2-3-2021

Saving Seabiscuit: An Argument for the Establishment of A Federal Equine Sports Commission

Celso Lucas Leite, Jr.

Follow this and additional works at: https://digitalcommons.law.villanova.edu/mslj

Part of the Animal Law Commons, Entertainment, Arts, and Sports Law Commons, Gaming Law Commons, Legislation Commons, and the State and Local Government Law Commons

Recommended Citation

Available at: https://digitalcommons.law.villanova.edu/mslj/vol28/iss1/4

This Comment is brought to you for free and open access by the Journals at Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Jeffrey S. Moorad Sports Law Journal by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.
SAVING SEABISCUIT: AN ARGUMENT FOR THE ESTABLISHMENT OF A FEDERAL EQUINE SPORTS COMMISSION

I. DEATH ON THE TRACK

In January 2020, three horses died in three days at the Santa Anita racetrack in Arcadia, California. Racing officials euthanized the horses following the accidents at the track, prompting fierce criticism from animal rights groups. These incidents added to a death toll of five horses in January 2020 and followed a cascade of fifty-six deaths that had occurred at the track since July 2018. Horse deaths in equine sports are not uncommon in the United States, but the recent spike in race horse deaths have raised the ire of animal rights groups, who are now calling for horse racing to be banned. Deaths in horse racing, however, are not the only threat to the equine sports community in the United States.

Equine sports have a significant cultural problem with cheating. Unethical jockeys and horse trainers engage in conspiracies to fix races and use illegal shocking devices to stimulate horses to

---


2. See Dan Ross, Protestors Vocal at Santa Anita After Third Horse Death in Three Days, THOROUGHBRED DAILY NEWS (Jan. 20, 2020), https://www.thoroughbrednews.com/protestors-vocal-at-santa-anita-after-third-horse-death-in-three-days/ [https://perma.cc/6dF5-WTXZ] (quoting PETA spokeswoman Brooke Rossi stating, “Three dead horses in three days requires immediate action . . . . If it takes the closure of a track to stop the deaths, then close the track”). For further discussion of how two horses broke their ankles during races and one horse suffered a collision with another horse, see Vigor, supra note 1.

3. See Vigor, supra note 1 (discussing how Santa Anita had been working with the California Horse Racing Board to prevent further horse deaths).


5. See id. (reporting serious threat to equine community from drugs administered to racehorses).

run faster. Horses in the United States are subject to a dizzying cocktail of medicines and treatments to mask their pain, allowing them to compete even while injured. These minor injuries, when stressed, can lead to catastrophic injuries that lead the horse to be euthanized. Moreover, unethical trainers in equestrian show sports, like dressage and eventing, utilize the cruel practice of soring (applying pain to a horse’s legs) to force their horses to develop a high-stepping gait that is highly prized by show judges.

The current patchwork of state and federal regulatory oversight is ineffective to tackle the cheating, drug, and soring problems in the equine sports community. State agencies do not have the financial bandwidth to address the national risk to the equine sports community. Piccemeal legislation from Congress has likewise been ineffective. The proposed Horse Racing Integrity Act is a step in the right direction, but is too narrow in scope. The proposed act deals only with drug abuse in horse racing but does not specifically address other forms of cheating or animal abuse, or other non-racing equine sports. Congress needs to comprehensively reform the equine sports community.

In order to effectuate reform, Congress should establish a federal Equine Sports Commission. The Commission should be empowered to establish national standards on cheating prevention and thoroughly investigate allegations of cheating. Likewise, the

7. For further discussion of horse race fixing and the use of illegal shocking tools, see infra notes 125-151 and accompanying text.

8. For further discussion of drug abuse in equine sports, see infra notes 153-198 and accompanying text.

9. For further discussion of how certain drugs can lead to catastrophic injuries in performance horses, see infra notes 182-198 and accompanying text.

10. For further discussion of the cruel practice of horse soring, see infra notes 223-236 and accompanying text.

11. See Caroll, supra note 4 (reporting protests related to current ineffective method of equine regulations across the United States).

12. For further discussion of state regulation of equine sports, see infra notes 54-120 and accompanying text.

13. For further discussion of federal equine sport legislation, see infra notes 204-222, 257-260 and accompanying text.

14. For further discussion of the proposed Horseracing Integrity Act, see infra notes 206-218 and accompanying text.

15. For further discussion of the scope of the proposed Horseracing Integrity Act, see infra notes 206-218 and accompanying text.

16. For further discussion of why Congress needs to comprehensively reform the equine sports community, see infra notes 258-273 and accompanying text.

17. For further discussion of the establishment of a federal Equine Sports Commission, see infra notes 258-273 and accompanying text.

18. For further discussion of how a federal Equine Sports Commission could tackle the issues of cheating, see infra notes 261-270 and accompanying text.
Commission should establish national standards for the administration of medicines that pose significant risks to equine health if used improperly. Further, rather than relying on designated qualified persons to monitor horse soring, the Commission should employ an adequate number of inspectors to deter the practice of soring. These reforms are imperative in an industry that operates in multiple states and has a significant impact on the national economy.

II. BACKGROUND: HISTORY OF THE EQUINE SPORTS COMMUNITY IN AMERICA

The equine sports community has deep roots in the United States and a sizeable impact on the U.S. economy. The breeding, housing, selling, and competition of horses directly adds over $50 billion per year to the U.S. gross domestic product (GDP). The equine industry employs nearly 1 million Americans, who take home almost $38 billion per year in wages and benefits. However, if the indirect impacts of the equine industry (such as the production of additional foodstuffs to feed horses) are taken into account, more than 1.5 million individuals contribute $122 billion to U.S. economic growth. While horseracing may better capture the American public’s imagination through classic underdog stories like that of Seabiscuit or glamorous events like the Kentucky Derby, horse shows are a significant aspect of horse sports in the United States. Unfortunately, however, both horse racing and

---

19. For further discussion of a federal Equine Sports Commission and drug regulation, see infra notes 271-273 and accompanying text.
20. For further discussion of how a federal Equine Sports Commission could prevent soring, see infra note 271-272 and accompanying text.
21. See U.S. CONST. art. I, § 8 (granting Congress power to regulate interstate commerce). For further discussion of the economic impact and interstate nature of the equine sports community, see infra notes 22-27 and 55-119.
22. See generally Economic Impact of the United States Horse Industry, AMERICAN HORSE COUNCIL, https://www.horsecouncil.org/resources/economics/ [https://perma.cc/DK8D-6CAA] (last visited Jan. 5, 2020) (discussing significant economic impact of U.S. equine industry on general economy; further estimating U.S. horse population of 7.2 million; additionally noting more than 3 million horses used for recreation, more than 1.2 million for competitive showing, more than 1.2 million for racing, and over half million working horses).
23. See id. (noting direct impact of U.S. equine industry to be $50 billion each year).
24. See id. (detailing equine industry “has a direct employment impact of 988,394 jobs”).
25. See id. (explaining combined direct and indirect contribution of equine industry includes 1.7 million jobs and $122 billion in contribution to U.S. economic growth).
competitive horse showing suffer from issues of cheating and animal abuse.\textsuperscript{27}

A. Horseracing

English sportsmen developed modern Thoroughbred racing under the patronage of the British Crown in the 18th Century.\textsuperscript{28} When British colonists settled in North America, they brought the “Sport of Kings” with them.\textsuperscript{29} Like the British Crown, American colonists were so enamored with the sport that colonial governments supported the construction of horse racing tracks, and local landmarks were named for their connection to the sport.\textsuperscript{30} Gambling, which has been associated with horseracing since the sport’s beginning, soon incentivized some individuals to cheat for profit.\textsuperscript{31} Like the modern horseracing industry, American colonists turned to private regulation by horseracing associations when faced with cheating concerns.\textsuperscript{32}

Due in large part to its association with gambling, cheating, and immoral behavior, state governments attempted to regulate and, in some cases, banned horse racing periodically over the next

\textsuperscript{27} For further discussion of problems associated with both branches of the equine sports community, see infra notes 121-198, 223-236 and accompanying text.\textsuperscript{R}

\textsuperscript{28} See Joan S. Howland, \textit{Let’s Not “Spit the Bit” in Defense of “The Law of the Horse”: The Historical and Legal Development of American Thoroughbred Racing}, 14 MARQ. SPORTS L. REV. 473, 480-82 (2004) (explaining Queen Anne generously sponsored horse races and breeding efforts; further, in 18th Century, ancestors of modern Thoroughbred racing were brought together in England).\textsuperscript{R}

\textsuperscript{29} See id. (noting horse racing so enamored British Kings and nobles that horse racing was prominently mentioned in medieval British literature, royal household accounts, and British Kings regularly raced or experimented with breeding better racehorses leading to sport’s name).\textsuperscript{R}

