



# NAIA

## Animal Policy Review

A publication of the National Animal Interest Alliance dedicated to analysis of legislation, regulations, and policies that affect animals and animal owners

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### Mission creep: Dog rescues and animal shelters risk public health and safety

There was a time – and it wasn't that long ago – when humane societies and rescue groups were held in high regard. Animal welfare advocates and the public recognized their work as necessary and valuable, generally accepted their practices as appropriate and forgave their shortcomings because they were “doing God's work.”

But that era may be drawing to a close as a new ideology and the end of dog overpopulation in many parts of the country cause not-for-profit humane organizations to abandon their missions(1) and replace long-standing codes-of-conduct (2) with irresponsible practices like:

- placing dangerous dogs with the public(3),

... records show that “thirty-five shelter dogs have participated in killing people since 2010.”



- placing pets without screening adopters,
- placing sick dogs, and
- participating in unregulated dog trafficking, the practice of moving literally thousands of dogs from high supply areas to areas that have solved or nearly solved

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### Charity watchdog dings HSUS after \$15 million settlement

The Humane Society of the US recently paid a court-ordered settlement of \$15 million to end 14 years of litigation against world-famous Ringling Bros. & Barnum and Bailey Circus and earned a slap from charity watchdog group Charity Navigator in the process.

The payment reimbursed a portion of the money spent by Feld Entertainment Inc., Ringling's parent company, to defend against false accusations that the circus abused its elephants. The court termed the suit “frivolous” and “groundless” and determined that the plaintiffs and their lawyers paid the chief witness nearly \$200 thousand to deliver unbelievable testimony. Although HSUS was not an original plaintiff, it became involved in the case when it merged with Fund for Animals, a named plaintiff organization, in 2005.

The charity watchdog also hit Fund for Animals with the same advisory.

Charity Navigator compiles information about charities based on tax returns and issues advisories based on more factors that could diminish confidence in a charity's abil-

ity to fulfill its stated mission. Earlier this year, the group downgraded HSUS following complaints that it misstated its income on its tax returns, a practice that can boost the ratio of program expenses to income and may earn higher ratings.

For more information about the Ringling case and the financial settlement, see the article on page 3.

**HELP SHAPE THE DIRECTION OF ANIMAL WELFARE IN THE US!**

**COME TO THE NAIA ANNUAL CONFERENCE NOVEMBER 8-9**

**Details on page 3**

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### NAIA Animal Policy Review

Norma Bennett Woolf, editor

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NAIA supports the responsible and humane use of animals for food, clothing, medical research, companionship, assistance, recreation, entertainment and education. For more information about NAIA and our mission to support responsible animal ownership, go to [www.naiaonline.org](http://www.naiaonline.org) and [www.naiatrust.org](http://www.naiatrust.org)

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## Circus \$25 million; animal activists zero in fraud and racketeering case

Fourteen years of litigation came to a close on May 15 when animal activist groups paid Feld Entertainment Inc. \$15.75 million in court-ordered reimbursement of legal fees the company spent to fight a lawsuit dismissed in 2009. This settlement is in addition to more than \$9 million paid by the ASPCA in December 2012.

Feld is the parent company of Ringling Bros. and Barnum & Bailey Circus. The dismissed lawsuit was deemed a fraudulent attempt by animal rights groups to prove the circus violated the federal Endangered Species Act by mistreating its elephants. In its decision, the court found that the organizations paid the main witness more than \$180 thousand while the suit was pending and attempted to hide those payments by channeling them through third parties.

The strategy was typical of practices used by radical fundraising groups: accuse an animal owner of abuse; initiate a campaign of harassment, half-truths, and outright lies; file a lawsuit; use the complaint to generate outrage and feed off the resulting donations – all the while claiming the moral high ground and bleeding the target out with exhaustive legal expenses. Most individuals and businesses targeted by these attacks hunker down to weather the storm in hope of avoiding a legal or public relations war. Not Kenneth Feld, CEO of

Feld Entertainment Inc.

### Radicals vs Feld Entertainment



In 2000, after many years of accusations, demonstrations and fundraising efforts targeting the use of elephants in circuses, several radical groups collaborated in a lawsuit accusing Feld of ESA violations involving the Barnum and Bailey elephants. Plaintiffs in the case were the ASPCA, the Fund for Animals (now an affiliate of the HSUS), the Animal Welfare Institute, Born Free USA (formerly the Animal Protection Institute), former circus elephant barn worker Tom Rider, and several others. But Feld chose to defend itself rather than buckle under the massive public relations campaign waged against it, and the US District Court dismissed that case for lack of standing. Undeterred, the groups filed again in September 2003.

Feld fought back; six years later, the court ruled the suit

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## *If you're not at the table, you're on the table!*

Times are changing, if you aren't actively helping to shape the direction and philosophy of animal welfare, you will find yourself left behind. If animals are an important part of your life – whether you are a professional, hobbyist, or simply an animal lover — actively shaping your future is vital: if you're not at the table, you're on the table!



The annual National Animal Interest Alliance (NAIA) conference has become a must-attend event for people whose lives revolve around animals. As always, we feature outstanding presentations from world-class scientists, trainers, and conservationists, as well as hands-on workshops to provide you with valuable tools you can use to take control and shape your future whether you are concerned with your own situation, your group, your local community, or national issues.

Join us as we bring together the leaders in animal science, husbandry, conservation, animal law, animals in entertainment, pet care and ownership, and many other diverse backgrounds to solve the issues that affect us all!

### **NAIA Annual Conference, November 8-9, 2014**

Reception November 7

Orlando, Florida, at the Double Tree by Hilton.

Early Bird Registration is available until August 15!

Registration details at <http://tinyurl.com/myuwmjc>

## Mission creep: Dog rescues and animal shelters risk public health and safety

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their surplus dog problems(4).

