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They Eat Horses, Don't They? The American Horse Slaughter Prevention 66 Brown v. Li, 308 F.3d 939 (9th Cir. 2002). ACT

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THEY EAT HORSES, DON’T THEY?
THE AMERICAN HORSE SLAUGHTER PREVENTION ACT

by
Donna Sims*

"The measure of a society is how well it treats its animals."
— Barbara Righton

I. INTRODUCTION

Congress has historically exhibited a significant interest in the welfare of the nation’s horses. The recent debate over attempts to end the slaughtering of horses in the United States that are exported for consumption to Europe and Japan has ended at least temporarily, in a modern coup d’etat pitting Congress and numerous animal welfare groups, against the United States Department of Agriculture (USDA). The losers unfortunately, in this ongoing battle of wills are the 80,000 horses slated for slaughter at three U.S. slaughterhouses which continue in operation despite the clear intent of Congress.

II. BACKGROUND

The horse has a long and intimate history with mankind in general and in particular with the development of the Americas. The Western Hemisphere had not seen horses since the end of the Ice Age (circa 10,000 B.C.).

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Columbus brought horses to the New World in 1492, followed by Hernando deSoto and Francisco Vasquez de Coronado in 1540. Those horses and other escaped horses of early settlers formed the foundation of wild horses that roamed the western plains in the centuries to follow.3

That the horse has occupied a significant role in the history and development of United States is irrefutable.4 Horses were used as the principal means of transportation until the arrival of the steam train in the mid 1800’s. They served as riding mounts, pulled wagons and carts, and even provided the power for the first railed, trolley cars in many eastern cities. Known as the “Horse Railroad”, early statutory regulations provided the foundation for later regulation of the steam rail system.5 The horse was an essential component of the settlement and expansion of the western territories. Covered wagon trains not only moved families west but also evolved into the central means for transportation of goods across the country. They were a major business before the railroad tracks were laid and thousands of wagons, usually drawn by six horses each, pulled loads of up to eight tons. Even the short-lived “Pony Express” has contributed to the romantic saga of the American horse and its rider.6

Horses proved their value to the early settlers and to farmers well into the twentieth century, as a tool of agriculture. It was not until after World War II that the horse was almost entirely replaced by equipment driven by internal combustion engines. James Watt, better known for his association with the electric measurement associated with his name, invented the term “horsepower” in 1782.7

III. HORSE INDUSTRY TODAY

The advent of the industrial age and the age of technology have not diminished the American enthusiasm for horse ownership.8 The American Horse Council9 is a national organization representing horse business interests and the promotion of associated horse industries. Its not-for-profit arm, The American Horse Council Foundation has conducted numerous studies designed to recognize the value of the horse industry in the United States. Its most recent report10 researched and prepared by Deloitte & Touche USA LLP11 estimated that the horse industry annually generates approximately $102 billion for the United States economy. With approximately 9.2 million horses in the U.S. and almost 2 million people owning horses, equines are big business.12

IV. REGULATORY HISTORY

Since the initial passage of the Wild Horse Annie Act13 in 1959, Congress has made it clear that the protection of the nation’s horses is a high priority. A single individual, Velma Johnston (who later came to be referred to as Wild Horse Annie) launched a campaign alerting the American public to the plight of wild horses. At that time it was a common practice for ranchers and hunters to round up and capture horses and burros on public lands through the use of both motor vehicles and helicopters. Public Law 86-234 which became law on September 8, 1959 prohibited these practices. Congress continued to respond to objections to the treatment of horses with the adoption of the Horse Protection Act14 in 1970. In fact, the initial focus of the act under Congress’s enumerated powers, limited the transportation in interstate and foreign commerce of horses that were “sored” for show purposes. “Soring” was a practice common to the showing of gaited horses. Trainers apply caustic materials to the inside of the
hoof; causing burns which make the “sore” horse raise the front feet in order to get away from the pain. Other methods include the placement of nails, screw or ball bearings into the sensitive part of the hoof and hoof wall: again causing the horse to exhibit a high lift in the front. When the Senate Committee on Commerce, Science and Transportation met in 1973 in an oversight hearing, considerable testimony was offered regarding the deficiencies and inadequacy of USDA enforcement of the Act in light of the continuing widespread practice of soring. The discussion recommended provisions for horse examination and enforcement procedures. The Horse Protection Act was amended in 1976 with support from both the House H.R. 6155 and Senate S.811, providing for more effective enforcement, by imposing criminal sanctions and increasing the funding for enforcement.

