

Anti-Horse Slaughter Legislation: Bad for Horses, Bad for Society

LAURA JANE DURFEE*

INTRODUCTION

The United States horse slaughter industry is on its deathbed. The demise of the industry follows various animal welfare groups' increased activism in recent years to eliminate domestic equine slaughter.¹ These proponents' arguments are emotionally charged, at the cost of foresight. For example, they claim that horses are "a rich part of American culture,"² but they fail to address what will really happen to "rescued" horses that would otherwise be destined for slaughter. While horses have played an important role in this nation's history, romanticizing the horse's place in our society while ignoring the consequences that are likely to follow a slaughter ban³ does little, if anything, for equine welfare. The past president of the American Veterinary Medicine Association, Dr. Bonnie Beaver, summed this up when she said,

We must think of the consequences of the proposed ban in concert with the welfare of a large number of horses that could be affected. I urge [members of Congress] to . . . base their opinions on facts and science, not on emotions. [The proposed horse slaughter ban] . . . has significant negative consequences for many horses.⁴

The elimination of domestic equine slaughter does not benefit equine welfare and has negative economic effects on the horse industry. Equine adoption agencies can neither absorb nor fund care for the 65,000 to 90,000 unwanted horses a year that owners can no longer send to equine processing plants.⁵ Additionally, the cost of euthanizing and disposing of carcasses is often prohibitive to owners, as is properly caring for

* J.D. Candidate, 2009, Indiana University Maurer School of Law — Bloomington. This Note is dedicated to my husband, Jeff, my parents, Ronnie and Anne, and the many horses that have influenced me. Thank you all for teaching me a practical approach to equine welfare.

1. See Barry Shlachter, *Killer Consequences*, W. HORSEMAN, Aug. 2007, at 37.

2. Manu Raju, *Western Lawmakers Vow to Fight Efforts to Ban Horse Slaughter*, CQ WKLY., Apr. 30, 2007, at 1280. "Horses are American icons and deserve to be treated as such. The practice of horse slaughter is a contradiction to our culture and our history." Meghan Goss, *Congress Corrals on Horse Slaughter*, HUMANE SOC'Y OF THE U.S., July 28, 2006, http://www.hsus.org/pets/pets_related_news_and_events/horse_slaughter_bill_heard.html (quoting Rep. John Sweeney).

3. See *infra* Part III.

4. *Independent Analysis Finds Horses, U.S. Economy Would Suffer if Horse Slaughter Ban (H.R. 503) Passes*, ROCKY MTN. HORSE EXPO, June 30, 2006, <http://www.rockymountainhorseexpo.com/News/IAFH07126.php>.

5. See JAMES J. AHERN, DAVID P. ANDERSON, DEE VON BAILEY, LANCE A. BAKER, W. ARDEN COLETTE, J. SHANNON NEIBERGS, MICHAEL S. NORTH, GARY D. POTTER & CAROLYN L. STULL, THE UNINTENDED CONSEQUENCES OF A BAN ON THE HUMANE SLAUGHTER (PROCESSING) OF HORSES IN THE UNITED STATES 5 (2006), <http://www.animalwelfarecouncil.com/html/pdf/consequences.pdf>.

unwanted horses.⁶ If legislators eliminate the option of slaughter for horse owners, the number of abused, neglected, malnourished, and abandoned horses will likely increase.⁷ However, a slaughter ban would adversely affect more than just the interests of horses. The elimination of horse slaughter would further strain animal rescue groups⁸ and cause significant economic damage to slaughter plant owners and workers,⁹ the horse industry,¹⁰ and the environment.¹¹

Until the spring of 2007, there were three equine slaughter plants operating in the United States: two in Texas¹² and one in Illinois.¹³ However, both states passed laws making horse slaughter for human consumption illegal,¹⁴ and the Fifth and Seventh Circuits upheld the laws on appeal,¹⁵ leading to the closure of all three plants.¹⁶ While the laws ostensibly apply only to horses slaughtered for human consumption, they effectively make it impossible to slaughter any horses. Equine processing plants

6. [A]most half of all U.S. horse owners have an annual income of between \$25,000 and \$75,000—and the average cost per year for maintenance [of a horse] is \$2,340 per horse, not including veterinary care. . . . Maintaining a horse until its natural death . . . averages \$25,740 per horse, not including veterinary care for sickness or injury.

Independent Analysis Finds Horses, U.S. Economy Would Suffer if Horse Slaughter Ban (H.R. 503) Passes, *supra* note 4.

7. See AHERN ET AL., *supra* note 5, at 2.

8. “Public animal rescue facilities are currently saturated with unwanted horses. No funding has been allocated to manage a large increase in horses that will likely become the responsibility of these facilities.” *Id.* at 2.

9. “The export value of horse meat for human consumption was approximately \$26 million [in 2002]. A ban on processing would eliminate these annual revenues.” *Id.* at 2; *see id.* at 9.

10. The horse industry contributes an estimated \$39 billion in direct economic impact on the economy. The Animal Welfare Council stated that “[a] conservative estimate of the total economic impact of a ban on horse processing for export has been reported to be \$152 million to \$222 million per year.” *Id.* at 5. “Horse owners will realize a direct impact [from the elimination of processing plants] from lower horse sale prices.” *Id.* at 2.

11. Not only will finding places to house unwanted horses be problematic, but there are also “significant management issue[s] in] the safe and proper disposal of horse carcasses to eliminate hazards to people or other animals.” *Id.* at 7.

12. Texas was home to Beltex in Fort Worth, Texas and Dallas Crown in nearby Kaufman, Texas. Shlachter, *supra* note 1, at 37.

13. Cavel International was located in DeKalb, Illinois. *Id.* Fifteen to twenty years ago there were eight equine processing plants in the United States; they processed about 350,000 horses a year. Linda Wilson Fuoco, *Horse Slaughter Unpopular but Necessary*, PITTSBURG POST-GAZETTE, Nov. 15, 2007, at N2; Bill Hord, *Nebraska Horse Lovers Split on Attempt to Ban Slaughter*, OMAHA WORLD-HERALD, Sept. 9, 2006. In 1990, 345,900 horses were processed in the United States. AHERN ET AL., *supra* note 5, at 5. That number dropped to 94,037 in 2005. *Id.*

14. Illinois Horse Meat Act, 225 ILL. COMP. STAT. 635 (2007); TEX. AGRIC. CODE ANN. § 149 (Vernon 2004).

15. *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007); *Empacadora de Carnes de Fresnillo, S.A. de C.V. v. Curry*, 476 F.3d 326 (5th Cir. 2007).

16. The Texas statute has been in place since 1949 but has only recently been enforced. Lisa Sandberg, *Horse Slaughter Foes See Victory Ahead*, SAN ANTONIO EXPRESS-NEWS, May 22, 2007, at A5.

produce products other than meat for human consumption—such as glue, pet food, and food for zoo animals—but the slaughter of horses for human consumption is the driving economic factor behind slaughter facilities.¹⁷ Without the profits from meat destined for human consumption, equine slaughterhouses cannot operate.¹⁸

The Prevention of Equine Cruelty Act of 2008 is currently pending before Congress and, if enacted, would make it a federal crime to “possess[], ship[], transport[], purchase[], sell[], deliver[], or receive[], in or affecting interstate commerce or foreign commerce, any horse with the intent that it is to be slaughtered for human consumption” or possess, ship, transport, purchase, sell, deliver, or receive “any horse flesh or carcass or part of a carcass, with the intent that it is to be used for human consumption.”¹⁹ Implementation of the Act would result in a further saturation of unwanted horses and a surge in equine abuse and neglect.²⁰ Without the Act, horses will continue to be transported to other countries for slaughter.²¹ With the Act, the United States will likely see a further increase in abuse and neglect, and a further strain on the limited funding available to care for unwanted horses.²² This puts the horse industry in a Catch-22: while the current state of affairs is undesirable, passage of federal legislation banning horse slaughter is even worse for horses and their owners.