Several trends have coalesced to cause this perversion of traditional rescue, especially:

- nearly universal pet sterilization and the associated decline in available puppies;
- social pressure to adopt a shelter pet rather than buy a puppy from a breeder; and
- defamation campaigns waged against breeders and pet stores.

This monumental – but largely unrecognized – ideological shift allows irresponsible groups to hide behind their charity image and operate as unregulated wholesale and retail pet marketers and middlemen who exploit public concern for animal welfare while endangering public health and safety.

### Saving lives or endangering lives?

For some shelters, saving a dog's life has become a bigger priority than protecting the public from sick and dangerous dogs. Whether they misapply the no-kill shelter philosophy, try to achieve ever higher live-release rates(5), or are simply ignorant about dog behavior, a growing number of these shelters are placing dangerous dogs with adopters.

In previous decades, shelter workers designated dogs with serious bite histories as too dangerous for public placement and scheduled them for euthanasia. Today, that decision is by no means certain.

A recent case in Stamford, Connecticut, a city that just fired their shelter director for placing known biters, highlights the risk. According to Connecticut News 12 reports, "Dogs described as 'harmless' in advertisements were often returned for biting people. Hollywood [the shelter director] then allegedly falsified documents, allowing dogs with a history of biting to be readopted. The dogs then bit their new owners."(6)

Unfortunately, the Stamford case is just the latest in a growing number of eerily similar situations where poor judgment and a lack of reasonable policies came together to injure or kill a member of the public. In 2003 in Newark, New Jersey, the Associated Humane Societies placed a dog

*For more on dog trafficking, see "Humane or insane?" on the NAIA website, <http://tinyurl.com/moazts7>*

**Mission creep by irresponsible shelters and rescues results in transporting dogs in cramped conditions, sometimes for more than 24 hours at a time.**



that attacked and killed his new owner just 10 days after she adopted him. Investigations found that the dog had viciously attacked his previous owner and was surrendered to the shelter for euthanasia by the victim's son. The son explained the dog's serious bite history, signed the forms and paid the euthanasia fee to the shelter. Subsequently, the shelter discarded its pledge to euthanize the dog and placed him with an elderly woman instead. Perhaps they decided that the previous owner had misjudged the dog or that the vicious attack described by the victim's son would not be predictive of the dog's future behavior. Actually, however, past behavior is the single best predictor of future behavior(7).

Merritt Clifton, the editor of *Animals 24-7* has monitored and logged severe and fatal dog attacks since 1982. His records shine a bright light on this disturbing trend. He reports that between 1982 and 2002 there were only four severe attacks by shelter dogs and only two that were fatal. By 2010 he reports that fatal or disfiguring attacks had soared to 18, by 2013 they shot up to 27 and in just the first half of 2014 they already total 34. His records show that "thirty-five shelter dogs ... have participated in killing people since 2010." For more detail on this subject, read Clifton's excellent article(8).

### Saving lives or trading lives? The net effect of dog trafficking

Mission creep by irresponsible shelter and rescue management also fuels dog trafficking, the massive and growing movement of rescue dogs from areas of high supply to areas where there are fewer dogs available to meet demand. Dog trafficking creates new problems for destination communities and does nothing to solve surplus and stray dog problems in the source communities. It revitalizes and fuels the development of retail shelters and cynically passes the buck from source communities that do little or nothing to

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## Carriage horses and drivers face extinction in NYC



A carriage ride in Central Park has been a thrill for tourists and a boost for romance in New York City for generations. Decked in traditional finery, the horses and drivers provide a touch of the past and allow city-dwellers to see horses up close, an opportunity sorely lacking in urban areas. The carriage business is highly regulated to assure the welfare of the horses, and a local union represents the drivers. All of these benefits come together to provide jobs for drivers and horses, jobs that are critical to provide a living for the people and a life beyond the pasture fence for the horses.

But despite these facts and the traditions they illuminate and foster, this small group of horse owners and drivers is under attack by animal rights groups. The routine is predictable: depending on general public ignorance about animal care and behavior, the activists select a small group of animal owners, demonize them as greedy and abusive, and conduct a hateful campaign of confrontational demonstrations and false allegations about the welfare of the animals.

New York City mayoral candidate Bill DiBlasio told the world that he would eliminate horse-drawn carriages from the city as a top priority of his administration. Glad for an ally in their long battle to get the horses off city streets, anti-carriage activists flocked to his campaign with money and support for the ban. The effort brought Di Blasio to the mayor's chair but ignited a firestorm of criticism, accusations of campaign finance irregularities, and an FBI investigation of allegations of extortion on Di Blasio's behalf.

Critics of the proposed ban include actor Liam Neeson, the Teamsters Union local representing the drivers, more than 60 percent of New Yorkers in a Quinnipiac poll, the *New York Daily News*, equine veterinarians who examined the horses(1), horse trainers who checked stable conditions, and two lawmakers who have introduced pro-carriage bills.

Carriage opponents include NYCLASS (New Yorkers for Clean, Livable, and Safe Streets), an animal rights organization, the ASPCA (American Society for the Prevention of Cruelty to Animals), and HSUS (the Humane Society of the

US). The ASPCA gave NYCLASS \$50,000.

The *New York Daily News*(2) and *Crain's Insider*(3) reported potential violations of state campaign finance laws by NYCLASS, real estate and parking garage mogul Steve Nislick, businesswoman and animal rights activist Wendy Neu, and paradoxically-named New York Is Not for Sale, a committee funded in part by Neu and Nislick and established to defeat pro-carriage candidate Christine Quinn. Nislick and Neu each gave \$200,000 to the committee and several thousand dollars more to other campaigns in spite of the state law limiting donors to a total of \$150,000 during a calendar year. NYCLASS also donated \$225,000 to the committee, \$75,000 above the limit. New York Is Not For Sale received more than \$1.5 million in donations for its successful anti-Quinn campaign.

DiBlasio originally promised to ban the carriages the first week of his term but later said they would be gone by the end of this year.