Subsequent to the Horse Protection Act Congress passed the Wild Free-Roaming Horses and Burros Act in 1971. The impetus behind this piece of legislation was the growing public awareness and concern over widespread slaughter of wild horses and burros for use as pet food, which reduced their numbers to a few thousand. Responsibility for oversight and maintenance of the wild herds was placed with the Bureau of Land Management (BLM).

The Bureau of Land Management has come under scrutiny because of problems with its horse sale and adoption program. In April 2005 BLM officials discovered that six wild horses that had sold for $50 a head to “an Oklahoma man posing as a minister and promising to provide humane care for the horses, resold the animals less than a week later to meatpacker Cavel International in Dekalb, Illinois.” Another thirty-five horses were slaughtered at Cavel after the Rosebud Sioux tribe of South Dakota sold fifty-one horses to a horse broker. “Tribal officials said they did not realize the broker would sell the horses to slaughter”. Although the terms prohibit sale for slaughter with both a maximum fine of $20,000 and/or five years in prison, BLM found itself unprepared to monitor the future well being of horses once sold, and suspended sales after the discovery.

V. THE U.S. HORSE MEAT INDUSTRY

Although federal law does not ban eating horse meat in the United States, the meat is no longer sold for human consumption. During World War II, New Jersey legalized the sale of horse meat for that purpose, presumably because of the low supply and high price of beef; but it was again outlawed at the war’s end. Horse meat has not been used in the production of pet food since the early 1980’s, because the common wormer used for horses, Ivermectin, caused deaths in many breeds of dogs. Ivermectin and other equally lethal worming products and medications are used today as a part of regular horse care: some even on a daily basis. Even if the American public had a taste for horse meat, it would not pass current FDA standards. If horse meat is not fit for human or dog consumption in the United States, why is it shipped out of the country for human consumption elsewhere? Proponents of the ban on horse slaughter have raised this issue with regulatory agencies and lawmakers to no avail.

Statistics from the USDA show that over 3.3 million horses have been slaughtered domestically since 1985, with peak years of 1986 to 1992. The following table excludes live horses that were exported to Mexico, Canada or Japan for slaughter. Figures for 2006 through June 24 show that 47,654 horses have been slaughtered to that date.
slaughter bound horses. Both of the provisions referred to in this amendment deal with the inspection of horses before slaughter, which is delineated as ante-mortem inspection in the Federal Meat Inspection Act (FMIA) and the Federal Agricultural Improvement and Reform Act (FAIR). Each of these provisions recognizes that horses, like cattle are slaughtered for human consumption and are subject to before or pre-slaughter inspections. Although both pre and post-mortem inspections are permitted under the FMIA, it seems clear that Congress’ failure to address the funding of post-mortem inspections is reasonable since removal of funding for ante-mortem inspections should have brought horse slaughter to an end. Congressional intent was to put a stop to the slaughter of American horses.

While Congress and humane organizations were celebrating the success of the temporary halt to the slaughter, lobbyists for the three slaughterhouses quietly requested that the USDA establish a “fee for service” inspection program for horse slaughter in lieu of Congressional funding. The USDA proposed a plan to accommodate the slaughterhouses by using the Agricultural Marketing Act, which permits a fee for ante- and post-mortem inspection of exotic animals such as bison, elk, and antelope. The USDA proposed new rules that would include horses in this program and allow the slaughterhouses to pay for the inspection services. Ignoring the notice and hearing procedures of the Administrative Procedure Act, the USDA went forward with the final rule claiming that “good cause” required it. An example of previous decisions of what constitutes “good cause” occurred in December 2003 when the USDA issued an emergency ruling banning the slaughter and sale of downer cows after the first confirmed case of mad cow disease.

### Table 1.

<table>
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The three horse slaughterhouses in the U.S. are Cavel International located in Dekalb, Illinois, Beltex of Fort Worth, Texas and Dallas Crown of Kaufman, Texas. All three plants are Belgian owned and it is reported that all three generate $29 million in annual foreign sales. The two plants in Texas employ about 150 local employees and spend at least $6 million yearly in refrigerated shipping expenses through the Dallas/Fort Worth Airport.