Part I of this Note will discuss the domestic horse slaughter industry. It will examine what types of horses are sent to slaughterhouses and by whom, as well as how slaughterhouses operate. Part II will discuss the current state of horse slaughter legislation and the legislative histories that led to the current situation. Part III will discuss the forecast for equine welfare and will explain why the closure of the U.S. equine slaughter industry is detrimental to equine welfare, and Part IV will discuss the negative economic effects that will be felt by the abolition of the domestic slaughter industry. This Note concludes by calling for the repeal of state laws criminalizing the slaughter of horses for human consumption, the reopening of equine slaughterhouses in the United States, and the rejection of the proposed Prevention of Equine Cruelty Act of 2008.

17. *Cavel*, 500 F.3d at 552–53. “The flesh of horses that is intended for pet food is obtained from the corpses hauled to rendering plants for disposal; the plants also produce glue and other products from the carcasses.” *Id.* at 553.

18. *Id.* at 552. All of the equine slaughterhouses in the United States have shut down, although the Texas slaughterhouses “reopened, adding cattle to their menu.” *Id.*

19. H.R. 6598, 110th Cong. (2008).

20. The Act also presents significant enforcement problems, since transporters can easily change the purpose for transporting horses to another country after passing through border checkpoints.

21. The criminalization of horse slaughter for human consumption in Illinois and Texas resulted in the cessation of all of the slaughter plants in the country. *See generally* Illinois Horse Meat Act, 225 ILL. COMP. STAT. 635 (2007); TEX. AGRIC. CODE ANN. § 149 (Vernon 2004). Slaughterhouses remain open in Canada and Mexico. While the Canadian government regulates slaughterhouses in Canada and ensures humane conditions, the situation in Mexico is far different. Shlachter, *supra* note 1, at 39–40. Many Mexican slaughterhouses do not use humane methods such as a stun gun to render a horse unconscious. Instead, many simply stab the horse’s spinal column with a knife, a process that may require multiple stabs to actually paralyze the horse, leaving the horse conscious when it bleeds to death. *Id.* at 40.

22. The United States has not felt the full force of a horse slaughter ban because slaughterhouses remain open and accessible in Mexico and Canada.

I. THE DOMESTIC EQUINE SLAUGHTER INDUSTRY

The United States' horse industry is a "highly diverse, national, serious, and economically significant industry."²³ There are 9.2 million horses in the United States and 4.6 million Americans involved in the industry.²⁴ The horse industry provides 460,000 full-time equivalent jobs.²⁵ Spending by industry suppliers and employees generates additional jobs, raising the total to 1.4 million full-time equivalent jobs.²⁶ Annually, the industry generates \$39 billion in direct economic activity for the U.S. economy, a total that swells to \$102 billion when added to spending by industry suppliers and employees.²⁷ Additionally, the horse industry pays \$1.9 billion in taxes to all levels of government.²⁸

The horse slaughter industry, like other domestic livestock industries, is largely commercial. The three slaughterhouses that operated in the United States, until they were forced to close in 2007, brought in millions of dollars annually.²⁹ In 2001, the industry exported 11,940 metric tons of processed horse meat worth more than \$41 million from the United States.³⁰ All horse meat processed for human consumption is shipped outside of the United States.³¹ The majority of horse meat is exported to

23. AMERICAN HORSE COUNCIL, HORSE INDUSTRY STATISTICS 1 (2005), <http://www.horsecouncil.org/statistics.htm>.

24. *Id.*

This includes 2 million horse owners, of which 238,000 are involved in breeding, 481,000 in competing, 1.1 million involved in other activities, 119,000 service providers and 702,000 employees, full- and part-time and 2 million family members and volunteers. That means that 1 out of every 63 Americans is involved with horses.

Id.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. Cavel International, Inc. in DeKalb, Illinois had more than sixty employees and generated approximately \$20 million in annual revenues in 2007. Brief of Plaintiffs-Appellants at 9, *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007) (No. 07-2658). Beltex Corporation in Fort Worth, Texas had ninety employees and grossed over \$30 million in sales in 2001, and Dallas Crown, Inc. in Kaufman, Texas had forty employees and had gross sales exceeding \$9 million in 2001. Amended Complaint at 8, *Empacadora de Carnes de Fresnillo, S.A. de C.V. v. Curry*, No. 4-02CV0804-A, 2005 U.S. Dist. LEXIS 18261 (N.D. Tex. Jan. 8, 2003).

30. Amended Complaint, *supra* note 29, at 3.

31. Brief of Plaintiffs-Appellants, *supra* note 29, at 9; Amended Complaint, *supra* note 29, at 7-8. While horse meat is not commonly found on most Americans' dinner menus, this has not always been the case. The Harvard Faculty Club served horse steaks until 1970. Christa Weil, *We Eat Horses, Don't We?*, N.Y. TIMES, Mar. 5, 2007, at A19. In fact, horse meat can be nutritious. British chef Gordon Ramsay encourages the inclusion of horse meat in the English diet; he describes the meat as "healthy, with lots of iron and half the fat of beef and far more Omega 3 essential fatty acids." David Harrison, *We Should Eat Horse Meat, says Ramsay*, TELEGRAPH.CO.UK, May 7, 2007, <http://www.telegraph.co.uk/news/uknews/1550742/We-should-eat-horse-meat,-says-Ramsay.html>.

Belgium, Italy, Japan, Switzerland, Mexico, and France.³² Processors sell other parts of the horses' carcasses—those not used for human consumption—for a variety of purposes, “including baseball covers, shoes, leather products, pharmaceuticals used in open heart surgery, violin bows, pet food, fertilizer, and to feed zoo animals.”³³

Commercial horse-buyers often purchase horses destined for slaughter at auctions, paying between \$300 and \$700,³⁴ with the average rate at about \$0.30 to \$0.40 per pound.³⁵ A study that examined horses at both auctions and slaughterhouses found that slaughterhouses only purchase horses not viewed by other buyers as viable working animals,³⁶ since “desirable” horses are purchased for “racing, show ring competitions, ranch work or recreational riding.”³⁷ The study also found that horses bound for slaughterhouses typically had poorer foot and body condition, were older, and had more severe behavioral problems than other horses at auctions.³⁸ This shows that it is

32. Hallie S. Ambriz, *The American Horse Slaughter Prevention Act*, 14 SAN JOAQUIN AGRIC. L. REV. 143, 146 (2004).

33. Amended Complaint, *supra* note 29, at 4; *see also* Brief of Plaintiffs-Appellants, *supra* note 29, at 10.

34. Amended Complaint, *supra* note 29, at 4.

35. Ambriz, *supra* note 32, at 146.

36. *See* K. McGee, J. L. Lanier & T. Grandin, *Characterization of Horses at Auctions in Slaughter Plants*, COLO. STATE UNIV. DEP'T OF ANIMAL SCI., 2001, <http://equineextension.colostate.edu/content/view/162/57/>.