Veterinarian Arnold Goldman, a native New Yorker and NAIA board member, wrote the following to highlight the value of maintaining the carriage businesses and the hubris of the activists who claim to know more about horse care and conditions than equine health and behavior experts.

### Carriage horses are a fundraising program for activist organizations

by Arnold L. Goldman DVM, MPH

Reading the positive and affirming comments of my colleagues in the veterinary profession for me reinforces the disingenuousness of those who would seek to end a 150+ year-old, beloved NYC tradition.

A native New Yorker, I know well the constant renewal that NYC embraces, as neighborhoods fade, then rise again with successive waves of immigrants and the ever-changing nature of our industry and economy. Still, New Yorkers jealously guard those traditions and practices, which are and remain quintessentially New York, and our carriage horse tradition is exactly of that sort.

The human partnership with working animals runs long and deep and the carriage horse remains a touchstone to that past, allowing us to remember a simpler time, when that very partnership was essential to life itself. We many are grateful that there remain pockets of animal stewardship that allow us to remember and embrace what has come before. How fortunate we are in NYC to still have carriage horses to remind us of those traditions.

Expert equine veterinarians have already made clear the excellent care and husbandry NYC carriage horses receive

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## Mission creep: Dog rescues and animal shelters risk public health and safety

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deal with stray dogs and unwanted litters to receiving communities that have already spent tax dollars to contain or solve their own unwanted dog problems.

Dog trafficking converts participating animal shelters and rescues into unregulated pet stores in a totally unregulated chain of supply that moves dogs from as far away as Mexico and Puerto Rico into US shelters and rescues. Some northern shelters now import thousands of dogs each year, flooding the local pet marketplace with out-of-area dogs, and causing nearby shelters to euthanize local dogs.(9) Many of these groups host adoption events in parking lots and other public places within hours or a few days of the dogs' arrival, leaving no time for evaluating each dog's health and temperament or screening the adoptive families.

Shamefully, many of these retail shelters also reject local pets in need in order to grab more attractive ones from outside their state or region. Simultaneously they often disparage local animal control agencies as "kill shelters" to give themselves a marketing advantage.

### Saving lives or spreading disease?

But it isn't just the lack of accountability in the shelter-rescue continuum that's a problem. The practice also threatens public health and facilitates pet theft and cruelty to animals. Authorities have found rabid dogs(10) and stolen dogs(11) in this unregulated adoption channel along with some of the most inhumane source conditions you'll find anywhere.(12). Dogs moving from the southern to northern US and those entering the US from foreign countries may carry diseases and parasites that have been locally or nationally eradicated or controlled. See "CDC tightens rabies vaccination rules for imported dogs; USDA rules still in limbo" for more information.

### Saving lives or eliminating competition?

Currently, a cabal of like-minded retail shelters and rescues who've had success in the commercial pet marketplace are conspiring to destroy their competition (i.e., the pet stores that are honest enough to admit that they are pet stores).

**Shamefully, many of these retail shelters also reject local pets in need in order to grab more attractive ones from outside their state or region. Simultaneously they often disparage local animal control agencies as "kill shelters" to give themselves a marketing advantage.**



Unfortunately, they have duped many local governments into adopting their cause.

Amazingly, political leaders in Chicago(13) and San Diego, to name a few cities, have been lured into passing laws that force legal and heavily regulated businesses that pay taxes (i.e., pet stores) to convert their operations into this unregulated, unwarranted, out-of-control model.(14) Claiming a moral high ground aimed at closing so-called "puppy mills," these groups cynically scam governments into mandating that regulated pet store businesses sell only animals acquired from shelters and rescue groups.

### The good news

But there is a light at the end of this tunnel. Finally, mainstream shelters and rescues are speaking out against the irresponsible actors and unprofessional practices in their industry. In an article he titled "Think globally, rescue locally: Rescue transports – a symptom of dysfunctional shelters and rescues," Mike Fry of the Animal Ark shelter in Minnesota lays it out. He challenges the very premise of rescue transports saving lives and points out that the thousands of out-of-state dogs transported into Minnesota every year result in native Minnesota dogs being killed.(15)

Responding to concerns of veterinarians and dog owners, state governments are also looking at the influx of imported dogs and answering the challenge with regulations requiring health examinations of dogs and registration or licensing of rescue groups that import them. (16)

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*For more information on changes in the pet marketplace see "Disparage – regulate – prohibit – monopolize: Animal mobsters collaborate to eradicate purebreds and take over the pet marketplace" on the NAIA website at <http://tinyurl.com/lm366zc>*

## CDC tightens rabies vaccination rules for imported dogs; new USDA regulations still in limbo after six years

The US Centers for Disease Control has issued long-awaited improvements to its dog import regulations regarding rabies vaccination. Beginning August 11, dogs imported from countries with poor rabies control programs must be vaccinated at least 30 days prior to entry in the US. Dogs without proper documentation will be returned to the country of origin if they arrive in US without proof that the vaccination was done.(1)

The rule applies to all dogs: strays captured from urban streets and rural areas and marketed as rescues, commercially-bred puppies for retail trade, and single puppies purchased as pets, show dogs, or working dogs. Dogs from countries with good rabies control programs may be exempt if they have lived in the country for more than six months.(2)

The agency first solicited comments for improving the rules seven years ago.

### USDA regs still on hold

CDC requested comments on the proposal in July 2007.(3) In 2008, Congress directed USDA to work with secretaries of Commerce, Health and Human Services, and Homeland Security to write regulations that place a six month minimum age on the importation of dogs for resale to cut down on commercially-bred puppies and unowned



### CDC posts rabies alert for veterinarians

On May 27, 2014, the Centers for Disease Control posted a health alert regarding dogs with questionable rabies vaccination documentation that are entering the US from rabies-endemic countries. The alert noted that these dogs may be purebred or mixed breed, may be sold or adopted through US or international sources, and may be falsely identified as born and raised in the US.

