

**January 27, 2014**

**INTERNATIONAL SOCIETY FOR ANIMAL RIGHTS**

**MODEL STATUTE PROHIBITING  
COMMERCIAL RETAIL SALES OF DOGS AND CATS**

**HENRY MARK HOLZER  
Professor Emeritus, Brooklyn Law School  
Chairman, International Society for Animal Rights**

Copyright © 2014

**International Society for Animal Rights**

Post Office Box F  
Clarks Summit, PA  
18411

-----

(570) 586-2200 (Tel)  
(570) 586-9580 (Fax)  
[www.isaronline.org](http://www.isaronline.org)  
[contact@isaronline.org](mailto:contact@isaronline.org)

All rights reserved. Permission to reprint this monograph is hereby granted on condition that the reprint prominently states that it is copyrighted by International Society for Animal Rights and is reprinted in its entirety by permission of the copyright holder.

**MODEL STATUTE PROHIBITING  
COMMERCIAL RETAIL SALES OF DOGS AND CATS**

**HENRY MARK HOLZER**  
**Professor Emeritus, Brooklyn Law School**  
**Chairman, International Society for Animal Rights**

*To the memory of*

*Lewis Gompertz*

## **ACKNOWLEDGEMENTS**

Deserving of recognition are the many lawyers and law students throughout the United States, many recruited through the efforts of Animal Legal Defense Fund, whose professional lives now include legal work on behalf of animals. Whether it is research, writing, teaching, advising, litigating, drafting or legislating, these men and women have taken up the cudgels on behalf of those who cannot protect themselves. Their labors on behalf of animals, often *pro bono publico*, are much appreciated.

**CONTENTS**

Introduction.....1

1. Constitutionality of prohibiting retail sales of dogs and cats.....7

2. Congress and the prohibition of retail sales of dogs and cats.....18

3. States and the prohibition of retail sales of dogs and cats.....22

4. West Hollywood ordinance prohibiting retail sales of dogs and cats...29

5. ISAR’s Model Statute prohibiting retail sales of dogs and cats.....36

6. The morality of retail sales of dogs and cats.....43

## **Introduction**

A major defect in many animal protection statutes is that crucial terms are ill-defined, or not defined at all. This failure leads to ambiguity, unavoidable litigation, lack of enforcement, and other problems undermining or defeating the goals the legislation was enacted to achieve.

Hence, for purposes of this Monograph and ISAR’s “Model Statute Prohibiting Commercial Retail Sales of Dogs and Cats” (hereafter “Model Statute”), we employ the following definitions:

- “Commercial”: “relating to the buying, selling, or barter of dogs and cats in return for a monetary or non-monetary benefit.”
- “Retail”: “the selling of dogs and cats directly to purchasers.”<sup>1</sup>
- “Sale”: “the transfer of ownership of dogs and cats for monetary or other consideration.”
- “Seller”: “any person or legal entity that makes a sale.”
- “Outlet”: “the place where, or through the means of which, a retail sale occurs.”
- “Purchaser”: “any person or legal entity that is the recipient of a sale.”
- “Breeder”: “any person who, or legal entity which, intentionally, recklessly or negligently causes or allows a female dog or cat to be inseminated by, respectively, a male canine or feline.”<sup>2</sup>
- “Mill”: “a place where at the same time more than three female dogs or cats are kept whose sole or major purpose is producing puppies or kittens for sale.”<sup>3</sup>

---

<sup>1</sup> Many if not most of the dogs and cats seen on retail levels—pet shops, malls, auctions, roadside cages, or elsewhere—have traveled through a pipeline that began with breeders, either commercial or amateurs. For an extensive discussion of that pipeline, see Chapters 1, 2, and 3 of ISAR’s “Model Statute Regulating Dog Breeding, Facilitation, and Sales (hereafter, “Anti-Breeding Statute”). <http://house.ethersense.com/~isaronline/programs/overpopulation-of-dogs-and-cats/regulation-of-dog-breeding-facilitation-and-sales/>

<sup>2</sup> This definition is deliberately broad because it intends to include all breeding—from family pets to the most egregious types, puppy mills and kitten factories.

