also artificially enhance the gait.<sup>14</sup> Despite the availability of humane ways to achieve the desired gait exaggeration, some competitors deliberately cause pain to a horse's legs, either chemically or physically.<sup>15</sup> "Action devices,"<sup>16</sup> such as chains, weighted shoes, and pads attached to the horses' lower legs and feet, are utilized to physically alter gait.<sup>17</sup> This process of deliberately causing pain to artificially exaggerate the gait is called "soring."<sup>18</sup> Under the federal law, specifically the HPA, soring is illegal.<sup>19</sup> Officially, the practice is condemned within the horse show industry, as the United States Equestrian Federation's ("USEF") ban of action devices demonstrates.<sup>20</sup>

### 2. *The American Quarter Horse Industry*

Similarly, the American Quarter Horse Association ("AQHA") also targets abusive practices within the Quarter Horse discipline. In September of 2012, the AQHA announced new equipment policies and a structure of fines and penalties for violators.<sup>21</sup> Under its new equipment policies, the AQHA defined "abuse" as "[a]ny excessive and/or repetitive action [used]

<sup>13</sup> Elizabeth Williams, Annotation, *Construction and Application of the Horse Protection Act of 1970 et seq.*, 131 A.L.R. FED. 363 § 2(a) (1996); see also Osborne, *supra* note 11.

<sup>14</sup> Osborne, *supra* note 11.

<sup>15</sup> *Soring Horses: Unethical Practice Making Horses Suffer*, AM. VETERINARY MED. ASS'N, <https://www.avma.org/kb/resources/reference/animalwelfare/pages/soring-horses.aspx> (last visited Feb. 11, 2014).

<sup>16</sup> U.S. EQUESTRIAN FED'N, USEF RULEBOOK: GENERAL RULES 29 (2013), available at <http://www.usef.org/documents/ruleBook/2013/GeneralRules/08-ConductofCompetitions.pdf> ("Any boot collar, chain, roller, or other device that encircles or is placed upon the lower extremity of the leg of a horse in such a manner that it can rotate around the leg or slide up and down the leg so as to cause friction or strike the hoof, coronet band, fetlock joint, or pastern of the horse.")

<sup>17</sup> Pat Raia, *USEF Bans Action Devices for Gaited Horses*, HORSE (Jan. 25, 2013), <http://www.thehorse.com/articles/31268/usef-bans-action-devices-for-gaited-horses>.

<sup>18</sup> *Id.*

<sup>19</sup> 15 U.S.C.A. §§ 1821–1831 (West 1976).

<sup>20</sup> See UNITED STATES EQUESTRIAN FEDERATION, *supra* note 16.

<sup>21</sup> Under the new rules, certain training equipment will not be allowed at any shows, and additional fines and penalties have been established to deter people who might even think about either abusing a horse or using illicit drugs. A Grievance Committee has also been approved to consider fines and/or penalties as meaningful deterrents, including suspension from competition or suspension from AQHA. The Grievance Committee would also investigate other forms of penalties and serve an educational function to assist owners in understanding the rules and hold owners to a higher level of accountability. Becky Newell, *AQHA Equipment Policies Go Into Effect November 1*, AM. QUARTER HORSE J. (Oct. 22, 2012), <http://www.aqha.com/Showing/World-Show/Blog/102412-Equipment-Rules-Update.aspx>.

to cause obvious distress or discomfort to a horse.”<sup>22</sup> Although positive, these revisions coincided with heightened media scrutiny of high-profile trainers accused of severely abusing their horses, suggesting a lack of spontaneity.<sup>23</sup> Still, the new equipment policies may also reflect a shift within the AQHA toward preserving and celebrating the Quarter Horse breed.<sup>24</sup> Statements by Jim Heird, chairman of the AQHA Animal Welfare Commission, that “[t]he greatest danger to our industry is the inhumane treatment of our horses during their training and the resulting appearance in the show ring” supports this.<sup>25</sup> Furthermore, on an individual level, some industry trainers have spoken out against abusive practices. For instance, Charlie Cole, a Texas trainer of multiple World Champion Quarter Horses, told *Horse & Rider Magazine* that:

[t]here definitely are trainers whose philosophy is to win at any cost . . . Not many people will resort to the worst abuses, such as riding a horse to complete fatigue or hitting one over the head with a bat. But, believe me, it does happen in extreme cases, and owners need to be made aware of it.<sup>26</sup>

Gavin Rawlings, the Australian owner of Kissin The Girls, became painfully aware of extreme trainer abuse when the two-year-old stallion experienced severe trauma allegedly caused by the “excessive abusive training practices.”<sup>27</sup> At the time, Kissin The Girls was in training with American Quarter Horse trainer Shirley Roth, who faced criminal charges relating to the incident.<sup>28</sup> The colt’s injuries, which included abrasions measuring 4” by 3” on the sides of the horse and a superficial laceration on the left hind limb, necessitated an estimated one week stay in an equine

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<sup>22</sup> *Id.*

<sup>23</sup> See *Breaking Developments in Horse Abuse Case*, GOHORSESHOW.COM (Jan. 10, 2009), <http://www.gohorshow.com/article.cfm?articleID=23415>; see also *Shirley Roth Arrested for Alleged Horse Abuse*, RATE MY HORSE PRO (Sept. 26, 2012), <http://www.ratemyhorsepro.com/news/shirley-roth-arrested-for-alleged-horse-abuse.aspx>.

<sup>24</sup> Newell, *supra* note 21 (statement of Jim Heird, chairman of the AQHA Animal Welfare Commission) (“The greatest danger to our industry is the inhumane treatment of our horses during their training and the resulting appearance in the show ring.”).

<sup>25</sup> *Id.*

<sup>26</sup> Jennifer Forsberg Meyer, *Horse Training or Abuse?*, HORSE & RIDER MAG. (June 2011), [http://www.equisearch.com/horses\\_care/training-or-abuse/](http://www.equisearch.com/horses_care/training-or-abuse/).

<sup>27</sup> *Shirley Roth Case Back to Prosecutor*, RATE MY HORSE PRO (June 12, 2013), <http://www.ratemyhorsepro.com/news/shirley-roth-case-back-to-prosecutor.aspx> (pictures within the article demonstrate the extensive injuries the horse suffered).

<sup>28</sup> *Id.* Although charges were not filed against Shirley Roth in 2012 due to lack of evidence, she remains suspended from the AQHA and from the National Snaffle Bit Association, and her case has been submitted back to the Texas prosecutor. She remains out of custody on a \$5,000 bond.

hospital.<sup>29</sup> Photographs of the horse, which was described as “fearful of people,” demonstrate the extent of abuse.<sup>30</sup> The new AQHA equipment policies targeting such abuse<sup>31</sup> may secure a brighter future for Quarter Horses across the country.

### 3. *Other Performance Horse Industries*

Unfortunately, abuse in equine competitions, including the use of illicit drugs, extends far beyond the Tennessee Walking Horse and Quarter Horse industries. According to Amy Maass, a writer for the Fort Collins Horse Examiner, drug use and abuse is pervasive in all equestrian sports.<sup>32</sup> In particular, publicity has prominently featured the racing industry’s use of illicit drugs in violation of racing regulations.<sup>33</sup> Even the 2008 Olympics were tainted by abuse when several horses tested positive for banned substances, and were disqualified from show jumping and dressage competitions.<sup>34</sup> Additionally, in 1999, David Boggs was suspended from showing and judging Arabian horses for having cosmetic surgery performed on seven horses to improve their appearance in the show ring.<sup>35</sup>

None of these events resulted in criminal convictions under the HPA,<sup>36</sup> however, because the Act only applies to specific activities involving sore horses.<sup>37</sup> Outside the HPA, “abuse” is often statutorily viewed as synonymous with “neglect” in regards to animal cruelty.<sup>38</sup> Therefore, unless neglect is evidenced by emaciation, lack of food and water, lack of adequate veterinary care, or as otherwise prescribed by

<sup>29</sup> FORT WORTH POLICE DEPARTMENT REPORT 3 (2012), *available at* [http://www.ratemyhorsepro.com/userfiles/files/Police%20Report%20Redacted\\_RMHP\\_Redacted.pdf](http://www.ratemyhorsepro.com/userfiles/files/Police%20Report%20Redacted_RMHP_Redacted.pdf).

