
Advocacy Update

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Federal

Puppy Protection Act

Rep. Ed Whitfield (R-KY) introduced H.R. 3484, the Puppy Protection Act of 2003, in the House of Representatives on November 7. H.R. 3484 is virtually identical to the PPA introduced by Whitfield in the 107th Congress, except that it does not require setting federal “socialization” standards for dogs. Companion legislation is expected to be introduced in the Senate shortly, sponsored by Sen. Rick Santorum (R-PA).

The bill has two main provisions: (1) breeding restrictions for female dogs and (2) a three strikes and your out provision if serious violations are documented over an eight-year period. The breeding requirements section of the bill would prohibit breeding of female dogs less than one year of age, and prohibit breeding more frequently than three times in any 24-month period. The “three strikes and you’re out” provision would require USDA to suspend the license of any person that commits a serious violation of the Animal Welfare Act (AWA), with respect to the humane treatment of dogs, on three or more separate inspections within any 8-year period. A hearing before the USDA would be scheduled within 30 days after the third violation is noted on an inspection report, and USDA would be required to revoke the license unless USDA makes a written finding that revocation is unwarranted because of “extraordinary extenuating circumstances.”

The PPA is again being promoted by the Humane Society of the United States (HSUS), a Washington-based animal rights organization. According to an HSUS press release, the decision to drop socialization standards from the current version of the PPA was a “strategic” decision intended to reduce opposition to the bill this year. Clearly the HSUS has not given up on the idea of socialization standards in the long run.

The Animal Welfare Act currently does not regulate breeding practices of any species of animals. H.R. 3484 will, for the first time, place the federal government into a whole new arena of animal regulation. The USDA’s Animal Care regulations already require commercial dog breeders to follow a program of veterinary care developed and supervised by a licensed veterinarian to protect the health of all animals in commercial breeding facilities, including the breeding stock. Breeding decisions should be made by breeders and their veterinarians. H.R. 3484 would co-opt the judgment and discretion of breeders and veterinarians.

American Anti-Vivisection Society Campaign for Retirement of Research Chimpanzees

The American Anti-Vivisection Society is now urging activists to write their congressional representatives to push for immediate retirement of research chimpanzees and the implementation of a ban on nonhuman ape experiments.

Indiana Congressman Introduces Eco-Terrorism Legislation

On October 16, 2003 Rep. Chris Chocola (R-IN) introduced H.R. 3307, entitled the “Stop Terrorism of Property Act of 2003,” partly due to the firebombing of several ‘Hummer’ trucks at a California car dealership in August. The Earth Liberation Front (ELF) claimed credit for the senseless destruction last month together with the arson that destroyed a condominium complex under construction that caused \$50 million in damage that same month. Chocola’s bill would mandate penalties for those convicted of “affecting interstate or foreign commerce, intentionally damaging the property of another with the intent to influence the public with regard to conduct the offender considers harmful to the environment.” Specifically, if a death results from those crimes, a life prison sentence is possible, and a ten-year prison sentence could be imposed if “serious bodily injury” results.

USDA Files Motion to Dismiss in ALDF & AWI Lawsuit Over Draft Policy on Environmental Enhancement for Nonhuman Primates

On October 14, 2003, the Department of Agriculture (USDA) responded to the lawsuit filed against it by the Animal Legal Defense Fund (ALDF) and the Animal Welfare Institute (AWI) by filing a motion to dismiss the case. In the lawsuit, ALDF and AWI claim the agency is violating the Animal Welfare Act (AWA) and the Administrative Procedure Act (APA) because it has not finalized its “Draft Policy” on environmental enhancement for nonhuman primates. The plaintiffs have asked that the court require the agency to issue a final version of the “Draft Policy.

USDA presented three arguments to support its motion for dismissal. First, the agency argues that its decision not to finalize the “Draft Policy” is not subject to judicial review. The APA only permits court review of “final agency action.” To be considered “final” an agency action “must be one by which rights or obligations have been determined, or from which legal consequences will flow.” USDA argues the Draft Policy was not binding on regulated entities and was only intended to provide guidance in developing environmental enhancement plans. Because the “Draft Policy did not establish a binding norm, nor determine rights or obligations . . . it was a general statement of policy, . . . not a rule, and thus not subject to APA review.”

Second, USDA argues that it has already made a final decision regarding the Draft Policy (i.e., it publicly stated it will not finalize the Policy) and therefore the plaintiffs’ request to the court for injunctive relief (i.e., “direct defendants to make a final decision regarding the proposed Policy”) is moot. Additionally, USDA argues plaintiffs claims that it is violating the AWA and the APA is without merit. USDA states in its Motion that it has already complied with its statutory duties under the AWA by issuing regulations, and that it was not required to follow the APA rule-making process with respect to the Draft Policy because the Draft Policy was a general statement of policy and did not establish “binding norms” on the regulated community.