### VI. CURRENT LEGISLATION

Beginning in 2002 Congress has attempted to address the ongoing and increasingly disturbing issue of horse slaughter in the U.S. The proposed legislation was sponsored by Representative Constance Morella. Although the bill was unsuccessful in the 2002 session, it was reintroduced again in 2003 as H.R. 857, and in the Senate in 2004 as S. 2352. Congress again considered the current versions, S. 1915 and H.R. 503 for passage in 2006.

In June 2005 the U.S. House voted 269 to 158 and in September the Senate voted 69 to 28 to pass an amendment to the 2006 Agricultural Appropriations bill that removes funding for the USDA for one year to conduct inspections at the three U.S. horse slaughterhouses and for border inspections of...
Some members of Congress were outraged. In January 2006 Representative John E. Sweeney, (D-N.Y.) and thirty-nine members of Congress sent a letter to the Secretary of Agriculture Michael Johanns expressing their intent for defunding the inspections, was for the purpose of stopping horse slaughter.

"...We were shocked and deeply upset to learn that the agency has apparently decided it need not carry out Congress' clearly expressed intent to halt horse slaughter for human consumption in FY 2006, but rather, intends to engage in a complex regulatory maneuver to willfully circumvent legislation that was passed by an overwhelming majority of both the House and the Senate. ...Instead of deferring to Congress' intent, the agency appears poised to continue horse slaughter inspections under a different law. This action is in direct defiance of Congressional intent. ...As required by the 2006 Amendment, the agency must cease inspection of horses for slaughter. Failure to do so constitutes willful disregard of clear Congressional intent on the part of USDA. The agency has absolutely no authority to circumvent a Congressional mandate and effectively rewrite an unambiguous law at the request of the horse slaughter industry."33

While the USDA moved forward with its plan to implement the fee for service, the Humane Society of the United States and other animal welfare organizations, which included residents living near the three U.S. slaughterhouses, filed a lawsuit to enjoin the USDA inspections under the fee for service plan. The same day the USDA filed an opposition to the group's request. The foundation for the claims filed by the plaintiffs (Humane Society of the United States and others) is that the USDA violated the Administrative Procedure Act by expediting the notice and public comment period; abused its discretion and acted arbitrarily and capriciously in acting against Congressional intent, and it violated the National Environmental Policy Act by not conducting an environmental assessment prior to creating the fee for service program. The court dismissed the claims relating to the expedited notice period and abuse of discretion on the grounds that the plaintiffs lacked standing to bring those claims. The court found that the plaintiffs APA claims relating to Congress' defunding of ante-mortem inspections, "effectuates only a change in federal funding which does not in itself invoke the environmental, aesthetic, informational, or economic interests raised by any of the Plaintiffs in the instant case." Although the court determined that the plaintiffs had standing to bring a claim under NEPA, it denied the motion for a temporary restraining order, preliminary injunction and hearing citing failure to satisfy the burden to show a substantial likelihood of victory on the merits. The court further opined that the plaintiffs failed to demonstrate tangible, irreparable injury required for the issuance of a preliminary injunction. As a result of the decision, horse slaughter has continued without interruption.

VII. SUBSEQUENT ACTION

Debate continued in the House and Senate on H.R. 503 and S.1915 during the first six months of 2006. In July the U.S. House Energy and Commerce Subcommittee on Commerce, Trade and Consumer Protection held a legislative hearing that drew such a large crowd that the location was moved in order to accommodate the participants. Witnesses speaking against the bill raised the issue that slaughter provides horse owners with a humane means of disposing of unwanted horses which might otherwise face neglect and mistreatment. After hearing additional testimony the House Agricultural Sub-committee
voted 37-3 to “discharge the bill with disfavor and recommended that the House vote against it.” Despite this negative recommendation, the House passed H.R. 503 by a vote of 263-146 in September 2006. The Senate version, S.1915 languished without a vote as the second session of the 109th Congress ended. Two new bills, H.R. 503 and S. 311 were introduced in January 2007 at the opening of the 110th Congressional Session.

 VIII. CONCLUSION

Clearly, the position taken by the USDA is one in conflict with the intent of Congress. Representative John Sweeney’s January 2006 letter to the Secretary of Agriculture outlined the following conclusions:

“Accordingly, we can only conclude that the USDA has special, and as of yet undisclosed, reasons for attempting to circumvent this particular de-funding mandate. We therefore request that you immediately provide our offices with copies of all agency documents with industry representatives – so that we can ensure that USDA is carrying out its duly assigned role of implementing congressional policy, rather than attempting to determine or circumvent such policy for itself.”