\textsuperscript{30} See id. at 483-84 (noting horse racing was so popular among colonists that Governors established horse racing tracks; further noting Race Street in Philadelphia was named after horse racing).\textsuperscript{R}

\textsuperscript{31} See id. at 478, 485, 491 (explaining criminal case where two individuals conspired to fix horse race in colonial Virginia and were sentenced to stocks; further noting early 19th Century case where jockey hit another jockey’s horse in head in middle of race).\textsuperscript{R}

\textsuperscript{32} See id. at 486 (“Desiring to avoid oversight by the Crown, horsemen took matters into their own hands” and organized jockey clubs to organize and certify races, and also to bar certain individuals from participating in races).\textsuperscript{R}
200 years. Consequently, horseracing in the United States did not enter its modern, accepted form until the Great Depression, when many states began to legalize pari-mutuel betting. This was the era of Seabiscuit, an unlikely success whose victory over the odds inspired millions of Americans who had been knocked down by the financial ruin of the 1930s. First introduced to the New York races in 1935, Seabiscuit was an unsuccessful competitor and failed to place in eighteen races. In 1936, when he finally won a race, his owners did not even bother to claim him. However, after a new trainer took him on in California, Seabiscuit won thirty-three races, beat the reigning champion War Admiral, and won a stunning record prize of $437,730. His success enshrined a love of horseracing in the general public that continues today.

B. Competitive Horse Shows

While horse racing has captured the imagination of the American public, nearly one in six American horses compete in horse show sports. Much like horse racing, these sports have an ancient

33. See id. at 494-99 (detailing attempts by many states to ban horse racing or exclude it from certain municipalities because of its association with immoral behaviors and gambling).

34. See id. at 498-99 (noting many states legalized pari-mutuel betting, form of betting where winning bettors share pooled wagers, in 1930’s; further, “[i]n an effort to escape the vicissitudes and uncertainty of the Great Depression, Americans found distraction in the glamour and excitement of the racing track”).


36. See id. (stating Seabiscuit won only one out of thirty-five starts and failed to place in eighteen races).

37. See id. (“Seabiscuit’s owners had given up and entered him in a claiming race for $6,000. He won the event only to suffer the indignity of not being claimed by anyone.”).

38. See id. (explaining race between Seabiscuit and War Admiral was called “[the] race of the century” and it was assumed War Admiral would easily outrun Seabiscuit).


The history of horse shows has a militant element, as the Medieval evolution of the sport, jousting, was meant to test a knight’s ability to precisely control a horse in simulated combat. This ability to manipulate the horse’s actions through a series of challenges is what characterizes the modern show sports of dressage and jumping.

Dressage is the sport of directing a horse to conduct precise movements in response to physical orders from a rider that should be barely perceptible. Judges score an equestrian and horse on the animal’s pace and composure while performing “walks, trots, canters, and more specialized maneuvers.” Many dressage rules can be traced back to the rules established by the Imperial Spanish Riding School in Vienna over 425 years ago. Dressage competitions are governed by the United States Dressage Federation, and it became an Olympic sport in 1912. However, true to its military heritage, only military officers were allowed to compete until 1953.
Jumping is the most recognizable equine sport after Thoroughbred horse racing. The discipline is the “pole vaulting, or high jump and hurdles” of equestrian sport. Even though jumping became an Olympic sport in 1900, it was not regularly featured on the program until 1912. In jumping, the rider must navigate obstacles of different heights and widths, and the judges will examine the horses’ agility and willingness to overcome the obstacle with confidence. Similar to dressage, the rider is awarded more points if they can direct the horse with a minimal amount of command movements.

III. STATE ENFORCEMENT: SMALL BUDGET, SMALL WORK FORCE, BIG PROBLEMS

State legislatures should be the first line of defense against cheating, drug abuse, and cruelty to horses. In states with the largest equine sport communities, such as Kentucky, Texas, and California, state legislatures have established executive commissions to regulate equestrian activities. Unfortunately, these commissions are understaffed and underfunded, which forces state law enforcement to rely on self-policing by industry participants. This problem also exists in states with smaller equine sport communities such as Pennsylvania, Florida, and Illinois. The result across


50. See id. (noting “[e]ssentially, what pole vaulting, high jump and hurdles are to track and field, Jumping is to equestrian sport”).


52. See Jumping, supra, note 48 (explaining details of judging at jumping competitions).

53. See id. (discussing judging requirements of modern jumping).

54. See U.S. Const. amend. X (stating “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people” and thus indicating state governments are endowed with necessary police power to regulate harmful activities).

55. For further discussion of state sport commissions, see infra notes 70-120 and accompanying text.

56. For further discussion of staffing and funding issues at state sport commissions, see infra notes 72-115 and accompanying text.

57. For a further discussion of equine sport regulation in small states, see infra notes 109-120 and accompanying text.
the national equine sports community is cheating and unnecessary suffering among horses.58

A. Enforcement of Equine Sport Law in Kentucky

The Commonwealth of Kentucky is the center of equestrian sport in the United States.59 According to recent surveys, the equine sports industry employs more than 40,000 Kentucky residents and provides over $130 million in tax revenue to the state government each year.60 The total value of Kentucky’s equine sports industry is approximately $3 billion, and the state proudly considers itself the “Horse Capitol of the World.”61 Despite this self-proclaimed nomenclature, according to the United States Department of Agriculture (“USDA”), the state has the second highest incidence of illegal horse soring in the United States.62 The state’s soring laws are hardly a model for other states, as the maximum fine for soring is $100 and has not been updated in decades.63

Kentucky is also home of the world-famous Thoroughbred race known as the Kentucky Derby.64 The race is hosted every year at
Churchill Downs, which is the second deadliest race track for horses in the United States. Horse deaths at Kentucky race tracks have become such a problem in recent years that activist groups pressured the state government to release more exact statistics on the nature of the deaths, but they have been met with significant resistance. Kentucky also hosts the world-renowned Breeder’s Cup at Keeneland each year, drawing tens of thousands of spectators and over $150 million in wagers. Further, Kentucky hosts the prestigious Kentucky Three-Day Event. Sponsored by a rotating group of luxury brands, the Kentucky Three-Day Event is an equestrian sport meet that combines different non-racing equestrian sports and further adds to Kentucky’s claim to be the “Horse Capitol of the World.”

The Kentucky Horse Racing Commission (KHRC), which has a small enforcement team and budget relative to its preeminent position in the equine sports community, is responsible for regulating the equine sports industry in Kentucky. To enforce equine regulating some 150,000 spectators to Churchill Downs” on the first Saturday of May).

65. See Tim Sullivan, Churchill Downs is one of the Deadliest Racetracks in America, LOUISVILLE COURIER J. (Mar. 28, 2019), https://www.courier-journal.com/story/sports/horses/horse-racing/2019/03/27/churchill-downs-horse-fatalities/3284846002/ [https://perma.cc/44RG-6E3C] (reporting Churchill Downs is second deadliest racetrack in America, with fatality rate fifty percent higher than national average; further reporting horse deaths-per-race have continued to increase each year).


67. See Keeneland, Breeder’s Cup 2020, KEENELAND RACETRACK, https://www.keeneland.com/racing/breeders-cup-2020 [https://perma.cc/D3BG-94ZG] (last visited May 14, 2020) (noting $150 million were wagered at 2015 Breeders Cup at Keeneland while over fifty thousand spectators were in attendance).


70. See KHRC ANN. REP. at 24 (2014) (explaining KHRC was appropriated approximately $2.6 million in 2014, while expenditures of commission were approximately $3.4 million in 2014; further noting KHRC made approximately 1.4 million in licensing fees in 2014); see also Office and Field Staff, Ky. HORSE RACING
lations in the “Horse Capitol of the World,” the KHRC maintains a staff of three state-employed investigators and ten state-employed veterinarians.71 The budget for the entire KHRC is only $3.4 million per year.72 KHRC veterinarians are supposed to be present in the paddock, starting gate, horse ambulances, and test barn during Thoroughbred races.73 However, for Standardbred racing, the veterinarians can be present “trackside” or via live video feed.74 These ten state-employed veterinarians and licensed lab technicians are also responsible for horse doping detection.75

In addition, the KHRC enforcement division performs breathalyzer alcohol testing, drug screening of jockeys, and various other racing officials on a random basis.76 Enforcement officials, when not relying on random chance to catch drug abuse in equestrian sports, perform drug testing at the orders of “stewards.”77 However, stewards are not state employees; rather, they are members of the equine industry that have been deputized by the KHRC to engage in self-policing.78 The stewards have “authority over all horses and all persons, licensed or unlicensed, on association grounds during each race meeting as to all matters relating to racing.”79 Stewards can conduct hearings, order investigations, and

71. See Office and Field Staff, KY. HORSE RACING COMMISSION WEBSITE, http://khrc.ky.gov/staff.aspx [https://perma.cc/2PYN-ECGP] (last visited Jan. 5, 2020) (indicating only three investigators are employed by Enforcement Division).


