

## COMMENTS

### SHOULD THEY GO THE WAY OF THE HORSE AND BUGGY? HOW THE NEW YORK CITY HORSE-DRAWN CARRIAGE INDUSTRY HAS SURVIVED THIRTY YEARS OF OPPOSITION

By  
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*This Comment reviews the history of the horse-drawn carriage industry in New York City and details legislative efforts to regulate the business. Many cities in the United States feature horse-drawn carriages as a tourist attraction, but they are most associated with New York. The long-standing controversy over the working and living conditions of the horses that pull the cabs has garnered less national attention than other animal welfare issues, despite the fatalities and injuries suffered by the equines on traffic-choked Manhattan streets. Supporters of the industry defend it as an important contributor to the local economy, an iconic symbol of the city, and a source of livelihood for the operators. They maintain that municipal regulations are sufficient to protect the horses from mistreatment and the public from the perils of accidents involving carriages. However, city regulation has historically proven to be inadequate and ineffective in ensuring that the horses are not exposed to inhumane conditions. Moreover, the inherent hazards and stressors of New York City streets take a toll on the horses' health and well-being that regulation cannot address. For these reasons, the protection of the horses and the public cannot be assured until the carriage business in the city is abolished. This Comment discusses the movement to ban the industry, including proposals that would replace the carriages with replicas of antique cars. With inadequate regulation and political obstacles to a ban, it may ultimately take a tide of public sentiment to end the suffering of carriage horses.*

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I. INTRODUCTION

On April 27, 2010, amid no small amount of fanfare and political spin, New York City Mayor Michael Bloomberg signed Introductory 35-A into law.<sup>1</sup> The subject of the legislation was the city’s 60-year-old horse-drawn carriage tourist business, but although its most hyped provisions included a five-week “furlough” in green pastures outside city limits and a mandatory “retirement” age for the hardworking equines who pull the cabs, it was in fact the latest successful effort by the carriage industry to beat back a strident and equally tenacious opposition.

While animal welfare issues such as dogfighting, puppy mills, and the treatment of factory-farmed animals have attracted the most media attention in recent years, the fight over the working and living conditions of carriage horses is among the most overlooked battlegrounds in the war for legal protections for animals in the United States. Nowhere is that battle more heated than in New York City. But at its heart, the issue and its accompanying debate are not all that different from most others where the interests and welfare of animals run up against the entrenched human interest in commerce.

This Comment analyzes why regulation of the carriage business in New York City has proven inadequate to protect the horses from inhumane conditions and addresses the concerns of the horses’ advocates.

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<sup>1</sup> Press Release, NYC.gov, *Mayor Bloomberg Signs Legislation Increasing Rates and Imposing Improved Regulations for Horse-Drawn Carriages* (Apr. 27, 2010) (available at [http://www.nyc.gov/portal/site/nycgov/menuitem; path News and Press Releases, select April 2010, scroll down to April 27, 2010, Mayor Bloomberg Signs Three Bills, select Signs Legislation Increasing Rates and Imposing Improved Regulations for Horse-Drawn Carriages](http://www.nyc.gov/portal/site/nycgov/menuitem;path News and Press Releases, select April 2010, scroll down to April 27, 2010, Mayor Bloomberg Signs Three Bills, select Signs Legislation Increasing Rates and Imposing Improved Regulations for Horse-Drawn Carriages) (accessed Nov. 21, 2010)) [hereinafter *Mayor Bloomberg Signs Legislation*].

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It explores the ongoing efforts to legislate a solution, leading to the recent passage of Intro 35-A, and how the political culture in the city has long protected the operators' interests. Against this backdrop, the question arises as to whether opponents will ever succeed in ending the carriage trade. Finally, this Comment supports the conclusion that abolishing the carriage industry is ultimately the only way to protect the animals and the public. Part II presents an overview of the carriage business in the city, its role in tourism, and its operators. It also describes the carriage-horse controversy in other U.S. cities and case law related to liability. Part III returns the focus to New York City and current regulation and enforcement. Part IV explores the history of legislative efforts to protect carriage horses, focusing particularly on how lax regulatory oversight and horse fatalities combined to fuel the drive for legislation, culminating in the most recent proposals before the city council. Part IV also discusses political obstacles to a ban of the industry. Part V addresses the future of the anti-carriage movement.

## II. BACKGROUND

In September 2007, a 12-year-old New York City carriage horse named Smoothie was startled by a street musician while hitched to her parked hansom cab on Central Park South.<sup>2</sup> She bolted onto the sidewalk, where her carriage became stuck between two poles.<sup>3</sup> Struggling frantically to free herself, Smoothie collapsed, went into shock and died, according to shaken witnesses.<sup>4</sup> Another horse then ran into the street and leaped onto the hood of a passing vehicle, badly damaging the car.<sup>5</sup> These tragedies came just two months after separate incidents in which carriage horses spooked in Manhattan traffic and collided with vehicles, causing injury to themselves and the vehicle drivers.<sup>6</sup>

In Boston, a heart wrenching scene unfolded in 2005 when a carriage horse named Toby collapsed from exhaustion near Faneuil Hall and desperately tried to scramble to his feet before helpless witnesses.<sup>7</sup> He was later euthanized.<sup>8</sup> A similar incident occurred in

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<sup>2</sup> Anahad O'Connor & Kai Ma, *A Carriage Horse Dies after Bolting onto a Sidewalk*, N.Y. Times B2 (Sept. 15, 2007) (available at 2007 WLNR 18056923 (accessed Nov. 21, 2010)).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Coalition to Ban Horse-Drawn Carriages (CBHDC), *Carriage Horse Accidents*, <http://www.banhdc.org/ch-acc.shtml> (Sept. 19, 2009) (accessed Nov. 21, 2010) [hereinafter *Carriage Horse Accidents*].

<sup>7</sup> CBHDC, *Carriage Horses, Other Cities, Horse Collapses on Street*, <http://www.banhdc.org/archives/ch-other-20051001.html> (accessed Nov. 21, 2010) [hereinafter *Carriage Horses, Other Cities*]; O'Ryan Johnson & Renee DeKona, Boston Herald, *Horse Collapses on Street* 2 (Oct. 1, 2005) (available at 2005 WLNR 15497672 (accessed Nov. 21, 2010)).

<sup>8</sup> *Carriage Horses, Other Cities, supra* n. 7.

downtown Portland, Oregon, in August 2009, where a carriage horse died after collapsing in 97° F heat, leading to calls for a carriage ban in that city.<sup>9</sup> The same debate emerged the following month in Salt Lake City when a half-draft horse named Jim bolted at a sudden noise and took off with a family of seven in the carriage, endangering pedestrians and drivers who swerved to get out of his way.<sup>10</sup>

These and similar incidents in other U.S. cities have ignited controversy and set the stage for a face-off between animal advocates and others who want carriage horses off urban streets on the one hand, and the small but politically connected carriage industry on the other. Criticism has been leveled not only at the perils to animals and humans from accidents but also at the extreme weather conditions the horses work under and the way they are kept and cared for. Supporters of the industry defend it as an important source of tourist revenue, civic pride, and livelihood for immigrant entrepreneurs and small businesses.<sup>11</sup> A growing chorus of opponents compares the carriage industry to circuses and other forms of entertainment that exploit animals and argues that it should go the way of other brutal vestiges of the horse-and-buggy era, such as child labor and sweatshops.<sup>12</sup> Politicians are caught in the middle, not wanting to appear insensitive to animal suffering, but loath to be seen as hindering enterprising immigrants or the tourist trade.

In New York City, where horse-drawn carriages are as etched onto the city landscape as the yellow cab and the pretzel cart, the struggle is hardly new. A campaign in the late 1980s led to a short-lived law that confined the carriages to Central Park.<sup>13</sup> But a string of high-profile accidents, including the deaths of Smoothie and two other horses along with a 2007 audit critical of industry oversight,<sup>14</sup> revived the opposition to the carriage business and led to legislative proposals in 2007, 2009, and again in 2010 that would ban, phase out, or restrict

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<sup>9</sup> Jake Cohen, *Mayor Asks for Input on Carriage Policies*, Oregonian B2 (Aug. 7, 2009).

<sup>10</sup> Melinda Rogers, *Horse-Carriage Ban Is Sought by PETA: Runaway Horse Draws Attention from Group*, Salt Lake Trib. (Sept. 3, 2009) (available at 2009 WLNR 17243053 (accessed Nov. 21, 2010)).

<sup>11</sup> See *Mayor Bloomberg Signs Legislation*, supra n. 1 (stating that horse-drawn carriage rides are an iconic part of New York City and are amongst the top-ten local attractions for tourists); see also Larry McShane, *Carriage Drivers Join Teamsters*, N.Y. Daily News 11 (Jan. 25, 2009) (interviewing an immigrant in the horse-drawn carriage industry) (available at 2009 WLNR 1469890 (accessed Nov. 21, 2010)).

<sup>12</sup> CBHDC, *Why a Ban Is Necessary*, <http://www.banhdc.org/ch-why.shtml> (accessed Nov. 21, 2010).

<sup>13</sup> Arnold H. Lubasch, *Council Passes Law Restricting Carriage Horses, Limits Midtown Hours and Doubles the Fares*, N.Y. Times B4 (Sept. 8, 1989) (available at 1989 WLNR 2096900 (accessed Nov. 21, 2010)).

<sup>14</sup> City of N.Y. Off. of the Comptroller & William C. Thompson, Jr., *Audit Report on the Licensing and Oversight of the Carriage-Horse Industry by the Departments of Health and Mental Hygiene and Consumer Affairs 2*, [http://www.comptroller.nyc.gov/bureaus/audit/PDF\\_FILES/MH07\\_092A.pdf](http://www.comptroller.nyc.gov/bureaus/audit/PDF_FILES/MH07_092A.pdf) (June 27, 2007) (accessed Nov. 21, 2010) [hereinafter *Audit Report*].