<sup>30</sup> *Shirley Roth Case Back to Prosecutor*, *supra* note 27.

<sup>31</sup> Newell, *supra* note 21 (describing recent AQHA measures targeting equine abuse).

<sup>32</sup> Amy Maass, *Drug Use – and Abuse – in Horses*, EXAMINER.COM (Sept. 20, 2012), <http://www.examiner.com/article/drug-use-and-abuse-horses>.

<sup>33</sup> See, e.g., Walt Bogdanich et al., *Mangled Horses, Maimed Jockeys*, N.Y. TIMES (Mar. 24, 2012), [www.nytimes.com/2012/03/25/us/death-and-disarray-at-americas-racetracks.html](http://www.nytimes.com/2012/03/25/us/death-and-disarray-at-americas-racetracks.html).

<sup>34</sup> Kenneth J. Braddick, *London Olympic Equestrian Sports Totally Drug Free for Horses, Humans*, DRESSAGE-NEWS.COM (2012), <http://www.dressage-news.com/?p=17399> (during the 2012 Olympics, however, test results showed both equine and human athletes in the equestrian events were drug free); Maass, *supra* note 32.

<sup>35</sup> McCart, *supra* note 7. David Boggs later returned to the Arabian show horse circuit and in 2009 won a halter championship with the Arabian stallion Magnum Psyche amid controversy over an alleged whip-mark on the horse’s shoulder. Today, Boggs is among the top halter exhibitors of Arabian horses.

<sup>36</sup> William C. Killian, *Trainer Sentenced For Horse Soring Violations*, U.S. DEP’T JUST. (Jan. 23, 2012), <http://www.justice.gov/usao/tne/news/2012/012312%20Blackburn%20Sentencing%20Horse%20Soring.html> (noting that as of January 2012, the United States Department of Justice only achieved two HPA convictions in twenty years, none of which were previously referenced incidents).

<sup>37</sup> See 15 U.S.C.A. § 1824 (West 1976) (outlining unlawful acts under the HPA).

<sup>38</sup> See, e.g., *Commonwealth v. Simpson*, 832 A.2d 496, 499 (Pa. 2003) (quoting 18 PA. CONS. STAT. ANN. § 5511(c) (West 2002)).

statute,<sup>39</sup> prosecutors remain highly unlikely to file criminal charges against trainers for animal cruelty. Thus, while the HPA provides an impetus for the conversation about ending abuse and a foundational starting point for eradicating abusive equine practices, it is still only a start, as its inadequacies demonstrate.

## II. THE HORSE PROTECTION ACT

### A. *Legal History*

The HPA, codified as 15 U.S.C. §§ 1821-1831, by its terms, is aimed primarily at ending the practice of soring horses.<sup>40</sup> Congress passed this Act in 1970,<sup>41</sup> in response to public outcry, finding the practice itself cruel and inhumane, and finding that it promoted unfair competition.<sup>42</sup> Under the HPA, “sore” is defined as:

- (A) an irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,
- (B) any burn, cut, or laceration has been inflicted by a person on any limb of a horse,
- (C) any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse, or
- (D) any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse, and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to

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<sup>39</sup> *Id.* The offense of Cruelty to Animals in Pennsylvania specifically addresses similar mistreatment.

<sup>40</sup> See 15 U.S.C.A. § 1824 (outlining unlawful acts under the HPA).

<sup>41</sup> *Horse Protection Act*, U.S. DEP'T AGRIC., [http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalwelfare?1dmy&urile=wcm%3apath%3a%2Faphis\\_content\\_library%2Fsa\\_our\\_focus%2Fsa\\_animal\\_welfare%2Fsa\\_landing\\_page%2Fsa\\_spotlights%2Fct\\_hpa\\_program\\_information](http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalwelfare?1dmy&urile=wcm%3apath%3a%2Faphis_content_library%2Fsa_our_focus%2Fsa_animal_welfare%2Fsa_landing_page%2Fsa_spotlights%2Fct_hpa_program_information) (last updated Feb. 20, 2014); see also *What is the Horse Protection Act?*, HUMANE SOC'Y U.S. (Aug. 2, 2013), [www.humanesociety.org/issues/tenn\\_walking\\_horses/facts/horse\\_protection\\_act.html](http://www.humanesociety.org/issues/tenn_walking_horses/facts/horse_protection_act.html).

<sup>42</sup> 15 U.S.C.A. § 1822(1)-(2); *History of the HPA*, U.S. DEP'T AGRIC., [http://www.aphis.usda.gov/animal\\_welfare/downloads/hpa\\_history\\_and\\_admin.pdf](http://www.aphis.usda.gov/animal_welfare/downloads/hpa_history_and_admin.pdf) (last visited Mar. 11, 2014).

practice veterinary medicine in the State in which such treatment was given.<sup>43</sup>

To facilitate greater enforcement, the Act's 1976 amendments expanded its inspection program by directing the U.S. Secretary of Agriculture to establish a regulatory regime appointing qualified individuals to conduct inspections enforcing the HPA.<sup>44</sup>

### *B. Administration of the HPA*

Through the Animal and Plant Health Inspection Service ("APHIS"), the United States Department of Agriculture ("USDA") administers the HPA.<sup>45</sup> Pursuant to the 1976 amendments calling for increased inspection and enforcement, USDA established the Designated Qualified Persons ("DQP") program.<sup>46</sup> Under this regime only accredited veterinarians, horse trainers, farriers, or any other "knowledgeable horsemen whose past experience and training would qualify them for positions as horse industry organization or association stewards or judges" are eligible to become a DQP.<sup>47</sup> The DQP licensure process requires eligible individuals apply and undergo formal training.<sup>48</sup>

Once licensed, DQPs frequently examine horses for soreness, or evidence of "use of devices or chemicals which caused the horse to experience pain" in the lower part of its front or hind legs, but only if the horse is involved in a show, exhibition, or sale.<sup>49</sup> Starting with the 1999 Horse Show Season practice, APHIS has followed agreed operating plans to administer the HPA.<sup>50</sup> These plans provide for private HPA implementation, formally delegating initial enforcement responsibility to certified Horse Industry Organizations ("HIOs") through the DQP programs.<sup>51</sup>

The HPA's enforcement scheme also involves private horse show administration, and defines horse show "management" as "any person who organizes, exercises control over, or administers or who is responsible for

<sup>43</sup> 15 U.S.C.A. § 1821.

<sup>44</sup> *History of the HPA*, *supra* note 42.

<sup>45</sup> *The Horse Protection Act: Responsibilities of Horse Show Management*, ANIMAL & PLANT HEALTH INSPECTION SERVICE (July 2010), [http://www.aphis.usda.gov/publications/animal\\_welfare/content/printable\\_version/hpa\\_horse\\_show\\_mgmt.pdf](http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/hpa_horse_show_mgmt.pdf) [hereinafter *Responsibilities of Horse Show Management*].

<sup>46</sup> *History of the HPA*, *supra* note 42.

<sup>47</sup> 9 C.F.R. § 11.7 (2012).

<sup>48</sup> *History of the HPA*, *supra* note 42.

<sup>49</sup> Clark Case, *No Rule of Thumb: The Conflict of Digital Palpation Under the Horse Protection Act*, 90 KY. L.J. 661, 668 (2002); *see also infra* notes 54-106 and accompanying text (providing a detailed account of the DQPs' activities).