73. See id. at 25 (noting KHRC veterinarians are supposed to check health of every horse prior to race, may recommend to stewards that unsound horses be removed from race; further noting all horses that die on racetracks must be examined by Veterinary Diagnostic Lab at University of Kentucky).

74. See id. (reporting “[f]or Standardbred racing, the KHRC veterinarian attends the test barn and either observes races via live racetrack video feed or is present trackside for each race”).

75. See id. (stating KHRC veterinarians and technicians are responsible for horse doping analysis; further explaining KHRC technicians are responsible for collecting horse urine after races for testing analysis).

76. See id. at 29 (indicating enforcement division follows adequate police procedures when collecting drug samples, with emphasis on chain of custody reporting; further reporting enforcement division responsibility for managing complaints received through state integrity hotline).

77. See id. (explaining enforcement division will coordinate with state and local law enforcement on certain investigations, especially those related to assault, burglary, theft, forgery, other state crimes that occur on race tracks).

78. See id. at 30 (stating “[t]he chief state steward, associate steward and the presiding and associate judge are employees of the KHRC; [t]he other steward and judges are employees of each racing association”).

79. See id. at 29 (explaining stewards are primary regulators of horse races in Kentucky and act on behalf of KHRC).
settle complaints. While this steward system places a low administrative burden on the state government, there is little success in maintaining the safety of horses.

B. Enforcement of Equine Sport Law in Texas

Equine sports have a special place in the culture of Texas. In particular, Texans have a long and storied history of racing horses and gambling on horse races. Horse racing existed in Texas long before Spanish conquistadors settled the area, and after Spanish settlement and eventual independence, Texans and Spanish settlers were willing to risk breaking the law to race horses and gamble. This heritage is reflected in the fact that Texas maintains the largest population of horses in the United States. The equine industry in Texas contributes almost $6 billion to the state economy, and 52,000 Texans find full-time employment working with horses.

The regulation of equine sports in Texas is the responsibility of the Texas Racing Commission (TRC), which, like its Kentucky counterpart, is small and relies significantly on industry self-policing policies, see infra notes 243-255.

80. See id. (indicating rulings of stewards outweigh rulings of all other members of racing associations and track employees).

81. For further discussion of the lethal consequences of Kentucky’s self-policing policies, see infra notes 243-255.


83. See McLeod, supra note 82 (“Texas was the land of big spenders and horse crazy cowboys, and Texans proudly lived up to that label.”); see also id. (“[T]he evolution of horse racing ... in Texas was characterized by ‘a story rich in drama, romance, humor.’”).

84. See id. at 310 (explaining horse racing in Texas can likely be traced to horsemanship of Comanche natives which later developed into practice among Spanish settlers who would brave penalty of twenty-five lashes for racing horses on religious holidays).


This is reflective not only of the general horse sport practice of self-policing, but also of the historically laissez-faire attitude of the Texas state government toward gambling regulation. The size of the TRC is statutorily limited to forty-six full-time equivalent positions, and the TRC came in under budget in both 2017 and 2018, with only forty-three and thirty-six full-time equivalent positions, respectively. These employees are responsible for ensuring the integrity of horse sports and the health of horses, as well as the integrity and safety of Texas greyhound races. While it is unknown exactly how many investigators the TRC employs, investigators regularly cooperate with other agencies in the Texas Department of Safety to stem a growing drug cartel problem within horse racing.

It is unclear how many veterinarians the TRC employs, but two state veterinarians are supposed to be present at each race. When the state veterinarians are at a racetrack, they examine up to 100 animals in a day. Typically, the state veterinarians will randomly test one horse per race. Lastly, like the KHRC, the TRC relies heavily on a steward system where non-state employees who are

87. See TRC ANN. REP. at 5 (2018) (noting state legislature, through the Texas Racing Act, “created the Texas Racing Commission . . . to be the state agency responsible for overseeing and regulating pari-mutuel horse and greyhound racing in Texas.”).
88. See McLeod, supra note 82, at 310 (“Betting at the tracks was conducted on ‘Texas principles of honesty’ until 1905, when the legislature first sanctioned gambling at race tracks.”).
89. See TRC ANN. REP. at 9 (2018) (reporting Texas General Appropriations Act only authorized TRC to have approximately forty-six full-time equivalent positions in both 2018 and 2019; further noting many TRC employees reside outside of state capital and are seasonal employees only working during racing season).
90. See id. at 7 (explaining part of TRC mission statement to regulate and provide economic incentives to greyhound and horse racing so as to encourage breeding of those animals in Texas).
91. See id. at 11-12 (noting individuals associated with drug cartels have been prosecuted for attempting to launder money through betting at horse races and acquiring ownership interest in Texas racetracks).
92. See id. at 12 (indicating two veterinarians are usually present at each racetrack during race day).
93. See id. (explaining on average, veterinarians examine 70-100 horses per race day, which totaled 11,046 examined horses in 2018; further noting state veterinarians are also responsible for examining eighty dogs per race day, which totaled 2,838 examined greyhounds in 2018).
94. See id. at 13 (indicating drug testing rates have remained steady over last three years, with approximately three percent of horses testing positive for drugs in 2016 and 2017, and 2.2% of horses testing positive for illegal drugs in 2018).
members of racing associations are allowed to police other participants at race tracks.95

C. Enforcement of Equine Sport Law in California

While California may have a smaller population of horses than Texas, California is second only to Kentucky in terms of horse racing culture.96 It is home to the Santa Anita Racetrack, where Seabiscuit won his first races in the Santa Anita Handicap and captured America’s imagination during the Depression.97 The Santa Anita Racetrack, known as the “Great Place,” has a deep connection to the Classical Hollywood era and its actors.98 Despite its romantic history, Santa Anita and other California racetracks have suffered a consistent spate of horse deaths in the last year, as more than two dozen horses died in the first six months of 2019.99 The deaths caused animal rights activists to push for greater regulation of horse racing in California, and some track owners are wondering whether Thoroughbred racing, a sport that contributes thousands of jobs and billions of dollars to the economy, might be banned in California.100

95. See id. at 9, 12-13 (noting TRC workforce includes non-state employee stewards; further indicating veterinarians must report unidentified animals to stewards; further noting veterinarians must report ill horses to stewards).

96. See Economic Impact of the United State Horse Industry, supra note 22 (noting Texas has largest population of horses in America, while California has second largest population of horses in America, approximately 534,500 horses). For further discussion of California’s significant contribution to horse racing culture, see infra note 97 and accompanying text.

97. For further discussion of Seabiscuit and his impact on American culture, see supra notes 35-39 and accompanying text.


100. See id. (noting animal rights activists have pledged “Californians will end horse racing at the ballot box,” while industry leaders are “scared to death” of possibility of Thoroughbred racing being banned in California, comparing possibility of racing band to “[the] Sword of Damocles” and further noting horse racing...
The State of California regulates equine sports through the California Horse Racing Board.¹⁰¹ California has more racing investigators and a larger budget for equine enforcement than both Texas and Kentucky.¹⁰² The state also has made significant progress in making horse betting more transparent.¹⁰³ Further, to tackle horse doping, state-employed veterinarians collect blood and urine samples from any horse that wins a race and from horses that finish second, third, and fourth in a race.¹⁰⁴ In order to keep up with unethical partners, the Board has entered into partnerships with public universities and national organizations.¹⁰⁵ However, like other states, California still relies on industry self-policing through the use of stewards.¹⁰⁶ The stewards, who are responsible for policing all activity off the race track, have failed to deter specific instances of blatant horse drugging that have been captured by surveillance footage.¹⁰⁷ More concerning, the system has failed to prevent the deaths of thirty horses at Santa Anita.¹⁰⁸

¹⁰¹. See CHRB ANN. REP. at 8 (2018) (explaining California Horse Racing Board was established in 1933 when horse betting was legalized through amendment to state constitution).


¹⁰³. See CHRB ANN. REP. at 20 (explaining "California is the only state with a statewide pari-mutuel database" to collect wagering data for use by racetracks and state regulators).

¹⁰⁴. See id. at 21 (stating state laboratory tests all horses placing in race and compares samples to more than 1,800 known drugs; further noting all samples are kept should retrospective analysis become necessary).

¹⁰⁵. See id. (explaining state laboratory has partnered with professors from U.C. Davis and Racing Medication and Testing Consortium to research next-generation performance enhancing drugs).

¹⁰⁶. See id. at 19 (indicating California contracts with racing officials to act as stewards who are delegated authority to enforce laws related to equine safety on racetracks; further including conducting administrative hearings and conducting investigations into improper behavior).

