

## **Testimony regarding New York State budget allocations for the regulation of horse racing and the lack of tax revenue generated by pari-mutuel betting on horse racing.**

The 2022 New York State Joint Legislative Budget Hearing on Economic Development  
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### **Horse racing: No meaningful tax revenue for New York State—billions in support.**

The New York State Constitution reads “...*pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government.*”

Gambling is sanctioned in New York to generate revenue for the state. Casinos and the lottery each add billions annually to the treasury. In a reversal of their mandate to provide revenue for the support of government, horse racing requires hundreds of millions every year in state support just to keep their privately-owned industry alive.

The New York State Gaming Commission’s most recent annual reports reveal that all 11 New York racetracks together generated only \$15 million in taxes from pari-mutuel betting on horse racing—handle taxes, regulatory fees, breakage taxes and admission taxes.<sup>1</sup> When you subtract the state’s \$15 million annual budget allocation to regulate racing,<sup>2</sup> the effect of that insignificant tax revenue nets to zero. In addition, horse racing’s wealthiest spend tens of millions every year buying racehorses in New York. Those racehorse purchases, as with our food and medicine, are exempt from sales tax.

#### **This is problematic primarily for 2 reasons.**

- First, these 11 incredibly valuable licenses are generating no meaningful tax revenue.
- Second, as opposed to collecting substantial revenues from horse racing, the state instead directs \$230 million annually to racing from video lottery terminals<sup>3</sup> — rather than using that portion of the VLT net win to increase funding for education, human services or the general treasury. Bennett Liebman, former New York State Deputy Secretary for Gaming and Racing, wrote in 2017 “*The fact is that New York horse racing is a fraction of what it once was. Video lottery revenues are keeping racing alive, but the heart of the sport of horse racing is barely beating.*”<sup>15</sup>

In many other states, horse racing receives no subsidies at all.<sup>22</sup> States that have casino gambling are reconsidering the wisdom of using a profitable gambling enterprise to support an unprofitable gambling enterprise. For example, the Governor of Pennsylvania is currently proposing a dramatic cut in racing subsidies in favor of funding educational grants and community college support.

## Perhaps the most lopsided deal the state has ever been a party to is the New York Racing Association's 2008 Franchise Agreement.

As Ryan Goldberg, a nationally known journalist who has written about horse racing has stated, "...NYRA's only standing today because of a bailout unprecedented in the sport's history, and a deal that looks worse all the time."<sup>16</sup>

When the New York Racing Association (NYRA) went bankrupt for the second time in 2006, they capitalized on their continuing failure by signing the 2008 Franchise Agreement<sup>4</sup> with New York State. NYRA ceded land to New York and the state paid or wrote off more than \$150 million to bail them out of bankruptcy. NYRA gained billions in future support payments for their purses, breeding incentives, capital improvements, operating costs—and free rent until 2032. In the process this also transferred their significant property tax obligation to the state. What landlord charges no rent, while paying the tenant's capital improvements, operational expenses and property taxes? Something almost never reported is that while NYRA spends on multimillion-dollar clubhouses, lobbyists, generous executive salaries and bonuses, and the highest purses in the nation—they haven't paid a franchise fee to New York State since their 2008 agreement was signed.

In 2021, New York State commissioned Spectrum Gaming to conduct a major analysis of racing that reported: "*Absent the subsidies, NYRA would be financially unable to provide the tier-one racing product it currently offers...*"<sup>13</sup> Why is this an obligation of the state government?

The New York State Comptroller's office has often stressed the need for NYRA to be self-sufficient. Their 2015 audit offers the following insight "...the Franchise Oversight Board stressed the need for NYRA to develop a plan to become profitable without reliance on VLT subsidies."<sup>18</sup>

Governor Spitzer famously said in relation to NYRA trading "their land" in the 2008 Franchise Agreement "*We own the land; I don't care what they say. They're not going to use that as leverage. They are a state entity, created by the state. They're a pawn of the state.*"<sup>17</sup>

For a better understanding of the argument that NYRA did not own the land it leveraged for the support payments, an article titled "Ownership of the NYRA Racetrack Properties: 1983 in Review," by Bennett Liebman, is available from the Government Law Center at Albany Law School.<sup>20</sup>

New York State subsidizes the breeding of extremely valuable racehorses, and then subsidizes the purses they die for on New York tracks...these two investments are clearly at cross-purposes.