<sup>50</sup> *History of the HPA*, *supra* note 42.

<sup>51</sup> *Id.*



organizing, directing, or administering [horse shows].”<sup>52</sup> Both the legal entity responsible for conducting a horse show or sale, the sponsoring organization, and the show manager, who is the primary authority for managing a horse show or sale, fall within this expansive definition.<sup>53</sup> While DQP hiring remains permissive, horse show management electing not to hire DQPs must prevent the showing or sale of sore horses,<sup>54</sup> and assumes legal responsibility for any horse later found to be sore in violation of the HPA.<sup>55</sup> Consequently, APHIS strongly recommends management hire DQPs to inspect horses for HPA compliance to avoid potential legal liability.<sup>56</sup>

Regardless of whether a DQP is hired, the HPA obligates management to perform certain duties at all shows and sales. Among other things, management must: (1) give APHIS representatives access to all show or sale facilities and records; (2) allow representatives to examine and copy all records pertaining to any horse;<sup>57</sup> (3) provide suitable facilities for examining records, horse inspection, and appropriate areas for horses awaiting inspection or detained horses;<sup>58</sup> (4) control onlookers and allow APHIS representatives to work safely and without interference; (5) ensure that only the exhibitor, trainer, groomer, and custodian involved with the horse are present in the inspection area with the DQPs or APHIS employees;<sup>59</sup> (6) limit workouts, classes, and performances of two-year-old horses; (7) disqualify any horse APHIS finds in violation of the HPA; and (8) keep records<sup>60</sup> to be presented to any APHIS representative upon request.<sup>61</sup> If there is no DQP, however, management is also required to identify and disqualify any horse violating the HPA,<sup>62</sup> as well as inspect any Tennessee Walking Horse tied for first place.<sup>63</sup> Finally, management must report each horse excused or disqualified to APHIS within five days of the show’s end.<sup>64</sup>

Similarly, horse show management hiring DQPs assumes specific duties and responsibilities as to the DQPs. First, at least two DQPs are required at any event with more than 150 horses entered.<sup>65</sup> As stated above,

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<sup>52</sup> 15 U.S.C.A. § 1821(1) (West 1976).

<sup>53</sup> *Responsibilities of Horse Show Management*, *supra* note 45.

<sup>54</sup> 9 C.F.R. § 11.20 (2003).

<sup>55</sup> *Responsibilities of Horse Show Management*, *supra* note 45.

<sup>56</sup> *Id.*

<sup>57</sup> 9 C.F.R. §§ 11.22(c), 11.23 (2003).

<sup>58</sup> 9 C.F.R. § 11.6; *Responsibilities of Horse Show Management*, *supra* note 45.

<sup>59</sup> *Responsibilities of Horse Show Management*, *supra* note 45.

<sup>60</sup> 15 U.S.C.A. § 1823 (West 1976); *Responsibilities of Horse Show Management*, *supra* note

45.

<sup>61</sup> *Responsibilities of Horse Show Management*, *supra* note 45.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

DQPs must be granted access to all show or sale facilities and records, and be provided a suitable area for observing and inspecting horses.<sup>66</sup> They are also entitled to inspect all Tennessee Walking Horses without influence or interference from management.<sup>67</sup> Moreover, to prevent post-inspection malfeasance and conflicts of interest, horse inspection must occur within a certain time before the horse is shown, and DQPs are barred from inspecting horses at any event where a horse owned by a member of the DQP's immediate family, or their employer, is competing or being offered for sale.<sup>68</sup> When a DQP finds a horse in violation of the HPA, management must disqualify the horse.<sup>69</sup>

If management is unhappy with a DQP, for any reason, they may not dismiss the DQP until the show or sale is concluded, and must notify both USDA and the DQP's licensing organization of the reasons for dissatisfaction.<sup>70</sup> Although DQPs are often subject to strict conflicts of interest and enforcement rules and risk license suspension for violations, there are still significant problems with DQP enforcement.<sup>71</sup> The USDA keeps a list of DQPs who have had their licenses cancelled or suspended.<sup>72</sup>

Finally, the HPA requires management to retain certain records for a minimum of ninety days after the event.<sup>73</sup> This includes a record of the date and location of the show or sale, the name and address of the sponsoring organization and each judge, a copy of the program, and a copy of each class or sale sheet.<sup>74</sup> The class or sale sheet must identify each entered horse and either their class and exhibitor number or lot and sale number, as well as the name and address both of the owner and, if different, the person paying for the entry fee and entering each horse.<sup>75</sup>

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* Management is charged with preventing inspections too far in advance of showing, or exposing QDPs to conflicts of interest during inspections.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> See *The Horse Protection Act*, U.S. DEP'T AGRIC. (Nov. 2012), [http://www.aphis.usda.gov/publications/animal\\_welfare/content/printable\\_version/faq\\_rev\\_horsep.pdf](http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/faq_rev_horsep.pdf) (outlining DQP responsibilities and potential loss of licensure for violations); see also U.S. DEP'T AGRIC., ANIMAL AND PLANT HEALTH INSPECTION SERVICE ADMINISTRATION OF THE HORSE PROTECTION PROGRAM AND THE SLAUGHTER HORSE TRANSPORT PROGRAM 1-4 (2010) [hereinafter ADMINISTRATION OF THE HORSE PROTECTION PROGRAM], available at <http://www.usda.gov/oig/webdocs/33601-02-KC.pdf> (detailing deficiencies in DQP enforcement); *FOSH Inspection Program: Organizational and DQP Manual*, FRIENDS SOUND HORSES (2013), [http://www.fosh.info/pdf/2013%20DQP%20Manual%20\\_2\\_.pdf](http://www.fosh.info/pdf/2013%20DQP%20Manual%20_2_.pdf) (example of DQP standards of conduct imposed by an HIO).

<sup>72</sup> See *USDA Horse Protection Act: Federal Disqualification and Civil Penalty List*, U.S. DEP'T AGRIC., [http://www.aphis.usda.gov/animal\\_welfare/hp/downloads/reports/USDAHPDQ\\_01282014.pdf](http://www.aphis.usda.gov/animal_welfare/hp/downloads/reports/USDAHPDQ_01282014.pdf) (last updated Jan. 28, 2014).

<sup>73</sup> *Responsibilities of Horse Show Management*, *supra* note 45.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

### C. Determining Whether a Horse is "Sore"

In addition to DQPs examining horses to detect soreness and disqualifying suspected sore horses,<sup>76</sup> USDA veterinarians may also watch horses during competition, and independently select certain horses for a more thorough post-performance examination.<sup>77</sup> Typically, during a post-performance examination, a visual inspection is first conducted, with the veterinarian looking for abnormal scar tissue, lesions, and lack of hair, which are indicative of soring.<sup>78</sup> Then, the horse may be examined by digital palpation and thermographically to discover whether there are abnormal infrared heat patterns indicative of inflammation in the horse's legs.<sup>79</sup> Digital palpation is best described as follows:

The DQP shall digitally palpate the front limbs of the horse from knee to hoof, with particular emphasis on the pasterns and fetlocks. The DQP shall examine the posterior surface of the pastern by picking up the foot and examining the posterior (flexor) surface. The DQP shall apply digital pressure to the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern, being careful to observe for responses to pain in the horse. While continuing to hold onto the pastern, the DQP shall extend the foot and leg of the horse to examine the front (extensor) surfaces, including the coronary band. The DQP may examine the rear limbs of all horses inspected after showing, and may examine the rear limbs of any horse examined preshow or on the show grounds when he deems it necessary, except that the DQP shall examine the rear limbs of all horses exhibiting lesions on, or unusual movement of, the rear legs.<sup>80</sup>

Following a post-performance veterinarian examination finding of soreness, a second veterinarian conducts another independent examination.<sup>81</sup> If both veterinarians independently conclude that the horse has been sored, they prepare a "Summary of Alleged Violation," which the APHIS relies on to

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<sup>76</sup> Williams, *supra* note 13, at \*2a.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Case, *supra* note 49, at 687-88.