Discussions with traders indicated that if a horse was sound enough to be ridden and it was not real old, they could usually get more money for it if they sold it for riding than if they sold it for slaughter. As a result, most horses are diverted away from the slaughter plants until they lose all potential as a riding or working horse. However, a severe behavior problem in an otherwise usable riding or working horses [sic] may render the horse non-saleable to the public and [it] may be taken directly to slaughter.

Id.

37. *The Facts Surrounding the Transportation and Slaughter of Equine for Human Consumption* 3 (Animal Welfare Council, Issue Paper No. 2, 2003), <http://www.nyshc.org/documents/awcissuepaper2.pdf>.

38. The body condition of horses at the auctions was 2% emaciated, 20% thin, 67% good, and 11% fat or obese. At the slaughter plants 3% were emaciated, 27% thin, 59% good, and 11% were fat or obese. Very poor foot condition was observed in 2% of the auction horses and in 10% of the slaughter horses. Of the auction horses, 54% had acceptable foot condition, compared to 31% of the slaughter horses. Severe behavior problems observed at the auctions (2%) and at the slaughter plants (4%) were repeated rearing, bucking, and stereotypes such as repetitive head shaking. These behaviors were more complex than simple acute stress reactions to being in an unfamiliar environment.

....

Eleven percent of the equines seen in all auctions were under two years of age and 3% were over twenty. Old (geriatric) riding horses were 7% of the auction horses. Only geriatric and juvenile age data was collected in Pennsylvania and in the slaughter plants. There were 211 (16%) geriatric horses and one horse under 2 years of age at the slaughter plant.

Soundness of horses between the auctions and slaughter plants varied. Sound usable riding horses (47%) were the single largest classification of horses

typically horses that are not useful, and therefore not as desirable, that are sent to slaughterhouses.

The slaughterhouses contract with independent buyers, often known as “killer buyers,” throughout the United States to acquire horses for slaughter.³⁹ A study on the transportation of horses commissioned by the Department of Animal Science at Colorado State University found that 7.7% of all horses transported to slaughter had severe welfare problems. Among these horses, six percent of the welfare problems originated with the horses’ original owners and 1.8% were caused by injuries that occurred during marketing or travel.⁴⁰ Because the majority of welfare problems found in horses destined for slaughter originated with the horses’ original owners, McGee, Lanier, and Grandin’s finding that slaughter is primarily an outlet for abused, unwanted, and neglected horses is reinforced.⁴¹

The United States Department of Agriculture (USDA) regulates the slaughter of horses in the same manner as other livestock, including cattle, sheep, swine, and goats.⁴² When the horses arrive at the processing plant, federal law provides that an appointee of the Secretary of Agriculture must inspect them. Horses showing symptoms of disease require additional inspections and must be slaughtered separately.⁴³ To prevent inhumane slaughtering, inspectors also scrutinize the facility and the slaughtering methods used. USDA appointees can halt slaughtering and close the plant immediately if they uncover any evidence of inhumane treatment.⁴⁴

The Humane Methods of Livestock Slaughter Act prescribes two primary methods of slaughtering livestock that prevent needless suffering.⁴⁵ The first method is consistent with Kosher or other religious slaughter. The second method renders

at the auctions, and only 13% were sound at the slaughter plants. At the auctions 8% of the horses were obviously unsound, compared to 28% of horses at the slaughter plants.

McGee et al., *supra* note 36.

39. Amended Complaint, *supra* note 29, at 3–4. Federal law regulates transportation to the slaughterhouses. The Commercial Transportation of Equine for Slaughter Act of 1996 provides that cargo space for animals during the commercial transportation of horses for slaughter must be designed, constructed, and maintained in a manner that protects the health and well-being of the horses. Commercial Transportation of Equines for Slaughter, 9 C.F.R. §§ 88.1–6 (2007). Additionally, the Act provides that horses cannot be transported in double-decker trailers, although trailers that could not be converted could be used until 2006. *Id.* § 88.3. The Act also provides that the horses shall have food and water immediately before and immediately after loading and unloading. *Id.* §§ 88.4–5.

40. TEMPLE GRANDIN, KASIE MCGEE & JENNIFER LANIER, SURVEY OF TRUCKING PRACTICES & INJURY TO SLAUGHTER HORSES I (1998), <http://www.grandin.com/references/horse.transport.html>. Examples of serious welfare problems caused by original owners were horses that were severely foundered, emaciated, skinny, weak, and had bowed tendons. *Id.* Examples of injuries that resulted during travel were abrasions, lacerations, and bite and kick marks. *Id.*

41. McGee et al., *supra* note 36.

42. 21 U.S.C. §§ 601–24 (2006); Humane Methods of Livestock Slaughter Act, 7 U.S.C. § 1902 (2006).

43. 21 U.S.C. § 603(a).

44. 21 U.S.C. § 603(b). At Cavell International, a USDA veterinarian, along with additional inspectors, was on site at the slaughterhouse at all times the plant was operating to ensure compliance with federal law and regulation. Brief of Plaintiffs-Appellants, *supra* note 29, at 11.

45. 7 U.S.C. §§ 1901–07 (2006).

animals “insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.”⁴⁶

Domestic horse slaughter is a necessary part of the billion-dollar horse industry. The slaughter industry not only provides revenue, jobs, and taxes, but it also provides a humane, economically viable disposal option for unwanted or dangerous horses under careful federal regulation. While the horse slaughter industry does not differ from other domestic animal slaughter industries, the emotions that surround the slaughter of horses have created a vocal public outcry.⁴⁷ Many citizens, most of whom are not associated with the horse industry, perceive the horse as something of a mystical icon embodying a special place in American history.⁴⁸ Congress and state legislatures have responded with significant regulations; the carefully regulated, much-needed domestic equine slaughter industry is now effectively extinct.

II. EQUINE SLAUGHTER LEGISLATION

Congress has a tradition of protecting American horses, especially wild horses. In 1959, Congress passed the Wild Horse Annie Act, which prohibited horse hunters from using motor vehicles and aircraft in hunting wild horses on public land.⁴⁹ This Act was generally ineffective in preventing the slaughter of wild horses, so Congress followed it with the Wild Free-Roaming Horses and Burros Act.⁵⁰ The Act criminalized the capture and sale of wild horses, which Congress found to be “living symbols of the . . . spirit of the West.”⁵¹ In 2004, a spending measure sponsored by then-Montana Senator Conrad Burns lifted the ban against selling wild horses for

46. *Id.* § 1902. The American Veterinary Medical Association also provides for two accepted methods of euthanasia for horses. One is an overdose of a barbiturate anesthesia and the second is from a “gunshot or penetrating captive bolt causing trauma to the cerebral hemisphere and brainstem resulting in an immediate painless and humane death.” AHERNET AL., *supra* note 5, at 3.

47. *See, e.g.*, Press Release, Ams. Against Horse Slaughter, Big Success for Anti-Horse Slaughter Lobbyists (Mar. 11, 2008), <http://www.horsetalk.co.nz/news/2008/03/055.shtml>.

48. “George Washington is pictured many places with horses. We are reminded of the legend of Paul Revere’s ride and the Pony Express in the West. The Depression era race between Seabiscuit and War Admiral raised the morale of our country during desperate times.” 151 CONG. REC. S10218 (daily ed. Sept. 20, 2005) (statement of Sen. Ensign).

49. 18 U.S.C. § 47 (2006).

50. 16 U.S.C. §§ 1331–40 (2006); Mary W. Craig, *Just Say Neigh: A Call for Federal Regulation of By-Product Disposal by the Equine Industry*, 12 ANIMAL L. 193, 198 (2006).