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carriage enterprises.<sup>15</sup> Animal advocates insist that there is no way to make the chaotic streets of Manhattan safe for horses despite the best efforts of operators,<sup>16</sup> while the industry and its political backers say that better regulation is all that is needed to protect the equines and the public.<sup>17</sup>

A. *The Horse-Drawn Carriage Business in New York,  
Past and Present*

For \$50, tourists in Manhattan can enjoy a twenty-minute ride in a velvet-lined horse-drawn hansom cab driven by an elegantly dressed man in a top hat.<sup>18</sup> It is unlikely these out-of-towners are aware that their quaint interlude is the subject of a contentious debate playing out in city council chambers, courtrooms, cyberspace, and the streets, a debate that has raged off and on for over thirty years.

Horses occupy a storied place in American history, folklore, and modern life. They have transported settlers across great distances and are an icon of westward expansion and freedom. Modern domesticated horses can live as long as thirty years.<sup>19</sup> Horses are highly social and able to form attachments to other animals and to humans.<sup>20</sup> They have keen eyesight, and their evolution as prey animals has given them a highly developed flight-or-fight response: their immediate reaction to a perceived threat is usually to startle and flee.<sup>21</sup>

New York City has never been gentle to these beasts of burden. In the mid- to late nineteenth century, thousands of large workhorses supported the exploding population by hauling goods and trolleys, producing large amounts of waste that created a health hazard in the

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<sup>15</sup> Carolyn Salazar & Adam Nichols, *Neighs and Yeas—Horse-Carriage Foes in Bitter Face-off*, N.Y. Post 9 (Jan. 31, 2009) (available at 2009 WLNR 1969860 (accessed Nov. 21, 2010)); David Seifman, *Push for Equine Time Off*, N.Y. Post 3 (Mar. 13, 2010) (available at 2010 WLNR 5410786 (accessed Oct. 19, 2010)); Press Release, American Society for Prevention of Cruelty to Animals (ASPCA), *ASPCA Urges NYC Council Committee on Consumer Affairs to Support Intro 658-A, Oppose Intro. 653-A* (Jan. 30, 2009) (available at <http://www.aspca.org/pressroom/press-releases/013009.html> (accessed Nov. 21, 2010)); see also CBHDC, *What You Can Do . . .*, [http://banhdc.org/what\\_you\\_can\\_do.shtml](http://banhdc.org/what_you_can_do.shtml) (accessed Nov. 21, 2010) (listing the current bills in the Consumer Affairs Committee of the New York City Council).

<sup>16</sup> Holly Cheever, CBHDC, *Yay or Neigh: Should the Carriage Horse Industry Be Banned in NYC?*, <http://banhdc.org/ch-news-20090511.shtml> (May 11, 2009) (accessed Nov. 21, 2010).

<sup>17</sup> See *Mayor Bloomberg Signs Legislation*, *supra* n. 1 (stating that stringent regulations will provide increased training for operators and better working conditions for the horses, which will create a better horse-drawn carriage industry).

<sup>18</sup> Manhattan Carriage Co. of NYC, *Park Rides*, <http://www.ajfineart.com/MCC/CarriageRide.html> (accessed Nov. 21, 2010).

<sup>19</sup> Craig M. Smith, *Brief Summary of Horse Laws*, <http://www.animallaw.info/articles/qvushorselaws.htm> (2009) (accessed Nov. 21, 2010).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

streets.<sup>22</sup> Many overworked, mistreated horses simply collapsed dead in the road.<sup>23</sup> In fact, the American Society for the Prevention of Cruelty to Animals (ASPCA) was born in 1866 when founder Henry Bergh intervened after witnessing a cart-horse being brutally beaten by its driver in New York City.<sup>24</sup>

With the advent of the automobile, only fifteen horse-drawn carriages operated in New York City by 1935, staying mostly within the confines of Central Park.<sup>25</sup> However, the gas rationing of World War II increased the number of carriages the city needed for non-motorized transportation.<sup>26</sup> Many of the new carriage drivers remained after the war, increasing the competition for business.<sup>27</sup> In the late 1940s and early 1950s, New York City's Irish-born mayor sold sixty-eight carriage licenses, or medallions, to two Irish expatriate stable owners for \$100 to \$200 each.<sup>28</sup> In the 1960s and 1970s, the medallion owners began selling their extra licenses, pushing the business farther outside of Central Park as more carriages competed for fares.<sup>29</sup> These new carriage enterprises operated virtually unregulated.<sup>30</sup>

Most horses pulling hansom cabs in New York are standard-bred or draft horses purchased from the Amish in Pennsylvania for \$50 to \$500 at auction.<sup>31</sup> Although the number of licensed cabs has remained unchanged since the post-War era (68), the number of licensed drivers has swelled to approximately 300, with about 200 horses serving the city at a given time.<sup>32</sup> There is relatively little training required to operate a carriage: five days of apprenticeship with an experienced driver culminating in a written exam administered by the veterinary health service, but no road test.<sup>33</sup>

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<sup>22</sup> The Living City, *Interview with David Rosner, Portrait of an Unhealthy City: New York in the 1880s*, [http://www.livingcityarchive.org/html/framesets/living\\_city/fs\\_dev.htm](http://www.livingcityarchive.org/html/framesets/living_city/fs_dev.htm) (accessed Nov. 21, 2010).

<sup>23</sup> *Id.*

<sup>24</sup> ASPCA & Pune Dracker, *History*, <http://www.aspc.org/about-us/history.html> (accessed Nov. 21, 2010).

<sup>25</sup> CBHDC, *Carriage Horses, History, The Political Power of NYC's Carriage Business—A Bare-Bones History*, <http://www.banhdc.org/archives/ch-hist-theopol.html> (accessed Nov. 21, 2010) [hereinafter *Carriage Horses, History*].

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*; E-mail from Elizabeth Forel, Pres. of CBHDC, to author, *The Horse-Drawn Carriage Industry in New York City* (Aug. 12, 2010, 18:23 CST) (on file with *Animal Law*).

<sup>29</sup> *Carriage Horses, History, supra* n 25.

<sup>30</sup> *Id.*

<sup>31</sup> Monique P. Yazigi, *Under F.D.R., Hidden Home for Horses*, N.Y. Times CY6 (July 17, 1994) (available at 1994 WLNR 3506516 (accessed Nov. 21, 2010)).

<sup>32</sup> City of N.Y. Off. of the Comptroller & William C. Thompson, Jr., *Follow-up Audit Report on the Licensing and Oversight of the Carriage-Horse Industry by the Departments of Health and Mental Hygiene and Consumer Affairs* 3, [http://www.comptroller.nyc.gov/bureaus/audit/PDF\\_FILES/FS09-124F.pdf](http://www.comptroller.nyc.gov/bureaus/audit/PDF_FILES/FS09-124F.pdf) (Sept. 21, 2009) (accessed Nov. 21, 2010) [hereinafter *Follow-up Audit Report*].

<sup>33</sup> *Id.*

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One can become licensed to steer horse carriages through the streets of Manhattan having had no prior experience handling horses anywhere.<sup>34</sup> In addition, often the carriage driver and horse owner are not the same person.<sup>35</sup> The business is dominated by a handful of mostly family-run operators who collectively comprise the following organizations: New York Horse & Carriage Association (NYHCA), Bicentennial Stables, Inc., Chateau Stables, Inc., Colombo Stables, Inc., Shamrock Stables, Inc., and Westside Livery Stables, Inc.<sup>36</sup> Many of the owners and drivers are first- or second-generation Irish and Italian.<sup>37</sup>

Once the horses come to New York, they spend almost their entire existence on their feet. They are kept in five locations on the far west side of Manhattan between 37th and 52nd Streets and 11th and 12th Avenues.<sup>38</sup> The term “stable” does not accurately describe their housing, which consists mostly of former warehouses and fire stations.<sup>39</sup> A 1994 *New York Times* article described Shamrock Stables prior to its closure:

It is tucked beneath a rundown underpass, with makeshift graffiti-covered gates and old boarded-up doorways. A peek inside reveals a world of gray and chestnut horses, row after row, all in cramped standing stalls four feet wide by ten feet long, tied up by their halters. They are unable to move more than a few inches. They stand in puddles of urine, some with no water buckets or salt licks. One small fan circulates the stagnant air. The horses' sounds are muffled by the sounds of the cars above. They look muddy but well-fed. To the Health Department, the governing body of carriage horses, the Shamrock is a decent home for a horse. “This is one of the better stables in the city,” said Steve Matthews, an associate commissioner.<sup>40</sup>

Neighboring elementary school students complained of respiratory and other ailments from the noxious stench emanating from Shamrock Stables, to no avail.<sup>41</sup>

To get from the horses' living quarters to their main area of business in and around Central Park, the carriages usually travel up 10th

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<sup>34</sup> N.Y. City Admin. Code § 17-334.1 (2010) (available at <http://public.leginfo.state.ny.us/MENUGETF.cgi?COMMONQUERY=LAWS+&TARGET=VIEW;search> “17-334.1” (accessed Nov. 21, 2010)).

<sup>35</sup> See *Carriage Horses, History*, *supra* n. 25 (stating that license owners began to sell their excess licenses).

<sup>36</sup> *N.Y. Horse & Carriage Assn. v. City of N.Y., Dept. of Consumer Affairs*, 545 N.Y.S.2d 439 (N.Y. App. Div. 1989).

<sup>37</sup> Robert Lipsyte, *Sad Days for the Lads of the Carriage Trade*, *N.Y. Times* CY1 (Dec. 26, 1993) (available at 1993 WLNR 3358037 (accessed Nov. 21, 2010)).

<sup>38</sup> *Animals' Angels USA, The New York City “Carriage-Horse Industry,” An Animals' Angels Investigation* 1, <http://banhdc.org/animalsangels.pdf> (accessed Nov. 21, 2010).

<sup>39</sup> *Id.* at 2–3.

<sup>40</sup> Yazigi, *supra* n. 31, at 6; see Emily B. Hagar, *New York Times, At Long Last, Stables are Empty*, <http://cityroom.blogs.nytimes.com/2010/06/07/at-long-last-stables-are-empty/> (June 7, 2010) (accessed Dec. 29, 2010) (discussing the closure of Shamrock Stables).