¹⁰⁷. See Drape & Knoll, supra note 98 ("California regulators were watching a live surveillance feed of a trainer’s assistant carrying a bucket into the stall of a horse named Tick Tock. Moments after the assistant left, a white foam was visible on the horse’s lips, often a telltale sign of performance-enhancing drugs. Investigators later found syringes in the bucket, along with a fatigue-fighting agent known in racing parlance as a milkshake, according to hearing transcripts from the state’s Horse Racing Board.").

¹⁰⁸. See id. (reporting failure of California regulators to prevent rapid death of thirty horses at Santa Anita in 2019).
D. Enforcement of Equine Sports Law in Other States

The pattern of small budgets and reliance on industry self-policing also exists outside of the largest states involved in equine sports.109 Horseracing in Pennsylvania is regulated by the Pennsylvania State Horse Racing Commission (PSHRC).110 The PSHRC maintains a total of forty salaried employees and 180 wage employees who were involved in 1,632 rulings that resulted in fines worth $274,325 in 2016.111 However, Pennsylvania is suffering a decline in horseracing attendance and related activities.112

Some states, like Florida, do not have state commissions or boards dedicated to equine sports.113 Equine sport regulation in Florida falls under the gambling division of the state’s Department of Business and Professional Regulation.114 Practically speaking, horse-related law enforcement in Florida is the responsibility of three state stewards and any associate stewards that racetracks may employ.115

The existence of a state commission, however, is no guarantee of positive outcomes in animal welfare.116 For example, the Illinois Racing Board relies on “association stewards” to assist state stewards

109. For a further discussion of equine sports law in other states, see infra notes 113-120 and accompanying text.
110. See PSHRC ANN. REP. at 3 (2016) (explaining State Horse Racing Commission was created in 2016 to unify previously separate commissions for Standardbreds and Thoroughbreds).
111. See id. at 5 (stating 1,051 rulings related to Thoroughbreds issued in 2016 among four locations and 581 rulings related to Standardbreds issued in 2016 among four locations).
112. See id. at 3 (explaining 2016 saw continued three-year decline in race attendance in Pennsylvania).
115. See Paulick, supra note 113 (“Florida does not have a traditional racing commission – only a bureaucracy at the state capitol in Tallahassee – and the sport is regulated by a hybrid of state and house rules. The state conducts post-race testing and employs one of the three stewards who oversee races for the purposes of adjudicating inquiries and objections.”).
116. For further discussion of horse welfare problems in Illinois, see infra note 117-120 and accompanying text.
in enforcing equine sport regulations.\textsuperscript{117} State-employed veterinarians carry out medical inspections, including race-day administration of drugs that may have performance-enhancing benefits.\textsuperscript{118} In certain cases, Illinois employs security personnel to conduct drug tests.\textsuperscript{119} Unfortunately, the current system does not seem to work very well for the horses as the Hawthorne Race Course in Illinois is the deadliest racetrack in America.\textsuperscript{120}

IV. HORSE RACING: A CULTURE OF CHEATING

Cheating is a fundamental aspect of horseracing culture.\textsuperscript{121} This cheating culture is systemic throughout the history of the sport and stretches back to the Colonial era of American history.\textsuperscript{122} Specifically, of all the sports that Americans enjoy, horse racing has the second highest perceived occurrence of cheating.\textsuperscript{123} Cheating can take many forms, but it most commonly involves race fixing by jockeys, use of electric shock machines, and a variety of legal and illegal drugs.\textsuperscript{124}

\begin{itemize}
\item 118. See id. (explaining state veterinarians monitor race-day use of legal drug, furosemide, which may have performance enhancing capabilities).
\item 119. See id. (“IRB security personnel conduct investigations to determine the fitness of applicants for licensing, perform drug and alcohol testing on licensees pursuant to the administrative rules, collaborate with racetrack security, work with other racing jurisdictions to monitor licensee activity, and conduct investigations into alleged violations of the Act and administrative rules.”).
\item 120. See Sullivan, supra note 65 (reporting Hawthorne Race Course had highest fatality rate among American racetracks in 2018).
\item 122. See Howland, supra note 29, at 485 (describing case in 1670 where laborer was convicted of fixing for his horse to give way to another horse during race, and sentenced to be put in stocks); see also id. at 491 (reporting case in 1839 in California where one jockey hit another horse over its head during race in attempt to win).
\item 124. For further discussion of the various forms of cheating in the equine sports community, see infra notes 125-198 and accompanying text.
\end{itemize}
A. Fixing Races

It is difficult for cheating to occur without the involvement of jockeys, and jockeys most commonly cheat by fixing races.\textsuperscript{125} Even without access to drugs or electrical stimulants, a jockey can easily fix a race.\textsuperscript{126} All the jockey must do is hold back on the reins and slow the horse down enough to allow other horses to pass.\textsuperscript{127}

One of the most prominent instances of race fixing is the 1974 New York Trifecta racing scandal, where three jockeys conspired to fix a race at the behest of Boston mobster Anthony Ciulla.\textsuperscript{128} The scandal broke when Ciulla became a state witness and exposed the conspiracy.\textsuperscript{129} Unfortunately, one of the jockeys involved was soon discovered dead.\textsuperscript{130} Race fixing by jockeys is not rare and criminal involvement is not a thing of the past; it occurs with remarkable regularity.\textsuperscript{131} For instance, in 2010, members of a Mexican drug cartel were arrested for conspiring to fix quarter horse races in Texas and New Mexico.\textsuperscript{132} The cartels’ interest in American horse racing became so large that the drug gangs were investing over $1 million per month in race horses.\textsuperscript{133} More recently, three Louisiana jockeys were arrested for holding back their horses after mak-

\textsuperscript{125.} See generally Swenson, supra note 6 (describing history of race fixing in United States from early 1960 to present day).

\textsuperscript{126.} For further discussion of cases of jockey cheating, see supra notes 127-138 and accompanying text.

\textsuperscript{127.} See Swenson, supra note 6 (noting enough training can make it easy to spot when jockey is holding back horse, and suspicion can be confirmed if there are “exotic” bets with high payouts placed on horses during race).

\textsuperscript{128.} See id. (reporting Anthony “Fat Tony” Ciulla was Boston mobster who had already been arrested for fixing races in New Jersey).

\textsuperscript{129.} See id. (explaining Ciulla was arrested for fixing races in Massachusetts and Rhode Island and he agreed to expose hundreds of fixed race conspiracies in United States).

\textsuperscript{130.} See id. (“Michael Hole, on the other hand, was found dead of asphyxiation on April 22, 1976. His body was discovered in the front seat of his parked car, its tailpipe blocked. The death was officially ruled a suicide, but given his involvement in exposing fixed races, it doesn’t take an overactive imagination to believe foul play might have been involved.”).

\textsuperscript{131.} For further discussion of present-day race fixing, see infra notes 132-138 and accompanying text.

\textsuperscript{132.} See Swenson, supra note 6 (noting instance where member of Mexican drug cartel bribed starting assistants to give bad breaks to competing quarter horses, resulting in payout of $1 million for single race).

ing a single bet of $60,000. Louisiana state police arrested the jockeys after receiving a tip-off about the bet.

A lot of race fixing goes unreported. Unless law enforcement places someone at a racetrack to monitor bets and closely watch jockeys during races, preventative enforcement of race fixing is all but impossible. Unfortunately, due to a lack of cost effectiveness, state racing commissions are unlikely to spend the time and money to prevent bettors from “literally [being] robbed” by implementing this sort of monitoring plan.

B. Illegal Shocking Machines

A particularly cruel form of cheating by jockeys is the user of shock “machines” by jockeys. The machines, also known as “buzzers,” are usually flesh-colored and about the size of a roll of dimes, with two prongs that stick out at the end. Jockeys use the buzzer towards the end of races to surprise horses and force them to run faster. Typically, they use the machine on mature horses who no longer respond to the jockey’s whip during races. Unfortunately, the use of buzzers can have long-term negative effects on

R


_135._ See id. (noting horse trainers and track owners were not involved in conspiracy to defraud bettors).

_136._ See Bowman, *supra* note 121 (explaining horse race fixing typically occurs at smaller events subject to less scrutiny).

_137._ See Swenson, *supra* note 6 (reporting race fixing is easy to spot if authorities monitor abnormal bets and unusual jockey behavior during race).


_140._ See id. (explaining machines are also called “joints, batteries, buzzers” and use of electrical machines referred to by jockeys as “dropping a dime”).

_141._ See id. (“A machine administers a light but highly surprising shock. I used to practice on one of my arms or the heel of my palm so I wouldn’t be shy about handling one when it counted. If I knew it was coming, the shock was only mildly uncomfortable”).