CDC recommended rabies vaccination of imported dogs over the age of three months if the client is unable to provide the original certificate; the certificate comes from an unknown source; or the reported age does not match the physical appearance of the puppy.

street dogs entering the US from countries without adequate kennel standards or veterinary care.(4)

USDA has yet to publish the final rule.

On January 14, 2014 the National Association of State Public Health Veterinarians (NASPHV) urged CDC to make changes that will reduce opportunities for diseased animals to bring rabies and other zoonotic diseases and parasites into this country.(5)

A letter signed by NASPHV and its Rabies Compendium Committee, said in part

*“Current regulations originated in the 1950s and fail to adequately reduce the risk that a rabid animal will enter the US and threaten our ability to maintain a canine rabies variant free status. Data published by CDC estimate that over 287,000 dogs were imported into the United States during 2006 and that at least 25percent of them were too young to be vaccinated for rabies and/or lacked proper documentation.”*

NAIA’s 2007 CDC comment letter went further by identifying a specific concern about importation of stray dogs and commercially-bred puppies from countries that have poor records of disease and parasite control. NAIA commented in part:

*“One of the greatest zoonotic threats to the health of citizens comes from imported dogs and puppies from developing countries in Asia, from Latin America, and several Island nations and territories. Because there is a greater demand for puppies in the US than supply, start-up breeding and stray dog round up programs have developed in these countries to meet the US demand. The result is a thriving unregulated industry selling pets across borders, and importing dogs from the streets and shelters of developing countries for placement through US shelters, sanctuaries and rescuers. These operations, both on the export and import side of the transaction, lie outside of any organized or regulated pet industry but nonetheless represent an ever-increasing number of pet transfers in the US each year. These imports need to be recognized and regulated if the new regulations are to achieve any degree of success in protecting US citizens from zoonotic diseases.”*

### Street dogs, disease, and parasites

Since 2007-08, the number of imported street dogs has

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## Circus \$25 million; animal activists zero in fraud case

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was “frivolous,” “vexatious,” and “groundless and unreasonable from its inception” and that Rider, the chief witness against the circus company, was a paid plaintiff who was not believable.(1) For six years, however, plaintiff groups used the suit as a public relations banner to raise money for its campaigns against the use of elephants in entertainment.

Following the dismissal, Feld sued for reimbursement of attorney fees and filed an additional suit under the federal Racketeering Influenced and Corrupt Organizations (RICO) act(2) – a law used against gangsters who conspire to harm individuals or businesses. Feld filed against the organizations, their attorneys, and the Wildlife Advocacy Project, a group run by the attorneys. Feld based its RICO allegation on documentation that ASPCA, FFA, AWI, and API paid chief witness Rider to testify against the circus. Some of these payments went directly to Rider; others went to WAP and were forwarded to him. Although HSUS was never a plaintiff in the lawsuit, the Fund for Animals became an HSUS affiliate in 2005, HSUS CEO Wayne Pacelle signed one of the checks given to Rider and the organization donated additional funds to the bogus suit.

The settlement announced on May 15 also puts an end to the RICO suit.

NAIA applauds Feld for persevering through nearly a decade and a half of expensive, malicious, and unsustainable litigation spawned by fundraising groups with political agendas.(3) This case highlights the huge differences in com-

mitment to animal welfare by animal owners and the self-serving fundraising rhetoric from bogus pretenders. While Feld spent \$25 million fighting baseless charges, the herd at the Ringling Bros and Barnum & Bailey Asian Elephant Conservation Center in Florida grew by 13 calves for a total of 26 births since the mid-1990s. The conservation center is home to the largest Asian elephant herd outside Asia, and Ringling is deeply involved in preservation of the species while the radical groups create and foster red herrings and rake in donations from unsuspecting animal lovers.

### Notes

1. Disposition of Civ. Action No. 03-2006 (EGS): American Society for the Prevention of Cruelty to Animals, et al, plaintiffs, v Feld Entertainment Inc., defendant: <http://www.animallaw.info/cases/causfd2009wl5159752.htm>

2. The federal Racketeer Influenced and Corrupt Organizations Act (RICO) allows lawsuits by victims of crimes committed by an organized gang or association. Passed as part of the 1970 Organized Crime Control Act, the statute originally used against the Mafia and similar organizations has been more broadly used in recent decades.

3. “Court says ASPCA, others paid chief witness: Judge finds witness not credible, tosses anti-circus suit”: *NAIA Animal Policy Review*, Winter 2009-10 (<http://www.naiaonline.org/uploads/NewsletterFiles/2009-10.pdf>); and “Judge allows circus racketeering suit to proceed against ASPCA, HSUS”: *NAIA Animal Policy Review* (<http://www.naiaonline.org/uploads/NewsletterFiles/AnPolRevSummer2012.pdf>)

## Court chastises federal agency for bearded seal listing

In 2012, the National Marine Fisheries Service added subspecies of two Arctic seal species to the threatened species list. On July 25, a federal court judge ruled that the designation of the Bering Sea population of bearded seals was improper and ordered the agency to rescind the rule and correct the deficiencies in its population study.

NMFS conducted its review following receipt of a petition from the Center for Biological Diversity, an environmental organization that frequently uses the federal Endangered Species Act and the courts to stop energy resource development and claims “global warming” will cause future habitat loss. The State of Alaska, Alaska Oil and Gas Association, and the North Slope Borough challenged the listing.

Using computer models, the agency based its designation of the Beringian population of bearded seals on a 100-year projected loss of sea ice, but the court said that the listing decision was speculative, lacked evidence, and was “... arbitrary, capricious and an abuse of discretion.” The decision is at <http://tinyurl.com/orubhk9>.

Proponents of global warming, often dubbed “climate change,” used the same type of models to lobby for ESA listing for polar bears, but bear experts point out that ice is actually increasing and that the bear populations are stable. For more information, see the website Polar Bear Science (<http://www.polarbearscience.com>).

