

Remarks by
Edward J. Martin, President
The Association of Racing Commissioners International
U.S. Senate Commerce Committee
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Senator Udall, thank you for holding this meeting to examine issues surrounding your proposal, Senate Bill 886, and for giving me the opportunity to participate.

The Association of Racing Commissioners International (RCI) is a not-for-profit trade association of the government regulators of horse and greyhound racing and all associated pari-mutuel wagering. Our members include federal regulatory entities in Canada, Mexico, and throughout the Caribbean as well as most state racing commissions in the United States and the Mobile County Racing Commission in Alabama.

RCI works to develop model rules, drug classifications, testing laboratory standards, and wagering system technology standards. We also provide limited data management and information services to our members. Some states, like California, have legislatively incorporated by reference portions of the RCI Model Rules into their statutes.

Horse racing and its associated gambling have historically been regulated by the States. Collectively, those states fund and conduct the most aggressive drug testing program of any professional sport, testing for more substances at deeper levels than anyone else.

Yes, there are people who cheat - just like in any enterprise. Thankfully they are the minority, although the actions of a few can be misinterpreted as representative of an entire sport or industry.

That, I fear is what has happened to racing.

State racing commissions focus on maintaining a level playing field in the race. Even the current policy concerning raceday furosemide permits its almost ubiquitous use under controlled circumstances to ensure that no one horse is given an unfair advantage over another.

That is not to say that the overuse of certain medications cannot be interpreted as an attempt to cheat - or worse yet - to mask a condition that should preclude a horse from participating in a race. This is where I believe public policy makers need to focus.

The substances contained in a horse on raceday are within the purview of the racing commissions. In 2010, 320,179 biological samples were taken from racing horses and sent to the various laboratories to be tested. 99.5% of those samples were found to contain no foreign or prohibited substance.

In those relatively rare instances when a violation of a medication rule did occur, most were associated with a legal substance administered in the normal course of equine care by a licensed veterinarian.

State racing commissions do not have jurisdiction over the practice of veterinary medicine. As such, most are not empowered or resourced to assess the propriety of veterinary care and treatments given to horses in training, particularly those training away from the physical locations under the jurisdiction of the racing commission. That responsibility often rests with other state entities.

At the RCI Annual Meeting in Oklahoma City in April, I proposed that the jurisdiction of racing commissions be expanded and resources provided so there can be a qualified review of treatments given to horses. If commissions had the ability to call into question an individual's license to practice veterinary medicine in the same way a State Veterinary Board can, those who might facilitate the abuse of a medication to enable a horse to run that should not be running might think twice.

Racing commissions can take away the racing license, but there is nothing preventing a racehorse from being treated by a vet without a racing license away from the grounds of the racetrack. The ability to take or suspend the vet license could be quite a deterrent.

There has been much talk about the need for uniformity. While uniformity is certainly desirable and RCI will continue to advocate for it, I must clearly say that it is not the major challenge facing the integrity of racing.

We certainly understand the temptation to set uniform national standards. But we must clearly understand that in so doing nothing will be done to address the real need to commit additional resources to racing investigations, surveillance, research and testing development.

Nor will such standards deal with the infiltration into the horse breeding business and sales arenas by those connected to the Mexican drug cartels as has been recently revealed. The breeding industry and associated horse sales do not fall under the jurisdiction of the state racing commissions. Given the recent developments concerning the drug cartel, this may be an area this committee may want to focus on.

As the Members of this Committee know well, government finances at all levels have been “challenged” in these economic times. When I met with your staff in 2011, I was informed that you would like to assist the racing commissions in what they are doing. We sincerely appreciate this.

To do so, we encourage reforms that will generate funding to dedicate investigative “boots on the ground”, ensure the best testing, and support the never-ending need for research necessary to detect and confirm the use of new and exotic substances.

We also encourage proposals to provide dedicated assistance to state racing commissions from the DEA, FBI, FDA and DOJ. When a state racing commission needs federal assistance dealing with substances coming across the border, or a drug compounding lab generating illegal substances that work their way to the racetrack, it would be helpful if the federal agencies empowered to deal with these areas would provide timely and aggressive assistance through a dedicated office or unit responsible for coordinating these matters with the racing commissions.

For the better part of the past year two state racing commissions quietly assisted the federal efforts that resulted in the recent charges brought against Jose Morales involving the laundering of money in Quarter Horse racing. It would be good if the federal government could reciprocate and pick up the ball when a matter within your jurisdiction is brought to you by a state racing commission because it impacts things going on in racing.

As one who managed a state racing commission for nine years of my life, I can report that while trying to stay ahead of those who would dope a horse is a never-ending challenge, it is not the only one. In New York we investigated and broke the case of the computer hackers who compromised the wagering system to turn losing tickets into winning tickets. We also launched the investigation that resulted in the New York Racing Association having to stand in front of a federal judge and admit to a conspiracy to defraud the government.