<sup>41</sup> Marianne Garvey, *Making a Stink; School Hits Horse Barn Next Door*, *N.Y. Post* 25 (Jan. 9, 2005) (available at 2005 WLNR 23213331 (accessed Nov. 21, 2010)).

Avenue and return by 9th Avenue.<sup>42</sup> This requires them to travel in the vicinity of the heavily congested Lincoln Tunnel and West Side Highway.<sup>43</sup> The horses are legally permitted to work up to nine hours a day, seven days a week; however, the NYHCA claims that horses are worked no more than five days per week under trade rules.<sup>44</sup> Additionally, the horses are not supposed to be worked if the air temperature reaches above 89° F or below 19° F, without factoring in humidity or wind chill.<sup>45</sup>

It is difficult to quantify the carriage trade's contribution to New York City's economy, especially because it is a cash business and is not subject to sales tax.<sup>46</sup> Its supporters champion it as a tourist attraction in itself, on par with the Statue of Liberty—a contention dismissed by critics who argue it is really an ancillary attraction and that New York City would still thrive as a tourist mecca without it.<sup>47</sup>

The struggle to legislate and regulate the carriage business is a case study in the rough-and-tumble world of New York politics. Over the past four decades, the industry's list of allies has read like a Who's Who of city political players, including powerful borough bosses and some of the most colorful and charismatic figures who have held the office of mayor. The industry also enjoys the support of the Teamsters Union.<sup>48</sup> Carriage operators have collectively resisted most efforts at regulation and have been overtly hostile to restrictions and litigious with city regulators and critics.<sup>49</sup> They have brought lawsuits—unsuccessfully—against the New York City Council, the Department of Consumer Affairs (DCA), the Department of Parks and Recreation (NYCDPR), and the ASPCA, just to name a few.<sup>50</sup>

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<sup>42</sup> CBHDC, *Carriage Horses, Facts, Facts about the NYC Horse Drawn Carriage Industry*, <http://www.banhdc.org/archives/ch-fact-facts.html> (Mar. 2006) (accessed Nov. 21, 2010).

<sup>43</sup> *Id.*

<sup>44</sup> Jessica Bennett, Newsweek, *Tradition or Cruelty?*, <http://www.newsweek.com/2007/09/24/tradition-or-cruelty.html> (Sept. 25, 2007) (accessed Nov. 21, 2010); N.Y. City Admin. Code at § 17-330(g).

<sup>45</sup> N.Y. City Admin. Code at § 17-330(o).

<sup>46</sup> Carriage Horses—NYC, *Don't Get Taken for a Ride*, <http://carriagehorses-nyc.blogspot.com/2009/02/dont-get-taken-for-ride.html> (Feb. 13, 2009) (accessed Nov. 21, 2010).

<sup>47</sup> CBHDC, *Why a Ban Is Necessary, Tourism*, <http://banhdc.org/ch-why.shtml> (accessed Nov. 21, 2010).

<sup>48</sup> See Salazar & Nichols, *supra* n. 15 (stating that the carriage operators are represented by Teamsters Local 553).

<sup>49</sup> See *id.* (stating that carriage drivers have been vocal in their public opposition to any perceived threat to their livelihood).

<sup>50</sup> See e.g. *McGill v. Parker*, 582 N.Y.S.2d 91 (N.Y. App. Div. 1992); *N.Y. Horse & Carriage Assn. v. Council of the City of N.Y.*, 564 N.Y.S.2d 399 (N.Y. App. Div. 1991); *N.Y. Horse & Carriage Assn. v. N.Y.C. Dept. of Parks & Recreation*, 473 N.Y.S.2d 805 (N.Y. App. Div. 1st Dept. 1984); *N.Y. Horse & Carriage Assn. v. N.Y.C. Dept. of Consumer Affairs*, 545 N.Y.S.2d 439 (N.Y. Sup. Ct. 1989).



### B. *The Controversy in Other U.S. Cities*

New York City is hardly the only tourist destination where the living and working conditions of carriage horses are the subject of controversy. The carriage trade has been banned outright in Las Vegas and in Palm Beach, Florida, as well as in London, Toronto, Paris, and Beijing.<sup>51</sup> The business came under fire in the summer of 2009 in Charleston, South Carolina, after an independent veterinarian hired by the city to inspect its five operators reported that four of them fed their horses less than was required by city regulations and also inadequately housed and maintained the animals,<sup>52</sup> spurring calls from some, including the *Post and Courier* newspaper, for greater scrutiny of the industry.<sup>53</sup>

J.C. Cutters was an operator in Chicago, which has a much smaller horse-carriage presence than New York City. Cutters was denied a license renewal by the city for various infractions and then had six of its horses seized by animal control authorities in February 2009 for neglect.<sup>54</sup> Collisions between automobiles and horse carriages have been a problem in places such as St. Augustine, Florida, where a passenger from Buffalo, New York, was seriously injured in a 2002 accident when a carriage seat flipped over.<sup>55</sup> The collisions with autos are sometimes not the carriage driver's fault or the result of a horse spooking but are just the result of congested traffic conditions or drunk driving.<sup>56</sup> It is for this reason that critics claim no amount of regulation or compliance on the part of operators can ensure safe conditions for the horses and the public, and that the horses simply do not belong in urban areas.

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<sup>51</sup> Bennett, *supra* n. 44.

<sup>52</sup> Allyson Bird, *Carriage Operators Criticized; Vet's Inspection Cites Animal Health, Stabling*, *Post & Courier* (Charleston, S.C.) A1 (July 3, 2009).

<sup>53</sup> Editorial, *Review Horse Safety Rules*, *Post & Courier* (Charleston, S.C.) A14 (July 17, 2009).

<sup>54</sup> Sara Olkon & Jeremy Gerner, *Neglected Horses Removed from Chicago Carriage Operation*, *Chi. Trib.* (Feb. 7, 2009) (available at 2009 WLNR 2447117 (accessed Nov. 21, 2010)) (acting on a complaint, investigators found the horses living in unsanitary conditions in an outdoor tent on a winter day without food or water); Dan Simmons, *Carriage Drivers Guilty of Mistreating Horses*, *Chi. Trib.* 24 (Sept. 24, 2009) (available at 2009 WLNR 2447117 (accessed Nov. 21, 2010)) (where animal control officers found the horses "living in stalls in which manure was mixed with hay . . . some horses were coated with dirt and their hooves covered in manure"). In September 2009, two of the horses' drivers were convicted of misdemeanor state cruelty violations. *Id.*

<sup>55</sup> Dana Treen, *Trolleys, Carriages and Traffic Can be Dangerous Mix: Accidents Occur When Drivers Don't Pay Attention*, *Florida Times-Union* (Jacksonville) (Aug. 3, 2009) (available at 2009 WLNR 14972295 (accessed Nov. 21, 2010)).

<sup>56</sup> *See id.* (police officer noting that "[t]here's congestion and there are people who don't drive with consideration" and carriage driver noting that he is "more concerned about Floridians who stay too long at a bar").

### C. *Liability for Accidents*

Most states have enacted equine activity liability statutes that exempt sponsors of horse-related recreational activities from liability under assumption of risk theories.<sup>57</sup> New York is one of only four states that do not have an equine liability statute.<sup>58</sup> Courts in Tennessee and Illinois have held that liability statutes do not apply to operators of horse-drawn carriage businesses absent express inclusion by the legislature because passengers have no ability to control the animals.<sup>59</sup> However, states such as Wisconsin have specifically included carriage operators in their equine activity liability statutes.<sup>60</sup> Courts in Ohio have interpreted that state's statute to include carriage ride passengers as "equine activity participants," who must prove willful or wanton disregard for safety on the part of operators.<sup>61</sup>

## III. REGULATION AND ENFORCEMENT OF THE HORSE-CARRIAGE TRADE IN NEW YORK CITY

In New York City, the carriage industry is regulated by the Department of Consumer Affairs (DCA), which licenses carriages and drivers, and the Department of Health and Mental Hygiene (DOHMH), which licenses the horses and regulates their health and working and living conditions through the Office of Veterinary Public Health Services.<sup>62</sup> The regulations are codified in Administrative Code titles 17 and 20,<sup>63</sup> recently amended by the passage of Intro 35-A.<sup>64</sup> Oversight and enforcement is also delegated to several other disparate public and private agencies, including the transportation and parks departments, the police department, and the American Society for the Prevention of Cruelty to Animals (ASPCA).<sup>65</sup> Operators can face civil penalties and license suspensions for violating the code.<sup>66</sup>

### A. *Administrative Code*

Under Title 17, each working horse must be identified and licensed annually, and the horse's tags must be displayed in a conspicu-

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<sup>57</sup> Heidi Walson, Mich. St. U. College of Law Animal Leg. & Historical Ctr., *Detailed Discussion of the Equine Activity Liability Act*, <http://www.animallaw.info/articles/dduseala.htm> (2003) (accessed Nov. 21, 2010).

<sup>58</sup> Mich. St. U. College of Law Animal Leg. & Historical Ctr., *Map of State Equine Activity Liability Statutes*, <http://www.animallaw.info/articles/armpequineliability.htm> (accessed Oct. 20, 2010).

<sup>59</sup> *Smith v. Lane*, 358 Ill. App. 3d 1126, 1132 (2005); *Friedli v. Kerr*, 2001 WL 177184 1, 4 (Tenn. App. 2001) (West 2010).

<sup>60</sup> Wis. Stat. Ann. § 895.481 (West 2002).

<sup>61</sup> *Lawson v. Dutch Heritage Farms, Inc.*, 502 F.Supp.2d 698 (N.D. Ohio 2007).

<sup>62</sup> N.Y. City Admin. Code §§ 17-327, 17-330, 20-373, 20-381.

<sup>63</sup> *Id.* at §§ 17-326–17-334.1, 20-372–20-384.