NMFS based its listing of the bearded seal subspecies on a computer model that projected a decline 100 years in the future.

The judge said the listing was an “abuse of discretion.”

## Six states sue California over hen housing regulations

Missouri, Nebraska, Oklahoma, Alabama, Kentucky, and Iowa joined forces to sue California over the latter state's laws governing egg production. These six states ship billions of eggs to the Golden State each year.

In a suit filed March 5, the plaintiff states contend that California's hen housing laws interfere with interstate commerce by requiring that hatcheries shipping eggs to California meet the Golden State's stricter housing mandates and that such intervention violates the US Constitution's Commerce and Supremacy clauses.

The lawsuit brings the battle over hen housing standards and egg sales back to the state where it started in 2008. That year, California voters passed an initiative that dictates larger cages for egg producing chickens beginning in 2015. Producers complained that the standards are too vague, will cost the state's egg farmers millions of dollars, and will raise the price of eggs for consumers. In 2010, the state doubled down with AB 1437, a bill that allows California producers and consumers to nullify the economic impact of the initiative by preventing the import of eggs from chickens raised in other states under different conditions. The rationale for the bill stated:

*"The intent of this legislation is to level the playing field so that in-state producers are not disadvantaged."*

The battle then shifted to Washington DC where an unlikely liaison of the Humane Society of the US and the United Egg Producers lobbied Congress for a nationwide set of standards. HSUS had threatened a state-by-state battle to force producers to switch to larger cages or cageless housing, and UEP wanted to avoid the cost of repeated skirmishes. However, the federal companion bills (HB 1731, SB 820) failed to pass and lawmakers declined to include them in the omnibus farm bill later in 2013 despite the HSUS/UEP efforts.

### The lawsuit

Plaintiffs in the suit contend that, taken together and regardless of compliance with their own state laws, the California laws force egg producers in their states to choose between two economically devastating options: spend hundreds of millions of dollars to comply with the housing mandates or forego selling their eggs to the huge California market. According to the lawsuit:

*"... Missouri farmers—who export one third of their eggs to California each year—must now decide whether to invest over \$120 million in new hen houses or stop selling in California. The first option will raise*



*the cost of eggs in Missouri and make them too expensive to export to any state other than California. The second option will flood Missouri's own markets with a half-billion surplus eggs that would otherwise have been exported to California, causing Missouri prices to fall and potentially forcing some Missouri farmers out of business."*

The suit also contends that health claims(1) made by proponents of the initiative petition and repeated in arguments for AB 1347 are not supported by science.

### UEP guidelines

United Egg Producers established a set of hen housing and care guidelines based on scientific research and best husbandry practices and launched its UEP Certified program in 2002. More than 80 percent of egg producers follow these guidelines and display the UEP Certified logo on their egg cartons. The guidelines include both cage and cageless systems and set sizes for enclosures, provide for enrichment (nest boxes and roosts) and outline biosecurity procedures, employee training, and the process for reporting abuse.(2)

It seems that egg producers are condemned whether they improve conditions for hens or stick to traditional confinement. HSUS complained to the Federal Trade Commission that producers were using the UEP welfare guidelines as an excuse to reduce hen flocks and raise egg prices in violation of interstate commerce laws, an outcome equally arguable under the California laws that HSUS lobbied for and supports. These opportunistic positions give the impression that HSUS is more interested in attacking egg farmers than in improving conditions for hens. In 2009, a group of restaurants and retailers filed an anti-trust lawsuit based in part on that allegation.(3)

### Notes

1. Proponents claimed that requiring more space per hen as described in the initiative petition could reduce incidence of *Salmonella enteritidis*, a statement not borne out by research and reported in the enrolled bill report for AB 1437 by the California Health & Human Services Agency as difficult to justify if challenged.

2. UEP 2014 Animal Welfare Guidelines, <http://www.unitedegg.org/information/pdf/UEP-Animal-Welfare-Guidelines-2014.pdf>

3. Processed egg products anti-trust litigation, a class action complaint filed in the S District Court for the Eastern District of Pennsylvania: <http://www.courthousenews.com/2011/09/29/secondamendedclassaction.pdf>

## Mission creep: Dog rescues and animal shelters risk public health and safety

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And more good news: NAIA has assembled a legal team to address these issues proactively. Please contact us for more information at [legalteam@naiaonline.org](mailto:legalteam@naiaonline.org) and sign up for alerts at NAIA Trust's legislative lobby center at <http://cqrcengage.com/naiastrust/app/register?2&m=8478>.

### Notes

1. NAIA News article "Humane or insane": <http://tinyurl.com/moazts7>
2. NAIA News article "Basic rules of ethical rescue": <http://tinyurl.com/k5xlhvc>
3. Fatal dog attack leads to inquiry on shelter," New York Times, September 17, 2003. <http://tinyurl.com/kuyfvjm>
4. "Taking Control of Rescue Dog Trafficking in Connecticut," a presentation at the 2011NAIA National Conference by Arnold L. Goldman, DVM, MS, MPH: <http://tinyurl.com/mq5u4kv>
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  10. "Make sure adopted pets are healthy," press release from the Vermont Agency of Agriculture, Food, and Markets, November 2013, <http://tinyurl.com/p34qzak>
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  12. "Life-lift for dogs is fatal, 100+ die," Puerto Rico Daily Sun, March 14, 2011, <http://tinyurl.com/lyjzve2>
  13. "Chicago Council approves ban of puppy mill sales at pet stores," NBC Chicago (Channel 5), <http://tinyurl.com/lfbf8xm>
  14. "Problems after adoption from shelters," NAIA white paper, <http://tinyurl.com/ngdeq59>
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## Carriage horses and drivers face extinction in NYC

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and there is little need for me to repeat their wisdom. I do want to point out however, the cynical way in which the claims to the contrary are being used to further both real estate investment opportunities for a few, as well as fundraising and publicity for activist organizations bent on their own vision of the place of animals in human societies.