<sup>3</sup> A puppy mill has been defined by one court as “a dog breeding operation in which the health of the dogs is disregarded in order to maintain a low overhead and maximize profits.” *Avenson v. Zegart*, 577 F. Supp. 958, 960 (D. Minn. 1984). While that description of a puppy mill accurately identifies one aspect of such an operation, applying equally to a place where cats are bred

- “Facilitator”: “any person or legal entity, not a breeder, seller, outlet or purchaser, as defined herein, who acts as a broker, dealer, wholesaler, agent, bundler, middleman or in any similar role in the sale, purchase, trade, auction, or other transfer of the ownership of dogs or cats, whether or not such animals are in the custody or control of the facilitator at the time of transfer.”<sup>4</sup>

In 2009, ISAR published Our Anti-Breeding Statute. In our Introduction we wrote:

While ISAR’s [Anti-Breeding] Statute applies to all breeders, it contains certain provisions aimed specifically at the horrors of mills because they are, by far, the most inhumane kind of breeding that exists today in the United States and elsewhere in the world.

Puppy mills, however, are only the first stage in the mass production and sale of dogs. Next come the facilitators, followed by the commercial retailers who sell to the public.

That public, however, [usually] has little or no [information] just how immoral and inhumane are certain aspects of the business of commercially producing and selling puppies and adult dogs [and kittens and adult cats] as if they were inanimate objects, no different from sausages.

Not only is the factory-like commercial production and sale of dogs [and cats] by itself immoral and inhumane, the business is a leading cause of the nationwide canine [and feline] overpopulation problem. That problem, in turn, has an adverse impact not only on the animals themselves, but also on society at large. Overpopulation of dogs [and cats] has severe economic, social, political, financial, health, environmental and other consequences which are well-documented and not debatable.

---

commercially, it does not adequately invoke the horrors of mills and is thus insufficient for the purposes of ISAR’s Model Statute.

<sup>4</sup> The Animal Health and Plant Inspection Service (hereafter “APHIS”), a division of the United States Department of Agriculture (hereafter “USDA”) has grouped “pet wholesalers” and “animal brokers” under the heading of “dealers.” Pet wholesalers are defined as “anyone importing, buying, selling, or trading pets in wholesale channels.” *Licensing and Registration Under the Animal Welfare Act*, USDA, available at [http://www.aphis.usda.gov/animal\\_welfare/downloads/aw/awlicreg.pdf](http://www.aphis.usda.gov/animal_welfare/downloads/aw/awlicreg.pdf). Animal brokers are defined as “anyone who deals in regulated animals but does not take physical possession.” *Id.* Both pet wholesalers and animal brokers are required to be licensed by USDA. *Id.* The Humane Society of the United States (hereafter “HSUS”) defines brokers as those who purchase dogs from puppy mills and kennels and then resell them to retail pet stores. *More on How Petland Continues to Support Cruel Puppy Mills*, HSUS, Jun. 29, 2009, available at <http://www.hsus.org/pets/>. The term “facilitator” as used in ISAR’s Model Statute is intended to include all of the persons and legal entities described above.

Accordingly, by severely reducing the numbers of dogs [and cats] produced by breeders, brokered by facilitators, and sold by commercial retailers, the related problems of immorality, inhumaneness and overpopulation could be dealt a serious blow.

Regrettably, however, even the most aggressive educational efforts by the animal protection movement have not been powerful enough to put sufficient pressure on breeders, facilitators and commercial retailers to reduce voluntarily their production and sales of dogs, let alone to drive them out of business altogether.

That said, however, there is a way in which production, trafficking and sale of dogs [and cats] can be greatly reduced—a way in which puppy mill producers, facilitators and commercial retail sellers of dogs [and cats] could virtually be put out of business.

How, then, to accomplish this worthy goal?

The short answer—which is developed at length in this Monograph [containing ISAR’s Anti-Breeding Statute]—is through strict administrative regulation of breeders, facilitators and commercial retail sellers, coupled with harsh penalty and generous “standing to sue” provisions.