<sup>81</sup> Williams, *supra* note 13, at \*2a.

file an administrative complaint against the horse's owner, trainer, or both.<sup>82</sup>

#### *D. Penalties for Soring a Horse in Violation of the HPA*

To establish a violation of the HPA, the USDA must prove, by a preponderance of the evidence, that:

- (1) . . . the individual charged with violating the HPA is the owner of the horse in question, (2) that the horse was entered, shown, or exhibited in a horse show or exhibition, (3) that the horse was "sore" . . . at the time it was shown, exhibited, or entered in a show or exhibition, and (4) that the owner permitted such showing, exhibition, or entry.<sup>83</sup>

Soring implicates strict criminal and civil penalties assessed against both the horse's trainer and owner. Although charged separately, each may either constructively admit "the charge by failing to answer the complaint . . . and then paying the fines and accepting the suspension, or they may have a hearing before an administrative law judge ("ALJ")."<sup>84</sup> If an owner or trainer elects for a hearing, the ALJ conducts a mini-trial, hearing evidence from the USDA and the defending trainer or owner, to determine liability and penalties under the HPA.<sup>85</sup> After issuing a ruling, the ALJ's decision is appealable for review by a judicial officer.<sup>86</sup> United States Courts of Appeals have upheld HPA violation adjudicative procedures under constitutional Due Process challenges, which frequently focused presumptions of soreness attached in particular instances.<sup>87</sup>

Specific remedies or sanctions are imposed on a case-by-case basis, and depend heavily on a case's specific facts.<sup>88</sup> The USDA possesses discretion to assess civil penalties up to \$2,000, as well as "disqualification from exhibiting horses or managing horse shows for not less than [one] year for an initial violation and not less than [five] years for subsequent

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at \*2b (citing *Bobo v. U.S. Dep't of Agric.*, 52 F.3d 1406, 1406 (6th Cir. 1995)).

<sup>84</sup> Case, *supra* note 49, at 672.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 672-73.

<sup>87</sup> *Williams, supra* note 13, at \*2a; *see also Back v. U.S. Dep't of Agric.*, 445 F. App'x 826 (6th Cir. 2011) (denying petition for review in part because the HPA's presumption of soreness was constitutionally valid under due process in certain disciplinary actions); *Trimble v. U.S. Dep't of Agric.*, 87 F. App'x 456 (6th Cir. 2003) (holding that notice to horse trainer of complaint alleging HPA violations did not violate due process); *Elliott v. U.S. Dep't of Agric.*, 990 F.2d 140 (4th Cir. 1993) (upholding presumption of soreness under due process challenge); *Fleming v. U.S. Dep't of Agric.*, 713 F.2d 179 (6th Cir. 1983) (holding that exhibitor-appellants' due process challenges lacked merit).

<sup>88</sup> *Williams, supra* note 13, at \*2a.

violations.”<sup>89</sup> For many owners and trainers, who are often competing for prizes greatly exceeding \$2,000, however, the fine is little more than a slap on the wrist.<sup>90</sup> Moreover, the severity of disqualification is probably overestimated because APHIS inspectors cannot be at every show, so individuals who are technically “disqualified” may be able to continue sending horses to shows without incurring any additional fines or violations.<sup>91</sup>

### *E. 2012 Case Studies: Jackie McConnell & USDA Inspections*

The 2012 Jackie McConnell case illustrates how serious charges against owners and trainers can be.<sup>92</sup> McConnell and two associates pled guilty to conspiring to violate the HPA.<sup>93</sup> Under the initial charges, “McConnell could have faced up to five years in prison and a hefty \$250,000 fine.”<sup>94</sup> As part of a plea deal, however, McConnell will serve 3 years probation, as recommended by the prosecutor, and has been fined \$75,000 for his felony conviction.<sup>95</sup> Considering that eight horses were seized from McConnell’s stable in March 2012, for which the Humane Society of the United States (“HSUS”) has been providing veterinary care, his sentence seems light.<sup>96</sup>

In 2012, the USDA inspected 9,962 horses at 100 events, including 78 horse shows.<sup>97</sup> Of the 9,962 horses inspected, 582 were in violation of the HPA.<sup>98</sup> Of the 78 shows where the USDA inspected horses, only fifteen did not have any horses found in violation of the HPA.<sup>99</sup> Notably, at the 74<sup>th</sup>

<sup>89</sup> *Id.*

<sup>90</sup> See *The Celebration*, *supra* note 1 (noting \$650,000 will be given away this year in prizes and awards); see also *Walk Time Charlie*, RISING STAR RANCH, <http://attherisingstar.com/stallions/walk-time-charlie/> (last visited Feb. 15, 2014) (noting the 2013 stud fee to breed to the 2012 World Grand Champion Tennessee Walking Horse is \$5,000.00).

<sup>91</sup> See ADMINISTRATION OF THE HORSE PROTECTION PROGRAM, *supra* note 71, at 11 (demonstrating APHIS officials attended less than 10% of selected industry horse shows on average from 2006 to 2008).

<sup>92</sup> *TN Grand Jury Indicts TWH Trainer Jackie McConnell*, RATE MY HORSE PRO (Apr. 1, 2013), [http://www.ratemyhorsepro.com/userfiles/files/State%20v%20McConnell%20\\_%20April%201.pdf](http://www.ratemyhorsepro.com/userfiles/files/State%20v%20McConnell%20_%20April%201.pdf).

<sup>93</sup> *Jackie McConnell Pleads Guilty to Federal Charge*, RATE MY HORSE PRO (May 23, 2012), <http://www.ratemyhorsepro.com/news/jackie-mcconnell-pleads-guilty-to-federal-charge.aspx>.

<sup>94</sup> *Id.*

<sup>95</sup> *Horse Trainer Jackie McConnell Fined for Caustic Chemical Cruelty*, NBC NEWS, [http://usnews.nbcnews.com/\\_news/2012/09/19/13955200-horse-trainer-jackie-mcconnell-fined-for-caustic-chemical-cruelty?lite](http://usnews.nbcnews.com/_news/2012/09/19/13955200-horse-trainer-jackie-mcconnell-fined-for-caustic-chemical-cruelty?lite) (last visited Feb. 8, 2014).

<sup>96</sup> *Horse Trainer Jackie McConnell Pleads Guilty to Animal Abuse; Avoids Jail*, EXAMINER.COM (July 9, 2013), <http://www.examiner.com/article/horse-trainer-jackie-mcconnell-pleads-guilty-to-animal-abuse-avoids-jail>.

<sup>97</sup> U.S. DEP’T AGRIC., USDA HORSE PROGRAM ACTIVITY REPORT 2012 (2013), available at [http://www.aphis.usda.gov/animal\\_welfare/downloads/hp/usda\\_hp\\_activity\\_report\\_2012.pdf](http://www.aphis.usda.gov/animal_welfare/downloads/hp/usda_hp_activity_report_2012.pdf).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

Annual Tennessee Walking Horse Celebration horse show, just under 9% of the horses were found sore in violation of the HPA.<sup>100</sup> Specifically, out of 1849 horses inspected, inspectors found a total of 166 violations: 25 bilateral violations, 49 unilateral violations, 67 scar rule violations, 11 foreign substance violations, 12 shoeing violations, and 2 heavy chains violations.<sup>101</sup>

#### F. 2013 Cases

In June 2013, Blake Primm, a farrier in Sevierville, Tennessee, was arrested and charged with one misdemeanor count of animal cruelty, but the charges were later dismissed.<sup>102</sup> Primm's arrest was the fourth in connection with an ongoing investigation into trainer Larry Wheelon's stables.<sup>103</sup> Trainers Randall Gunter and Brandon Lunsford were also arrested in connection with the Larry Wheelon investigation around the same time.<sup>104</sup> Although felony charges of aggravated animal cruelty against Gunter and Lunsford<sup>105</sup> were initially dropped, they were later reinstated in early December 2013, when a grand jury indicted Wheelon, Gunter, Lunsford, and Primm on eighteen counts related to livestock cruelty and conspiracy.<sup>106</sup>

### III. ANALYSIS

#### A. Industry Beliefs

On December 17, 2012, the USEF approved a rule banning soring and the use of any action device on a Tennessee Walking Horse in classes

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* "Bilateral sore" means a horse is found to be sore in both its forelimbs or hindlimbs. 9 C.F.R. § 11.25(c)(1) (2014). "Unilateral sore" means a horse is found to be sore in one of its forelimbs or hindlimbs. 9 C.F.R. § 11.25(c)(2) (2014). A "scar rule violation" is a violation of 9 C.F.R. § 11.3 (2014).