The activist organizations of which I speak, NYCLASS, ASPCA, HSUS and others, are not novices in their attempts to ban all manner of traditional uses of animals by human beings, terming them as cruel, neglectful and unnecessary. Faced with objective criteria demonstrating the complete lack of alleged cruelty or neglect, they fall back on unnecessary as though opinion is enough to end the debate.

There is an obvious difference between those who profess to care about animals and those few who actually care for them. Those who care for them have real skin in the game, know far more about animal husbandry and have much more invested personally than those who simply write articles,

lobby, file lawsuits or raise funds from comfortable offices in Washington DC or on East 92nd Street.

As said by former New York Senator, the late Daniel Patrick Moynihan, Everyone is entitled to his own opinion, but not to his own facts. The opponents of carriage horses ought to be reminded of that in their pursuit of an ideology that does not include animals in most of their existing mainstream roles in American society. Thankfully such people are in the minority and with effort and some luck, will stay that way.

### Notes

1. What the vets say about NYC carriage horses, <http://www.savenychorsecarriages.com/#!veterinarians/chg2>
2. "Mayor de Blasio's position on horse carriages switched as the cash rolled in," by Greg B. Smith, *New York Daily News*, April 22, 2014.
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## Report helps researchers deal with anti-science activists

Animal-based scientific research is essential to advances in human and animal medicine, and the vast majority of scientists who design and implement research projects are aware of their ethical and legal obligations to take care of the physical and mental well-being of their subjects.



from the administration, the legal and public relations divisions, and the security and human resources departments as well as the researchers and animal caretakers. This team should assess the potential for an anti-science attack of any sort, prepare employees for all types of incidents, and present facts to the public through a public relations expert.

In spite of their attention to animal welfare and their adherence to professional and government guidelines, however, these scientists and their backers have frequently been targets of a broad range of demonstrations, harassment, and crimes designed to pressure them into eliminating all use of animals in their work.

For years, anti-science zealots have badgered universities and companies that conduct animal-based research; stalked individual scientists; hounded their neighbors, colleagues, and families; destroyed their work; stolen their animals; skewered them in the arena of public opinion; and in some cases, trashed or bombed their laboratories;. But the scientists and their supporters have learned from the adversity. In a recently released report titled *The Threat of Extremism to Medical Research*, the Federation of American Societies for Experimental Biology(1) outlines a strategy for confronting and derailing radical opposition to the use of animal models in biomedical research.

The FASEB report tackles the extremist activities on two fronts: lowering the potential for targeting through development and maintenance of an impeccable animal welfare program that strictly adheres to federal laws and regulations and implementation of a crisis management plan to short circuit attacks if they materialize.

Radical campaigns target research on at least three levels:

- direct attacks on researchers and their institutions;
- secondary attacks on companies and charities that fund research and companies that transport animals or provide other services to research institutions; and
- third level attacks on companies that provide support for secondary targets

To preclude and counter the broad-based legal and illegal crusades initiated and implemented by animal rights groups, FASEB recommends a multi-faceted crisis management plan that highlights preventive measures and organized responses for companies, universities, and individuals.

### Step one: the crisis management team

A crisis management team should include representatives

### Step two: the crisis management plan

Informed citizens, including employees of the company or institution under scrutiny, are less likely to believe activist propaganda, so FASEB recommends a crisis management plan that revolves around internal and external communication of facts about the research. Such a plan helps the general public understand the use of animal models in biomedical research; helps employees, including those not directly involved with animals, to appreciate the value of the research; and allows the institution to respond to criticism with a single message.

Communication should

- Highlight your organization's commitment to the "3Rs" to replace, reduce, and refine the use of animals in research;
- Develop explanations of practices and procedures that can be rapidly prepared and released in the event of an incident;
- Inform the public about research successes, including personal stories about patients helped by a discovery or procedure;
- Build relationships with local and national reporters; and
- Look for opportunities to visit schools, community centers, places of worship, etc. to explain the benefits of animal research

Oregon Health and Science University learned the message the hard way. They failed to communicate effectively in a 2001 attack on the OHSU animal care program, a mistake that gave activists a victory, caused a loss of public trust in the institution, and made OHSU ripe for another assault in 2007. That time, however, OHSU had a plan in place and rolled out a rapid and successful response that dominated media coverage and blunted the extremist rhetoric.

Today, the OHSU communication plan includes the regular release of inspection and accreditation reports, tours of the facility, and a youth program to give students a first-hand look at research using animals.

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## Report helps researchers deal with anti-science activists

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### Step three: Providing security

The report recommends security measures for the institution and for individual scientists and other employees, including

- Establish contact with local law enforcement to make them aware of the potential for animal rights activities;
- Use local laws and noise and nuisance ordinances to guide a response when a demonstration crosses the line into illegal activity;
- Make sure the institution's information technology staff is knowledgeable about cybersecurity and prepared for denial of service attacks, mass email bombardment campaigns, and black fax campaigns;
- Prepare for open records requests; and
- Improve hiring processes to avoid infiltration of an activist who may try to disrupt the work

or stage a video that condemns the animal care program.

Obviously, the FASEB report is limited to organizations and institutions conducting biomedical research with animals, but the principles outlined in the report are useful for agricultural groups, pet breeders, and others who breed, raise, train, or otherwise interact with animals as a business, hobby, avocation, or sport.<sup>(2)</sup> A copy of the report is available at <http://www.faseb.org/>.

### Notes

1. FASEB is an international coalition of more than two dozen scientific societies whose members conduct and support research using animal models. For a list of member groups and more information about FASEB, see <http://www.faseb.org/>.