Finally, USDA argues the plaintiffs lack standing to bring the suit. Standing requires an actual injury to the plaintiff that is “fairly traceable” to the challenged action, and is likely to be redressed by the relief sought. Because the Draft Policy was advisory, not mandatory, “it is conjecture to assume that the existence of a final Policy would have caused any specific regulated party, which might have been visited by any plaintiff, to alter its conduct.” Because finalizing the Draft Policy is not the cause of plaintiffs’ alleged injuries, and because the relief sought would not have redressed those injuries, plaintiffs lack standing.”

Lawsuit Concerning Nonhuman Primates, continued

A federal district court judge recently granted NABR’s motion to intervene in the latest lawsuit concerning nonhuman primates initiated against U.S. Department of Agriculture (USDA) by animal activist groups. Animal Legal Defense Fund (ALDF) and the Animal Welfare Institute (AWI), along with several named individuals, filed their brief last summer in the U.S. District Court for the Northern District of California. The suit claims that USDA’s Animal and Plant Health Inspection Service is in violation of the Animal Welfare Act and the Administrative Procedure Act for failing to issue a final version of its proposed “Policy on Environmental Enhancement for Nonhuman Primates.” The plaintiffs asked the court to require the government to make a decision regarding a final policy within 30 days.

By granting intervention status, the court is making NABR a party to the case which allows NABR to make arguments on behalf of the research community. (NABR has pursued this legal approach very successfully in several similar suits involving USDA’ animal welfare regulations.) In addition, a USDA motion to dismiss the suit is still pending before the Northern California court and may be ruled upon later this month (see above). NABR already has submitted a brief in support of dismissal and has argued for transfer of the case to the U.S. District Court for the District of Columbia (DC). It is possible that, if dismissal is denied in the Northern California, the federal court for DC might agree to dismiss based on legal precedents there.

New Lab Animal Oversight Requirements at the VA Approved in House Bill

On October 29, 2003, the House of Representatives approved a bill to establish an Office of Research Oversight within the Veterans Administration, which will have responsibility for human subjects protection and animal welfare. The House approved H.R. 1720, the Veterans Health Care Facilities Capital Improvement Act, which included a revised version of a separate bill (H.R. 1585) establishing this office within the VA.

The Office will be responsible for monitoring, reviewing, and investigating matters of medical research compliance and assurance with respect to human subjects protections and animal welfare. The Office will be headed by a Director who will report to the VA Under Secretary for Health on the following specified matters: lack of required integrity of content, validity of approach, and ethical conduct of employees in Department research programs; and allega-

tions of research impropriety and misconduct by employees engaged in medical research programs of the Department.

The Director may recommend to the Under Secretary that a Department research activity be terminated, suspended, or restricted, in whole or in part. The bill also required the Director to conduct periodic inspections and reviews of medical research programs (including research programs at medical schools and universities sponsored by the VA). The bill also requires the Director to observe external accreditation activities of medical research programs conducted in facilities of the Department. The bill further requires the Director to submit a report each year to the House and Senate VA Committees on the activities of the Office during the preceding calendar year.

HHS Publishes Interim Final Rule on Animal Import Restrictions

In the November 4 Federal Register, the Centers for Disease Control (CDC) and the Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS) published an interim final rule as well as details on the opportunity for interested parties to comment. The rule will “establish new restrictions and modify existing restriction on the import, capture, transport, sale, barter, exchange, distribution, and release of African rodents, prairie dogs and certain other animals.” The Department of Health and Human Services (HHS) first issued its ban on the importation of the above species on June 11, 2003 (following an outbreak of monkey pox). The CDC and FDA will be accepting comments on the interim final rule until January 20, 2004.

USDA Proposes to Regulate Foreign Carriers of Animals

As stated in the last *Advocacy Update*, the Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture (USDA) has proposed a new rule where it would begin “applying the Animal Welfare Act (AWA) regulations and standards for the humane transportation of animals in commerce to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia.” Following the publication of the proposed rule in the *Federal Register* on October 10, 2003, there was a Board meeting of the Live Animal and Perishables Board of the International Air Transport Association (IATA). In that meeting, it was agreed that USDA already has the statutory authority to impose such oversight; that many international carriers already comply with those same regulations; and any animal cargo on U.S. cargo is subject to international regulations while in transit. Thus, the aim of the proposed rule would be to encourage comments from foreign governments and/or the respective air carriers to determine if there might be economic or political consequences as a result of the rule.