<sup>102</sup> *State of Tennessee vs. Blake Tanner Primm*, RATE MY HORSE PRO (June 11, 2013), <http://www.ratemyhorsepro.com/equine-court/criminal-matters/state-of-tennessee-vs-blake-tanner-primm.aspx>.

<sup>103</sup> *TN Farrier Charged with Animal Cruelty*, RATE MY HORSE PRO (June 17, 2013), <http://www.ratemyhorsepro.com/news/tn-farrier-charged-with-animal-cruelty.aspx>.

<sup>104</sup> *Two More TWH Trainers Arrested in Soring Investigation*, RATE MY HORSE PRO (June 8, 2013), <http://www.ratemyhorsepro.com/news/two-more-twh-trainers-arrested-in-soring-investigation.aspx>.

<sup>105</sup> *Id.*; *State of Tennessee vs. Randall Stacy Gunter*, RATE MY HORSE PRO, <http://www.ratemyhorsepro.com/equine-court/criminal-matters/state-of-tennessee-vs-randall-stacy-gunter.aspx> (last visited Mar. 11, 2014). The charges against Gunter and Lunsford were eventually dismissed.

<sup>106</sup> Iva Butler, *Horse Trainer Larry Wheelon, Three Others Indicted on 18 Counts of Aggravated Cruelty to Livestock, Conspiracy*, DAILY TIMES (Dec. 4, 2013, 10:45 PM), [http://www.thedailytimes.com/Local\\_News/story/Horse-trainer-Larry-Wheelon-three-others-indicted-on-18-counts-of-aggravated-cruelty-to-livestock-conspiracy-id-043982](http://www.thedailytimes.com/Local_News/story/Horse-trainer-Larry-Wheelon-three-others-indicted-on-18-counts-of-aggravated-cruelty-to-livestock-conspiracy-id-043982).

at USEF licensed competitions.<sup>107</sup> The HSUS applauded USEF's action,<sup>108</sup> which Keith Dane, director of equine protection for the HSUS, described as allowing "[s]pectators at USEF shows . . . to experience the natural grace and beauty of sound, flat-shod walking horses without supporting or being exposed to any of the abusive practices long associated with the Big Lick."<sup>109</sup> Soring critics Nathanael and Jennie Jackson of Cookeville, Tennessee, echoed Dane's sentiments, calling for a return to the Tennessee Walking Horse's roots.<sup>110</sup> Jennie has firsthand knowledge of abusive practices, having competed on the walking horse circuit in the late 1970s in California.<sup>111</sup> While competing, Jennie sore horses to keep up with her competitors.<sup>112</sup> She called it "addictive," and "a quick fix."<sup>113</sup> According to Nathanael, soring is "unnatural," even "unholy."<sup>114</sup> The Jacksons have been some of the leaders in the fight against soring.<sup>115</sup>

Mark Inman, Chief Executive Officer for the Celebration, articulates opposition to the USEF ban.<sup>116</sup> Speaking for both the Celebration and its subsidiary Sound Horses, Honest Judging, Objective Inspections, Winning Fairly ("SHOW"), Inman claims "the rule discriminates against a specific breed of horses that are exhibited using equipment that is legal under HPA guidelines."<sup>117</sup> Still, Inman is quick to add that "[i]n no way, does SHOW condone any violation of the law," clarifying his position as merely highlighting that "the action devices used . . . are not against the law and *when used properly* allow the beauty, grace, and performance of our horse to be demonstrated in the show ring."<sup>118</sup> Two things are worth noting from Inman's comments: (1) he describes the practice as *legal*, but says nothing about whether it is *ethical* or if there are viable alternatives;<sup>119</sup> and (2) he qualifies his statement, conditioning action devices' legality on proper use, but fails to mention improper use, which is the real concern.<sup>120</sup>

<sup>107</sup> Raia, *supra* note 17.

<sup>108</sup> Press Release, Humane Soc'y of the U.S., The HSUS Commends U.S. Equestrian Fed'n for New Rule Protecting Walking Horses (Jan. 24, 2013), *available at* [http://www.humanesociety.org/news/press\\_releases/2013/01/usef-new-rule-walking-horses-012413.html](http://www.humanesociety.org/news/press_releases/2013/01/usef-new-rule-walking-horses-012413.html).

<sup>109</sup> *Id.*; see also Raia, *supra* note 17.

<sup>110</sup> Todd South, *Indictment Shines Light on Abuse Allegations in Tennessee Walking Horse Industry*, CHATTANOOGA TIMES FREE PRESS, Mar. 18, 2012, <http://timesfreepress.com/news/2012/mar/18/indictment-shines-light-abuse-allegations-tennesse/>.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> For more about the Jacksons, see WALKIN ON RANCH OF COOKEVILLE, TENNESSEE, <http://www.walkinonranch.com/index.html> (last visited May 21, 2014).

<sup>116</sup> Raia, *supra* note 17.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* (emphasis added).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

Indeed, a knife, when used properly, is a helpful kitchen tool, but when used improperly, it becomes a weapon.

Dr. Stephen Mullins, head of SHOW, claims the sought-after high-stepping Big Lick gait is possible through breeding, training, and the use of chains and pads.<sup>121</sup> According to Mullins, “genetics have caught up with the horse . . . horses are able to do a lot toward the big lick on their own.”<sup>122</sup> Yet, critics, such as Nathanael Jackson, remain unconvinced, pointing out that “[i]f you ever see an action device on a horse, a chain or a roller, [trainers] can tell you all day . . . ‘My horse is not sored’ – it’s a lie. . . . There’s no way in the world you get that without soring.”<sup>123</sup> In the Jacksons’ view, saving the breed and its reputation requires returning to tradition, natural methods.<sup>124</sup> USEF’s ban on soring devices is only a start.

### *B. Why the HPA is Not Enough*

While the HPA may technically apply to other horses, its guidelines seem to primarily target the Tennessee Walking Horse, prompting private organization action designed to protect other non-gaited breeds.<sup>125</sup> Until recent AQHA initiatives combating abusive practices in Quarter Horse industry, the breed had very few safeguards.<sup>126</sup> Those familiar with the horse show industry know that show-horse abuse is not a new phenomenon and is not isolated to Tennessee Walking Horses.<sup>127</sup> Effectively addressing widespread abuse within the diverse equine competition disciplines necessitates expanding the HPA to specifically cover other breeds and disciplines.

The HPA’s failure to address drugs in horses, leaving regulation to the USEF is another significant inadequacy of the Act.<sup>128</sup> While it could be an effective delegation, the USEF rules only impact its member breeds, leaving out other important breeds, such as Quarter Horses.<sup>129</sup> Consequently, the AQHA is left on its own to issue and enforce regulations, exacerbating self-regulation problems, while the horse show industry and

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<sup>121</sup> South, *supra* note 110.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> See Newell, *supra* note 21; see also *What is the Horse Protection Act?*, *supra* note 41; *The Horse Protection Act*, *supra* note 71.