As we made clear in that Monograph and Anti-Breeding Statute, ISAR’s strict, even extreme “regulation” of breeders, facilitators and retail sellers was designed to be a virtual *de facto* prohibition of dealing in dogs and cats. We wrote:

Preface to ISAR’s [Anti-Breeding Statute]

The Humane Society of the United States suggests that an acceptable statute regulating a puppy breeding facility is one which

applies to all breeding operations with animals or animal sales numbering over a specified threshold; requires a licensing fee and pre-inspection; includes routine, unannounced inspections at least twice yearly; is enforced by an agency with adequate funding and properly trained and tested staff; rotates inspectors to cover different areas of the state; and is equipped with strong penalties when facilities are in repeated non-compliance, including but not limited to cease and desist orders.<sup>5</sup>

---

<sup>5</sup> *State Legislation*, HUMANE SOCIETY OF THE UNITED STATES, available at [http://www.humanesociety.org/about/departments/legislation/state\\_legislation.html](http://www.humanesociety.org/about/departments/legislation/state_legislation.html).

While these requirements impose conditions and behavior which are better than those found today in most, if not all, statutes, implicit in them are two premises which ISAR categorically rejects: (1) that indiscriminate breeding of dogs [and cats] is morally acceptable so long as it is moderately (“humanely”!?) regulated, and (2) that through such “moderate” regulation the treatment of dog [and cat] “breeding machines” can be made morally and humanely tolerable.

If another of ISAR’s monographs [\*The Policy, Law and Morality of Mandatory Spay/Neuter\*](#) and Chapters 1, 2 and 3 of [our Anti-Breeding] monograph teach anything, they speak loudly for the proposition that there is an intractable dog and cat overpopulation problem, that the only feasible way to alleviate it today is by mandatory spay/neuter and severe regulation of breeders, facilitators and commercial retail sales outlets, and that legislation seeking to deal with the problem must be strict, comprehensive, loophole-free, and without the kinds of compromises that gut the few statutes which have been enacted and others that are now in the legislative pipelines.

In the end, dealing effectively with the breeder-facilitator-commercial retail sales outlet situation, and the dog [and cat] overpopulation problem it so greatly contributes to, is an either/or choice.

Either the dog [and cat] breeding, facilitating and sales valve is turned off almost completely, or useless and counterproductive legislative efforts will perpetuate the charade that something constructive is being done while countless millions of hapless prisoner dogs [and cats] continue to be bred, born, traumatized, abused, killed, and incinerated—and while figuratively, and often literally, our land is suffused with their wind-borne ashes.

In ISAR’s proposed [Anti-Breeding] Statute, we have made the “either” choice: *ISAR proposes to turn off almost completely the dog [and cat] breeding, facilitating and commercial retail selling outlet valve, and in so doing see the dog [and cat] overpopulation problem substantially ameliorated.*

Before presenting the annotated text of ISAR’s proposed [Anti-Breeding] Statute, several important antecedent points have to be made.

First. ISAR realizes that its proposed [Anti-Breeding] Statute far exceeds the prohibitions on breeding, facilitation and sales which appear in other animal protection laws, actual and proposed. ISAR has staked out its extreme position because our organization deeply believes that only very strict regulatory laws will achieve the stated goal, and if there are to be necessary compromises they must be as few, narrow, and morally and humanely defensible as possible.

Second. ISAR acknowledges that even if its proposed [Anti-Breeding] Statute were to be adopted by the federal government, or in a slightly different form by every state in America, there would still be unwanted dogs [and cats]. ISAR believes, however, that if its [Anti-Breeding] Statute accomplishes its intended purpose there would be adoptive homes for those far fewer dogs [and cats]. (In this connection, see <http://isaronline.blogspot.com/2008/04/redemption-myth-of-pet-overpopulation.html>).

Third. ISAR believes that while Americans have the right to enjoy the companionship and services of dogs [and cats] of their choosing, no one has either the moral or legal right to be an accessory to the tortured lives and ultimate fates that await the living reproductive machines of most breeders and all puppy [and cat] mills, and many of their offspring.

Fourth. As Chapter 2 proves, there are neither constitutional nor legal impediments to even the most restrictive breeding and sales laws. Attacks on them in court will fail if the statutes are drafted carefully and defended intelligently.