<sup>64</sup> N.Y. City Council Comm. on Consumer Affairs, *Committee Report of the Government Affairs Division 11–17* (Mar. 12, 2010) [hereinafter *Comm. Report*].

<sup>65</sup> N.Y. City Admin. Code at § 20-381.1(e).

<sup>66</sup> *Id.* at §§ 17-332, 20-383.

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ous place.<sup>67</sup> Horses may not be left untethered or unattended except when in their stables.<sup>68</sup> The provisions for the horses' living conditions are generalized and, some charge, vague.<sup>69</sup> They must be "adequately quartered," and the stalls must be clean and dry with "sufficient bedding of straw, shavings or other suitable materials."<sup>70</sup> There must be "adequate heating and ventilation,"<sup>71</sup> and owners must ensure "appropriate and sufficient food and drinking water" at "reasonable intervals."<sup>72</sup> Carriage horses are not supposed to be worked on a public street during adverse weather or other dangerous conditions.<sup>73</sup> They may not be worked for more than nine hours in any continuous twenty-four-hour period and must have rest periods of at least fifteen minutes for each two-hour work period.<sup>74</sup> Their stables are subject to inspection by authorized parties, including veterinarians and the ASPCA, who may order that lame or ill horses be removed from work.<sup>75</sup> Horses must be examined by a veterinarian at least every eight months to ensure they are fit for work, and health certificates signed by the veterinarian must be posted on their stalls.<sup>76</sup>

One of the most contentious issues for carriage trade opponents is the weather conditions the horses work under. The regulations state that horses shall not be worked if the air temperature reaches 18° F or below, or 90° F or above, as measured by "a state-of-the-art thermometer . . . at street level at one of the stands designated pursuant to . . . the code."<sup>77</sup> Critics contend that this provision is too infrequently enforced, partly because only a "special thermometer" used by the ASPCA may be used to enforce it.<sup>78</sup> The newly passed law contained no amendment to this section of Title 17, so the temperature limits

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<sup>67</sup> *Id.* at §§ 17-327(b), 17-328(a).

<sup>68</sup> *Id.* at § 17-330(b)(1).

<sup>69</sup> *E.g.* N.Y. City Bar, *Report on Legislation by the Committee on Legal Issues Pertaining to Animals* § B (Apr. 2010) (available at <http://www.nycbar.org/pdf/report/uploads/20071913-CommentonIntro35reHorseDrawnCabs.pdf> (site no longer available) (on file with *Animal Law*)) (stating that the reforms under Intro. 35 would have "negligible impact on the horses' working conditions and lives").

<sup>70</sup> N.Y. City Admin. Code at §17-330(d).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at § 17-330(e).

<sup>73</sup> *Id.* at § 17-330(f).

<sup>74</sup> *Id.* at § 17-330(g)(1).

<sup>75</sup> *Id.* at §§ 17-330(j), 17-330(m).

<sup>76</sup> N.Y. City Admin. Code at § 17-330(n). Prior to the passage of Intro. 35, it was required that horses be examined just once a year. *See Comm. Report, supra* n. 64, at 6.

<sup>77</sup> N.Y. City Admin. Code at §17-330(o)(1)–(3). If the temperature falls outside designated levels, the driver must cease to work the horse within a half-hour and return it to its stable until the temperature reaches an acceptable level. Operators who violate the rules must first be issued a written warning by enforcement personnel, and only when they fail to comply with the warning are they issued a formal violation. *Id.* at § 17-333(o)(4)–(5).

<sup>78</sup> Horsetalk, *Video: Carriage Horses Suffering in Heat Wave*, <http://www.horsetalk.co.nz/news/2010/07/125.shtml> (July 20, 2010) (accessed Nov. 21, 2010).

remain without allowances for humidity or wind chill, as do the loose enforcement provisions.<sup>79</sup>

The provision in Title 17 for a five-member advisory board to make specific recommendations for horse health and safety<sup>80</sup> has been perhaps the most disregarded requirement, and, until a 2007 comptroller's audit, the board did not even exist.<sup>81</sup> Section 17-331 calls for the DOHMH commissioner to appoint an advisory board consisting of two members representing rental horse businesses, two members from the public of which no more than one may be associated with a humane organization, and one veterinarian.<sup>82</sup>

Title 20 is enforced by the DOHMH and the DCA, governing licensing for cabs and drivers.<sup>83</sup> It mandates inspection for each licensed cab at least once every four months.<sup>84</sup> On weekdays, carriages are confined to Central Park and the streets that are immediately adjacent.<sup>85</sup> There are additional restrictions barring them from midtown Manhattan during various time periods.<sup>86</sup> They are banned from bridges and tunnels.<sup>87</sup> None of the day and time restrictions apply to carriage horses that are being taken without passengers to and from their stables if the transport is within a reasonable time.<sup>88</sup> Until Intro 35-A, there were no provisions requiring turnout of the horses, i.e., grazing time in a pasture away from the confines of their stable stalls.<sup>89</sup>

#### B. City Comptroller's 2007 Audit Report

Between July 1, 2005, and March 30, 2007, the New York City Office of the Comptroller conducted an audit of the city agencies that oversee the carriage industry.<sup>90</sup> While the audit found overall compliance with regulations, it was critical of agency oversight in many areas, and in particular the failure to establish an advisory board to set forth guidelines for care of the horses as required by the code twenty-five years earlier.<sup>91</sup> In a report dated June 27, 2007, Comptroller William C. Thompson Jr. said DOHMH and DCA have "adequate controls" over the business, but that because of DOHMH's failure to establish the board, "regulations were never promulgated to promote the health, safety, and well-being of the horses . . . and DOHMH's oversight duties and responsibilities were never clearly established."<sup>92</sup> For instance,

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<sup>79</sup> *Comm. Report, supra* n. 64, at 11.

<sup>80</sup> N.Y. City Admin. Code at § 17-331.

<sup>81</sup> *Audit Report, supra* n. 14, at 9, 11.

<sup>82</sup> N.Y. City Admin. Code at § 17-331.

<sup>83</sup> *Audit Report, supra* n. 14, at 1.

<sup>84</sup> N.Y. City Admin. Code at § 20-378.

<sup>85</sup> *Id.* at § 20-381.1(b).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at § 20-381.1(c).

<sup>89</sup> *Comm. Report, supra* n. 64, at 12.

<sup>90</sup> *Audit Report, supra* n. 14, at 1.

<sup>91</sup> *Id.* at 2.

<sup>92</sup> *Id.* at 1-2, 10.

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DOHMH had no written guidelines dictating when and how often stables should be inspected.<sup>93</sup> The auditors found the DOHMH veterinarian spent on average only twenty-five minutes on each inspection, which included traveling from one stable to the next, inspecting the facilities, and completing paperwork.<sup>94</sup> The audit concluded: “There was limited time available for the veterinarian consultant to observe the overall physical condition of the horses.”<sup>95</sup>

The report was especially critical of the agencies’ over-reliance on the ASPCA to monitor horses and stables in an unofficial capacity without any formal agreement with the private agency: “The ASPCA could suddenly reduce or curtail its oversight role, which would leave a void in oversight of the industry.”<sup>96</sup> The ASPCA and some carriage operators complained about the dearth of hitching posts and water spigots where carriages pick up passengers, inadequate street drainage, and a lack of shade for horses in the heat, all issues that the comptroller identified as best addressed by an advisory board that was never created.<sup>97</sup> The comptroller summarized the need for the board in the report as follows:

The process envisioned by the writers of the Administrative Code statute creating an Advisory Board appears to acknowledge that the few requirements contained in the statute were inadequate to care for the horses . . . An Advisory Board would help to ensure that rules reflect the current knowledge of the industry and cover such topics as the size of horse stalls and age limits for carriage-horses.<sup>98</sup>

Synergy between DOHMH and DCA was also found lacking. According to the report, DCA had renewed licenses for several horses before the health department veterinarian signed off on their health reports.<sup>99</sup> The audit also faulted both agencies for failures to conduct veterinary examinations of horses in the field and to adequately inspect the carriages themselves.<sup>100</sup> It uncovered at least two drivers who were licensed by DCA despite not having completed the required training.<sup>101</sup> Auditors were also troubled by differing information given for the same horses on health certificates submitted in 2005 and 2006: one horse was listed as male one year and female the next.<sup>102</sup>

Although the report concluded that no “serious violations regarding the health and safety of the horses” were found during visits by auditors, it set forth eleven recommendations, including establishing the required advisory board, written guidelines for inspections of sta-

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<sup>93</sup> *Id.* at 10.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Audit Report, supra* n. 14, at 2.

<sup>97</sup> *Id.* at 11.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 2.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 14–15.

<sup>102</sup> *Audit Report, supra* n. 14, at 13.

bles and horses in the field, and a more formal monitoring process under which it could form an agreement with the ASPCA or with another organization for horse and carriage inspections.<sup>103</sup> In response to the comptroller's report, DOHMH agreed to establish an advisory board and comply with the other recommendations.<sup>104</sup> The new advisory board met for the first time in November 2007 and issued recommendations to the health commissioner in February 2009.<sup>105</sup>

### C. 2009 Follow-Up Audit

On September 21, 2009, the comptroller's office released a follow-up audit report on progress made on its 2007 recommendations.<sup>106</sup> Of the eleven recommendations, DOHMH and DCA had implemented seven, including establishing the required advisory board.<sup>107</sup> However, DOHMH had yet to act on any recommendations made by the board, including using microchips to identify the horses.<sup>108</sup> "It is astonishing that the Health Department is only now[—]two years after our audit[—]at the initial reviewing stage of processing recommendations intended to improve health, safety, and well-being of the carriage horses," the comptroller's office stated in a press release.<sup>109</sup> It found that the DCA was still noncompliant with some carriage inspection requirements and that the DOHMH was still carrying out informal stable inspections and had not taken action to properly identify horses.<sup>110</sup> Moreover, the audit uncovered new issues, including the failure to ensure that all working horses are healthy and properly licensed.<sup>111</sup>

## IV. LEGISLATIVE EFFORTS TO REGULATE THE HORSE-CARRIAGE TRADE

From the time of the industry's emergence after World War II until about 1980, operators of horse-drawn carriages serving the New York City tourist trade virtually had free rein to house, care for, and work their horses as they chose with little government oversight. That began to change when concerned members of the public began taking notice of various abuses that pervaded the business. A movement slowly gained ground to improve the lot of the equines working in the carriage trade, but it ran up against fierce resistance from the industry's backers in City Hall.