51. 16 U.S.C. § 1331 (2006).

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 the public lands.

Id.

slaughter.⁵² The measure allowed the government to sell some older and unwanted horses for slaughter in order to reduce the wild horse and burro population.⁵³

In response to the Burns amendment, Congress passed an agriculture appropriations bill that included a provision placing a one-year moratorium on federal funding for the inspection of horse meat.⁵⁴ The provision's sponsors intended it to end the practice of horse slaughter for human consumption by eliminating funding for inspectors conducting required inspections under the Federal Meat Inspection Act, as uninspected meat would not be marketable in the United States.⁵⁵ However, after President Bush signed the appropriations bill into law, the equine slaughterhouses petitioned the USDA, asking to pay for inspections in exchange for permission to continue operations.⁵⁶ The USDA granted the slaughterhouses' petition, allowing the slaughterhouses to remain open.⁵⁷

In 2003, Representative John Sweeney introduced a bill in Congress entitled the American Horse Slaughter Prevention Act.⁵⁸ While Congress took no significant action on that bill, it laid the groundwork for H.R. 503, which Sweeney introduced in February 2005.⁵⁹ H.R. 503 would amend the otherwise unrelated Horse Protection Act of 1970⁶⁰ "to prohibit the shipping, transporting, moving, delivering, receiving,

52. Craig, *supra* note 50, at 198.

53. *Id.* Controlling domestic wild horse herds continues to be a problem. *See generally* Felicity Barringer, *Mustangs Stir a Debate on Thinning the Herd*, N.Y. TIMES, July 20, 2008, at A1.

54. Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2006, Pub. L. No. 109-97, 119 Stat. 2120 (2005).

55. *See* 151 CONG. REC. S10218 (daily ed. Sept. 20, 2005).

56. 2005-2006 *Legislative Review*, 12 ANIMAL L. 277, 281 (2006).

57. *Id.* Another agriculture appropriations bill, which passed in the House of Representatives on August 2, 2007 and is currently on the Senate calendar, contains a similar provision. It provides that no funds made available by the act "may be used to pay the salaries or expenses of personnel" to inspect horses under federal law. H.R. 3161, 110th Cong. (2007). However, if this version of the bill passes, it would have little practical significance at this time, as the domestic equine slaughter industry is effectively extinct.

58. H.R. 857, 108th Cong. (2003). *See generally* Robert Laurence, *Cowboys and Vegetarians: The Proposed "American Horse Slaughter Prevention Act,"* 2003 ARK. L. NOTES 103.

59. H.R. 503, 109th Cong. (2005).

60. Congress enacted the Horse Protection Act in 1970 to protect gaited horses from being "sored" by chemicals to gain an advantage in the show ring. 15 U.S.C. §§ 1821-31 (2006).

Soring involves the application of chemical irritants, such as diesel fuel or mustard oil, or driving devices, such as nails or tacks, into sensitive areas of the horse's feet. . . . The effect of the intentionally inflicted foot pain is that the sore horses "raise their hooves immediately after touching the ground and thus produce the high step," giving an advantage in a Tennessee Walking competition.

Lafcadio H. Darling, *Legal Protection for Horses: Care and Stewardship or Hypocrisy and Neglect*, 6 ANIMAL L. 105, 116 (2000) (quoting HUMANE SOC'Y OF THE U.S., HSUS FACT SHEET: TENNESSEE WALKING HORSE ABUSE (1998)). Congress found that the soring of horses was cruel and inhumane and that horses that are sored "compete unfairly with horses which are not sore." 15 U.S.C. § 1822 (2006).

possessing, purchasing, selling, or donation of horses and other equines to be slaughtered for human consumption, and for other purposes.”⁶¹

Sweeney recognized that efforts to eliminate inspection funds had failed to close equine slaughter plants and proposed H.R. 503 as a more direct ban on horse slaughter for human consumption. On September 2, 2006, the Committee on Agriculture reported on H.R. 503 with the recommendation that the bill *not* pass.⁶² Nonetheless, the House of Representatives passed the bill by a vote of 263 to 146 on September 7, 2006.⁶³ The bill was placed on the Senate calendar in September 2006, but it expired before it was voted on in the Senate.⁶⁴

The latest federal legislation aimed at ending domestic equine slaughter on a national level is H.R. 6598, the Prevention of Equine Cruelty Act of 2008, introduced on July 24, 2008 by Representatives John Conyers, Jr. and Dan Burton.⁶⁵ This Act would amend the federal criminal code to impose a fine and/or prison term for anyone who (1) “possesses, ships, transports, purchases, sells, delivers, or receives, in or affecting interstate commerce or foreign commerce, any horse with the intent that it is to be slaughtered for human consumption; or” (2) “possesses, ships, transports, purchases, sells, delivers, or receives, in or affecting interstate commerce or foreign commerce, any horse flesh or carcass or part of a carcass, with the intent that it is to be used for human consumption.”⁶⁶ The Act goes on to provide that the Attorney General is responsible for providing the “humane placement or other humane disposition of any horse seized” under the Act.⁶⁷ While H.R. 6598 would make it illegal to transport horses across state lines, or national borders, the bill is, likely, not a priority for the Senate since state laws have eliminated the domestic slaughter industry.

At least three states—Texas, California, and Illinois—have bans on slaughtering horses or selling their meat.⁶⁸ Illinois and Texas were home to the last three remaining

61. H.R. 503.

62. H.R. REP. NO. 109-746, at 40 (2007).

63. *Id.*

64. *Id.* H.R. 503 proposed findings and two new definitions to the Horse Protection Act. It defined “human consumption” as “ingestion by people as a source of food” and “slaughter” as “the killing of one or more horses or other equines with the intent to sell or trade the flesh for human consumption.” H.R. 503. In addition, it found that horses play a “vital role in the collective experience of the United States and deserve protection and compassion.” *Id.* And it distinguished horses from other livestock by finding that “individuals selling horses or other equines at auctions are seldom aware that the animals may be bought for the purpose of being slaughtered for human consumption.” *Id.*

65. H.R. 6598, 110th Cong. (2008).

66. *Id.* The Act provides lesser penalties for defendants who “have no prior convictions under the Act” and engage in conduct that “involves less than five horses or less than 2000 pounds of horse flesh or carcass or part of a carcass.” *Id.*

67. *Id.* Providing adequate care for unwanted horses—most horses sent to slaughter are dangerous, mistreated, or unwanted, *see supra* notes 34–41 and accompanying text—is not inexpensive. *See infra* notes 114–20 and accompanying text. Spending taxpayer dollars on caring for dangerous and unwanted horses might not be the most efficient use of funds.

68. *See* CAL. PENAL CODE §§ 598c–598d (West 1999); Illinois Horse Meat Act, 225 ILL. COMP. STAT. 635/1-18 (2007); TEX. AGRIC. CODE ANN. § 149 (Vernon 2004); Tamara Jones, “A Necessary Evil” Aging, Lame Horses Face Slaughtering For Meat, SEATTLE TIMES, Jan. 24, 2003, at A3.

equine slaughterhouses in the country. The passage of state equine slaughter laws, or enforcement of existing laws in Texas's case, has effectively banned the processing of horses for human consumption in the United States.