Representative Sweeney contends that congressional intentions are clear by pointing out that Congress on numerous occasions has used its ability to remove funding to “effectuate congressional policy on a number of subjects.” In a letter to the Committee on Agriculture Secretary Johanns made clear the USDA position, “Fourth, we do not believe that the Horse Protection Act, a law to prevent soring of horses in the United States, should be amended to prohibit a completely different type of activity.” While the court’s dicta in Humane Society of the United States v. Johanns relates almost exclusively to procedural matters, in summarizing public interest arguments states, “Congress, which has taken a half-step to eliminate the existing programs.” It seems probable from these representations that should S.1915 be successfully adopted, the USDA would participate in, if not initiate action, to prevent its implementation.

ENDNOTES

1 Barbara Righton, All the Sad Horses, Maclean’s, Toronto, February 10, 2003, Vol. 116, No 6, at 38. “Unlike cats and dogs, who are cradled by their lifelong owners as they die on a vet’s table and are then buried under the rose bushes, horses often live their lives from pillar to post. Horse-trading has always had a bad reputation because unsavory characters gull the uninitiated. Fair enough for the buyers, who ought to know better, but what about the dumb animals?”

2 U.S.C. Title 7


4 Webb Garrison, Civil War Curiosities, Famous Horses of the Civil War, www.civilwarhome.com/horses.htm, (2002). The military horse’s rich history is infused within our nation’s development. The relationship between a cavalryman and his horse was so important that part of the surrender terms at Appomattox in 1865 allowed each confederate cavalryman to take his horse home with him. General Robert E. Lee’s favorite mount “Traveller” was a Morgan horse, a breed considered by many to be the second exclusive breed developed in the United States. Traveller is buried outside of the Lee Chapel at Washington and Lee University in Lexington, Virginia. A well known U.S. Army Recruiting Office slogan was, “The Horse Is Man’s Noblest Companion – Join the Cavalry And Have A Courageous Friend.”

Frank S. Popplwell, *The Spirit of the Pony Express*. www.ponyexpress.org/history.htm. The founders of the Pony Express were Russell, Majors and Waddell. The company, Central Overland California and Pike's Peak Express Company which operated from April 3, 1860 to October 1861 was a financial failure and was sold at auction in March 1862. “From the days of ancient Persia to dawn of modern history, horse and rider served to bind together the provinces of monarchy, empire and republic. In rain and in snow, in sleet and in hail over moonlit prairie, down tortuous mountain path...pounding pony feet knitted together the ragged edges of a rising nation.”

H.W. Dickenson, *James Watt – Craftsman and Engineer*, Cambridge University Press, 1936, at 145. Watt intended to market a steam engine that he had developed and was looking for a measurement tool that others would easily understand.1 His unintentional legacy lives on in the automobile industry and engine power calculations from lawn mowers to vacuum cleaners.

Jackson Turner Main, *Society and Economy in Colonial Connecticut*, Princeton University Press, 1983) at 177. Horse owners in Connecticut often quip “There are more horses here today than there were in colonial times.” That statement may not be far off the mark. Comparing the 52,000 horses estimated to exist in the state today, historian Jackson Turner Main estimates that in the year 1730 the colony of Connecticut had a population of about 38,000. Since it is most probably not likely that each person owned a horse, but also possible that some part of the population owned multiple horses for agricultural and transportation purposes, an estimate of 38,000 colonial horses is not beyond reason.

The organization’s mission is to represent and promote the equine industry. It was founded in 1969 and today includes 195 member organizations and over 1,800 individuals.


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The study breaks down usage into the following categories; 844,500 used in racing, 2,719,000 used in showing, 3,906,900 used in recreation and 1,752,440 used in other activities. It further ranks horse numbers by state with Texas, California, Florida, Oklahoma and Kentucky respectively, coming in as the top five nationally.


15 U.S.C. § 1821 et seq. (Dec. 9, 1970). The initial purpose of the Horse Protection Act was to prohibit the transportation or showing of horses that were injured through “soring” to alter the gait for show purposes.


Id. at 76 C.I.S. II. 501 16 (1975).

16 U.S.C. §1331 et seq. (1971), “Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the west; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of congress that wild free-roaming horses and burros shall be protected from capture, branding harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of public lands.” (Public Law 92-195, Dec. 15 1971, 85 Stat. 649).


Id.