_142._ See id. (explaining younger horses act too unpredictably when subject to electric shocks and may harm their riders if subjected to electric shock during a race).
horses. Eventually, some horses become so used to the buzzers that they will only run in response to electric shock, and some horses become so used to the shock that they don’t run at all.

Buzzers are not difficult to hide, and their use is prevalent. Jockeys can hide the buzzers in saddle towels, the palms of their hands, jock straps, and helmets. In some cases, they can build sophisticated buzzers into a jockey’s whip to make detection more difficult. Despite their easy concealment, some jockeys give away their illegal buzzer use by bragging about it. Recently, animal rights groups uncovered a video of an unethical trainer and a jockey “laughing and exchanging stories about their experiences with electrical devices earlier in their careers.” The trainer in the video, D. Wayne Lukas, won fourteen Triple Crown Races, indicating that buzzer usage is not only limited to small races. At Ruidoso Downs, home of the richest quarter horse race in America, one jockey said that “[the jockeys] used to go behind the gate at


144. See id. (discussing use of electric buzzers causes horse to run from fear of shock rather than thrill of speed during race, indicating it is easy for veterinarians to determine if horse has been subjected to shocks because it may no longer run or only run when subjected to shocks).

145. See Joe Drape, Seamy Side of Sport: Prodding Horses with Shocks, N.Y. TIMES (Mar. 27, 2014), https://www.nytimes.com/2014/03/28/sports/new-light-on-seamy-role-of-buzzers-in-horse-racing.html [https://perma.cc/9EC9-373V] (reporting over 300 instances of electrical buzzer usage in horse racing by jockeys and trainers since 1974; more than fifty-three instances since 2000; suspecting other uses of buzzers have gone unreported); see also Donnally, supra note 139 (admitting to having used buzzers in over fifty races without detection by horse racing authorities).

146. See Donnally, supra note 139 (explaining machines may also be hidden in knots tied into horse’s reins, blinkers, and hiding machine in hand may be difficult when jockey is being photographed).

147. See id. (“I had the opportunity to buy a whip with an electrical device imbedded inside the handle. During the post parade, the rider took two tiny metal cylinders from his mouth and stuck them into the handle where they made contact with the coil generating the shock.”).

148. For further discussion of jockeys revealing their use of electric machines, see infra notes 149-151 and accompanying text.

149. See Drape, supra note 139 (noting prevalent use of electrical devices to cheat in horse races).

150. See id. (explaining jockey ties to horse trainer Steve Asmussen who was previously investigated for electric machine usage and ranks second in victories in Thoroughbred racing by winning over $214.8 million in purses).
Ruidoso [Downs], and it was just like it was a full-blown orchestra—zzz, zzz, zzz. . . . [E]verybody had one."151

C. Drugs in Horseracing

Horse doping is an additional form of cheating that greatly impacts the United States horseracing industry every year.152 Recently, a prominent trainer named Jason Servis was indicted by federal prosecutors for a large horse doping conspiracy.153 Servis was the trainer for Maximum Security, the horse who crossed the finish line first at the 2019 Kentucky Derby but was disqualified for interference.154 The indictment names twenty-seven members of the equine sports community including trainers, veterinarians, and drug distributors.155 Federal prosecutors allege that the conspiracy involved multiple states and that multiple horses have been killed or have disappeared in an attempt to conceal it.156

1. The Long Tradition of Drugs and Cheating

Drug testing is more prevalent today than it was in the past, which makes it easier to catch the use of known illegal drugs; however, unethical trainers continue to explore new illegal drugs to stay ahead of state authorities.157 Further, some trainers can abuse legal drugs like corticosteroids and phenylbutazone to enhance perform-


152. For further discussion of drugs in U.S. horse racing, see infra notes 153-198 and accompanying text.


154. See id. (stating Servis doped many horses he worked with).

155. See id. (reporting conspirators defrauded government regulators by applying fake labels to illegal substances ostensibly administered as part of veterinary program).

156. See id. (stating conspiracy extended to New York, New Jersey, Florida, Ohio, Kentucky).

157. For further discussion of illegal drugs in horse racing, see infra notes 166-174 and accompanying text.
ance by allowing a horse to run while injured. The only solution to the drug problem is a national system of drug regulation.  

Drugs, like cheating by jockeys, are a significant factor in the culture of equine sports and have been for a long time. In the early 19th Century, the open use of morphine and cocaine to improve the performance of racehorses was so commonplace in the United States that Europeans referred to American jockeys as “Yankee alchemists.” The first winner of the American Triple Crown was administered a cocktail of drugs that improved his performance.

2. Cheating with Illegal Drugs

Since the early 19th Century, rules designed to prevent the drugging of horses and testing methods designed to catch unscrupulous jockeys have made it more difficult to cheat successfully by drugging horses. However, most of the cheating that occurs in the equine industry is still accomplished with drugs because the new substances administered to horses are either difficult to detect or fall in a legal twilight zone of performance enhancing drugs with legitimate medicinal properties, such as phenylbutazone. The result is that the administration of performance-enhancing drugs

---

158. For further discussion of legal drugs in horse racing, see infra notes 175-198 and accompanying text.
159. For further discussion regarding the need for national drug regulation, see infra notes 204-222 and accompanying text.
160. For further discussion of how drugs are imbedded in equine racing, see infra notes 161-165 and accompanying text.
161. See Luke Breslin, Reclaiming The Glory In The 'Sport of Kings' – Uniformity Is the Answer, 20 SETON HALL J. SPORTS & ENT. L. 297, 305 (2010) (noting cocaine and morphine in 19th century racing was viewed as medication and American horses that had been administered “medication” enjoyed superior performance against European counterparts, earning American jockeys the moniker “Yankee Alchemists”).
163. See Breslin, supra note 161, at 305 (reporting nineteenth century “medications” were banned in England in 1903 by English Jockey Club, and other European nations began to develop testing methods involving use of frogs to detect the presence of stimulants in horse); see also Crawford, supra note 162, at 167-68 (informing Federal Bureau of Narcotics began to investigate instances of horse drugging between 1930-1940).
damages the perception of the sport for sports bettors and is the leading cause of horse deaths on the racetrack.\textsuperscript{165}

Traditional performance-enhancing substances are now easier to detect during drug tests.\textsuperscript{166} While the first winner of the Triple Crown may have won with drugs, a recent winner was disqualified after positive results of a drug test.\textsuperscript{167} As a result, trainers and jockeys have turned to alternative performance-enhancing substances, such as animal-based poisons, which are used to numb pain.\textsuperscript{168} Some Kentucky horse trainers have utilized cobra venom as a pain reliever; however state officials are aware of its use and have raided barns to prevent its administration.\textsuperscript{169}

More recently, trainers in Colorado have used poison from a South American tree frog to numb the horses’ pain during a race.\textsuperscript{170} Unlike cobra venom, which is a local nerve blocker, tree frog poison includes dermorphin, a general pain killer that is “[forty] times more powerful than morphine.”\textsuperscript{171} The use of “frog juice” was for a time undetectable because labs did not know to

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{165} See Drape & Knoll, supra note 98 (“Experts have long considered drugs a leading cause of horse deaths. Not only do they dull pain and mask injuries, letting at-risk horses run when they should not, but they make horses unnaturally stronger and faster, increasing stress on their limbs.”).
\item \textsuperscript{166} See Breslin, supra note 161, at 306 (explaining Enzyme Linked Sorbet Assay (ELISA) testing can detect trace amounts of prohibited substances and is so sensitive that some jurisdictions have moved away from zero tolerance approaches to drug enforcement).
\item \textsuperscript{168} For further discussion of the use of animal based poisons as performance enhancing drugs, see infra notes 169-174 and accompanying text.
\item \textsuperscript{169} See Marty McGee, Cobra Venom Said to Be In Biancone Barn, ESPN (July 4, 2007), https://www.espn.com/sports/horse/news/story?id=2926083 [https://perma.cc/UH99-T22N] (reporting explaining cobra venom is typically used to block pain signals from being sent to horse’s brain and can be difficult to detect in post-race drug test).
\item \textsuperscript{170} See Walt Bogdanich and Rebecca Ruiz, Turning to Frogs for Illegal Aid in Horse Races, N.Y. TIMES (June 19, 2012), https://www.nytimes.com/2012/06/20/sports/horse-racing-discovers-new-drug-problem-one-linked-to-frogs.html [https://perma.cc/M764-TKM4] (indicating poison known as dermorphin comes from skin of waxy monkey frog native to South America and, in addition to blocking pain, produces feeling of euphoria and excitation).
\item \textsuperscript{171} See id. (explaining powerful drug was found in multiple states in more than two dozen horses).
\end{itemize}
\end{footnotesize}
look for it. Labs have begun to identify artificial dermorphins, but the process is extremely difficult. Unfortunately, whenever a new dermorphin is discovered by a lab, unethical trainers begin to search for new dermorphins; and in doing so, the unethical trainers buy themselves more time to cheat until they are caught again.