2. Farmers have been particularly hard hit by agenda-driven infiltrators who apply for jobs involving contact with livestock, stage videos alleging cruelty, and using edited portions of the recordings to condemn an individual farm and by implication, an entire industry. See "Message to activists: stop trespassing, lying, and distorting animal care practices with staged videos" in the 2013 issue of *Animal Policy Review* at <http://tinyurl.com/k33bsfq>

## CDC tightens rabies vaccination rules for imported dogs; new USDA regulations still in limbo after six years

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increased dramatically as fewer homebred puppies have become available and hundreds of organizations fill the void by transferring dogs from foreign countries and offshore territories. What began as an effort to bring Puerto Rican strays to shelters in the Northeastern US nine years ago has blossomed into an unregulated industry transferring dogs from areas where rabies<sup>(6)</sup>, parvovirus, distemper, screwworm, brucellosis, and parasites and diseases previously unknown, under control, or eradicated in this country are endemic.

As national and international groups aggressively promote the acquisition of stray dogs as a moral or ethical decision, more and more dogs arrive in the US from countries or regions where canine diseases and parasites are endemic and veterinary care and preventive programs are lacking. A recent article in *Discover Magazine*<sup>(7)</sup> highlights just one of the dangers – the spread of *Echinococcus* parasitic tapeworms to dogs and humans in Central Asia since the fall of the Soviet Union in 1991. The region is not far from Sochi, the site of the Winter Olympics and the source of street dogs brought to the US by some athletes and members of their entourages.

*Echinococcus* is not limited to Central Asia; CDC reports<sup>(8)</sup> that it also exists in Africa, Europe, the Middle East, Asia, and Central and South America, making it a potential threat to North America when various groups round up stray

dogs and ship them to the US as part of a relocation scheme.

NAIA notes that American-bred dogs are among the best in the world and the US pet industry is the world's most highly regulated. We join the public health authorities and veterinarians in their request for new regulations governing the importing of puppies and dogs that may be harboring diseases or parasites that pose public risk or have been eliminated or controlled in this country.

### Notes

1. Link to CDC Federal Register entry announcing the rule change: <http://tinyurl.com/pyahlxx>

2. Link to list of countries exempted from CDC rabies vaccination rule: <http://tinyurl.com/n2hzqso>

3. Link to NAIA comment letter: <http://tinyurl.com/n479y9l>

4. Link to 2008 farm bill (Public Law 110–246—June 18, 2008: Section 14210): <http://www.ag.senate.gov/issues/2008-farm-bill>

5. Link to vet letter: <http://tinyurl.com/lpmou79>

6. The World Health Organization reported in 2012 that people in most of the un- or under-developed world have a high risk of contracting rabies, and that stray dogs are serious carriers of the deadly disease. Groups in many of these nations round up these dogs and work with US and international organizations to bring them to this country for adoption. The WHO 2011 risk distribution map is at <http://tinyurl.com/kmqsof>.

7. Link to *Discover* article: <http://tinyurl.com/mfbftkz>

8. Link to CDC on tapeworm: <http://tinyurl.com/khy9enm>

# An animal ownership saga: Ohio exotic species owners thread their way through court over ban law

*By Polly Britton, Ohio Association of Animal Owners, and Norma Bennett Woolf*

Ohio owners of exotic animals are trudging through the courts in the aftermath of a state law that bans private ownership of species designated as dangerous unless the owners join a zoo association or a specific sanctuary group, operate a wildlife rehabilitation center, or meet one of 13 exemptions(1). The following timeline from bill passage to the wait for a decision for an en banc hearing of the Sixth Circuit Court of Appeals in Cincinnati is indicative of the long battle facing owners who fight laws that impulsively abolish valid existing businesses and hobbies. It hits the high points; it does not detail the amount of hours, the legal costs, and the financial and emotional impact of the struggle to responsibly keep these animals on private property or to operate a business involving their breeding and sale.

Exotic animal owners are easy pickings if an incident involving a big cat, a large snake, a monkey, or a bear makes the news. Two such Ohio incidents brought the issue to the forefront: in 2010, a bear mauled a worker to death (2) and in 2011, sheriff's deputies shot dozens of animals

when the owner was killed and the cages cut open.(3) The Humane Society of the US used the tragedies to pursue their agenda against private ownership of exotics and ramped up a campaign to pass a ban. Former Columbus Zoo director Jack Hanna, a national celebrity with a huge audience, joined the battle against the owners.

A ban handily passed both houses of the legislature in June 2012; Governor John Kasich added his signature, and the law went into effect that September. Several owners filed suit in November 2012; the judge ruled against them in December 2013; they appealed in January 2013; and the three-judge panel denied that appeal in March 2014. The plaintiffs asked for an en banc hearing with the full appeals court panel, but that, too, was denied. Their only remaining recourse is the US Supreme Court.

Here are the details supplied by Polly Britton, legislative agent for the Ohio Association of Animal Owners. Polly was a member of the governor's exotic animal task force.

Spring 2011	Governor Kasich appointed a Task Force to study ownership of dangerous wild animals and draft possible regulations, following the "Buckeye Agreement" brokered between former Governor Strickland, HSUS, and Ohio Farm Bureau Federation.
October 2011	Terry Thompson allegedly cut the cages of his lions, tigers, and other exotics, freeing more than 50 animals, and then reportedly shot himself.
November 2011	Governor Kasich injected himself into the Task Force and demanded immediate submission of the draft regulations, which were close to completion.
March 8, 2012	Senator Troy Balderson introduced SB310 after approximately 16 drafts.
March -April 2012	Animal owners and representatives attended and testified at Senate committee hearings. Approximately 200 people attended the first hearing to show opposition to the bill. Subsequent hearings were also well attended.
April 25, 2012	SB310 passed the Senate with one dissenting vote.
May 2012	While SB 310 was under discussion in the House Agriculture and Natural Resources Committee, OAAO drafted a substitute bill that had the approval and support of all animal groups. This draft allowed USDA licensed animal businesses to continue operating and required pet owners to meet the same USDA standards.
May 2012	Governor Kasich blocked introduction of the OAAO sub-bill and amendments and in closed-door meetings with committee, he threatened to veto SB310 if they adopted any substantial amendments.
May 22, 2012	SB310 passed the House 89 to 9.
June 5, 2012	Governor Kasich signed the bill into law, effective September 5, 2012. <a href="http://codes.ohio.gov/orc/935">http://codes.ohio.gov/orc/935</a>
June 2012	Plaintiffs hired attorney Robert Owens to sue the Ohio Department of Agriculture in an at-

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## Ohio exotic species owners thread their way through court over ban law

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tempt to overturn the Dangerous Wild Animal and Restricted Snake Act on the grounds that the law violates owners' rights to free speech and free association.