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<sup>103</sup> *Id.* at 2–3.

<sup>104</sup> *Id.* at 12.

<sup>105</sup> *Follow-up Audit Report*, *supra* n. 32, at 9.

<sup>106</sup> *Id.* at 1.

<sup>107</sup> *Id.* at 8.

<sup>108</sup> *Id.* at 8, 11.

<sup>109</sup> *City Has Not Implemented Recommendations by Horse-Carriage Industry Advisory Board*, U.S. Fed. News (Sept. 23, 2009) (available at 2009 WLNR 18760747 (accessed Nov. 21, 2010)).

<sup>110</sup> *Follow-up Audit Report*, *supra* n. 32, at 11–13.

<sup>111</sup> *Id.* at 5.

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Organized campaigns to curb the carriage trade to protect horses did not begin in earnest until the 1970s, spearheaded by several New York entertainment figures.<sup>112</sup> These efforts met stubborn opposition in the form of a powerful, Irish Catholic, conservative Democratic party boss and city councilman from Queens named Thomas J. “Tom” Manton, who was also a partner in a law firm that represented the carriage industry,<sup>113</sup> many of whose members were based in Queens.<sup>114</sup> Manton served on the city council from 1970 to 1984, when he was elected to Congress.<sup>115</sup> Edward Koch, who was elected mayor in 1978, was heavily dependent on Manton’s political support and resisted efforts to legislate the industry.<sup>116</sup> In 1981, perhaps partially to placate the opposition, the first law regulating the industry, the Horse Licensing and Protection Law, was enacted. The law required the horses to be licensed, imposed a ten-hour-a-day work limit, and called for an advisory board.<sup>117</sup>

In 1983, city councilman Robert Dryfoos introduced a bill that would have limited the carriages to Central Park, and Mayor Koch responded with a more watered-down bill.<sup>118</sup> Both bills died in the committee.<sup>119</sup> Meanwhile, carriage accidents were attracting public attention, and in 1986 the Carriage Horse Action Committee (CHAC) was formed to help push for legislation.<sup>120</sup> Dryfoos introduced a compromise bill in May 1988.<sup>121</sup> That summer, a public relations disaster for the carriage industry transpired when one horse collapsed and another died in the brutal New York City heat.<sup>122</sup> The image of a horse named Whitey struggling to get to his feet for over two hours was imprinted on the collective consciousness of New Yorkers that summer, and he came to symbolize the debate.<sup>123</sup> The ensuing media and public backlash kept pressure on the industry,<sup>124</sup> which only intensified after

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<sup>112</sup> *Carriage Horses, History*, *supra* n. 25.

<sup>113</sup> *Id.*

<sup>114</sup> Lipsyte, *supra* n. 37.

<sup>115</sup> Sewell Chan, *Thomas J. Manton, 73, Influential Queens Democrat, Dies*, N.Y. Times B7, (July 24, 2006) (available at 2006 WLNR 12690202 (accessed Nov. 21, 2010)).

<sup>116</sup> *Carriage Horses, History*, *supra* n. 25.

<sup>117</sup> *Id.*

<sup>118</sup> *See id.* (Koch responded with a bill to restrict carriages from Midtown for four hours a day.)

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Carriage Horses, History*, *supra* n. 25.

<sup>123</sup> *The Carriage Horse Question*, N.Y. Times A18 (Sept. 25, 1989) (available at 1989 WLNR 2010081 (accessed Oct. 19, 2010)).

<sup>124</sup> *Help the Horses*, N.Y. Times A28 (Oct. 4, 1989) (available at 1989 WLNR 2032774 (accessed Nov. 21, 2010)) (stating that New York does not need an industry that creates traffic problems or provides its citizens with photographs such as the one of a carriage horse that collapsed from heat exhaustion); *see also The Carriage Horse Question*, *supra* n. 123 (stating that the need for protection of carriage horses is obvious as evidenced by

Dr. Holly Cheever, a Cornell-educated veterinary consultant to CHAC and the American Society for Prevention of Cruelty to Animals (ASPCA), inspected the stables in December and issued a scathing report to the ASPCA and city officials.<sup>125</sup> Cheever summed up some of her findings in a letter to *The New York Times*:

The majority of the horses are housed in unsafe, unhealthy[,] and inhumane conditions. Most of the stables are firetraps, housing horses on second and third floors, in stalls too narrow for their occupants and on pitted floors that permit pooling of urine and manure. Stall[-]cleaning and bedding seem nonexistent, ventilation and light are grossly inadequate, and access to water is rare, contributing to the dehydration and heatstroke suffered by Whitey last summer.

Many of the animals are filthy, un-groomed[,] and underfed. Their health is often impaired by age, poor care[,] and a legacy of injuries as 'breakdowns' from the racetrack or Amish farming communities. With few exceptions, they are driven by individuals who show little knowledge of equine health, soundness, proper care[,] or harnessing (not to mention manners). The horses work as many as [seventy] hours a week in extremes of temperature and hazardous traffic conditions, often without sufficient water or veterinary care.<sup>126</sup>

Cheever's letter to the editor would later become the subject of a defamation suit by the carriage association.<sup>127</sup>

In May 1989, the new Dryfoos bill was debated before the city council in raucous hearings in which carriage operators were accused of riotous behavior.<sup>128</sup> Operators complained the law would drive them out of business, since they would all be forced to compete with each other within the crowded confines of the park.<sup>129</sup> With the support of city council speaker Peter Vallone, the bill was voted out of committee, and in September it passed the city council thirty-one to three.<sup>130</sup> In November, after Koch lost the mayoral election to David Dinkins (a supporter of the bill), the city council overrode Koch's veto and enacted Local Law 89 (LL 89), which limited carriages to operating within Central Park during the daytime, prohibited horses from working when the air temperature climbed above 89° F or below 18° F, limited the horses' workdays to eight hours, and required more training for driv-

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complaints of traffic jams and concerns for horse safety as they move through crowded streets).

<sup>125</sup> Holly Cheever, Ltr. to the Ed., *Treatment of Carriage Horses Is a Blight on New York's Image*, N.Y. Times A16 (May 1, 1989) (available at 1989 WLNR 2008606 (accessed Nov. 21, 2010)).

<sup>126</sup> *Id.*

<sup>127</sup> *McGill*, 582 N.Y.S.2d at 91.

<sup>128</sup> *Carriage Horses, History*, *supra* n. 25.

<sup>129</sup> Donatella Lorch, *Horse-Carriage Drivers Call New Law's Reins Too Tight*, N.Y. Times 58 (Dec. 3, 1989) (available at 1989 WLNR 2095402 (accessed Nov. 21, 2010)).

<sup>130</sup> Arnold H. Lubasch, *Council Overrides Koch's Veto on Horse Carriages*, N.Y. Times B2 (Nov. 22, 1989) (available at 1989 WLNR 2070612 (accessed Nov. 21, 2010)) [hereinafter *Council Overrides Koch's Veto*].



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ers and increased liability insurance for owners.<sup>131</sup> As a concession, the city council gave operators a rate hike.<sup>132</sup> Advocates for the horses had reason to temper their celebration: The law was designed to expire in four years.<sup>133</sup>

Dr. Cheever expressed fear that without a strong regulatory presence and the news media's attention, the abuses would rapidly rise again: "These horses still live in stables that are pure hell and still contend with . . . aggressive driving habits and pollution."<sup>134</sup>

### B. *Litigation Brought by Carriage Operators*

Over the next year, New York City carriage business owners and their association brought lawsuits against the City of New York,<sup>135</sup> CHAC and the ASPCA, and individual carriage-horse advocates, including Dr. Cheever.<sup>136</sup> Immediately after the passage of LL 89, the New York Horse & Carriage Association (NYHCA) sought an injunction under the state Environmental Quality Review Act based on the law's possible adverse impact on Central Park and challenged legislative procedural matters.<sup>137</sup> The state appellate court rejected both challenges, concluding that the potential consequences to the park were not specific enough to the industry to create standing under the environmental statute.<sup>138</sup>

It was far from the first time the industry had taken the city and its various agencies to court. In 1984, NYHCA unsuccessfully sued the parks department for requiring permits for carriages that operate on designated roads in Central Park that are closed to motor vehicle traffic.<sup>139</sup> In 1989, NYCHA sued the New York Department of Consumer Affairs (DCA), challenging the practice of unannounced carriage inspections on search and seizure grounds, among other Title 20 provisions.<sup>140</sup> The Supreme Court of New York County rejected the challenge, holding that "Fourth Amendment rights . . . 'have lessened

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<sup>131</sup> *Carriage Horses, History*, *supra* n. 25; *Council Overrides Koch's Veto*, *supra* n. 130; Arnold H. Lubasch, *Plan To Restrict Carriage Horses Vetoed by Koch*, N.Y. Times 28 (Oct. 7, 1989) (available at 1989 WLNR 2039456 (accessed Nov. 21, 2010)) [hereinafter *Plan to Restrict Carriage Horses*].

<sup>132</sup> *Plan to Restrict Carriage Horses*, *supra* n. 131.

<sup>133</sup> *Carriage Horses, History*, *supra* n. 25 (stating that the law was enacted in November 1989 and expired in November 1993).

<sup>134</sup> Holly Cheever, Ltr. to the Ed., *Conditions for Carriage Horses Improve Some in Holiday Season*, N.Y. Times 24 (Dec. 30, 1989) (available at 1989 WLNR 2063111 (accessed Oct. 19, 2010)).

<sup>135</sup> *N.Y. Horse & Carriage Assn. v. Council of the City of N.Y.*, 564 N.Y.S.2d 399 (N.Y. App. Div. 1st Dept. 1991).