Marsha A. Levine, *Eating Horses: The Evolutionary Significance of Hippophagy*, Antiquity Publications, Ltd., March 1, 1998. This is the quintessential oxymoron: we do not eat horses in the United States. In fact many would consider it downright un-American. The foundation for our widespread abhorrence to horse eating may have its roots in early Christianity. In 732 Pope Gregory, in an effort to stop the pagan practice of animal sacrifice, and the subsequent eating of the sacrificed animal, forbid
the eating of horseflesh. While these early taboos may contribute to the
evolution of our present “distaste” for horse flesh, there is a widespread
consensus that the horse is treasured by the American public for its
contributions to our nation’s growth and history. The Equine Protection
Network, a horse slaughter awareness group that publishes opinion polls on
horse slaughter, reports that overwhelmingly the American public is
opposed to horse slaughter for food and in many cases is not even aware
that horses are being slaughtered in the U.S. for export overseas.

21 Mary Jacoby, Why Belgians Shoot Horses in Texas for Dining in Europe:
Grass-Fed Meat is Superior, But Slaughterhouses Draw Growing Criticism


23 It should be noted that not all horse meat is shipped out of the country. A
small percentage of meat is sold to U.S. zoos for their big cat population
and other carnivores because of its high protein content.

24 Barry Shlachter, Horse plants to pay for inspections, Fort Worth Star-
Telegram, March 10, 2006, at 1.

25 Shlachter, supra note 24 at 1.

26 107 H.R. 3781, (2002). Synopsis: A bill to prevent the slaughter of horses
in and from the United States for human consumption by prohibiting the
slaughter of horses for human consumption and by prohibiting the trade and
transport of horseflesh and live horses intended for human consumption,
and for other purposes.

27 Representative Constance Morella, (R. - M.D.) “Mr. Speaker, today I join
my colleagues, Mr. Gilman, Mr. Chris Smith, Mr. Jones, Mr. Pallone, and
Mr. Lantos to introduce the American Horse Slaughter Prevention Act. This
bill will prevent the cruel and senseless slaughter of American horses
simply to satisfy the culinary desires of consumers in Canada, Europe,
Japan and elsewhere. According to the U.S. Department of Agriculture,
55,776 horses were slaughtered in the United States last year for their meat,
which was then sent overseas for human consumption. Thousands more
were shipped live across the borders to Canada and Mexico for slaughter
there.

28 Agriculture Appropriations Act, FY 2006. “Effective 120 days after the
date of enactment of this Act, none of the funds made available in this Act
may be used to pay the salaries or expenses of personnel to inspect horses
under section 3 of the Federal Meat Inspection Act (21 USC §603) or under
the guidelines issued under section 903 of the Federal Agricultural
Improvement and Reform Act of 1996.”


30 Federal Agricultural Improvement and Reform Act, 9 C.F.R. § 309 et seq.
1996.

32 Michael Owen Johanns grew up in an Iowa family of dairy farmers. A practicing attorney, he began his Republican political career in 1983 in Lincoln, Nebraska and served two terms as Nebraska’s governor from 1999 to 2005, until his nomination by President George W. Bush for U.S. Secretary of Agriculture in 2005.

33 Letter from John E. Sweeney, Member House of Representatives, to Michael Johanns, Secretary United States Department of Agriculture (January 17, 2006).


36 Id. at 5 U.S.C. § 706.


38 The Humane Society of the United States, at 8.

39 Id. at 20.


41 Chad Mendell, Agriculture Subcommittee Strongly Disapproves of Slaughter Bill, The Blood Horse, July 2006, at 19.

42 Sweeney, supra note 33 at 13.

43 Id.

44 Letter from Michael Johanns, Secretary United States Department of Agriculture, to Bob Goodlatte, (R-VA) Chairman, Committee on Agriculture House of Representatives, (Sep. 6, 2006).


FINANCIAL ACCOUNTING STANDARDS BOARD
STATEMENT 123 (R): THE EXPENSING OF OPTIONS

By

Daniel D. Acton*
Robert G. Hutter*
Mary Stermole*

Introduction

In the 1980’s Nelson Pelz benefited greatly from Michael Milken’s junk bond financing. Pelz successfully bought and sold Triangle Industries. He then turned his attention to obtaining control of Triarc Companies, owner of Arby’s, R.C. Cola and other brands. At the time of acquisition the market priced Triarc at $18 per share. Pelz immediately granted himself options on 600,000 shares at that price exercisable over the following decade. Under Pelz’s leadership the price of the stock dropped to half its former value leaving

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