Texas passed its anti-horse slaughter law in 1949,⁶⁹ but did not enforce it until recently, after an animal rights activist came across the law in 2002.⁷⁰ In response, the Texas Attorney General advised equine slaughterhouses that the Texas law was valid and carried criminal penalties,⁷¹ three equine slaughterhouses filed suit to have the Texas law declared unconstitutional.⁷² The slaughterhouses attacked the law, claiming that federal law preempted it and that it violated the Dormant Commerce Clause.⁷³ The district court agreed and issued a permanent injunction protecting the slaughterhouses from prosecution.⁷⁴ In January 2007, the Fifth Circuit Court of Appeals vacated the district court's judgment and upheld the Texas law against attacks on its validity,⁷⁵ and the Supreme Court subsequently denied certiorari.⁷⁶ The Fifth Circuit held that the statute criminalizing the slaughter of horses for human consumption had not been implicitly repealed, was not preempted by federal law, and did not violate the Dormant Commerce Clause, although the district court disagreed on each point.⁷⁷

69. *Empacadora de Carnes de Fresnillo, S.A. de C.V. v. Curry*, 476 F.3d 326, 330 (5th Cir. 2007). The Texas Statute states: "A person commits an offense if: (1) the person sells, offers for sale, or exhibits for sale horsemeat as food for human consumption; or (2) the person possesses horsemeat with the intent to sell the horsemeat as food for human consumption." TEX. AGRIC. CODE ANN. § 149.002 (Vernon 2004).

70. Lisa Sandberg, *Horse-Slaughter Foes Pleaded That No Action Taken on Bill*, HOUS. CHRON., May 22, 2007, at B4.

71. Barry Shlachter, *Zoo Group Opposes Closing Horse Plants*, FORT WORTH STAR-TELEGRAM, Oct. 8, 2002 at 2.

72. *Empacadora*, 476 F.3d at 329 (involving one Mexican and two Texas slaughterhouses).

73. *Id.*

74. *Id.*

75. *Id.* at 337.

76. Sandberg, *supra* note 70; Shlachter, *supra* note 1, at 37. The Texas legislature considered a bill that would have made slaughter legal, thereby reopening the two equine slaughter plants in Texas; however, the deadline for the bill passed without action. Sandberg, *supra* note 70.

77. *Empacadora*, 476 F.3d at 329. The court's opinion is not relevant to the question of whether it is good policy to eliminate the domestic slaughter industry, but a brief overview of the reasoning in the opinion is warranted. The Fifth Circuit found that the Texas Meat and Poultry Inspection Act (TMPIA) did not implicitly repeal the Texas anti-slaughter statute. *Id.* at 330–31. The TMPIA stated that a person may not "sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce . . . meat food product of a horse . . . unless the article is plainly and conspicuously marked or labeled." *Id.* at 330 (quoting TEX. AGRIC. CODE ANN. § 433.033 (Vernon 2004) (emphasis in original)). The Fifth Circuit reasoned that the TMPIA "is reconcilable with Chapter 149 by reading it as applying only to horsemeat used for other legal purposes, such as animal feed." *Id.* at 331. The court went on to hold that the codification of Chapter 149, the Texas anti-slaughter statute, in 1991—the statute was originally passed in 1949—controlled over the TMPIA, which was passed in 1989. *Id.* at 331–32.

The Fifth Circuit also found that the Federal Meat Inspection Act (FMIA) did not preempt the state law, either expressly or impliedly. *Id.* at 333–34. The court stated that the preemption clause in FMIA limited a state's ability to regulate meat inspection and labeling, but did not

The last equine slaughterhouse in the country, operated in Illinois by Cavel International, was closed after the governor signed the Illinois Horse Meat Act, banning horse slaughter for human consumption, on May 24, 2007.⁷⁸ Cavel International brought suit challenging the validity of the law. Like the slaughterhouses involved in the Texas challenge, Cavel International asserted that the law violated the Dormant Commerce Clause and was preempted by the Federal Meat Inspection Act.⁷⁹

limit a state's "ability to regulate what types of meat may be sold for human consumption in the first place." *Id.* at 333. The court found that FMIA did not implicitly preempt state laws through field preemption because Congress did not intend to preempt the entire field of meat commerce, as FMIA states that it "shall not preclude any State . . . from making requirements or taking other action, consistent with this chapter, with respect to any other matters regulated under this chapter," *id.* at 334 (quoting 21 U.S.C. § 678), or through conflict preemption, as it is possible to comply with both federal and state law because "not selling, possessing, or transferring horsemeat for human consumption would not breach any provision in the FMIA. And Chapter 149 does not stand as an obstacle to realizing the FMIA objectives of 'assuring that meat and meat food products distributed to [consumers] are wholesome, not adulterated, and properly marked, labeled and packaged.'" *Id.* (quoting 21 U.S.C. § 602).

On the final challenge to the Texas statute, the court held that Chapter 149 does not violate the Dormant Commerce Clause, as the statute "treats both intrastate and interstate trade of horsemeat equally by way of a blanket prohibition," *id.* at 335, and the incidental burdens placed on interstate commerce do not "exceed the burdens on intrastate commerce." *Id.* at 336 (quoting Nat'l Solid Waste Mgmt. Ass'n v. Pine Belt Reg'l Solid Waste Mgmt. Auth., 389 F.3d 491, 502 (5th Cir. 2004)). The court went on to state that even if Chapter 149 did impose incidental burdens on interstate commerce, "no alternative measures could advance Texas's interests as effectively." *Id.* at 337. As this Note shows, the court's statement that "it is a matter of commonsense that the alternatives listed [supporting equine research at agricultural universities, encouraging the humane treatment of horses, regulating and licensing veterinary care for equines, and legalizing pari-mutuel betting on horse races] do not preserve horses as well as completely prohibiting the sale and transfer of horsemeat for human consumption," *id.* at 336, is correct to the extent that horses are "preserved," but many are only "preserved" until they die of neglect, starvation, or abandonment. *See infra* Part III. It is far better to dispose of unwanted horses in a humane, economically viable, and federally regulated manner.

78. Shlachter, *supra* note 1, at 37. The statute provides that:

- (a) Notwithstanding any other provision of law, it is unlawful for any person to slaughter a horse if that person knows or should know that any of the horse meat will be used for human consumption.
- (b) Notwithstanding any other provision of law, it is unlawful for any person to possess, to import into or export from this State, or to sell, buy, give away, hold, or accept any horse meat if that person knows or should know that the horse meat will be used for human consumption.
- (c) Any person who knowingly violates any of the provisions of this Section is guilty of a Class C misdemeanor.
- (d) This Section shall not apply to:
 - (1) Any commonly accepted noncommercial, recreational, or sporting activity.
 - (2) Any existing laws which relate to horse taxes or zoning.
 - (3) The processing of food producing animals other than those of the equine genus.

Illinois Horse Meat Act, 225 ILL. COMP. STAT. 635/1.5 (2007).

79. Cavel Int'l, Inc. v. Madigan, 500 F.3d 551, 553 (7th Cir. 2007).

The district court denied relief, and the Seventh Circuit Court of Appeals upheld the law on September 21, 2007.⁸⁰

Although H.R. 6598's permanent ban has not passed,⁸¹ the appeals courts' decisions have effectively eliminated the domestic horse slaughter industry. Theoretically, though, a slaughterhouse could reopen in a state that does not criminalize the slaughter of horses for human consumption.⁸² The closure of the last remaining domestic equine slaughterhouses is potentially very detrimental to equine welfare, and it will likely negatively affect the economy as horse prices fall further and jobs and taxes are lost.