<sup>126</sup> See Newell, *supra* note 21.

<sup>127</sup> McCart, *supra* note 7.

<sup>128</sup> See 15 U.S.C. § 1824 (2014); U.S. EQUESTRIAN FED’N, 2014 GUIDELINES FOR DRUGS AND MEDICINES 2 (2013).

<sup>129</sup> See U.S. EQUESTRIAN FED’N, <https://www.usef.org> (last visited Feb. 15, 2014) (select “Breeds” then “Recognized National Breed Affiliation”).



other equine competition genres face a substantial drug problem that federal law does not sufficiently address.<sup>130</sup>

Furthermore, even where federal law, under the HPA, directly tackles instances of horse abuse, the USDA is unable to fully enforce the law's provisions.<sup>131</sup> HSUS cites underfunded inspection programs and political pressure from influential industry insiders pushing against inspections and violation citations as the root cause of this ineffective enforcement.<sup>132</sup> The USDA's budget for fiscal year 2012, for example, proposed an increase of about \$6 million to further investigation of problematic dog breeders and dealers, but only allocated a measly \$0.9 million toward greater HPA enforcement.<sup>133</sup> In fact, out of the \$758 billion allocated for APHIS programs, the budget proposed just \$17 million for Animal & Plant Health Regulatory Enforcement.<sup>134</sup> Overall, the APHIS 2012 budget saw a net decrease of about \$76 million.<sup>135</sup> In 2013, HPA enforcement resources will shrink again, with the budget proposal reducing the allocation to just \$0.5 million.<sup>136</sup> Under this regime, the decrease will partially be achieved by "prioritizing inspections based on determination of risks."<sup>137</sup> Unfortunately for the equine industry, this language, which should be a red flag to horse show inspection proponents, signals the USDA's de-prioritization of inspection funding in favor of nutrition assistance and conservation funding.<sup>138</sup> With USDA inspection funding unlikely to increase on its own, the industry could still subsidize inspections itself.<sup>139</sup> Industry inspection is, however, self-regulation, which, in an industry where trainers often judge a show one weekend and compete in another the next, can mean social and political suicide and disastrous competition

<sup>130</sup> See *supra* notes 10-128 and accompanying text; see also *infra* note 144 (discussing issues facing private regulation and enforcement).

<sup>131</sup> *What is the Horse Protection Act?*, *supra* note 41; see also *USDA Announces Recent Animal Welfare Act and Horse Protection Act Enforcement Actions*, U.S. DEP'T AGRIC. (May 17, 2013), [http://www.aphis.usda.gov/wps/wcm/connect/APHIS\\_Content\\_Library/SA\\_Newsroom/SA\\_News/SA\\_By\\_Date/SA\\_2013/SA\\_05/CT\\_enforcement\\_actions\\_march\\_april](http://www.aphis.usda.gov/wps/wcm/connect/APHIS_Content_Library/SA_Newsroom/SA_News/SA_By_Date/SA_2013/SA_05/CT_enforcement_actions_march_april) (the USDA is not entirely failing to enforce the HPA; the organization highlights enforcement actions on its website).

<sup>132</sup> *What is the Horse Protection Act?*, *supra* note 41.

<sup>133</sup> U.S. DEP'T OF AGRIC., FY 2012 BUDGET SUMMARY AND ANNUAL PERFORMANCE PLAN 87-88 (2012) [hereinafter FY 2012 BUDGET SUMMARY], available at <http://www.obpa.usda.gov/budsum/FY12budsum.pdf>.

<sup>134</sup> *Id.* at 84, 118.

<sup>135</sup> *Id.* at 85.

<sup>136</sup> *Id.* at 80 (total APHIS budget for 2013 is about \$765 million, a total net decrease of about \$55 million compared to 2012); see also U.S. DEP'T OF AGRIC., FISCAL YEAR 2013 BUDGET SUMMARY AND ANNUAL PERFORMANCE PLAN 82 (2013) [hereinafter FISCAL YEAR 2013 BUDGET SUMMARY], available at <http://www.obpa.usda.gov/budsum/FY13budsum.pdf>.

<sup>137</sup> FISCAL YEAR 2013 BUDGET SUMMARY, *supra* note 136.

<sup>138</sup> See *Department of Agriculture*, WHITE HOUSE, [http://www.whitehouse.gov/omb/factsheet\\_department\\_agriculture/](http://www.whitehouse.gov/omb/factsheet_department_agriculture/) (last visited Feb. 15, 2014).

<sup>139</sup> See FY 2012 BUDGET SUMMARY, *supra* note 133, at 88.

results.<sup>140</sup> Combating this phenomenon requires a cultural shift within the horse industry toward the well-being of horses by embracing HPA inspection and enforcement.

According to one theory, the HPA's inadequate enforcement is caused in large part by trainers circumventing the USDA's enforcement efforts.<sup>141</sup> DQPs, who are charged with enforcing the HPA, "are [Tennessee Walking Horse] industry people to the core . . . [who] view their job as to protect the horse industry, not to write up sore horses."<sup>142</sup> Jan Saltzman, commenting on the widespread corruption within inspection programs, observed that after "DQPing for 10 years and watching HIOs get payoffs to allow sore horses [to] go through, I cannot find a clean HIO and no longer DQP."<sup>143</sup> Additionally, evidence suggests USDA officials attempting to enforce the HPA have been subject to intimidation and harassment at competitions.<sup>144</sup> In 2000, for instance, APHIS requested the presence of U.S. Marshals and law enforcement agents at numerous shows in response to threats of violence against APHIS personnel.<sup>145</sup> Dr. Pamela Reband, a board member for the National Walking Horse Association, reportedly received death threats against herself, her family, and her horses after standing up to HPA offenders.<sup>146</sup> She is not alone – USDA Veterinary Medical Officers (VMOs) who write a high number of violations have also received death threats, and some USDA inspectors have had their tires slashed.<sup>147</sup>

The horse industry's heavily segmented nature adds another level of complexity and creates more obstacles to enforcement.<sup>148</sup> An exhibitor or trainer who is suspended in one show or from one organization can simply change venues or circuits with ease.<sup>149</sup> And, if an expelled trainer moves to a different competition circuit or to competitions under different show management, they will take their clients with them.<sup>150</sup> Finally, "suspending or expelling an exhibitor who is a trainer can have a significant [negative]

<sup>140</sup> McCart, *supra* note 7. Horse show judges frequently are also trainers and exhibitors. Being both a judge and a trainer is economically necessary because neither pays particularly well and trainers acquire show ring influence by also being judges. See UNITED STATES DEPARTMENT OF AGRICULTURE, *supra* note 74 (detailing conflicts of interest and enforcement obstacles facing DQPs).

<sup>141</sup> *What is Soring?*, FOR THE TENN. WALKING HORSE, <http://www.forthetwh.com/whatisoring.htm> (last visited Feb. 11, 2014).

<sup>142</sup> *Id.* (alteration in original).

<sup>143</sup> *Id.* (alteration in original).

<sup>144</sup> *What is the Horse Protection Act?*, *supra* note 41; see also UNITED STATES DEPARTMENT OF AGRICULTURE, *supra* note 74, at 16 (discussing hostility towards DQPs).

<sup>145</sup> *What is Soring?*, *supra* note 144; see also UNITED STATES DEPARTMENT OF AGRICULTURE, *supra* note 74, at 16 (discussing hostility towards DQPs).

<sup>146</sup> *What is Soring?*, *supra* note 141.

<sup>147</sup> *Id.*

<sup>148</sup> McCart, *supra* note 7.

<sup>149</sup> *Id.*; see also *What is Soring?*, *supra* note 141 (a substantial number of exhibitors packed up and left after the arrival of VMOs at the 2004 NHSC show in Pennsylvania).