Fifth. Readers of ISAR's [Anti-Breeding] Statute may be surprised at its comparative simplicity. There are several reasons for its comparative brevity. Since ISAR's [Anti-Breeding] Statute could be enacted on the federal level, and thus be uniformly applicable nationwide, no provisions for state or local involvement are necessary. However, absent Congressional enactment, the statute could easily be adapted for, and enacted on, a state level. Even then, there would be no need for local involvement.<sup>6</sup>

Sixth. ISAR's [Anti-Breeding] Statute is not the last word on the subject, neither from [its own text,] nor [from] any one person or other organization who can offer constructive suggestions—so long as others recognize the underlying premise upon which ISAR's proposal is based: *turning off almost completely the dog [and cat] breeding, facilitating and commercial retail sales outlet valve* [emphasis in original]. That is ISAR's goal, and that is what it has endeavored to codify in the [Anti-Breeding] Statute.

Seventh. ISAR is well aware that our statute will be unpopular not only with dog breeders, facilitators and commercial retail sales outlets, aiders

---

<sup>6</sup> In addition, compromises and exemptions which always require considerable verbiage to accommodate, have been held to a bare minimum, unlike in the recent unlamented California "mandatory" spay/neuter statute which, until its demise at the hands of compromisers and lobbyists, attempted to accommodate various anti-mandatory spay/neuter constituencies and in doing so turned itself inside out.

and abettors, and others complicit in the dog-trade, but also with other animal protection organizations. So be it!

ISAR's pessimistic prediction proved correct, doubtless because our Anti-Breeding Statute challenged the root premises of commercial production of dogs and cats, from their conception to their sale at retail.

Many individuals and organizations who should know better, and from whom we expected support, have opposed ISAR's Anti-Breeding Statute. Because the nature and quality of their objections lack consistency, let alone substance, they will not be discussed here.

On the other hand, some of ISAR's supporters have argued for an outright ban on retail sales of dogs and cats, and have sought ISAR's help in making the argument in support of that goal.

Accordingly, this monograph and ISAR's "Model Statute Prohibiting Retail Sales of Dogs and Cats," contained herein, is a brief in support of that goal.<sup>7</sup>

That goal has become even more important because on November 18, 2013 a new rule of the United States Department of Agriculture, Animal and Plant Health Inspection Service became final. According to APHIS

USDA has changed the Animal Welfare Act regulations by revising its definition of retail pet store in order to keep pace with the modern marketplace and to ensure that animals sold via the Internet or other non-traditional methods receive humane care and treatment. USDA Animal Care has posted several materials on this webpage in an effort to provide all interested parties with pertinent information. We encourage you to please read through these materials in order to: 1) gain a better understanding of this regulation change; 2) learn the reasons that prompted the change; and 3) see if you need a USDA license or if you are exempt from licensing.

As ISAR will explain in a forthcoming essay, the deficiencies in APHI's regulation of pet shops and those associated in the sale of companion animals are so glaring and counterproductive that the only humane solution is, as ISAR's model statute proposes, outright prohibition of retail sale.

## 1.

---

<sup>7</sup> Please note that throughout this Monograph 12-point Georgia font has been used. The same specifications apply to the text of ISAR's Model Statute. *However, in order to identify ISAR's annotation of each section of the West Hollywood ordinance and our Model Statute, ISAR's comments appear immediately after each section in 12-point Courier font, in which this sentence is written).*

## **CONSTITUTIONALITY OF PROHIBITING COMMERCIAL RETAIL SALES OF DOGS AND CATS**

ISAR's previously published Anti-Breeding Statute contains an extensive argument about why even strict regulation of dog and cat breeding and sales easily passes constitutional muster.

*The same argument supports an outright ban on the commercial retail sales of both dogs and cats.*<sup>8</sup>

Various levels of government throughout the United States are today increasingly enacting laws that severely restrict, or even prohibit, the breeding and owning of dogs and, to a lesser extent, cats. Some of these laws are breed-specific, some apply generally. Communities located in many states have passed canine breed-specific legislation.<sup>9</sup>

There is, of course, substantial opposition to these types of laws, especially from organizations such as the American Kennel Club, which have a huge financial stake in the breeding of dogs.

Important to the question of constitutionality of these kinds of statutes—both of a regulatory and prohibitory nature—is their “Declaration of Intent.” For example: “The Board of Supervisors of the Town of Wherever hereby finds and declares that it intends to provide for the *public, health safety, and welfare*, by imposing a moratorium on the breeding of dogs owned, harbored, or kept in this municipality in order to bring the population of abandoned and stray animals to an acceptable level.”