III. EQUINE WELFARE: A FORECAST

The emergence and enforcement of state laws criminalizing horse slaughter for human consumption were victories for supporters of an equine horse slaughter ban. However, the closure of the domestic slaughter industry is likely to result in an increase in the number of neglected and abandoned horses.⁸³ As the market for unwanted horses has disappeared—in 1954 there were more than thirty equine slaughterhouses in the United States, fifteen in the 1980s, and only four in 1999⁸⁴—

80. *Id.* at 553, 559. Again, the court's reasoning is not relevant to this Note's assertion that laws that eliminate the domestic equine slaughter industry provide little utility. Nonetheless, the court held that the Illinois statute did not violate the FMIA, relying on much of the same reasoning as the Fifth Circuit. *Id.* at 553–54; *see Empacadora*, 476 F.3d 326. Cavel also challenged subsection (b) of the Illinois statute, “which forbids the importing and exporting of horse meat for human consumption.” *Cavel*, 500 F.3d at 554. However, the court stated that subsection (b) “is addressed to a middleman who having procured horsemeat from Cavel tries to export it, or that imports horse meat to Illinois hoping to induce Americans to eat it.” *Id.* The court stated that subsection (a) is directed at Cavel—that provision “forbids the slaughtering of horses for human consumption”—and the court only analyzed whether that subsection was valid. *Id.* The court held that there was no outright discrimination between local slaughterhouses and non-local slaughterhouses, *id.* at 555, and there were not “‘incidental’ ‘effects on interstate commerce.’” *Id.*

The court also stated that the law has a rational justification, as “[s]tates have a legitimate interest in prolonging the lives of animals that their population happens to like.” *Id.* at 557. However, prolonging an unwanted horse's life by allowing it to starve through abuse and neglect does that horse few, if any, favors. In noting that the Illinois statute was lawful, Judge Posner, who seemed to disfavor the law, *see id.* at 557, noted that “[a] follower of John Stuart Mill would disapprove of a law that restricted the activities of other people (in this case not only Cavel's owners and employees but also its foreign consumers) on the basis merely of distaste, but American governments are not constrained by Mill's doctrine.” *Id.*

Interestingly, the court dismissed the argument that the Illinois law interfered with foreign commerce, as Cavel did not tell the court “what percentage of the horse meat consumed by Europeans it supplies and thus whether its being closed down is likely to have a big effect on the price of horse meat in Europe.” *Id.* at 558.

81. *See* H.R. 6598, 110th Cong. (2008).

82. However, the public's apparent intolerance of the equine slaughter industry may provide deterrence.

83. *See* AHERN ET AL., *supra* note 5, at 2.

84. *Thoroughbreds Washed up in Racing Often Land at Slaughterhouses*, TRISTATE

cases of abandoned horses have increased.⁸⁵ The United States has not yet felt the complete effects of a full ban since slaughterhouses in Mexico and Canada still provide an outlet for unwanted horses,⁸⁶ but the negative impact on equine welfare is already apparent. The passage of H.R. 6598 could cause “[t]ens of thousands of horses [to] be neglected or abandoned.”⁸⁷

Without a domestic equine slaughter market, and with other options unavailable or cost-prohibitive, many horse owners will deal with unwanted horses in other, more undesirable, ways. Some estimates put the number of abandoned horses—so far—at over 120,000.⁸⁸ A sale barn owner in Utah reported that one horse owner abandoned his horses at a sale barn because the owner could not afford to pay the consignment fee to sell his horses.⁸⁹ Another owner locked twenty-three horses in a barn because he could no longer afford to care for them because of the rising costs of feed⁹⁰ and the horses’ plummeting value.⁹¹ One rancher in Oregon reported that, during an eighteen to twenty-four month period, at least nine horses were turned loose on his ranch.⁹² In Pennsylvania, two horses were found dead along with seven others suffering from malnourishment.⁹³ Those who abandon horses can be charged with animal abandonment or animal abuse, but it can be difficult to identify the owners of abandoned horses, since many horses have no identifying marks tying them to their owners.⁹⁴ Unwanted horses who are not neglected, starved, or abandoned may still find

OBSERVER (Milford, Pa.), May 31, 2004, <http://www.tristateobserver.com/modules.php?op=modload&name=News&file=article&sid=2085>.

85. *Review of the Welfare of Animals in Agriculture Before the Subcomm. on Livestock, Dairy, and Poultry of the H. Comm. on H. Agriculture*, 110th Cong. 44 (2007) [hereinafter *Review of the Welfare*] (statement of Leslie Vagneur, National Director, American Quarter Horse Association).

86. See AHERN ET AL., *supra* note 5, at 5.

87. See *id.* at 2 (stating that the passage of H.R. 503, a similar bill to H.R. 6598, could cause many animals to be neglected or abandoned).

88. Tonya Root, *Prices of Hay Soar for Farmers: Drought Adding to Costs of Feeding Horses, Livestock*, SUN NEWS (Myrtle Beach, S.C.), Nov. 16, 2007, at C1; April Bethea, *Experts Fear Some Animals May Be Neglected, Abandoned: Horse Owners Face Dire Winter As Hay Harvest Dries Up, Drought Taking Toll on Production, Prices*, CHARLOTTE OBSERVER, Nov. 15, 2007, at A1.

89. *Review of the Welfare*, *supra* note 85, at 44.

90. *Id.* In 2007, the founder of a horse rescue operation in Idaho reported paying \$80 to \$85 for a ton of hay. In May of 2008, that same horseman reported paying \$225 a ton. *Hard Times Lead Owners to Abandon Horses*, NPR.ORG, June 2, 2008, <http://www.npr.org/templates/story/story.php?storyId=91142984>. “With 67 horses [at the rescue facility], we’re feeding over a ton of hay a day.” *Id.*; see Dana Cole, *No Horsing Around: Rising Prices Impact Horse Owners*, THE HERALD (Sierra Vista, Ariz.), Aug. 3, 2008 (detailing “skyrocketing” feed, hay, veterinary, and farrier prices that are “taking a toll on the horse industry”), available at <http://www.svherald.com/articles/2008/08/03/news/doc48954d6693dce725403300.txt#>.

91. *Review of the Welfare*, *supra* note 85, at 44; see also Cole, *supra* note 90.

92. Richard Cockle, *They Abandon Horses, Don’t They?: The Rising Price of Hay and the Last U.S. Slaughterhouses Closure Puts Pressure on Owners Who Can’t Afford to Keep Their Animals*, OREGONIAN, Nov. 18, 2007, at D4.

93. Matt Hicks, *Horses Recovering After Rescue from Ridgebury Property*, MORNING TIMES (Sayre, PA), May 16, 2008, <http://www.morning-times.com/homepage/x1902440112>.

94. Cockle, *supra* note 92.

their way to slaughterhouses, but they will travel farther distances—across national borders—a journey that can be stressful on old or weak horses⁹⁵—and may end up at facilities that use slaughter techniques that would be far from acceptable at a federally regulated U.S. slaughterhouse.