## What are some of the reasons for the lack of racing revenue?

- First, decades of declining interest in horse racing has sunk this business. Except for the brief 8-week Saratoga Race Course season and the Belmont States week in Elmont, attendance at most tracks is down more than 90% annually from their heyday. In 1978 annual racing attendance was at 12.6 million.<sup>5</sup> Reports in 2018 show 2.1 million total attendees.<sup>6</sup> The Gaming Commission has even stopped reporting attendance at all 7 harness tracks. This is important as live wagering at the racetrack is where the New York State treasury and the racetracks make the highest percentage of the wager. Online services and advance deposit wagering platforms for horse racing don't provide any meaningful tax revenue for New York. As Joe Spector wrote in *The Democrat & Chronicle* about the heavily subsidized purses “*Purses at New York's seven harness tracks have tripled over the past 14 years, creating an unprecedented dynamic: There's nearly no one in the stands, but the prize money is at levels not seen in decades.*”<sup>7</sup>

In the 1970s, Yonkers Raceway saw a record average daily attendance of 25,800.<sup>21</sup> Now they average less than one hundred people (down 99%),<sup>6</sup> who are milling around on track days while their affiliated racino kicks off \$63 million in annual subsidies to harness racing.<sup>3</sup> Why aren't the local residents who host that racino demanding a far bigger share of support for their own community?

New Yorkers are not aware of how unprofitable harness racing is. The 2021 NYS Spectrum Gaming Report states that some tracks will run a day of racing and make as little as \$660 profit from the handle: “*For example, New York harness tracks in 2018 averaged from about \$6,600 to \$38,500 a day for live on-track handle. The track might retain about 10 percent of that after paying taxes, purses, and winning wagers. With handle revenue of about \$660-\$3,850 a day, you might suggest closing the track grandstand would be more efficient.*”<sup>14</sup>

- Second, racing's \$2.5 billion annual handle is highly publicized. But \$2 billion, or 80% of this handle, is “exported out of state.”<sup>8</sup> That represents bettors in other states wagering on NY racing—and taxed by those other states—not ours. Our subsidies that pay for New York racing are contributing generously to the treasuries of other states. From the 2021 NYS Spectrum Gaming Report: “*Export race signals: Wagers made elsewhere on a racetrack's content receive a host fee. How that host fee is divided varies by state. In New York only the horsemen's purse account and the track shares in that compensation (§238(1)(b)(c)), leaving the State tax or racing commission and breeders fund excluded from any distribution of that compensation.*”<sup>14</sup>
- Third, NYS Sales Tax exemptions for the purchase of racehorses in New Your State.
- Forth, there is a growing public sentiment against racing due to the killing, drugging, slaughter and criminal activity, including 27 indictments that are in NY courts right now. The state has documented that 1,600 young horses have died at New York tracks just since 2009.

## **Jobs and economic impact?**

The justification for horse racing is based on industry claims of 19,000 jobs and \$3.3 billion in economic impact. This American Horse Council report,<sup>9</sup> only a few pages in length, was funded by the industry itself, and costs \$50 to obtain. In it, there is no mention of the lack of revenue to support the state, no verifiable details and comprehensive data on the jobs and economic impact, and certainly no analysis of the potential economic impact of redirecting billions in subsidies to other businesses with far greater potential to grow the economy of New York.

Jobs and economic impact are *not* unique to horse racing. That's why New York grants business licenses—to create those benefits for the state. Hundreds of thousands of private businesses in New York receive no public bailout and yet create millions of jobs and generate hundreds of billions in economic impact.