<sup>150</sup> McCart, *supra* note 7.

economic impact on the governing organization [when] they lose membership and competition revenue from not just one, but multiple persons,” providing a further financial disincentive for private HPA enforcement.<sup>151</sup> In conjunction with shifting targets facilitated by ease of movement, this erects additional substantial enforcement barriers.

### C. *What Needs to Be Done*

Although probably primarily motivated by negative public scrutiny, the USEF’s recognition of performance horse welfare as a serious issue and push for sweeping change in the horse show world is an undeniable positive.<sup>152</sup> During the 2013 summer, to encourage widespread discussion participation and increase dialogue focused on performance horse welfare, the USEF held “Town Hall Meetings” in Virginia, New York, Kentucky, California, Colorado, and Oregon,<sup>153</sup> and expressed interest in holding meetings in Texas and the Midwest as well.<sup>154</sup> John Long, USEF Chief Executive Officer, pressed harsher penalties for HPA violators, stating that “[f]or people . . . [who] do bad things to horses [the USEF] need[s] to throw the book at them . . . [and] make it hurt.”<sup>155</sup>

While penalties that hurt and stick probably provide greater deterrence, instituting real, meaningful change requires wider-reaching rules and regulations beyond HPA’s specific instances of soring at horse shows or sales. While the HPA, if adequately and fully enforced, could effectively address soring of gait horses, the Act only targets one issue largely in one discipline and the rest of the horse industry derives little benefit, if any, from its severely limited scope. This shortcoming forces private organizations to supplement the HPA with actions targeting widespread horse show abuse. The USEF’s action device ban and the AQHA’s November 2012 partial equipment ban are good examples of such actions.<sup>156</sup> Importantly, the fact that governing equestrian organizations are passing rules targeting equine competition abuse suggests an increased awareness of widespread mistreatment in the industry, and a greater commitment to stopping it. Hopefully, improved dialogue, through efforts like the USEF’s “Town Hall Meetings,” will inspire further action. While

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<sup>151</sup> *Id.*

<sup>152</sup> See *USEF Looks for Change*, RATE MY HORSE PRO (Apr. 4, 2013), <http://www.ratemyhorsepro.com/news/usef-seeking-change-for-horse-welfare.aspx>.

<sup>153</sup> *Id.*; see also *Town Hall Meeting: Welfare of the Horse in the 21st Century: Meeting the Needs of the Performance Horse in a Changing Environment*, USEF NETWORK (June 3, 2013), <http://www.usefnetwork.com/featured/USEFTownHallMeetings/> (coverage of the USEF Town Hall Meetings is available through [www.usefnetwork.com](http://www.usefnetwork.com)).

<sup>154</sup> *USEF Looks for Change*, *supra* note 152.

<sup>155</sup> *Id.*

<sup>156</sup> See *supra* notes 21-31 and accompanying text (discussing the Quarter Horse industry, and recent rules banning training equipment).

these are all steps in the right direction, private action alone is insufficient because of the obstacles facing private enforcement. Stronger, government action is needed.

#### IV. PROPOSAL: STRICTER ENFORCEMENT FOR A BROADER SCOPE

The widespread and pervasive nature of horse show abuse necessitates creating a stricter and more powerful enforcement regime, vested in either the USDA or prosecutors, with adequate funding to fully enforce the law.<sup>157</sup> Here, the USDA's experience illustrates that even the best statutes, rules, and regulations, without the resources and willingness to enforce them, will continue to be broken.<sup>158</sup> Thus, any expansive new statutory or regulatory scheme will prove as ineffective as the HPA, unless it is given the necessary funding and personnel for full implementation and enforcement.

Given recent budgetary developments, however, relying solely on the USDA to finance stricter enforcement is unrealistic, but, fortunately, likely unnecessary. By mirroring compliance funding schemes in other equine competition disciplines, the horse show industry itself could, potentially in conjunction with the USDA, provide the funding required to enforce crucial rules and regulations. Horse racing, particularly in California, may provide a financing model applicable to the horse show industry.<sup>159</sup> In California, race industry members already subsidize racetracks' drug testing activities with an additional fee charged by the tracks.<sup>160</sup> Charging an independent "inspection fee," similar to drug-testing fees already assessed at recognized USEF competitions,<sup>161</sup> would help cover the cost of hiring *independent USDA inspectors*. Although critics may correctly point out that horse shows already hire DQP inspectors frequently, the insufficiencies of the current system, they likely support, have necessitated the very restructuring they oppose. Moreover, hiring DQPs subjects show management to the same conflict of interest issues seen when trainers serve as judges—namely that the fear of retaliation

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<sup>157</sup> Pat Raia, *House Bill Would Amend Horse Protection Act*, HORSE (Apr. 15, 2013), <http://www.thehorse.com/print-article/31695>.

<sup>158</sup> See *supra* notes 131-139 and accompanying text (discussing the USDA's financial challenges and inability to effectively enforce the HPA).

<sup>159</sup> See *California Horse Racing Board*, ALLGOV, [http://www.allgov.com/usa/ca/departments/independent-agencies/california\\_horse\\_racing\\_board?agencyid=219](http://www.allgov.com/usa/ca/departments/independent-agencies/california_horse_racing_board?agencyid=219) (last visited Mar. 7, 2014) (the California Horse Racing Board and its programs, including drug testing, is funded by licensing and other fees collected from the industry).

<sup>160</sup> *Id.*

<sup>161</sup> See, e.g., *USEF Fees*, U.S. EQUESTRIAN FED'N, [http://www.usef.org/\\_IFrames/memberServices/membership/fees.aspx](http://www.usef.org/_IFrames/memberServices/membership/fees.aspx) (last visited Feb. 15, 2014) (prescribing an \$8 fee for Drugs and Medication under "Memberships").

significantly deters active enforcement and citation.<sup>162</sup> Finally, as strict DQP conflicts of interest rules demonstrate, DQPs are already subject to enormous personal pressure in the close-knit horse show world, where it may be nearly impossible to find a DQP without connections to someone entered in the competition.<sup>163</sup>

Ideally hiring USDA inspectors, who are probably less likely to have personal connections with competitors, would be required for each show or sale. Such a regime separates equine competitions from other sports as the only one with mandatory government inspectors. This may raise concerns about government encroachment into officiating other sports. The doctrine of “agricultural exceptionalism,” which finds exemptions from federal legislation provided to the agricultural sector permissible, resolves this issue.<sup>164</sup> Simply put, the doctrine generally refers to the “practice of treating agriculture differently than other industries.”<sup>165</sup> Although the doctrine traditionally encompasses exceptions relaxing existing law,<sup>166</sup> requiring the USDA inspectors could be considered a form of agricultural exceptionalism because it treats the horse show industry differently from other sports and entertainment industries. This perspective clearly demarcates the horse show industry as a completely different and unique discipline with officiating issues necessitating special treatment that are wholly inapplicable to other sports; just as agriculture has been exempted from labor laws applicable to other industries.<sup>167</sup>

Comparing horse show officiating with that of other sports’ officiating further reinforces this point, and demonstrates that different treatment of equine officials is warranted. Judges, umpires, referees, or inspectors at the highest level of competition in any sport generally possess extensive experience in their chosen sport.<sup>168</sup> Unlike equine officials, football or basketball officials, for instance, do not also compete against or coach the athletes, whereas equestrian officials do. One individual can

<sup>162</sup> See, e.g., McCart, *supra* note 7 (judges are frequently themselves trainers and exhibitors).

<sup>163</sup> See UNITED STATES DEPARTMENT OF AGRICULTURE, *supra* note 74 (discussing conflicts of interests facing DQPs); see also *FOSH Inspection Program: Organizational and DQP Manual*, *supra* note 74 (the strict conflict of interest rules imposed by Friends of Sound Horses demonstrates how close the Horse Show Circuit is); *Responsibilities of Horse Show Management*, *supra* note 48 (management is charged with preventing inspections too far in advance of showing, or exposing QDPs to conflicts of interest during inspections).