Christian Science Monitor Polls Readers on Extreme PeTA Tactics

Reporting on the latest campaign from the People for the Ethical Treatment of Animals (PeTA), the *Christian Science Monitor* is running a poll on the justifiability of PeTA's extreme tactics.

The Christian Science Monitor asks its readers, "Are PETA's extreme tactics justifiable?"

As of Jan. 13, 2004 671 votes were cast.

88% said "No. PETA will win no converts by harassing those with whom it disagrees."

12% said: "Yes. Widespread lack of regard for the rights of animals demands radical action."

To register your vote, visit www.csmonitor.com/2003/1222/p12s02-ussc.html and follow the link to the Monitor Talk poll: Are PETA's extreme tactics justifiable?

PCRM Plans to Go After 23 Medical Schools With Dog Labs

In a mailing to activists last month, Neal Barnard, M.D., President of the Physicians Committee for Responsible Medicine, asked his followers to join him in a campaign to get 23 medical schools "to abandon the use of live animals in medical education."

Barnard's mailing named individuals at each of the schools to receive letters, phone calls, and emails and provided a sample letter for their use. Barnard also called for volunteers who live near Uniformed Services University of the Health Sciences; University of Mississippi Medical Center; St. Louis University; New York Medical College; East Carolina University; Case Western Reserve University; East Tennessee State University; University of Tennessee, Memphis; Texas A&M Health Science Center, and University of Texas at San Antonio for assistance in leafleting on campuses, etc.

Rats, Mice, and Birds Bred for Research

Regarding a proposed rulemaking on rats, mice and birds, the Department of Agriculture's Animal and Plant Health Inspection Service (USDA/APHIS) proposed rule (Docket 98-106-4) pertains only to those rats, mice and birds **NOT** bred for use in research.

Humane Education Initiative

A new initiative is worrisome in regard to CSBR's efforts to reach out to students not just about biomedical research, but also scientific study and the life sciences. A controversial curriculum focusing on "humane education", which advocates say includes compassion for animals, awareness of environmental problems like global warming and overpopulation, as well as non-violence, is expanding into the U.S. public school system. Seventeen states now mandate aspects of the humane education curriculum, with one charter school,

in Harmony, Fla., already devoted entirely to teaching the curriculum.

Last fall, a local school board near Sacramento became the second district in the country to charter an entire school based on a humane education curriculum. The school's charter promises to promote "respect for humans, all species and the environment," and "the promotion of harmonious relations, kindness toward domestic pets and humane treatment of living creatures." The Humane Society of the United States and the American Society for the Prevention of Cruelty to Animals supported this taxpayer-funded Humane Education Learning Charter School in California's San Juan Unified School District.\

This planned charter elementary school will encourage students to "examine [their] cultural assumptions regarding the inherent value of different species and nature" and help them to "explore [their] responsibility toward earth and other human and non-human beings," according to the New World Vision Institute (the foundation that supports this move).

While the specific curriculum for the planned humane school is not yet available, the website of New World Vision causes pause. Altering students' perspectives or educating students about compassion for animals, awareness of environmental problems appears laudable. What compassion for animals means, however, can be radically different from teacher to teacher, from parent to parent, and from one humane school to another and can make these stated goals very different in application and practice. Certainly groups like PeTA, the Humane Society of the United States, and the Doris Day Animal League see charter schools as important venues for their ideas and are already named supporters of the Sacramento area school and the initiative in general and will most likely share in the shaping of the agenda, and the supply of educational materials.

This movement promises to grow and is supported by additional number animal rights groups with divergent missions and goals. This month there was a posting on the Animal Rights News Group calling for all "Animal Protection Organizations and individuals" and asking for their support in contacting the governors, legislators, and boards of education in all 50 states to show "a very public display of unity towards our nation's schools and the implementation of humane education into the curriculum by the year 2010."

In addition, the HSUS's Humane Society University (HSU) is taking humane education to a higher place — the graduate level. In partnership with Webster University and the National Association for Humane and Environmental Education (The HSUS's youth education affiliate), HSU is now offering a Master of Arts in Teaching, with a character development and humane education focus. The fully accredited degree program will be conducted completely online and will train students in creating, implementing, and evaluating educational programs that emphasize character development and respect for animals and nature. Courses will be taught by the education faculty of Webster University in St. Louis.

State

AB 395 Cat Declaw

AB 395 has been amended to eliminate domestic cats from the ban on declawing as well as authority for the Veterinary Medical Board to add types of cats not expressly designated.