One slaughterhouse buyer reported on the increased distance traveled by the horses he purchases.⁹⁶ This buyer now ships the horses he purchases at auction to El Paso, Texas, where they are transferred to another truck, and hauled across the border and out of USDA oversight.⁹⁷ From there, the horses might stay in Juarez, Mexico, for slaughter or they might be shipped 700 miles south to one of two large plants in the city of Zacatecas.⁹⁸ The Juarez plant uses captive bolt guns, a humane equine slaughter method according to the American Veterinary Medical Association,⁹⁹ but the bolt guns rarely operate correctly.¹⁰⁰ Often, workers must incapacitate a horse by severing its spinal cord with a knife, a process known as the “puntilla” technique.¹⁰¹ A horse might endure as many as thirteen jabs to the back before it collapses.¹⁰² After the horse collapses, it is left on the ground for two minutes before it is attached to a chain, lifted up, and has its throat slit.¹⁰³ However, the horse smells, hears, and sees his throat being slit because the jabs to the spinal cord leave the horse quadriplegic, but conscious.¹⁰⁴ Therefore, the horse experiences being hoisted and bleeding to death.¹⁰⁵ The plant owner in Juarez compares this method of slaughter to “watching someone with an ice pick.”¹⁰⁶ As of September 2007, 30,000 American horses had been shipped to Mexico, a 370% increase from the number recorded in September 2006.¹⁰⁷

Slaughterhouses in Canada do not incapacitate horses with knife jabs to the back.¹⁰⁸ Instead, most slaughterhouses shoot them with a .22 caliber rifle.¹⁰⁹ As with horses shipped to Mexico, horses sent to Canada for slaughter travel farther than they did when slaughterhouses operated in the United States,¹¹⁰ causing an increased risk of injury.¹¹¹ In September of 2007, 18,000 horses had been exported to Canada.¹¹² This is

95. See GRANDIN ET AL., *supra* note 40.

96. Lisa Sandberg & Michelle Mittelstadt, *U.S. Ban on Horse Slaughter Means a More Gruesome Death Elsewhere: Rising Number of Animals Face Primitive End at Foreign Plants*, HOUS. CHRON., Sept. 30, 2007, at A1.

97. *Id.*

98. *Id.*

99. AHERN ET AL., *supra* note 5, at 3.

100. Sandberg & Mittelstadt, *supra* note 96.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. See Julie Marshall, “Fortune” Saved from Slaughter: Equine Rescue Group Prevents Young Horse from Becoming Food, BOULDER DAILY CAMERA, July 15, 2007, at A1.

109. See *id.*; Sandberg & Mittelstadt, *supra* note 96.

110. Sandberg & Mittelstadt, *supra* note 96.

111. See GRANDIN ET AL., *supra* note 40.

112. Sandberg & Mittelstadt, *supra* note 96.

a twenty-six percent increase from 2006, and this was before the Seventh Circuit's ruling closed the last remaining slaughterhouses in the United States.¹¹³

Local animal control agencies, which are either non-profit or government organizations, are responsible for neglected horses in most areas of the United States.¹¹⁴ These agencies often do not have enough money to pay for the housing and care of unwanted horses. Agencies that take in unwanted horses are strained and at capacity.¹¹⁵ It could cost \$127 million in the first year alone to pay for all of the unwanted horses that will likely emerge as a result of the closure of the domestic slaughter industry.¹¹⁶ A number of private horse rescue organizations have emerged in reaction to the increasing number of neglected horses in recent years.¹¹⁷ But these organizations often do not have enough funding to provide adequate care to unwanted horses.¹¹⁸ One of these organizations, Indiana Horse Rescue South, reported that they will likely have to shut down, as the owners have exhausted their savings and inheritance to try and keep their organization open and operating.¹¹⁹ Some estimates predict that it would take an additional 2700 rescue facilities to care for the unwanted horses that are likely to result from the closure of the domestic slaughterhouses.¹²⁰ However, the economic cost of the ban extends far beyond rescue organizations and animal control agencies.

IV. ECONOMIC EFFECTS OF A SLAUGHTER BAN

A ban on the slaughter of horses will not only be detrimental to the welfare of horses. Such a ban will also be unnecessarily devastating to those who are involved in the horse slaughter industry. One longtime Montana horse breeder said she will trade her horses in for cattle because her well-tempered colts are worth less as a result of the closure of domestic slaughterhouses,¹²¹ as slaughterhouses set the base price for all horses.¹²² The woman said that “[a] three-year-old trained ranch horse that traditionally would bring upwards of \$1,500 fetched only \$525 at a sale 175 miles away, a transaction that cost her \$200 in truck fuel.”¹²³ Likewise, one slaughter buyer reported that the closure of the Texas slaughterhouses has sharply reduced his margins.¹²⁴ He now ships and sells horses to slaughterhouses in Mexico, which costs him about \$100 per horse and cuts his already-thin margins to approximately twenty to thirty dollars per horse.¹²⁵

113. *Id.*

114. AHERN ET AL., *supra* note 5, at 4.

115. *See* Shlachter, *supra* note 1, at 37.

116. 153 CONG. REC. H9585 (daily ed. Aug. 2, 2007) (statement of Rep. Boswell).

117. AHERN ET AL., *supra* note 5, at 6.

118. *See, e.g., id.*

119. *Id.*; *see also* Cole, *supra* note 90.

120. *Review of the Welfare*, *supra* note 85, at 44.

121. Pat Dawson, *An Epidemic of Abandoned Horses*, TIME, May 28, 2008, <http://www.time.com/time/printout/0,8816,1809950,00.html>.

122. *Review of the Welfare*, *supra* note 85, at 44.

123. Dawson, *supra* note 121.

124. Sandberg & Mittelstadt, *supra* note 96.

125. *Id.*

In 2005, approximately one percent of the 9.2 million horses in the United States were processed for human consumption.¹²⁶ Nevertheless, “[a] conservative estimate of the total economic impact of a ban on horse processing for export has been reported to be \$152 million to \$222 million per year.”¹²⁷ Additionally,

The number of unwanted horses is almost certain to increase as the problem compounds each year as unwanted horses are not processed but become the responsibility of owners, not-for-profit organizations, or local governments [Thus,] the cost to owners and taxpayers from a ban on the processing of horses could quickly reach billions of dollars.¹²⁸

In 2002, horse meat sold for processing in the United States accounted for approximately \$26 million in revenue.¹²⁹ Not only is this revenue lost, along with tax revenue and approximately 190 direct jobs,¹³⁰ but there is now an expense for the disposal of unwanted horses.¹³¹ One estimate shows the “direct loss in revenues to horse owners who [could] have sold their horses for processing” could be between \$19.7 and \$28.8 million.¹³²

The elimination of the domestic equine slaughter market makes it difficult for horse owners to dispose of unwanted horses. The Animal Welfare Council reported that about forty-five percent of horse owners have an annual household income between \$25,000 and \$75,000.¹³³ Maintaining a horse until its natural death costs about \$2,340 per year, not including veterinary costs.¹³⁴ The additional cost of euthanizing and disposing of unwanted horses can be prohibitive for many owners. It can cost between \$100 and \$175 to euthanize a horse, not including the cost of a farm call by a veterinarian.¹³⁵

In contrast to the federal oversight of equine slaughter, local ordinances typically dictate the disposal of horses.¹³⁶ The Animal Welfare Council outlined six potential carcass disposal methods for horses: burial, rendering, disposal at a landfill,

126. AHERN ET AL., *supra* note 5, at 3.

127. *Id.* at 5.

128. *Id.* at 5–6. The problem of unwanted horses is likely to be a recurring one as long as “backyard breeders” turn out “poor-quality foals nobody [wants to] buy[.]” Stephanie Rice, *Horse Neglect Rises at a Gallop*, THE COLUMBIAN (Vancouver, Wash.), May 22, 2008, at A.

129. AHERN ET AL., *supra* note 5, at 9.

130. The last three slaughterhouses that operated in the United States employed approximately 190 employees. See Brief of Plaintiffs-Appellants, *supra* note 29, at 9; Amended Complaint, *supra* note 29, at 7–8.