<sup>164</sup> See Guadalupe T. Luna, *An Infinite Distance?: Agricultural Exceptionalism and Agricultural Labor*, 1 U. PA. J. LAB. & EMP. L. 487, 489 (1998); see also ERNESTO GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY* 106 (1964).

<sup>165</sup> Peter J. Wall, *Land Use and Agricultural Exceptionalism*, 16 SAN JOAQUIN AGRIC. L. REV. 219, 222 (2007).

<sup>166</sup> See Luna, *supra* note 164, at 490.

<sup>167</sup> *Id.*

<sup>168</sup> See James Alder, *How to Become an NFL Official*, ABOUT.COM, <http://football.about.com/cs/football101/a/nflofficial.htm> (last visited Feb. 15, 2014) (requiring a minimum ten years experience, with at least five in the varsity collegiate level); see also *Welcome to NBA Officials.com*, NBA.COM, <http://nbaofficials.com/> (last visited Feb. 15, 2014).

coach at one competition, compete at the next, officiate or judge the third, and serve as DQP inspector at the fourth. Combined with the small world of equestrian sport, the numerous roles equestrians play makes finding willing, full-time, neutral inspectors exceedingly difficult to locate. Hiring government inspectors would ensure that neutral inspections are conducted, and uninfluenced by the threat of jeopardizing one's own career.

In addition to effectively targeting show horse abuse, expanding the HPA to include all breeds and disciplines would allow the USDA to work cooperatively with the equestrian organizations, such as the USEF and AQHA, to enforce the HPA and improve competition horse welfare across equine disciplines. An HPA amendment establishing that competing or selling *any* horse in violation of *any* federal law, including prohibitions on animal cruelty, constituted an HPA violation should adequately enlarge the Act's scope. Expanding coverage to any horse in competition or at a sale effectively increases non-gait breed protection, while including violations of any federal law successfully incorporates abusive behavior and training techniques that violate the Animal Welfare Act.<sup>169</sup> Furthermore, the amendment would implicitly reflect the horse show industry's recognition that abuse is prevalent in other equestrian disciplines beyond the Tennessee Walking Horse.<sup>170</sup> Finally, amending HPA § 1824 to prohibit the sale, auction, or exhibition of any horse suspected to have been abused or displaying indices of abuse in violation of state or federal anti-cruelty laws would further the HPA's enlarged scope, affording greater protection.<sup>171</sup>

For any HPA expansion to effectuate real change, however, Congress must give officials the requisite enforcement authority. Currently, under § 1826, the Attorney General must be informed of any willful violation of the Act.<sup>172</sup> Consequently, this language should automatically afford the Attorney General the authority to prosecute new HPA violations and ensure compliance with new standards created under the expanded the statutory scheme. Similarly, prior to Attorney General action, the Secretary of Agriculture is already authorized to "utilize, to the maximum extent possible, the existing personnel and facilities of the Department of Agriculture."<sup>173</sup> Furthermore, the Secretary is also permitted to provide technical and nonfinancial assistance "to any State to assist it in administering and enforcing any law of such State designed to prohibit

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<sup>169</sup> 7 U.S.C.A. § 2131(1) (West 1976) (explaining that the Animal Welfare Act is designed "to insure that animals intended . . . for exhibition purposes . . . are provided humane care and treatment").

<sup>170</sup> See *supra* notes 32-36 and accompanying text (discussing the abusive practices in other equestrian disciplines).

<sup>171</sup> 15 U.S.C.A. § 1824 (West 1976).

<sup>172</sup> 15 U.S.C.A. § 1826 (West 1970).

<sup>173</sup> *Id.* § 1827.

conduct described in § 1824.”<sup>174</sup> The Secretary can, therefore, expansively utilize federal Department of Agriculture resources to implement and enforce newly covered equine activities, as well as provide states with assistance to enforce similar state law.

Expanding the Act to include violations of any federal law would provide prosecutors with exponentially more potential charges, increasing prosecutorial power, thereby enabling and encouraging criminal prosecution of individuals in violation of the HPA. Prosecution of more individuals, such as Larry Wheelon in Tennessee<sup>175</sup> and Shirley Roth in Texas,<sup>176</sup> should effectively deter those utilizing the most atrociously abusive training, but will likely be insufficient to alter less egregious violators’ behavior. Deterrence of lower level violators could, however, be achieved if local law enforcement and prosecutors took a more active role in responding to allegations of equine abuse.

While the recent prohibitive actions taken by the USEF and AQHA targeting abusive practices are encouraging, they lack the harsh penalties necessary to make the industry abundantly aware equine abuse is unacceptable. Amending the HPA to include mandatory imprisonment and a minimum substantial fine per equine abuse violation for criminal convictions, as well as increasing minimum civil penalties from the current \$2,000 ceiling to a \$5,000 to \$10,000 range per equine abuse violation, should provide harsh enough consequences to get the attention of violators.<sup>177</sup> At the very least, abusing show horses should be a misdemeanor punishable by up to 364 days in prison and a minimum fine of \$3,000 per count.<sup>178</sup>

## V. CONCLUSION

Show horse abuse is a very serious and widespread problem impacting equine competitions’ integrity and threatening the horses’ well-being at near epidemic proportions. While HPA’s current scope provides many useful tools for, primarily regulating the Tennessee Walking Horse, it affords other breeds virtually no protection, is inadequately enforced, and

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<sup>174</sup> *Id.* Section 1824 would need to be amended to prohibit the sale or exhibition of any horse believed to have been abused in violation of state or federal anti-cruelty laws. *See* 15 U.S.C.A. § 1829 (West 1970) (discussing preemption under the HPA – only state law in direct conflict with the HPA are preempted).

<sup>175</sup> Pat Raia, *Tennessee Horse Trainer Charged in Soring Case*, HORSE (Apr. 26, 2013), <http://www.thehorse.com/articles/31767/tennessee-horse-trainer-charged-in-soring-case>.

<sup>176</sup> *See Shirley Roth Case Back to Prosecutor*, *supra* note 27.

<sup>177</sup> *See* 15 U.S.C.A. § 1824 (West 1976) (current HPA violations and penalties).

<sup>178</sup> Pub. Act 095-1052, 95th Gen. Assembly (Ill. 2009) (language is partially taken from Illinois Class A misdemeanor sentencing).

does little to penalize people in other areas of the horse show industry who behave just as outrageously.<sup>179</sup>

Moreover, the equestrian industry's perilous show horse abuse situation behooves it to acknowledge the problem and take immediate action on an industry-wide basis, like the USEF and AQHA have. Under reforms in other areas of the law condemning animal cruelty, the techniques employed at some horse shows would be considered cruel. What is really lacking, however, is a mentality within the industry that the techniques are cruel, unacceptable, and they can and should be punished.

To combat these problems, the HPA should be expanded to encompass more federal law violations, other breeds and equestrian disciplines beyond Tennessee Walking Horse, and increased criminal and civil penalties. Still statutory amendments alone cannot effectuate change. To have meaningful impact, any new statutory regime improvements to the enforcement system, spearheaded by Congress and the USDA and calling for more proactive self-regulation and stricter enforcement by the equine industry, must accompany it. Admittedly, truly foundational change requires a paradigm shift within the horse show industry. Greater reach and more severe consequences may, however, facilitate impressive strides toward eradicating these abysmal practices. At the very least, these actions will send a clear signal that this behavior is unacceptable, while hopefully bringing the abuse to forefront of industry discussions.

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<sup>179</sup> See *supra* notes 32-39 and accompanying text (discussing the abusive practices in the rest of the horse show industry, and other equestrian disciplines).



