

Testimony of Joe De Francis

Energy & Commerce Subcommittee on Consumer Protection and Commerce
Re: H.R.1754 – The Horseracing Integrity Act of 2019
January 28, 2020

Chair Schakowsky, Congresswoman McMorris, Members of the Committee, thank you for giving me this opportunity to testify before you today.

My name is Joe De Francis, I was the former Chief Executive Officer and controlling shareholder of the Maryland Jockey Club (MJC), the corporate parent entity of Pimlico Race Course (home of the Preakness Stakes, the middle jewel of thoroughbred racing's famed Triple Crown) and Laurel Park. I am also the Chairman of the Humane Society of the United States National Horseracing Advisory Council. I am proud to lead that council because the Humane Society represents countless Americans who believe as I do that we as a nation have an immeasurable debt to the horse. Ensuring the best care and the proper protection for horses should be our highest priority.

While I'm honored to represent HSUS, I also wear a second hat regarding this issue. Having for decades been a significant equity owner in, and responsible for the operation of, the MJC--America's oldest, and one of our most prestigious and significant racing operations--I'm very familiar with the economic demands of the marketplace that must be met in order to run a successful business. Setting aside the critically important ethical and moral issues that are essential to this debate (unlike human athletes, who at least can exercise their free will in making a choice to cheat with drugs, horses are totally dependent for their health and well-being on both the ethics and the competence of the humans who care for them), and focusing solely on the harsh, business bottom line, it is absolutely essential to the survival--let alone the success--of the business that the equine athletes are treated ethically and humanely, and are perceived by the public as being properly cared for.

The days when horse racing enjoyed a virtual monopoly on gambling in America--and could get away with reckless monopolistic behavior--have been gone for decades and are gone forever. We are besieged on all sides by competition for the gambling dollar--from State-run lotteries to the seemingly endless proliferation of casinos to the nascent introduction of sports betting nationwide. By far, our strongest and most effective asset in this heated competition is the athleticism, nobility and majesty of the thoroughbred race horse. If the general public loses confidence that the people responsible for the health and safety of these equine athletes are mistreating them--as survey after survey unequivocally proves is happening to an increasing extent--then the "invisible hand" of the marketplace will drive horse racing into extinction as surely as it has Ringling Brothers Circus.

The bar for effectively detecting and punishing cheaters in American racing is so low

that it is difficult to fail. Frankly, it is more of an IQ test, than a drug test, because trainers in the US would have to be more daft than unlucky to fail – each trainer knows what they're being tested for, when they're being tested, and if that isn't bad enough, the lab testing may miss it anyway. There is little, if any, out-of-competition testing, the kind of testing that has proven so effective in catching athletes who dope in Olympic sports. In addition, few labs are up to international standards, and the procedures and chain of custody vary too much from state to state to instill any confidence in the system. Finally, and probably most importantly, racing officials who are given the responsibility of promoting racing cannot, and should not, be given responsibility of policing those who they also promote.

Congress now has an opportunity to do something constructive about it. H.R. 1754, the Horseracing Integrity Act, will transfer the responsibility of the sport's anti-doping program to an independent organization, run by both the US Anti-Doping Agency and conflict-of-interest free representatives from the racing industry. This bill will charge a new rulemaking and enforcement organization, the Horseracing Anti-Doping Authority (HADA), with establishing a list of acceptable and illegal therapeutic drugs, laying out the basis for when drugs can be used. This independent organization will take this new structure and apply it uniformly across all 38 jurisdictions, with meaningful reciprocal penalties, and a process that will ensure fairness and most importantly, deterrence.

It is only a win, win, win for racehorses and the sport. This new system will ensure that our equine athletes are treated with fewer drugs, run only when they are healthy enough to do so, and compete with their given talents. Trainers will be less dependent on "treating" horses with chemicals, and more reliant on their horsemanship to win races. In addition, trainers who ship horses across state lines will no longer have to worry about running afoul of another state's arcane doping requirements, because every racing jurisdiction will have the same, uniform medication regulations. In the end, risks to racehorse welfare will be reduced, and the sport of racing will benefit as bettors and fans will have greater confidence that what they're watching is the result of ability, not chemistry.

Both animal welfare groups and organizations from the industry see American racing's drug habit as a practice that must end — for the horses' health and safety and the integrity of the sport.

I also want to debunk the myth that it's somehow inhumane not to treat horses with medications when they race. Almost every drug or medication has certain positive therapeutic qualities or effects, and other negative effects that are performance-enhancing and/or harmful to health. The key to an enlightened, effective, humane policy on drugs and medications in racing is to have the most knowledgeable, competent and unbiased people as possible balancing these positive and negative effects, and deciding which way the scales tip with respect to any particular drug or medication. The core of the problem is that this critically important balancing is being done today on a state-by-state basis by state regulators--many of whom are

well-intentioned--but the overwhelming majority of whom lack the necessary expertise (and some of whom are influenced by factors other than what's in the best interests of the health and safety of the horses) to make the best possible decisions. And different states have and continue to come to different conclusions on these watershed issues.

The most important aspect of H.R. 1754 is that it places USADA (with input from the horse racing experts on the board of HADA) in charge of conducting this balancing, not only with respect to the myriad of drugs and medications that exist today, but importantly with respect to the countless new drugs and medications that are being developed and created at this moment and into the future. USADA has by far the greatest repository of scientific knowledge and expertise of any organization in the world regarding the impact of drugs and medications on athletic performance and health. USADA is literally light years ahead of any individual state regulatory body in this regard. Most importantly, USADA is completely unbiased, independent and free from any conflicting motivations other than what's best for the health and safety of the equine athletes that are the foundation of our sport and our business.