131. AHERN ET AL., *supra* note 5, at 9.

132. *Id.*

133. *Id.* at 6.

134. *Id.* Routine veterinary services—immunizations, deworming, and dental care—cost about \$380 per year. See Cherry Hill, Cost of Keeping a Horse, http://www.horsekeeping.com/horse_management/cost_of_keeping_a_horse.htm (stating that the estimated cost for veterinary services was \$295 in 2002, and that in 2008, the cost “will be at least 30% higher than” the 2002 cost).

135. Burt Constable, *We Don’t Eat Horses, Do We? But Will We Slaughter ‘Em?*, DAILY HERALD (Arlington Heights, Ill.), June 14, 2007, at 17.

136. AHERN ET AL., *supra* note 5, at 7.

composting, incineration, and bio-digestion.¹³⁷ However, all of these disposal methods have significant drawbacks, including cost, availability, and environmental concerns.

Local ordinances concerning “ground and surface water contamination, distance restrictions from neighbors, proximity to previous burial sites and depth of burial requirements” can make the option of burial prohibitive.¹³⁸ It can cost from \$300 to \$500 to bury a horse, but the option of burial is becoming less desirable due to environmental externalities.¹³⁹ Rendering is also becoming less available because of concerns about disease and the residue from chemically euthanized horses.¹⁴⁰ Additionally, the cost for a rendering company to pick up a carcass ranges from \$75 to \$250 or more.¹⁴¹ Landfills are also a problematic way to dispose of unwanted horses because of local regulations and the reluctance of landfill operators to accept horse carcasses.¹⁴² Composting is available, but it can generate “[s]ignificant negative environmental externalities . . . includ[ing] potential water contamination, nuisance odor from decaying carcasses, inadequate disease control, and the required surface application of the end compost product.”¹⁴³ Incineration does not pose the same environmental threat to ground water as other disposal methods, but it does create air pollution, and its cost ranges from \$600 to \$2000, depending on fuel costs.¹⁴⁴ Bio-digestion, an emerging technology that uses alkaline hydrolysis to hydrolyze the animal carcass into a sterile aqueous solution, is the most environmentally friendly and bio-secure disposal method, but there are few bio-digesters available and the cost can be prohibitive to many horse owners.¹⁴⁵ At least one brand of bio-digesters is priced at \$1 million, and it operates at a cost of about \$97 per ton.¹⁴⁶

The closure of U.S. slaughterhouses eliminated the most economically viable and environmentally friendly disposal method. Slaughter not only provided federally regulated euthanasia, but it was also very easy for owners to dispose of unwanted horses at auction. Additionally, instead of costing owners money, owners could recoup a small portion of their investment by the price slaughterhouses paid for their horses. Finally, slaughterhouses used all parts of the horse, eliminating environmental concerns.

137. *Id.* Animal rendering is a process that converts waste material generated by animals into “valuable ingredients for various soaps, paints and varnishes, cosmetics, explosives, toothpaste, pharmaceuticals, leather, textiles and lubricants,” as well as pet food and feed for beef, pork, poultry, and fish. National Renderers Association, The Rendering Process, <http://nationalrenderers.org/about/process>.

138. AHERN ET AL., *supra* note 5, at 7–8.

139. *Id.* at 8.

140. *Id.*

141. *Id.*

142. *See id.*

143. *Id.* Additionally, composting a horse is much more involved than composting, for instance, household garbage.

144. *Id.*

145. *Id.*

146. *See* JACKIE McCLASKEY, NATIONAL AGRICULTURAL BIOSECURITY CENTER CONSORTIUM, CARCASS DISPOSAL: A COMPREHENSIVE REVIEW ch. 9, at 15 (2004), *available at* <http://krex.k-state.edu/dspace/bitstream/2097/662/9/Chapter9.pdf>.

CONCLUSION

While proponents of a ban on equine slaughter have the interests of horses in mind, their tactics are not helpful in advancing the well-being of horses. It is admittedly difficult for Americans to think of horses being served for dinner, especially when a horse like Ferdinand, the 1986 Kentucky Derby champion, was slaughtered for human consumption.¹⁴⁷ However, when considering the welfare of all horses, we must put aside the emotional appeal of horses as a national icon and think about what a ban on the slaughter of horses for human consumption will really do for horses' well-being.¹⁴⁸ We must also consider the negative economic effects that such a ban would impose on the horse industry.

Abuse and neglect of horses is likely to increase further if Congress implements a full slaughter ban. Proponents of anti-slaughter legislation argue that cases of neglect and abandonment have not increased in states that have previously banned the slaughter of horses.¹⁴⁹ However, a rise in neglect or abuse cases would not have been expected as long as slaughterhouses remained open within the United States, as horses could be shipped across state lines to operating slaughterhouses. Likewise, the United States will not feel the full force of neglected and abused horses until there is federal legislation stopping the flow of horses into Canada and Mexico for slaughter.¹⁵⁰

Equine slaughter legislation at the state level has not furthered horses' welfare, even though that was the intention of legislators.¹⁵¹ The future looks bleak for unwanted horses, as owners who are not able to pay over \$2000 per year to care for unwanted horses—especially those that are unsound, injured, or problem horses—are left with few choices.¹⁵² While federal legislation banning the transportation of horses destined for slaughter would cut back on the number of horses crossing national borders, it would increase the number of abused, neglected, and abandoned horses in the United States, costing taxpayers millions of dollars. The elimination of the domestic equine slaughter industry is not the answer.

147. Constable, *supra* note 135.

148. Emotional arguments should not be completely cast aside—indeed, this Note relies on emotion—but emotional arguments that are based on reality are more useful in addressing the very imminent problem of what to do with unwanted horses that can no longer be processed than simply arguing that “it is mean to kill horses.”

149. 151 CONG. REC. H4249 (daily ed. June 8, 2005) (statement of Rep. Spratt).

150. The enforcement of federal legislation, however, might be problematic, as a horse's purpose for traveling to another country can change after it crosses the border.

151. Many groups who advocate for the interests of horses believe that a ban on the slaughter of horses will be detrimental to the welfare of unwanted horses. These organizations, like the American Veterinary Medicine Association, American Association of Equine Practitioners, American Quarter Horse Association, and the American Paint Horse Association, to name a few, believe that the closure of the domestic slaughter industry will lead to a rise in the number of abused, neglected, and abandoned horses. See Matt Bewley, *The Question of Horse Slaughter Still Raises Hackles*, AGWEEK MAG., Jan. 1, 2008; Marsha Mercer, *Horse Slaughter: Just Say Whoa*, SEATTLE POST-INTELLIGENCER, Sept. 19, 2006, at B6; Lisa Sandberg, *East Texas Sanctuary Saves Horses From Slaughter*, FORT-WORTH STAR TELEGRAM, Oct. 28, 2007, at B4.

152. AHERN ET AL., *supra* note 5, at 6.

The domestic equine slaughter industry provides a humane and federally regulated manner of disposal for unwanted horses, and it helps to absorb the 65,000 to 90,000 unwanted horses that are sent to processing facilities each year.¹⁵³ Lawmakers at the state and federal level should take measures to facilitate the domestic slaughter industry as a humane, cost-effective, and environmentally friendly way to dispose of the many unwanted horses that live in the United States. Therefore, it is important that state laws criminalizing slaughter be repealed and proposed federal legislation be rejected so that equine processing facilities can once again operate in the United States.

153. *Id.* at 5.