We know this committee will consider the proposal that has been embodied in S.886. While RCI has not yet taken a position on this proposal, I must note that we do

believe the creation of an Interstate Racing Regulatory Compact would be the preferred path to avoid government redundancy and associated cost that could result from creation or expansion of a federal agency.

We believe a compact would advance uniformity by creating a new way for state racing commissions to promulgate rules and implement and fund regulatory programs. In conjunction with the Council of State Governments, RCI has developed recommended state legislation creating such a compact. This proposal has received the endorsement of the National Council of Legislators from Gaming States, The Jockey Club (US), the National HBPA, and the American Association of Equine Practitioners. As you know, entry to such a compact can only be authorized by state statute. The Commonwealth of Kentucky has passed this legislation and statutes enacted in Colorado and Virginia have authorized their racing commissions to enter into such a compact once created. Five additional states need to enact this legislation before the Compact can be created. We have been asked if Congress could require or encourage the states to create a compact. We refer that question to you.

Having said this, I would like to make some specific observations about the proposal before this committee, S.886 and ask that you consider them before moving forward:

- 1. First, we have received questions as to why the determination of equine medication policy in racing is proposed to be assigned to the Federal Trade Commission (FTC).*

State regulators currently rely on the Racing Medication and Testing Consortium, the RCI Regulatory Veterinarian Committee, input from the American Association of Equine Practitioners, and the Veterinary Pharmacology Subcommittee of the RCI Drug Testing Standards and Practices Committee before adopting a public policy that affects the health and wellbeing of racing equines. The FTC traditionally does not handle matters like this. Perhaps the RCI Model Rules could be incorporated by reference if your goal is uniformity of medication policy.

- 2. Second, S.886 outlaws the current raceday use of furosemide, a legal medication intended to mitigate exercise induced pulmonary hemorrhage (EIPH). The current policy, enacted on concerns of equine welfare, was implemented approximately twenty years ago. RCI has opened a reassessment of the issue to determine if the public policy exemption that exists allowing a raceday administration to treat EIPH should continue. The RCI Regulatory Veterinarian Committee is currently assessing issues*

pertaining to changes in body weight and electrolyte balance resulting from a furosemide administration to determine if there are any adverse effects that might also need to be balanced with concerns over EIPH. The challenge for policymakers, be they state or federal, must be to make an informed decision on this issue that can be scientifically justified. We appreciate being here with Dr. Lyons. I do note that there are other equally-qualified opinions from the veterinary community on this topic who are not here. State regulators are attempting to sort this issue out. In general we do not like the idea of any medication being given a horse on race day. But we must be careful that any public policy change does not adversely affect the health of a generation of horses now racing. S.886 proposes to decide this issue and we request that your staff share with us any reports the sponsors have based their decision on that have assessed the various research projects that have been done in this area. Perhaps we have yet to see what you have seen.

There are strong positions on all sides of this issue but we note that there is no requirement that a horse run in a race on furosemide. Later this month, the RCI model rules committee will consider a modification of our Model Rules that would facilitate the creation of lasix-free racing opportunities for those owners who do not believe in its use yet use it anyway.

- 3. Third, S.886 does not contain a sufficient funding mechanism for the FTC to assume the responsibilities you assign to them. In Canada, the federal agency tasked with the determination and enforcement of racing medication policy and drug testing is the Canadian Pari-Mutuel Agency (CPMA). That agency is funded by an assessment on wagering handle.*
- 4. Finally, RCI agrees that the current penalty structure should be more progressive than it is now. We are currently working with the Racing Medication and Testing Consortium and the U.S. Jockey Club to reform penalty recommendations to the commissions. S.886 deploys a “three strikes, you’re out” approach to all medication rule violations, regardless of whether the medication has any significant ability to affect the performance of a horse. Just as one would not remove a driver’s license for three parking tickets, we urge you to reconsider this aspect of S.886 to differentiate between relatively minor rule violations involving legal substances that are normal for equine care and those that have no business being in a horse, let alone a race horse.*

We welcome this review by the Commerce Committee. This is an issue we believe is not adequately understood by racing fans and the general public.

We caution the committee that these are not simple issues. The States have considerable experience in this matter and although you may disagree with how a particular issue is handled, the states have worked diligently for a long time to balance the health needs of our horses and riders, provide an equal playing field necessary for participants and fans, and to keep up with and catch those who cheat. Certainly the recent detection of a new substance, dermorphin, is indicative of the current system working. But after dermorphin there will be something else. There always is.

Thank you for the opportunity to be part of today's discussion.