3. Cheating with Legal Drugs

Unethical horse trainers also have legal performance-enhancing drugs at their disposal when they want to cheat. Phenylbutazone (“Bute”) is an anti-inflammatory drug commonly administered to racehorses. Bute is legal in the United States and regulated by the FDA, which requires it to be administered by a licensed physician, and because the drug is an inexpensive and effective treatment for a variety of muscular and skeletal ailments, it is commonly used in horse racing. Unfortunately, the drug can have terrible side effects. Mouth ulcers are the most common side effect, along with gastrointestinal bleeding. Less common but more serious side effects include kidney failure, internal bleeding, and loss of protein.

However, the more significant issue is that Bute can indirectly cause significant injuries in horses. The drug is often administered to horses that already suffer from muscular or skeletal injuries.
ries. 182 The injured horses are given Bute, allowing them to race or perform by masking their pain. 183 This compounds injuries that should not be subject to more stress. 184 The physical risk of stressing an existing injury is significant because horses are fifty percent more likely to sustain a major, or even fatal, injury when they race with Bute in their systems. 185

In response to this risk, veterinarians have started to lobby for a ban on the administering of Bute within forty-eight hours of a race. 186 European race authorities have already extended the ban period for the administration of Bute to seven days before a race. 187 Currently, the Bute ban period is twenty-four hours in every American jurisdiction that allows horse racing. 188 While several American states are considering extending the prohibition period between Bute administration and race day to forty-eight hours or even a week, American racing authorities move slowly and tend to lag behind their European counterparts. 189


183. See id. (reporting administration of Bute allows horses to keep racing despite natural pain from racing industries).

184. See id. (explaining pain from injury is sign horse should stop racing for time and recover from injury and continuing to train horse on Bute increases likelihood of significant injury or death).

185. See id. (discussing ten-year study of 500,000 South American racehorses leading to finding administration of Bute strongly correlated with significant injury and death).

186. See id. (noting lobbying efforts connected to racing fatalities in Santa Anita have resulted in California’s recent implementation of more strict Bute regulations).

187. See id. (stating British Horseracing Authority has zero-tolerance approach to administration of Bute, banning use of drug within seven days of race and prohibition of drugs like Bute in days leading up to race); see also Kevin Blake, The Real Problem With Drugs in Horse Racing, THOROUGHBRED DAILY NEWS (July 26, 2016), https://www.thoroughbreddailynews.com/the-real-problem-with-drugs-in-horse-racing/ [https://perma.cc/4MFE-CXHX] (noting how administering Bute to horse within seven days of race in Great Britain and Ireland is banned, but it can be used up to 24 hours before race in America).

188. See Hegarty, supra note 182 (explaining while many states have at least twenty-four-hour bans on Bute, recent legislation in some states has increased time ban to forty-eight hours).

Corticosteroids are more powerful than, but closely related to, Bute. In human beings, the drug is commonly used to treat poison ivy. In the equine industry, the drug is used to treat chronic musculoskeletal problems like arthritis. Like Bute, it can positively impact equine health by saving horses from significant pain and suffering caused by a lifetime of training and racing. Good practice for administration of corticosteroids involves the vet inspecting the horse with a series of x-rays and not injecting the horse more than once or twice. For the best anti-inflammatory effect, the horse should be given at least twenty-four hours to rest from all physical activity after receiving corticosteroids.

Unfortunately, veterinarians on racetracks do not always follow good practice; rather, they may administer multiple injections in a relatively short period of time in the same joint to keep a horse training. In some cases, a horse may be injected more than ten times over a period of eighteen months. Consequently, cortico-

190. See Corticosteroids, ROSSDALES VETERINARY SURGEONS, https://www.rossdales.com/referrals/treatments-and-therapeutics/joints-tendons-ligaments/corticosteroids (noting corticosteroids are synthetic versions of naturally occurring hormone used as potent anti-inflammatory agent; further noting corticosteroids used for joint injuries and laminitis).


192. See id. (noting corticosteroids, like Bute, are used to treat muscular and skeletal injuries, and can also be used to relieve allergic reactions in horses).

193. See Daniel Ross, Corticosteroid Joint Injections: An Issue at the Heart of Horse Racing’s Drug Debate, THE GUARDIAN (Apr. 28, 2016), https://www.theguardian.com/sport/2016/apr/28/horse-racing-corticosteroid-joint-injections-drug-debate-issue (explaining horse joints are subject to more than 4,000 pounds of pressure every time horse leg hits ground just during trot, and force is higher when horse is galloping during race).

194. See id. (stating high motion joints should be injected rarely, but x-rays should be administered to detect more significant problems that can be masked, such as bone chips and or fractures).

195. See id. (noting rest is one of most effective methods for dealing with muscular or skeletal injuries).

196. See id. (describing use of “six-packs” and “twelve-packs” that allow veterinarians to inject multiple joints in single session in short time before race).

197. See id. (noting egregious example of corticosteroid abuse that caused fatal ankle break mid-race in California).
steroids, like Bute, can cause the horse to put unnecessary stress on injuries, even when only used for a short period.¹⁹⁸

Horse racing has had a long tradition of cheating.¹⁹⁹ Unethical participants have access to a wide variety of methods including fixing races; using shocking machines; and administering both legal and illegal drugs.²⁰⁰ These forms of cheating are cruel and can cause significant physical harm to the horses involved.²⁰¹ But regardless of the methods used by cheaters, the current system of industry self-policing is ineffective.²⁰² States and the federal government will need to step up in order to reform the industry.²⁰³

V. PROPOSED HORSE RACING INTEGRITY ACT

The recent spate of horse deaths at Santa Anita has triggered a need for change within the equine industry.²⁰⁴ At the most recent annual “Round Table Conference on Matters Pertaining to Racing,” the discussion among industry leaders concerned regulatory reform.²⁰⁵ Notably, there was significant industry support for the proposed Horseracing Integrity Act (“H.R. 1754” or “HIA”).²⁰⁶ H.R. 1754, introduced to the U.S. House of Representatives by Representatives Paul Tonko (D-NY) and Andy Barr (R-KY), proposes the creation of a national Horseracing Anti-Doping and Medication Control Authority (“Authority”) to regulate the use of drugs in

¹⁹⁸. See id. (“The problem with injecting a joint within days of a race . . . is that the pain-numbing effects of the corticosteroid could mask the symptoms of a potentially more severe problem.”).

¹⁹⁹. For further discussion of how cheating is a fundamental aspect of the equine sports community, see supra notes 121-124 and accompanying text.

²⁰⁰. For further discussion of different cheating methods, see supra notes 121-198 and accompanying text.

²⁰¹. For further discussion of how electric shock machines and drugs harm horses, see supra notes 139-198 and accompanying text.

²⁰². For further discussion of the current system of industry self-policing, see supra notes 54-120 and accompanying text.

²⁰³. For further discussion of a proposed solution to the issues of cheating in the equine industry, see infra notes 204-284 and accompanying text.


²⁰⁵. See id. (explaining 2019 was first year where animal rights activist from Humane Society of United States was invited to speak at industry conference and voice support for Horseracing Integrity Act).

²⁰⁶. See id. (indicating horse trainers, large track owners, and leader of The Jockey Club voiced support for HIA).
equine sports. A similar bill (S. 1820), introduced in the U.S. Senate by Senators Kirsten Gillibrand (D-NY) and Martha McSally (R-AZ), closely mirrors the House bill but includes provisions to regulate the sale of horses that have been drugged.

H.R. 1754 would establish the Authority as an independent, non-profit corporation with the power to set national drug standards for horse racing. The Authority would be headed by a central board comprised of members of the United State Anti-Doping Agency and members of the equine sports community. In order to avoid conflicts of interest, board membership would be restricted to individuals that have no commercial relationships with horseracing or industry lobbyists. The Authority would have broad jurisdiction over any person, horse, or entity licensed to participate in horseracing by a state racing commission. Critically, the Authority would also be vested with the same enforcement powers as state racing commissions, which includes the power to access any facility, engage in searches and seizures, and conduct investigations.
The crux of H.R. 1754 is the regulation of prohibited substances. The Authority would be required to establish a list of prohibited or controlled substances within one year of its formation. While the National Uniform Medication Program marks a current attempt by the states to establish a national standard of prohibited substances and penalties, this program is far from universal. For example, two of the largest states in equine sports, California and Kentucky, have yet to adopt all of its components. In contrast, H.R. 1754 would establish a national standard of prohibited substances, rules to regulate the administration of medicine with performance enhancing effects prior to a race, and consistent penalties for rule violators.