Citing the previously mentioned journalist Ryan Goldberg *“Every few years, the industry trots out industry-financed economic impact studies from racing organizations or trade groups like the American Horse Council. Their numbers then appear in state or state-commissioned reports as authoritative sources, when they're anything but. I looked at a recent one treated like gospel, published in 2018 by the American Horse Council about New York's horse industry. It certainly didn't show its work; it was thinly sourced and confusing, with lots of bold numbers interspersed with glossy photos of horses from NYRA racetracks, photos credited to New York's thoroughbred horsemen's association. It reported that New York racing created 12,815 direct jobs and close to 7,000 in indirect jobs—tourism included—for a total impact of \$3.08 billion on the state's economy. It later noted, however, that just 2,583 people were employed in “racing and track operation,” which seems to be the most relevant category. The study, it acknowledged, was commissioned “with major support” from New York's thoroughbred horsemen's and breeders' associations.”*<sup>16</sup>

### **Where exactly are these 19,000 jobs?**

When GlobalFoundries, the Department of Motor Vehicles, or your local supermarket chain talk job numbers, they support their claims. Racing does not do that. What percent of racing jobs are full-time, earning a livable wage and have healthcare, retirement or family leave benefits? How many poorly compensated jobs in racing must rely on low-income state programs? New York State should demand detailed, county by county, job data so the state can independently verify the “19,000” jobs. In the words of Bennett Liebman, the former New York State Deputy Secretary for Gaming and Racing, and cited here earlier *“We may not know how many jobs [racing] has produced, but it is certainly nowhere near the levels that the surveys authored on behalf of the industry have indicated.”* If we cared about the workers in this industry we would stop talking about the questionable number of jobs and start talking about the quality of the jobs themselves.

### **Where exactly is the detailed proof of the \$3.3 billion claimed in economic impact?**

Think about this example: the Saratoga County Industrial Development Agency reports<sup>10</sup> in great detail that the Saratoga Race Course is responsible for \$237 million in economic impact for the large 9-county region around its flat track. This single track in Saratoga is responsible for more than 50% of the attendance of all eleven tracks in New York,<sup>11</sup>

much of the state's breeding and most of the tourism. How is it possible then that it has only \$237 million, or 8%, of the touted \$3.3 billion in economic impact claimed by racing? Are the other 10 tracks, with less combined attendance than the Saratoga Race Course alone, somehow responsible for the remaining 92% of racing's total speculative state-wide economic impact? That seems impossible.

The American Horse Council study does not identify how much of this economic impact is "net new" and would not occur if the industry were absent, or if the industry changed such that horse racing decreased and the recreational and competition sectors remained the same. The study does not provide the level of analysis necessary to understand the true economic impact or drain on taxpayers of horse racing in New York State. Yet, the media, legislators and racing interests hold this dubious study up as factual.

It's also stated by racing that billions in casino subsidies are justified because racing funds agricultural jobs, farms, green space and tourism. If that were so, New York would equitably subsidize the many diverse businesses achieving these same goals. As one example, the larger equine competition and recreation sectors encompass many more horses and produce employment and economic impact in New York State—without casino subsidies. Racing is unique in that it has a far greater and disproportionate influence in government, giving it a broad range of specialized benefits, subsidies and tax exemptions.

### **Future attendance predictions are dismal.**

2021 Marist Poll results<sup>12</sup> show horse racing is not something New Yorkers care about as 91% of those surveyed stated they have no intention of ever attending and 6% reporting they intend to go once or twice. Attending one or two days of racing when there are 1,200 days of racing in New York, rounds to zero economic impact—for 97% of New Yorkers in the poll.

### **Unfair to other businesses in New York.**

At a town hall meeting in 2021, President Biden referred to the federal tax incentives racing enjoys "*...Everyone should be able to go to community college for free. That costs \$9 billion... you spend almost that money as a break for people who own racehorses.*"<sup>19</sup>

Horse racing in New York has been subsidized for two decades and continues to lose any evidence of viable attendance and has done nothing to prove sustainability. It is a terrible bet for New Yorkers. How is it fair that a private gambling business, with a constitutional obligation to fund New York, instead receives billions in support payments enriching wealthy owners, breeders and celebrity trainers? And, as racing continues to slide, the handouts continue to get larger. Hundreds of thousands of New York businesses, that succeed or fail on their own bottom line, do so without these government bailouts. The private racing industry, in serious decline, and living on corporate welfare, has shown no ability to self-correct and support itself. A growing number of organizations representing New Yorkers across the state are supporting legislation recently introduced in the Assembly, and soon to be introduced in the Senate, that would re-direct horse racing subsidies to education, local communities and the general treasury.