<sup>136</sup> *McGill*, 582 N.Y.S.2d at 91.

<sup>137</sup> *N.Y. Horse & Carriage Assn.*, 564 N.Y.S.2d at 400.

<sup>138</sup> *Id.* (finding that, in any case, LL 89 was exempt from environmental review under state regulations).

<sup>139</sup> *N.Y. Horse & Carriage Assn.*, 473 N.Y.S.2d at 805.

<sup>140</sup> *N.Y. Horse & Carriage Assn.*, 545 N.Y.S.2d at 439.

application' in a 'closely regulated trade or industry'"<sup>141</sup> and that "the legislative policy behind the regulatory scheme was based on a prior history of 'evils and hazards which existed in the absence of governmental supervision.'"<sup>142</sup>

But the case that may have had the most far-reaching effect on the momentum behind efforts to protect carriage horses was probably a 1990 SLAPP suit (Strategic Lawsuit Against Public Publication) for defamation and conspiracy brought by the owners of Chateau Stables against CHAC and the ASPCA, its respective directors, and veterinarian Holly Cheever, arising out of the fight to pass LL89.<sup>143</sup> The subject of that complaint was letters and leaflets distributed by Cheever and CHAC, which the plaintiffs claimed were libelous.<sup>144</sup> The plaintiffs also alleged interference with business relationships.<sup>145</sup> The appellate court dismissed the entire complaint, ruling that the statements were all either constitutionally protected as assertions of fact on a matter of public concern that were not provably false, or were protected opinion under state law.<sup>146</sup> In particular, the plaintiffs had offered no evidence to disprove the defendants' assertions with regard to stable conditions, the presence of animal waste, or sores and other horse health problems, but only disputed their conclusions that these conditions were inadequate or dangerous.<sup>147</sup> The defendants had merely expressed opinions that were necessary to encourage the sort of public debate "which is crucial in environmental and animal protection matters."<sup>148</sup> However, in a move that likely contributed to setting the movement back, the court denied the defendants' request for sanctions and costs.<sup>149</sup>

Even in losing the SLAPP suit, the industry may have achieved its objective. Within the next several years CHAC dissolved, and the ASPCA hired a president who was more eager to compromise with the carriage industry and avoid litigation.<sup>150</sup>

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<sup>141</sup> *Id.* at 443 (quoting *N.Y. v. Burger*, 482 U.S. 691, 702 (1987)).

<sup>142</sup> *Id.* (quoting N.Y. City Admin. Code at § 20-371).

<sup>143</sup> *McGill*, 582 N.Y.S.2d at 91.

<sup>144</sup> *Id.* (explaining that the plaintiffs cited several of Cheever's letters, including a 1989 letter to *The New York Times*, letters to the ASPCA and CHAC reporting her stable inspection findings—in which she reserved the harshest criticism for Chateau Stables—and a letter she sent to the city council urging the passage of LL 89).

<sup>145</sup> *Id.* at 95 (stating that the tort of civil conspiracy is not recognized in New York).

<sup>146</sup> *Id.* at 99.

<sup>147</sup> *Id.* at 98.

<sup>148</sup> *Id.* at 99.

<sup>149</sup> *McGill*, 582 N.Y.S.2d at 99–100 (ruling that there was no showing that the claim was brought in bad faith, but acknowledging the "extreme animosity" between the two sides).

<sup>150</sup> See *Carriage Horses, History*, *supra* n. 25 (stating that a new policy at ASPCA was to avoid lawsuits).

### C. *Setbacks for Carriage Foes: 1993 to 2005*

Carriage operators must have welcomed the fact that the expiration of LL 89 coincided with a transition in mayoral administrations from Democrat Dinkins, a supporter of the law, to business-friendly Republican Rudolph Giuliani.<sup>151</sup> There were also changes in the composition of the city council that were more favorable to the industry.<sup>152</sup> For one, Councilman Dryfoos, the law's sponsor, left office, and Speaker Vallone, who had been instrumental in passing the law, took a softer stance to placate the Queens contingent.<sup>153</sup> When a councilman named Noach Dear, head of the transportation committee, introduced a bill in 1993 that would undo many of LL 89's protections, he faced a vulnerable opposition.<sup>154</sup>

The new legislation would again allow the carriages to operate in the busy streets near the park, the theater district, and Madison Square Garden, and also increase the allowable daily working hours of the horses.<sup>155</sup> The operators complained that the law was causing them to lose money, although it had doubled their fares.<sup>156</sup> Despite the fact that carriage accidents had declined while LL 89 was in effect and city traffic officials and business leaders supported the law,<sup>157</sup> the city council yielded to the industry and passed the bill as Local Law 2.<sup>158</sup> Local Law 2 was vetoed by the outgoing Mayor Dinkins,<sup>159</sup> but early in 1994, newly elected Mayor Giuliani signed it into law.<sup>160</sup>

With the expiration of the old law on December 31, 1993, there was effectively no regulation of the carriage industry at all, so some reasoned that any law was better than none.<sup>161</sup> The new law attempted to justify the rollback in protections by increasing the penalties for regulatory violations.<sup>162</sup> Over the next decade, the carriage business receded into the background as a political issue even though carriage horses were still exposed to the hazards of busy traffic and

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<sup>151</sup> See Ronald Sullivan, *Mayor Vetoes Carriage Law Expanding Operating Areas*, N.Y. Times B6 (Dec. 30, 1993) (available at 1993 WLNR 3363885 (accessed Nov. 21, 2010)) (describing Dinkins's veto of a bill that would have expanded carriage drivers' operating hours and areas).

<sup>152</sup> *Carriage Horses, History*, *supra* n. 25.

<sup>153</sup> *Id.*

<sup>154</sup> *Spare the Horses—and New Yorkers*, N.Y. Times A24 (May 14, 1992) (available at 1992 WLNR 3361626 (accessed Nov. 28, 2010)).

<sup>155</sup> *Id.*

<sup>156</sup> *Carriage Horses in Danger Again*, 141 N.Y. Times A24 (April 14, 1992) (available at 1992 WLNR 3269549 (accessed Nov. 21, 2010)).

<sup>157</sup> *Carriage Horses, History*, *supra* n. 25.

<sup>158</sup> *Will This Mayor Care About Carriage Horses?*, 143 N.Y. Times 18 (Feb. 12, 1994) (available at 1994 WLNR 3517560 (accessed Nov. 21, 2010)).

<sup>159</sup> *Carriage Horses, History*, *supra* n. 25.

<sup>160</sup> *Id.*

<sup>161</sup> *Horse Sense*, N.Y. Times A16 (Jan. 10, 1994) (available 1994 WLNR 3531085 (accessed Oct. 19, 2010)).

<sup>162</sup> *Comm. Report*, *supra* n. 64, at 3–4.

nasty incidents reemerged.<sup>163</sup> In 1999, the ASPCA tried unsuccessfully to get city council sponsorship for a new bill that would have improved conditions for the animals.<sup>164</sup>

#### D. *The Death of Spotty*

The renewed effort to legislate the New York horse-drawn carriage business can be traced to a five-year-old gelding named Spotty. In January 2006, Spotty was returning to West Side Livery Stables when he spooked in traffic near the Lincoln Tunnel and bolted down 9th Avenue.<sup>165</sup> He collided with a station wagon at 50th Street and ended up pinned underneath the vehicle with his head on the ground and his legs on top of the car.<sup>166</sup> Spotty suffered a broken leg and had to be destroyed.<sup>167</sup> He had been working as a carriage horse in the city for only a few months.<sup>168</sup> The carriage driver, a former bagel shop worker who had only had eight months of experience handling horses, was thrown from the cab and critically injured, and the two passengers in the station wagon also suffered minor injuries.<sup>169</sup>

Spotty's death became the catalyst for reviving the dormant controversy and the grassroots anti-carriage movement. His tragedy was soon followed by a succession of horse-bolting calamities on Manhattan streets and the troubling 2007 comptroller's audit report.<sup>170</sup> With the support of allies such as Councilman Tony Avella on the city council, the new Coalition To Ban Horse-Drawn Carriages took over where CHAC left off, working to get anti-carriage legislation introduced in

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<sup>163</sup> See *Carriage Horse Accidents*, *supra* n. 6 (discussing ongoing injuries to carriage horses).

<sup>164</sup> See Press Release, ASPCA, *ASPCA Issues Statement on NYC Carriage Horses* (July 12, 2007) (available at <http://www.aspc.org/pressroom/press-releases/071207.html> (accessed Nov. 21, 2010)) (observing that "the ASPCA has not been successful in passing legislation, despite our best efforts"); Wista Jeanne Johnson, *Village Voice*, *Horse Rules: An ASPCA Campaign is Saddled with Criticism*, (Sept. 12, 2000) (available at <http://www.villagevoice.com/2000-09-12/news/horse-rules/> (accessed Nov. 21, 2010)) (discussing how the measure would have again confined carriages to the park, considered humidity and wind chill in weather restrictions, and improved fire safety in the stables).

<sup>165</sup> Jessica Rosero, *Hudson Reporter.com*, *Tradition or Cruelty? Local Residents Join Coalition to Get Horse-Drawn Carriages off NYC Streets*, [http://hudsonreporter.com/view/full\\_story/2409381/article-Tradition—or-cruelty—Local-residents-join-coalition-to-get-horse-drawn-carriages-off-NYC-streets?](http://hudsonreporter.com/view/full_story/2409381/article-Tradition—or-cruelty—Local-residents-join-coalition-to-get-horse-drawn-carriages-off-NYC-streets?) (July 30, 2006) (accessed Nov. 8, 2010); Carrie Melago, *Horse Bolts & Injures 3 in Midtown*, *N.Y. Daily News* 6 (Jan. 3, 2006); Jen Chung, *Gothamist*, *Hansom Cab Accident on Ninth Avenue*, [http://gothamist.com/2006/01/03/hansom\\_cab\\_acci.php](http://gothamist.com/2006/01/03/hansom_cab_acci.php) (Jan. 3, 2006) (accessed Nov. 21, 2010).