SECTION 1. Section 4826.5 is added to the Business and Professions Code, to read:

4826.5. (a) A licensee shall not perform, or otherwise procure or arrange for the performance of, surgical claw removal, declawing, onychectomy, or tendonectomy on any cat that is a member of a native, wild, or exotic cat species, and shall not otherwise alter such a cat's toes, claws, or paws to prevent the normal function of the cat's toes, claws, or paws. This subdivision does not apply to a procedure performed solely for a therapeutic purpose.

AB 588 Pound Release

After initial discussion with interested parties and suggested language changes and possible amendments, Assemblyman Paul Koretz has decided not move forward with AB 588 in January. Parities currently opposed to this bill are in agreement that any of the suggested language changes proposed by Teresa Stark, Koretz's Chief of Staff, are unacceptable. As detailed in earlier issues of *Advocacy Update*, AB 588 seeks to end the release of all pound animals or cadavers to medical research and teaching facilities. We will continue to monitor this bill.

Proposed Exemption for Transgenic Glo-Fish

The California Fish and Game commission denied a request for an exemption from the ban on ethical grounds, despite accepting recommendations from scientists and the California Fish and Game Department that there is no danger to state waterways even if the fish escaped. The 3-1 vote came moments after commissioners approved the state's 14th license for research into genetically modified fish. At the Commission meeting in October, CBRA shepherded 13 permits for medical research facilities through the permitting process.

Without the exemption, Yorktown Technologies is blocked from marketing the first bio-engineered aquatic household pet in a state that buys a quarter of the nation's ornamental fish. California is the only state with a ban on transgenic aquatic species, and sales of the fluorescent Glo Fish are expected everywhere else this month. California adopted its regulations regarding transgenic aquatic species last year, as detailed in past issues of *Advocacy Update*.

State Toughens Farm Trespass Laws

A new state law designed to shield farms from protesters and protect the food supply from contagious disease went into effect on January 1. The law, proposed by state Sen. Charles Poochigian, R-Fresno, makes trespassing on lands where animals are raised for human consumption a misdemeanor punishable by six months in jail and/or a \$1,000 fine. Currently, someone who trespasses faces a citation and a \$10 fine. Poochigian said his bill removes any ambiguity about the various trespassing laws and gives law enforcement another “arrow in the quiver” to protect farmers, their animals, and, ultimately, consumers. This law has drawn the ire of activists, who say it will inhibit their ability to document cases of animal abuse.

FBI Arrests California Animal Activist

The FBI has charged Harjit Gill, an animal activist and college senior at CSU, Chico, with making a false declaration to a Grand Jury this past July regarding the Animal Liberation Front (ALF). The *Orion Online* (Chico’s campus online newspaper) reports that Gill was arrested on three counts of perjury (one count of giving false testimony to a grand jury and two counts of lying to a federal officer). Gill disavowed any interaction with the ALF, even though he agrees with their positions. “I’m not linked in any way to the Animal Liberation Front other than the fact that I’m in philosophical agreement with it,” he said. “I’m not a participant in any way.” If convicted, he could face 15 years in prison, a maximum of five years for each charge.

Local

San Francisco Commission of Animal Control & Welfare

At their meeting on Thursday, January 8, 2004, the Animal Commission once again discussed the development of a “Cambridge-Type” ordinance that would provide local oversight, specifically of UCSF live-animal testing. A draft of such an ordinance is being prepared by In Defense of Animals’ Susan Roy and Caster Dillard. While the Commission has been discussing this item for several months, no one from the public has seen a draft copy, although Commissioner Wheeler commented at the meeting that there has been a lot of real progress from the earlier drafts. CBRA is attempting to see a copy of this draft.

The Commission indicates that they plan next to make an appointment with San Francisco Board of Supervisors President Matt Gonzalez to ask for a senior attorney from the city instead of the representative from the City Attorney’s Office that is assigned to the Commission so that the draft can be written in S.F. Code. We surmise that the attorney assigned to them has indicated complications to their plans regarding UCSF and Article 9

of the California Constitution and the UC system, and they are seeking additional, more supportive, insight.

The “Cambridge Ordinance” is styled after one established in Cambridge, MA. A link to the original Cambridge Ordinance is below:

http://www.cambridgepublichealth.org/perm_license/la_ordinance.html

Santa Monica Council Considers “Pet Guardian” Language

The Santa Monica City Council minutes for the meeting of September 9, reflect that the animal rights groups, In Defense of Animals requested the Council adopt an ordinance changing the word “owner” to “Guardian”. The Council states it is not sure when a prospective new ordinance will be drafted or when it will be considered. IDA has spearheaded the drive to have as many city councils amend local ordinances on this issue as possible. Their last success was last January, when San Francisco adopted guardianship language. At the same time, however, Los Angeles rejected such a change. CBRA is monitoring the status of this effort in Santa Monica and throughout California.