- <sup>1</sup> New York State Gaming Commission Annual Reports, Division: Horse Racing & Pari-Mutuel Wagering, <https://www.gaming.ny.gov/about/index.php?ID=3>
- <sup>2</sup> STATE OPERATIONS - OTHER THAN GENERAL FUND/SUMMARY OF APPROPRIATIONS AND CHANGES/FY 2019 RECOMMENDED, <https://www.budget.ny.gov/pubs/archive/fy19/exec/agencies/appropData/GamingCommissionNewYorkState.html>
- <sup>3</sup> 2019 Video Lottery Terminal Gaming-7, <https://www.gaming.ny.gov/about/index.php?ID=3>
- <sup>4</sup> 2008 Franchise Agreement between New York State and New York Racing Association (NYRA), [https://www.gaming.ny.gov/pdf/RFP\\_VLFAqueduct\\_ExhibitG\\_Franchiseagreement.pdf](https://www.gaming.ny.gov/pdf/RFP_VLFAqueduct_ExhibitG_Franchiseagreement.pdf)
- <sup>5</sup> NYS Racing & Wagering Board Annual Report 1979, <https://www.gaming.ny.gov/pdf/1979%20Annual%20Report.pdf>
- <sup>6</sup> 2018 Track & OTB Race Dates, Attendance, Handle, <https://www.gaming.ny.gov/about/2018ap.php>
- <sup>7</sup> Democrat and Chronicle, <https://www.democratandchronicle.com/story/news/politics/albany/2017/02/16/how-vlts-saved-ny-horse-racing/98007232/>
- <sup>8</sup> 2019 Total Commingled Handle Imports, <https://www.gaming.ny.gov/about/index.php?ID=3>
- <sup>9</sup> American Horse Council, <https://www.horsecouncil.org/product/new-york-economic-impact-study/>
- <sup>10</sup> Saratoga County Industrial Development Agency, <https://www.saratogacountyida.org/wp-content/uploads/2017/12/2015-Economic-Impact-Racecourse.pdf>
- <sup>11</sup> 2018 Track & OTB: Race Dates, Attendance, Handle, <https://www.gaming.ny.gov/about/2018ap.php>
- <sup>12</sup> Marist Poll conducted August 4th - August 10th, 2021, in New York State
- <sup>13</sup> 2021 Spectrum New York Gaming Study, Main Report, pg 258
- <sup>14</sup> 2021 Spectrum New York Gaming Study, Main Report, pgs 278, 292, 333
- <sup>15</sup> Saratoga Institute, <https://saratogainstitute.wordpress.com>
- <sup>16</sup> The Defector, <https://defector.com/is-horse-racing-still-too-big-to-fail/>
- <sup>17</sup> <https://paulickreport.com/news/ray-s-paddock/nyra-s-spoils-of-victory/>
- <sup>18</sup> NYS Comptroller: 2015 Financial Condition and Selected Expenses, New York Racing Association, Inc. <https://www.osc.state.ny.us/files/audits/2018-01/sga-2016-15s21.pdf>
- <sup>19</sup> Rev, <https://www.rev.com/transcript-editor/shared/QnDSfJu9Q6Q-Qderf43cH-NjOj7fgsGDy28JUJjSRJg--jokra3DTiH4os70Jqyo3vnNQTGOcgHHRtrl7PmPN3mrsFg?loadFrom=PastedDeeplink&ts=3589.89>
- <sup>20</sup> <https://saratogainstitute.wordpress.com/2015/06/18/ownership-of-the-nyra-racetrack-properties-1983-in-review>
- <sup>21</sup> Untapped Cities, <https://untappedcities.com/2021/10/26/secrets-yonkers-raceway/7/>
- <sup>22</sup> USA Today, <https://www.usatoday.com/story/sports/horses/2019/11/03/horse-racing-deaths-taxes-subsidies/4148813002/>