<sup>166</sup> Chung, *supra* n. 165.

<sup>167</sup> Nancy Dillon et al., *Carriage Driver in Coma; Wife Said He Was 'Scared' of Horse that Bolted in Midtown*, *N.Y. Daily News* 3 (Jan. 4, 2006) (accessed Nov. 21, 2010).

<sup>168</sup> Rosero, *supra* n. 165.

<sup>169</sup> Dillon et al., *supra* n. 167 (also noting that "amateur" carriage driver Carmello Vargas had expressed fear about the "unruly" Spotty but needed the income he earned working twelve-hour shifts six or seven days a week).

<sup>170</sup> *Audit Report*, *supra* n. 14; *Carriage Horse Accidents*, *supra* n. 6.

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2007 and again in early 2009.<sup>171</sup> This time the aim was not merely to enact restrictions on the carriage trade but to abolish it entirely.<sup>172</sup>

*E. New York City Council Considers Competing Proposals*

Those measures were defeated, but the anti-carriage forces came back with a vengeance in the 2009–2010 legislative session.<sup>173</sup> Along with a new version of the defeated ban, Intro Law 92, also on the table was Intro 86, a rather creative proposal that attempted to reconcile the welfare of the horses and the job security of carriage drivers.<sup>174</sup> Sponsored by council member Melissa Viverito, Intro 86 would gradually phase out renewal of licenses for horse-drawn carriages and replace carriages with replicas of antique cars operating on alternative fuel.<sup>175</sup> Under this proposal, according to its backers, tourists could see the city from the back of a replica antique car, drivers would not only still have a job but one without any restrictions on where or when they could pick up passengers, and the hardworking horses could be retired.<sup>176</sup> The industry quickly marshaled its supporters on the council and countered with legislation designed to save itself; Intro Law 35-A offered improvements in carriage safety and horse care along with a large rate increase for operators.<sup>177</sup> Among other provisions, horses would get five nonconsecutive weeks per year of turnout away from the city, a minimum of sixty-four square feet of stall space, mandatory veterinary examinations twice a year, and heavy blankets in the winter.<sup>178</sup> The bill would also require carriages to have emergency brakes and reflective materials for nighttime.<sup>179</sup>

Supporters of the ban and the antique-car proposal included a wide swath of divergent groups, not only animal welfare activists but

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<sup>171</sup> Salazar & Nichols, *supra* n. 15.

<sup>172</sup> *Id.*

<sup>173</sup> See Seifman, *supra* n. 15 (describing a crowd of more than 200 people being present in the chambers); N.Y. City Council, <http://legistar.council.nyc.gov/Calendar.aspx>; select Committee on Consumer Affairs, select Legislation, select All Years, search “0658,” select Int 0658-2007 (accessed Nov. 21, 2010) (indicating that this measure was introduced in 2007 and was defeated in 2009).

<sup>174</sup> See *Comm. Report*, *supra* n. 64, at 7–8 (stating that carriages could be replaced with replicas of antique cars that require licensed drivers).

<sup>175</sup> Proposed Int. No. 86-A (Mar. 3, 2010) (available at <http://legistar.council.nyc.gov/Legislation.aspx>; search Carriage; select Int 0086-2010 (accessed Nov. 24, 2010)).

<sup>176</sup> See N. Y. City Bar, *Report on Legislation by the Committee on Legal Issues Pertaining to Animals*, <http://www.nycbar.org/pdf/report/uploads/20071886-CommentinIntro86reHorseDrawnCarriages.pdf> (accessed Nov. 21, 2010) (noting that the proposed legislation would create a new source of employment for the carriage drivers, that the DOH and the ASPCA would no longer be required to divert resources to regulation of the carriage industry, and that tourists would be able to participate in an “exciting new environmentally friendly attraction”).

<sup>177</sup> *Comm. Report*, *supra* n. 64, at 5–7 (stating that horses should get five weeks of vacation or furlough and an exam at least twice per year, with the result that the fare for a twenty-minute ride would jump from \$34 to \$50).

<sup>178</sup> *Id.* at 5–6.

<sup>179</sup> *Id.* at 6.

also the New York City Bar Association (NYCBA), New Yorkers for Clean, Livable and Safe Streets, and other civic organizations.<sup>180</sup> Even Governor Paterson said if the industry could not treat its horses better, it should be shut down.<sup>181</sup> In a crowded hearing before the Committee on Consumer Affairs on March 12, 2010, NYCBA and others testified that many of the Intro 35-A proposals were inadequate and did not conform to the best practices recommended by the state department of agriculture.<sup>182</sup> In written testimony submitted to the committee, Dr. Holly Cheever claimed, “New York City has inherent characteristics that make the safe handling of urban carriage horses impossible.”<sup>183</sup> Cheever and others testified to the various health hazards facing the horses, such as respiratory disease resulting from the “nose-to-tailpipe” conditions the horses are constantly exposed to, lameness from walking on concussive surfaces without adequate hoof care, and heat prostration.<sup>184</sup> The executive director of the carriage operators’

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<sup>180</sup> Hrg. Transcr. 87:9–19, 149:11–25 (Mar. 12, 2010) (available at <http://legistar.council.nyc.gov/Legislation.aspx>; *search* Carriage; *select* Int 0035-2010; *select* Hearing Transcript 3/12/10 (accessed Oct. 21, 2010)).

<sup>181</sup> Associated Press, New York Post, *Paterson: Central Park Horses Need to Be Treated Better*, <http://www.nypost.com>; *select* Archives, *select* This Year, *search* “Paterson Central Park Horses,” *select* Paterson: Central Park Horses Need to Be Treated Better (updated Jan. 27, 2010) (accessed Oct. 5, 2010) [hereinafter *Horses Need To Be Treated Better*].

<sup>182</sup> Hrg. Transc., *supra* n. 180 at 90:18–21 (testimony of Melissa Norden, Chief of Staff at the ASPCA, stating that “[n]either the New York City environment nor the current law can provide horses with the fundamentals to ensure their safety and well-being”); 149:19–24 (testimony of Natalie Reeves on behalf of the NYCBA stating that a ban is needed due to the dangerous conditions inherent in driving in NYC); 152:24–25, 153:2–3 (testimony of John Phillips, Executive Director of the New York League of Humane Voters, stating, “The industry’s bill, Intro 35, is simply a rate increase bill. The so-called reform for the horses that is included as part of the bill is little more than political cover.”); 196:18–24 (testimony of Elizabeth Forel, President of the CBHDC, stating that Intro 35 is proposed to give the drivers a raise, and the recommendation for stall size is too small); 201:7–13 (testimony of Ardele Murphy, Member of the CBHDC, stating, “The horses work between the shafts of their carriages for nine hours straight, seven days a week only to go back to their multi-storied stables into stalls that are too small. Even with the Department of Health proposals and Intro 35, they will still be too small. It is clearly inhumane.”); and 212:12–21 (testimony of Jacqueline Hoffner, citizen of New York, saying, “It is my opinion that however well intended legislation and regulations may be, our urban environment simply cannot provide open pastures, clean air, or freedom from the harms of New York City traffic. These inherent conditions, which cannot be remedied, make the use of horse drawn carriages unsafe and inhumane. Therefore, I wish to testify in favor of Intro 92 and Intro 86, with the hope that they will be merged, and to oppose Intro 35.”).

<sup>183</sup> *Id.* at 157:21–25, 158:9–11 (written testimony of Holly Cheever submitted by Edita Birnkrant, New York director of Friends of Animals).

<sup>184</sup> *Id.* at 155:10–14, 243:12–14 (stating that horses can develop respiratory ailments from exhaust fumes, leg problems from walking on city streets, and foot problems from standing in soiled bedding for long periods of time); Hrg. Test. 35 (Mar. 12, 2010) (available at <http://legistar.council.nyc.gov/Legislation.aspx>; *search* Carriage; *select* Int 0035-2010; *select* Hearing Testimony 3/12/10 (accessed Nov. 21, 2010)) (discussing respiratory disease from exhaust fumes, lameness resulting from walking on city streets, and heat prostration). Cheever also argued that, because asphalt surfaces can reach as high

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association, several veterinarians, and a spokesman representing Chateau Stables testified in support of Intro 35-A.<sup>185</sup> The industry was suddenly presenting itself as a cooperative and compliant citizen, eager to work with the new advisory board in improving the horses' welfare. And, notwithstanding the views of celebrity animal activists like Alec Baldwin and the singer Pink,<sup>186</sup> or the average New Yorker for that matter, the industry enjoyed the backing of Mayor Bloomberg and his administration.<sup>187</sup> The director of the Department of Health and Mental Hygiene (DOHMH) articulated the official city posture at the hearing: "[T]he department believes that the carriage industry can be regulated in such a way to protect the health of the horses . . . and the safety of those who patronize them."<sup>188</sup>

Perhaps more importantly, the industry had the support of a new city council speaker, Christine Quinn, who was handpicked by the late Queens County Democratic leader and carriage industry supporter Tom Manton.<sup>189</sup> As speaker, Quinn has continued the pro-industry tradition on the council.<sup>190</sup> At least one anti-carriage activist claimed to have been told by city council members who were inclined to vote for a ban that they chose not to out of fear of Quinn.<sup>191</sup> On April 14, 2010, the city council passed the industry bill, Intro 35-A, by a vote of forty-three to four.<sup>192</sup> The bill was hailed by the city council and much of the New York media as a huge victory for the horses and for animal wel-

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as 200° F in the summer, the ground-level temperature that the horse is actually experiencing can be up to 45° F higher than the official U.S. Weather Bureau air temperature. *Id.*

<sup>185</sup> Hrg. Transc., *supra* n. 180, at 65:12–15, 110:22–23, 114:4–8, 202:22–25. Chad Marlow, President of the Public Advocacy Group, testified on behalf of Chateau Stables, telling the committee, “no one cares for our horses more than we do,” *id.* at 205:18–20, and invoked images of 9/11, saying, “New York City has already lost one iconic symbol this century, let’s not make it two.” *Id.* at 205:2–3.