The Senate bill, S. 1820, in addition to allowing the Authority to manage anti-doping policy, would also regulate horse auctions through existing mechanisms. Currently, federal law prohibits U.S. businesses from engaging in “unfair or deceptive” trade practices. S. 1820 would apply the same federal law to horse auctions by making the sale of a horse that has been drugged in a manner that would harm its long term health illegal, unless the buyer has been informed of the drugging. The rule would automatically apply to bisphosphonates, but the Authority would have the power to apply the disclosure rule to other drugs.

---

214. See id. § 4(c) (noting Authority will have exclusive jurisdiction over anti-doping efforts and medication administered to covered racehorses).
215. See id. §§ 6(a)-(b) (legislating Authority must establish uniform list of prohibited substances including “drugs, medications, naturally occurring substances, and synthetically occurring substances”).
217. See id. (noting California and Kentucky have failed to adopt uniform penalty system, opening opportunity for inconsistent enforcement and punishment of doping violations).
218. See Horseracing Integrity Act, § 6 (stating Authority to have power to establish list of controlled substances, procedures for administration prior to race, and uniform list of sanctions for rule violators).
220. See 15 U.S.C. § 45(a) (2020) (stating unfair deceptive acts and practices are unlawful and FTC has authority to proscribe and prosecute such behavior).
221. See S. 1820, § 7 (noting sellers must inform buyers horse has been drugged if they know or have reason to know the horse has been drugged).
222. See id. (explaining Authority will have power to create list of substances that, if administered to horse, must be disclosed to buyer).
SAVING SEABISCUIT

VI. HORSE SHOWS: SCORING POINTS WITH ANIMAL ABUSE

A. Horse Soring

Soring is a practice where humans inflict pain on the legs of a horse in order to force the horse to develop a high gait step. This especially cruel practice has plagued the equine sports industry since the 1950s, when unethical trainers determined that they could shortcut their way to a high stepping gait. A high step gait is a highly desirable trait that has been bred into certain breeds of show horses because high stepping horses are more likely to receive better scores from judges in show competitions. Without the high gait, a horse will not be competitive, and the owner risks loss of profit.

Soring is accomplished by cruel and inhumane methods. A common soring practice is to apply a corrosive substance to the horse’s front legs. Typically, trainers will cover their horses’ legs in diesel, kerosene or mustard oil and then tightly wrap them in plastic so that the legs can be “cooked” which teaches the horse to avoid putting weight on the front legs. Metal chains wrapped around the horse’s lower legs during training also produce a high-stepping gait, as do cutting hooves down to sensitive inner tissue and pressure shoeing, which involves cutting down the horse hoof, nailing in a horseshoe, and then forcing the horse to stand for hours to produce pain in the front legs.

---

223. See Lewis Bollard, The Legal Tipping Point On Horse Soring, Racing, and Slaughter, 7 KY. J. EQUINE, AGRIC. & NAT. RESOURCES L. 423, 424 (2015) (defining horse soring as “the deliberate infliction of pain on the hooves and legs of horses to produce an artificial high-stepping gait”).

224. See Bollard, supra note 223, at 426 (reporting horse trainers between 1950-1960 began to use artificial methods to increase gait of show horses).


226. See id. at 6 (explaining judges’ focus on high stepping gait continues to encourage trainers to engage in soring).

227. For further discussion of cruelty of horse soring, see infra notes 228-236 and accompanying text.

228. See Bollard, supra note 223, at 426-27 (noting trainers first began to use diesel fuel and mustard oil as corrosive soring agents around 1950).


230. See id. at 202-04 (explaining chains, tight metal bands, pressure shoeing, and inserting objects into hoof to produce “big lick” are common methods of mechanical soring); see also AVMA, supra note 225, at 43 (discussing mechanical soring used in conjunction with chemical soring to achieve desired gait in show horses).
Soring can produce painful and obvious scarring that can give the trainer away. In order to hide the scarring, unethical trainers will engage in “treatments” that can be more painful than the soring itself. One common “treatment” to remove scarring is to cover the skin in a mixture of alcohol and acid and leave it on the horse’s legs for days. While the scarred skin will peel off, the high stepping gait is still burned into the horse’s muscle memory. However, even if the scarred skin has been removed, officials can identify soring if the horse lies down excessively, refuses to stand, or develops a choppy stride. In one instance, soring was discovered because a veterinarian found nails embedded in the horse’s hooves during an X-ray check.

B. Horse Protection Act of 1970

In 1970, Congress enacted the Horse Protection Act (HPA) in an attempt to eliminate the practice of soring in the United States. The HPA rested on the finding that, in addition to being cruel and inhumane, the soring of horses unfairly impacts competition at horse shows and, therefore, interstate commerce. Enforcement of the HPA rests with the Secretary of Agriculture, who uses inspectors from the Animal and Plant Health Inspection Service to carry out the terms of the act. However, it was clear

231. See Dane, supra note 229, at 203-205 (noting USDA developed scar examination as method of identifying trainers using soring).
232. See id. (“The caustic effect is excruciating to the animal, and the pain is so severe that it is said to cause unconsciousness and even death in some cases.”).
233. See id. (stating paste of salicylic acid and alcohol is applied to scar tissue in order to remove it).
234. See id. (noting evidence of caustic “treatment” is found by USDA inspectors in show horse competitions).
235. See AVMA HORSE SORING REPORT, at 6 (explaining pain felt by horse will cause it to act differently, and soring can be confirmed by physical inspection of welts, swelling, or ripped hair).
236. See id. (displaying copy of x-ray with nails imbedded in horse hoof due to soring; further, explaining gas chromatography and x-rays are very useful in detecting horse soring).
238. See 15 U.S.C. § 1822 (2020) (finding soring of horses to be “cruel and inhumane,” and soring unfairly impacts competition because soring improves performance of horses at shows and therefore has adverse effect on interstate commerce).
within a few years that the HPA was not having a large impact on instances of soring.\footnote{240}{See Bollard, supra note 223, at 427 (explaining first version of Horse Protection Act required amendment in 1976 because it failed to make sizeable impact on instances of horse soring).}

Traditionally, the USDA has not enforced the HPA effectively.\footnote{241}{See id. (reporting traditionally “lax enforcement” by USDA has resulted in equine industry effectively being able to ignore HPA).} Until the mid-1980’s, there were no guiding regulations regarding the use of non-listed devices that could be used to sore horses, and the definition of “soring” remained weak until 1988.\footnote{242}{See id. at 428 (noting USDA failed to provide “guidance as to when a device not specifically prohibited may reasonably be expected to cause soring” and “[a]lthough the USDA strengthened its definition of ‘sore horses’ in 1988 . . . it continued to fall short of a zero tolerance approach to soring”).}
The greatest impediment to effective enforcement of the HPA, however, has been the reliance by the USDA on self-policing.\footnote{243}{For further discussion of why industry self-policing is an ineffective method of enforcement, see supra notes 96-198 and accompanying text.} Self-policing is a common practice in the horse industry, and the state commissions responsible for enforcing state equine law rely on industry representatives a great deal.\footnote{244}{For a further discussion of the use of industry self-policing by state commissions, see supra notes 59-108 and accompanying text.} Like state commissions, the USDA relies on industry representatives, titled Designated Qualified Persons (DQPs).\footnote{245}{See Animal and Plant Health Inspection Service, Horse Protection Act, U.S. DEP’T OF ACRI., https://www.aphis.usda.gov/wcm/connect/aphis_content_library/sa_our_focus/sa_animal_welfare/sa_hpa/ct_hpa_program_information#collapse296ff762-e6c5-42c3-b1f2-68935b7063f3 [https://perma.cc/7DMM-M6A9] (last modified Aug. 4, 2020) (discussing self-policing structure used by USDA to manage horse soring).}

However, the Department of Agriculture does not license DQPs directly.\footnote{246}{See id. (explaining DQPs are authorized to “detect or diagnose” instances of horse soring at horse shows and auctions, in addition to having access to horse records to enforce HPA).} Rather, Horse Industry Organizations (HIOs) license DQPs, oversee their individual certifications, and create training programs.\footnote{247}{See id. (stating “[t]he USDA does not license DQPs on an individual basis”).} The use of a DQP is not mandatory, and when they are used, the industry organization determines the scope of their assignment.\footnote{249}{See id. (indicating HIOs have broad discretion over implementation of DQPs at horse shows and auctions; additionally, explaining use of DQPs is not...
Theoretically, deputizing members of the equine industry seems like an efficient method of enforcement, because industry members do not consume the meager government budgets allocated for the protection of horses. While it may be efficient, this system is certainly not effective. The industry groups that license DQPs have a conflict of interest because they often sponsor the horse shows they are meant to police. As a result, DQPs that are licensed by industry groups “systematically [ignore] violations of the HPA” at their competitive events. HIOs only enforce the HPA when federal inspectors are present at horse shows. As a result of this lax enforcement, soring remains a significant problem, with as many as 20,000 horses subjected to the cruel act every year.