November 2, 2012 Owens filed the lawsuit in the Southern District/Eastern Division Court in Columbus, Ohio. The plaintiffs requested a temporary restraining order and preliminary injunction based on three constitutional violations:

- Denial of the First Amendment right of association by compelling plaintiffs to join and fund private organizations (the Association of Zoos and Aquariums or the Zoological Association of America), organizations that oppose individual ownership of large exotic animals.
- Denial of procedural due process rights by failing to provide a procedure for objecting to or obtaining an exemption from microchipping and sterilizing their animals; and
- Enactment of a regulatory taking without compensation, a violation of the Fifth Amendment, by requiring insertion of a microchip in each animal. Microchipping (specifically, anesthetizing animals to microchip them) threatens the health of the animals and constitutes a permanent physical occupation of property. In addition, permit fees and other costs exceed the value of the animals and businesses, thus completely depriving plaintiffs of all economic beneficial use of their animals and constituting a regulatory taking.

December 10-12, 2012 Judge George C. Smith presided over the three-day trial

December 20, 2012 Judge Smith ruled against plaintiffs(4) saying in part:

- The Act does not force membership to AZA or ZAA (but affords 13 other possible exemptions. There is no compulsory association under the Act.
- Plaintiffs have a **limited** property interest in their animals, so the fundamental constitutional right of due process is not implicated. Plaintiffs claim that forced implementation of a microchip constitutes a permanent physical invasion of the owners' property. Defendant (State of Ohio) and intervener (HSUS) have sufficiently set forth a legitimate government purpose behind the enactment of the Act: to protect animal welfare and public safety from threats posed by certain dangerous wild animals.
- Microchipping is at least minimally invasive to the animal, but this requirement is a function of government regulation, not governmental physical appropriation or invasion. A permanent, physical taking does not result if an owner may keep an animal, even under restricted use. Government regulation involves the adjustment of rights for the public good. New regulation might even render the property economically worthless. Even though...the Act undoubtedly will increase the cost of ownership...and devalue businesses or otherwise hinder economic activity to the detriment of certain dangerous wild animal owners, these circumstances do not effectuate a taking under the U.S. Constitution.

January 31, 2013 Plaintiffs appealed to Sixth Circuit Court of Appeals in Cincinnati, case number 13-3112.

February 2013 The state completed construction of a \$2.8 million taxpayer-funded 20,000 square foot

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## Ohio exotic species owners thread their way through court over ban law

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temporary holding facility to house animals voluntarily surrendered by owners or confiscated by the State.

November 22, 2013 Appeals hearing before three Circuit Judges: Daughtrey, Gibbons, and Donald

March 4, 2014 Judges rule against Appellants(5), saying in part):

- Appellants...are not required to join AZA or ZAA if they are incapable of joining those organizations. Unwillingness to conform their conduct to the permitting requirements or the other 13 exemptions does not mean that the Act compels Appellants to join AZA or ZAA. Appellants' unwillingness or inability to meet other options available to them is not the type of compulsion that qualifies them for First Amendment protection. An educational use permit would appear a strong candidate for many of the Appellants.
- Not every permanent physical invasion rises to the level of a taking. Only when the government physically takes possession of an interest in property...or authorizes a "physical occupation...by a third party"...does state action rise to the level of a taking. The Takings Clause does not impinge on a state's ability to pass regulations for the general welfare in most cases. Here, neither the government nor a third party has occupied Appellants' property. Even after Appellants implant the microchips, they retain the ability to use and possess their animals and the implanted microchips.

March 28, 2014 Plaintiff's attorney filed a motion for en banc re-hearing, stating that the Act "could have simply required appellants to adhere to the *standards* of the AZA or ZAA without compelling them to *join* either organization". "These elements of the Act serve to totally eviscerate the livelihood of the appellants by barring the activities of their long-established businesses.... The Act has reduced the economic value of the appellants' property to 'zero'."

The en banc hearing was denied on April 24; plaintiffs may seek a Supreme Court hearing.

### Notes

1. Exemptions include accredited zoos and research facilities, rescues accredited by the Global Federation of Animal Sanctuaries, USDA-licensed circuses, veterinarians providing temporary care, individuals traveling through Ohio if they spend less than 48 hours in the state and do not exhibit the animals, educational institutions using a banned species as a mascot, individuals or institutions with a permit from the Ohio Department of Natural Resources, and owners of a service spider monkey trained by a non-profit organization.

2. In August, 2010, a bear owned by Sam Mazzola of Columbia Station, Ohio, attacked and killed Brent Kandra, its 24-year-old caretaker. Mazzola kept a menagerie of exotic animals and had a permit to keep the bear.

3. In October 2011, exotic animal owner Terry Thompson apparently freed more than four dozen exotic animals before committing suicide, and sheriff's deputies killed most of them, including 18 tigers and 17 African lions. The case occurred while the governor's exotic animal task force was finalizing its recommendations and resulted in demands for a ban from the governor's office. Thompson's body was found in the driveway.

4. Judge Smith's comments were edited for space.

5. Comments of Circuit Judges Daughtrey, Gibbons, and Donald were edited for space.



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