<sup>186</sup> Simon Houpt, *Doc Reveals Dark Side of Iconic Carriage Rides*, *Globe & Mail* (Toronto) R1 (June 23, 2008) (available at 2008 WLNR 11792883 (accessed Oct. 21, 2010)).

<sup>187</sup> *Horses Need to Be Treated Better*, *supra* n. 181.

<sup>188</sup> Hrg. Transc., *supra* n.180, at 15:14–15:19 (testimony of Daniel Kass, acting deputy commissioner, Division of Environmental Health).

<sup>189</sup> *Carriage Horses, History*, *supra* n. 25; Henry J. Stern, *Tom Manton: Successful County Leader, Controlled Queens, Thwarted Reformers, Selected Speakers and Judges with Class*, [www.nycivic.org/articles/060724.html](http://www.nycivic.org/articles/060724.html) (July 24, 2006) (accessed Oct. 5, 2010).

<sup>190</sup> Graham Rayman, *The Village Voice Blogs, Donny Moss Takes Aim at Christine Quinn in Short Film*, <http://blogs.villagevoice.com/runninscared/archives/2009/06/quinn.php> (June 8, 2009) (accessed Nov. 21, 2010).

<sup>191</sup> *Id.*

<sup>192</sup> Daisuke Nakai, *NYTimes.com City Room Blog, Council Passes Fare Increase and Vacation for Carriage Horses*, <http://cityroom.blogs.nytimes.com/2010/04/14/council-passes-fare-increase-and-vacation-for-carriage-horses/> (Apr. 14, 2010) (accessed Nov. 21, 2010).

fare.<sup>193</sup> A typical headline ran: “Neigh-Cation for Carriage Horses.”<sup>194</sup> Mayor Bloomberg signed the bill into law on April 27, 2010.<sup>195</sup>

## V. THE FUTURE OF THE ANTI-CARRIAGE MOVEMENT

To advocates for the horses, the passage of Intro 35-A was undoubtedly a setback. The industry had succeeded in cloaking its own self-preservation in ostensible new protections for horses and had given itself a raise to boot. In a city of 8 million people, some 300 carriage drivers hold sway over city government. Still, it is hard to deny that some progress, however minimal, has been made. Carriage horses in New York undoubtedly enjoy more legal protections than they did thirty years ago. When LL 89 was passed in 1989, carriage operators were fighting against the regulation of how they conducted their business, but they were not fighting for their very existence as was the case in 2010. The industry has adopted a defensive posture, and it must be aware it will be under closer scrutiny for the foreseeable future. In addition, state courts have generally backed the city’s efforts to restrict the trade, and it is unlikely to win a court challenge to any future ban.

However, as Dr. Cheever observed in 1989, once media attention dies down and lawmakers lose interest and regulators get complacent, the industry goes back to its old ways. This has been the vicious cycle of the horse-carriage business in New York City for the past three decades. Given the documented lack of oversight and indifference of city agencies and the inherently unhealthy and dangerous conditions the horses work under, their well-being and safety, as well as that of the public, will not be assured until the carriage business is abolished. Even if carriages were confined to Central Park, the horses would still have to navigate traffic-snarled 9th and 10th Avenues to return to their stalls. It is unlikely that heavy winter blankets would have saved Spotty or Smoothie.

To illustrate the ineffectiveness of city regulation, as the sweltering summer of 2010 progressed there were already indications that the passage of Intro 35-A had accomplished little in the way of improving the lives of carriage horses. Horse advocates—and a number of ordinary concerned citizens—accused carriage drivers of ignoring the heat restrictions and continuing to work horses when the temperature

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<sup>193</sup> Laura Eldridge, The Huffington Post, *The Harsh Reality for N.Y. Carriage Horses*, [http://www.huffingtonpost.com/laura-eldridge/the-harsh-reality-for-new\\_b\\_575391.html](http://www.huffingtonpost.com/laura-eldridge/the-harsh-reality-for-new_b_575391.html) (updated May 13, 2010) (accessed Oct. 5, 2010); Sally Goldenberg, *Neigh-Cation for Carriage Horses*, N.Y. Post 25 (Apr. 15, 2010) (available at [http://www.nypost.com/p/news/local/neigh\\_cation\\_for\\_carriage\\_horses\\_ea94nLh4txES6uDUVYh4XL](http://www.nypost.com/p/news/local/neigh_cation_for_carriage_horses_ea94nLh4txES6uDUVYh4XL)) (accessed Nov. 12, 2010); Clarissa Wei, *New York Carriage Horses to Get Job Benefits*, <http://nyunews.com/news/2010/04/19/20horses/> (updated Apr. 20, 2010) (accessed Nov. 21, 2010).

<sup>194</sup> Goldenberg, *supra* n. 193.

<sup>195</sup> Animal Law Coalition, *Two Carriage Horse Accidents Just Days After NYC Mayor Signs Industry Bill*, <http://www.animallawcoalition.com/animal-cruelty/article/278> (updated May 11, 2010) (accessed Nov. 21, 2010).



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climbed well above 90° F, and also accused the American Society for Prevention of Cruelty to Animals (ASPCA) of inadequate enforcement of the weather regulations.<sup>196</sup> In spite of the comptroller's 2007 and 2009 audit findings and recommendations, the health department still apparently relies largely on the ASPCA—a private agency with limited resources—to police the horses' working conditions.<sup>197</sup> Critics charge that because enforcement of the temperature restrictions depends solely upon the unreliable presence of the ASPCA and the use of a special thermometer that only the ASPCA possesses, carriage operators regularly flout the law with impunity.<sup>198</sup> In a July 28, 2010, blog entry entitled *NYC Carriage Horses Reprieved on Hot Summer Days*, the ASPCA boasted that it had ordered horses returned to their stables twenty-three times during the heat waves of June and July.<sup>199</sup> But advocates for the equines say the problem is that even when ASPCA officers are available to suspend operations, the horses have been returned to the streets within a few hours, even if the temperature has not dropped and the ASPCA has not officially canceled the work suspension.<sup>200</sup> By that time, the ASPCA officers are usually long gone, and it is business as usual.

Elizabeth Forel, director of the Coalition To Ban Horse-Drawn Carriages, believes that with the passage of Intro 35-A, horse advocates will probably have to wait for a new mayoral administration to make any headway with new legislation.<sup>201</sup> Carriage-trade opponents have predicted that it might take human fatalities to get the industry banned once and for all.<sup>202</sup>

However, there are other animal-related legislative campaigns horse advocates can look to as a source of hope. In 1992, attendance at greyhound races in the United States reached an all-time high of 3.5 million.<sup>203</sup> By 2010, several of the states where greyhound racing had been most popular had taken steps to ban it outright.<sup>204</sup> There are parallels in the debates over dog racing and the horse-carriage trade. The primary justification put forth by supporters is an economic one: The

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<sup>196</sup> Horsetalk.co.nz, *Video: Carriage Horses Suffering in Heat Wave*, <http://www.horsetalk.co.nz/news/2010/07/125.shtml> (updated July 20, 2010) (accessed Oct. 13, 2010) [hereinafter *Video: Carriage Horses Suffering in Heat Wave*].

<sup>197</sup> *Id.*; ASPCA Blog, *NYC Carriage Horses Reprieved on Hot Summer Days*, <http://www.aspc.org/blog/nyc-carriage-horses-reprieved-on-hot-summer-days.html> (updated July 28, 2010) (accessed Oct. 13, 2010).

<sup>198</sup> *Video: Carriage Horses Suffering in Heat Wave*, *supra* n. 196.

<sup>199</sup> *NYC Carriage Horses Reprieved on Hot Summer Days*, *supra* n. 197.

<sup>200</sup> *Video: Carriage Horses Suffering in Heat Wave*, *supra* n. 196.

<sup>201</sup> E-mail from Elizabeth Forel, *supra* n. 28.

<sup>202</sup> *Blinders: The Truth Behind the Tradition* (DVD) (McMoss Productions 2007).

<sup>203</sup> Nancy Hoffman & Robin McGinnis, *2007–2008 Legislative Review: Greyhound Racing*, 15 *Animal L.* 265, 283 (2009).

<sup>204</sup> *Id.* at 284 (“With attendance at greyhound races dropping, seven states banned live greyhound racing in the 1990s. As of November 2008, there were thirty-two live racing greyhound racetracks in eleven states. Two of these states considered changing their dog racing laws in 2008.”).

participants depend on the activity for their livelihood, and it is an important source of revenue for the state.<sup>205</sup> Meanwhile, opponents say the conditions the animals live and work under are inhumane, and when they outlive their usefulness they are usually destroyed.<sup>206</sup> Owners of racing greyhounds and carriage horses often make the same rebuttal: Because their animals are their bread and butter and they invest money in them, it is counter to their financial interests to mistreat them, and they are actually well cared for.<sup>207</sup>

In Massachusetts, formerly a stronghold of greyhound racing, voters approved a ballot measure in 2008 that would ban greyhound racing in 2010, despite the pleas of racing supporters that more than 1,000 racetrack workers would be put out of work.<sup>208</sup> In the spring of 2010, the New Hampshire legislature also passed a ban on dog racing, joining nine states where dog racing has been banned.<sup>209</sup> Through a determined campaign of rescue efforts and high public visibility, greyhound advocates are winning victories, state by state.

Can a tide of public sentiment similarly overcome the hold the carriage industry has on New York City's government? As iconic as horses are to many people, dogs occupy a unique place in the sentiments of many Americans. Until the industry can be legislated out of existence, advocates for horses may have to hope that growing public disapproval will translate into declining demand for romantic twenty-minute carriage rides in the park. It may take a change of hearts and minds to end the industry once and for all.

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<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* at 285.

<sup>209</sup> ASPCA Blog, *Victory for Racing Dogs*, <http://www.aspc.org/blog/victory-for-racing-dogs-in-new-hampshire.html> (Apr. 27, 2010) (accessed Oct. 13, 2010).