VII. FEDERAL EQUINE SPORTS COMMISSION

State governments should be the first line of defense against animal abuse and cheating, but unfortunately, small state budgets and small enforcement divisions are unable to deal with this significant interstate problem. Congress has regulated the equine sports community by piecemeal legislation, and the result has been mandatory, rather only used to limit liability under HPA as theoretically, every barn or horse show is responsible for appointing person to inspect horses for soring).

250. See Bollard, supra note 223, at 428 (noting consistent budget of less than $500,000 per year allocated by USDA to enforce HPA); see also Dane supra 61, at 205 (explaining budget constraints Department of Agriculture inspectors visit only six percent of all horse shows).

251. For further discussion of the lack of effectiveness, see supra notes 252-255 and accompanying text.

252. See Bollard, supra note 223, at 428 (explaining HIOs in charge of DQP monitoring often also sponsor horse shows; and further noting HIOs have conflict of interest, which has been noted by USDA Office of Inspector General); see also Animal and Plant Health Inspection Service, supra note 245 (admitting HIOs are chosen because they are promoters of horse shows and involved in managing auction houses).

253. Bollard, supra note 223, at 428 (reporting USDA Inspector General found “that HIOs systematically ignore violations of the HPA” and keep inspectors waiting for long periods of time, allowing time to conceal evidence of soring).

254. See id. (“[O]f all the violations cited by HIOs from 2005 to 2008, half were at the mere six percent of shows where USDA inspectors were also present monitoring the HIOs.”); see also AVMA, Horse Soring Report, at 6 (2015), https://www.avma.org/sites/default/files/resources/2015-Soring-Booklet-Final_Logo.pdf [https://perma.cc/N4KG-QMNH] (noting USDA Inspector General found self-regulation to be inadequate).

255. See Dane, supra note 61, at 205 (“It is estimated that up to 20,000 Tennessee Walking Horses are subjected to soring and soring related cruelty every year.”).

256. For further discussion of small budgets hampering state abilities to effectively regulate equine sports, see supra notes 59-108 and accompanying text.
the widespread abuse of horses and cheating. Congress needs to create a federal Equine Sports Commission (ESC) to reform and regulate the national equine sports industry. Legislators have already laid out the groundwork for such a commission in the proposed Horseracing Integrity Act. Congress could establish the ESC as an independent, non-profit corporation with the power to set national standards for all equine sports and tackle cheating, drug abuse, and soring.

Critically, the equine industry needs the ESC in order to reform the system of self-policing frequently used at the state and federal level. The use of state stewards and federal DQPs is ineffective to prevent cheating and the misuse of performance-enhancing substances. Stewards and DQPs may have a strong financial incentive to turn a blind eye to unethical behavior, unless compelled to act by the presence of a federal inspector or state law enforcer. The ESC should have a budget sufficient to hire enough federal inspectors to make stewards and DQPs accountable. The ESC should thoroughly investigate suspicious horse owners and races.

Regarding the issue of shocking machines, the ESC would not need to establish complex procedures to eliminate their use.

257. For further discussion of Congress’ piecemeal approach to the regulation of the equine sports industry, see supra notes 121-255 and accompanying text.

258. For further discussion of ineffectiveness of current equine sport regulatory framework and negative effects, see supra notes 59-255 and accompanying text.

259. See Bittenbender, supra note 204 (discussing conversations regarding adoption of Horseracing Integrity Act).


261. See Bollard, supra note 225, at 428 (noting industry stewards have conflict of interest and cannot adequately engage in self-policing). For further discussion of the ineffectiveness of self-policing in equine sports, see supra notes 240-242 and accompanying text.

262. See id. (noting federal inspectors are far more effective at enforcing equine regulations). For further discussion of DQPs and federal inspectors, see supra notes 252-255 and accompanying text (discussing DQPs and federal inspectors conflicts of interest impacting rule enforcement).

263. For further discussion of unaligned interests between stewards and effective sports policy, see supra notes 59-81 and accompanying text.

264. For further discussion of the importance of federal inspectors in motivating track officials to enforce the law, see supra notes 253-255 and accompanying text.

265. For further discussion of abuse of equine sport by cheaters and drug cartels, see supra notes 121-151 and accompanying text.

266. See Donnally, supra note 139 (stating use of simple metal detecting wand would have been significant deterrent to use of shocking machines).
Jockeys and other equine workers are already subject to searches at the race site. The ESC should require that jockeys be wanded with a handheld metal detector. Metal detectors are already in use at the Churchill Downs. Additionally, the ESC should require that racing officials visually inspect the inside of a jockey’s helmet and check beneath the saddle towels prior to a race.

Regarding the issue of the unethical use of drugs, the ESC should bring withdrawal periods for medicines like Bute and corticosteroids in line with international standards, so that horses are not forced to run with numbed injuries. The ESC should also consider requiring the use of an independent veterinarian to verify the administration of certain medications to performance horses. Lastly, the ESC should use the presence of federal inspectors to prevent trainers from entering sored horses into horse shows, because that has been proven to be the most effective deterrent against soring.

VIII. CONCLUSION

The equine sports community in the United States faces an existential threat. Currently, public anger on this topic is primarily focused on deaths in Thoroughbred horseracing. Animal rights

267. See id. (explaining individuals licensed to be involved in horse racing may have their persons, effects, and cars searched at any time they are on racetrack).

268. See id. (“I don’t think a shock can be administered without a metal coil, always copper in the machines I used. The battery itself contains metal. These, I am convinced, would be detectable with a metal detecting wand.”).

269. See Mullins, supra note 151 (detailing how PETA was able to convince Churchill downs to institute random metal detecting sweeps during races at track).

270. See Donnally, supra note 139 (describing methods used to hide electric machines from view).

271. For further discussion of the use of drugs in equine sports, see supra notes 175-198 and accompanying text.

272. For further discussion of the need for independent vets to administer drugs to racehorses, see supra notes 196-198 and accompanying text.

273. For further discussion of federal inspectors preventing horse soring, see supra notes 253-255 and accompanying text.


275. See Ross, supra note 99 (“The future of horse racing in America is at a crossroads amid the headline-grabbing rash of fatalities at Santa Anita Park, yet the consequences of a wholesale ban would be far-reaching.”).
activists question whether horse racing can ever be made humane, and some California activists have begun to argue for a state-wide ban.276 Ethical participants in the sport are rightly concerned with growing public anger, and some have vocalized support for the proposed Horseracing Integrity Act.277 National drug standards for horse racing are a step in the right direction, but that alone will not address the greater threat to the equine sports community.278

Spectators will not watch a sport that lacks integrity.279 Gamblers will withhold cash from a sport where race fixing and shocking devices deprive them of a fair chance of winning.280 This is especially true now that gamblers have alternative opportunities to engage in sports betting.281 The equine sports community is developing a worrying connection with criminal enterprises that will worsen its image.282 Finally, and critically, no one will tolerate a sport that allows the regular abuse of animals through soring and unnecessary deaths.283 If it is to survive, the equine sports community must be reformed.284

* J.D. Candidate, Villanova University Charles Widger School of Law, Class of 2021; B.A. in Finance and Real Estate, Villanova University, Class of 2018. Special thanks to my family and friends for their support during my time in law school; and also, to Mr. Charles Widger for his mentorship and scholarship support. Additional thanks to Michael Horvath, Kirsten Reilly, Hannah Rogers, and the MSLJ Staff Writers for their editorial assistance.

276. See id. (noting animal rights activists believe horse racing can be banned in California “at the ballot box” and California ban could be used as springboard to ban horse racing in other parts of United States).

277. See id. (“I’m scared to death,’ says Arthur Hancock, owner of Stone Farm in Kentucky. Hancock is part of the Water Hay Oats Alliance (WHOA), a group of industry leaders pushing for a federal medication governing body, overseen by the U.S. Anti-Doping Agency.”).

278. For further discussion of national drug regulation, see supra notes 204-222 and accompanying text.

279. For further discussion of horseracing’s culture of cheating, see supra notes 121-138 and accompanying text.

280. See Paulick, supra note 123 (explaining gamblers at fixed horse races are “literally being robbed”).


282. For further discussion of drug cartel involvement in horse racing, see supra notes 132-133 and accompanying text.

283. For further discussion of the suffering and death of horses in the equine sports community, see supra notes 1-4 and accompanying text.

284. For a further discussion of how and why the equine sports community must be reformed, see supra notes 256-273 and accompanying text.