The controversy over Lasix is a classic example of this problem. The words of experienced equine veterinarian Dr. Kraig Kulikowski accurately and succinctly describe Lasix far better than I ever could:

"Exercise Induced Pulmonary Hemorrhage (EIPH) is a disease affecting many race horses. The cardiovascular and respiratory tract are under incredible stress during racing. The exchange of oxygen in the lung is paramount during the extreme effort of racing. There are strong forces from the diaphragm to breath and there are even stronger forces on the blood pressure of the capillaries of the lungs. As the heart pumps stronger blood pressure to the vessels of the lung, the capillaries of the lung burst and begin to bleed. This blood leaks into the air sacs of the lung. At this point, the horse starts to drown on its own blood. Sometimes there is enough blood that it begins to pour from the horses nostrils. Typically, the first symptom a jockey or trainer will notice on a horse suffering from EIPH is a decrease in speed or performance.

Lasix (furosemide) is a diuretic. It has been used in treating horses with EIPH. It is not fully understood why furosemide helps with bleeding from the lungs. It could be that by dehydrating the horse, we decrease blood volume thereby lowering the blood pressure at the level of the lung capillaries. It could be that a drop in water weight on race day means that the horse is stressed less while weighing less. There may be other factors or it may be a combination of factors that result in a decrease in lung bleeding during exercise."

While I'm neither a medical doctor nor a vet, mountaineering is my hobby, and I know humans suffer a very similar problem when they go to high altitudes. When a

human's circulatory system is under stress because of the reduced oxygen in the air at altitude--similar to the stress a horse's circulatory system is under when running at full speed--a small percentage of humans suffer a genetic defect that prevents their red blood cells from being able to transport enough oxygen to allow their bodies to function normally. People with minor defects suffer minor effects generally known as "mountain sickness" and characterized by headaches at altitude. People with more serious defects are prone also to suffer High Altitude Pulmonary Adema (HAPE), where their lungs begin to fill with fluid. Similar to horses bleeding through their nostrils from EIPH, humans with severe cases of HAPE begin to cough up blood.

The treatment for humans is the same as for horses--a powerful diuretic called "Diamox" which I have personally used many times when climbing at high altitudes. But only roughly 6% of the population of race horses is genetically prone to suffer from EIPH to the point where they would be unable to race unless administered Lasix on race day. Yet virtually 100% of the horses who race in the US are treated with Lasix when they run. Why is this? Because the weight that a horse carries when he/she runs is critical to the speed that the horse can run. The overwhelming majority of races run in America vary the amount of weight that each horse carries in order to create as competitive a race as possible. The standard rule of thumb is that one extra pound of weight will slow a horse down by one length in a race of one mile. Depending on the size and weight of the horse, Lasix will typically flush 20 pounds or more of water weight out of that horse's system, and thus allow that horse to run that much faster.

So while 6% of the horses being treated with race-day Lasix are actually receiving a therapeutic benefit, the other 94% are using it solely as a performance-enhancer, and are suffering the detriment of racing at full physical capacity while dehydrated. Why is this bad? The answer should be self-evident for anyone who has ever tried to perform extreme physical exertion in a dehydrated state, but for people who haven't then Dr. Kulikowski again explains it far better than I ever could:

"Why argue against the use of Lasix if it helps EIPH?

First, a horse that bleeds from its lung and is drowning on its own blood is unfit to be a racehorse. If a juvenile human athlete coughed up blood every time he or she took to the little league field, they would not be considered safe or fit to have on that playing field.

Second, the concept of dehydrating an athlete prior to its athletic performance is medically inappropriate. Human athletes use the expression "stay hydrated" for a reason. A dehydrated athlete runs the risk of affecting muscle metabolism, kidney function and cardiovascular function along with many other metabolic functions. Just to make a horse artificially run faster, we potentially put the rest of its body functions at risk.

Third, bleeding into the lung has the impact of decreasing performance and

speed. By removing the effects of EIPH, we have removed the horse's ability to modify its efforts in a racing scenario. We artificially remove that governor on a horse's cardiovascular and respiratory system. We artificially allow that horse to run faster and further than it naturally would ever run. When we artificially allow that horse to run faster and further than it should, then on top of that we mask any possible orthopedic pain with steroids and anti-inflammatories, then horse's bodies fail."

The cost/benefit balancing on Lasix is so obvious that literally every major racing jurisdiction in the world--other than the United States--bans the administration of Lasix on race day. But for other drugs and medications--including importantly those drugs and medications still being created in labs right now and in the future--it may be a closer call or a more difficult balance. It is imperative--both from a moral and ethical perspective as well as from a business perspective--that we have the very best and most qualified, unbiased decision-maker—USADA (with the input of conflict-of-interest-free racing experts on the HADA board)--making one judgment for the best interests of all American racing rather than 38 different State regulatory bodies making 38 different decisions based on each state's parochial interests.

Chair Schakowsky, this very committee saved the sport of racing over 40 years ago when it passed the Interstate Horseracing Act, which allowed racetracks to transmit their racing signals over state lines. Today 90% of all wagers are interstate, and IHA is the life blood of the industry. In the U.S. in 2018, 493 Thoroughbred racehorses died, according to the Jockey Club's Equine Injury Database. This is absolutely unacceptable. Altogether, you have another opportunity to save our industry from itself and afford our equine athletes the protection they deserve by passing the Horseracing Integrity Act, and I strongly urge you to do so at the soonest occasion.

Thank you, Members of the Committee.