To understand why anti-breeding, and prohibitions against commercial retail sales, laws—motivated by legislative intent to provide for the public health, safety, welfare and morals—will be held constitutional, it is necessary first to understand something fundamental about the American system of government.

---

<sup>8</sup> There is, of course, substantial opposition to these types of laws, especially from organizations such as the American Kennel Club, which have a huge financial stake in the breeding of dogs, as do cat breeders.

<sup>9</sup> *BSL Locations*, Wikipedia 2014, available at [http://en.wikipedia.org/wiki/Breed-specific\\_legislation](http://en.wikipedia.org/wiki/Breed-specific_legislation). For example, Fairfield, Iowa's Ordinance No.999, Section II, 6.14.70. Dangerous Animals, includes: “l. Doberman Pincher; m. Pit bull terrier, American Pit Bull, Staffordshire Terrier, or any other dog whose appearance and characteristic of breed is commonly regarded as Pit Bull, Pit Bull Dog, or Pit Bull Terrier or a combination of such breeds; n. Rottweiler; o. German Shepherd; p. Belgian Malinois; q. Siberian Huskies; r. Malamutes; s. Dogs that by size present control concerns including Great Danes, Wolfhounds, Deerhounds, Mastiffs, Boerboels and other dogs weighing in excess of 100 pounds.” These dogs are not allowed in Fairfield, subject to certain limited exceptions.

When the United States was founded, the Constitution created a new *federal* government possessing substantial power. Concern was expressed about whether any power was left to the states. To address that concern, the Tenth Amendment to the federal Constitution reserved to the states what is commonly referred to as the “police power”—not in the sense of law enforcement, but rather the power to legislate for the public’s health, safety, welfare and morals.

All state constitutions, in turn, delegate its police power from the state to various municipalities—e.g., cities, counties, towns, villages—which gives the latter power to pass similar laws related to the public health, safety, welfare and morals.

But those laws, like all legislative enactments made at every level of government—federal, state, municipal—must pass the test of constitutionality.

Laws affecting rights so fundamental that they are *expressly* protected by the federal and state constitutions – e.g., speech, press, religion—are tested by a very strict standard. In effect, laws affecting these kinds of fundamental rights (e.g., censoring media reporting, regulating church services) must advance an extremely important (i.e., “compelling”) governmental interest (e.g., not revealing the coming D-Day invasion), and be virtually the only way to accomplish that goal (“narrowly tailored”).

On the other hand, laws not affecting such fundamental rights are measured for constitutionality by a much less demanding test: Is there a problem properly within the government’s area of concern (e.g. teenage driving), and is the enacted law (e.g. requiring twenty-hours of classes and road testing) a rational way to deal with that problem? Put another way, the legislation must address legitimate “ends” and employ reasonable “means.”

Since laws restricting breeding and selling of dogs and cats do not affect any fundamental rights, they are tested by this lesser, “rational relation” standard.

Clearly, the number of unwanted dogs and cats causes significant social problems: senseless and often brutal killing, health risks, wasted taxes, and more. Clearly, these problems raise important issues of public health, safety, welfare—and even morals. In other words, from a constitutional perspective, the “end” of anti-breeding laws is entirely legitimate.

As important as is the legislative intent, equally or even more important is the manifestation of that intent in a statute’s “findings.” Indeed, the foundation of a typical anti-breeding law, for example, is its “findings,” which will typically contain such recitations as:

- The euthanasia of unwanted dogs and cats is rampant, with totals annually in the millions of animals;

- The destruction of these animals, though necessary, is immoral and not befitting a humane society;
- The practice is not cost effective;
- The root cause of this mass killing is the problem of overpopulation, which causes social problems beyond those created by mass euthanasia.

As we shall soon see, the findings in West Hollywood, California’s purported ban on the retail sale of cats and dogs are extensive.<sup>10</sup>

After a judicial examination of the legislative ends, the next question is one of “means”: Is breeding, facilitation and sales regulation, or outright prohibition, a reasonable way to deal with the problems set forth in the findings? Not the only manner, but a *reasonable* one.

The “practical” answer is obvious: If there are too many unwanted dogs and cats it is certainly reasonable to prevent the breeding, facilitation, and sale of any more, in order to prevent the overpopulation from growing, while allowing normal attrition to reduce the existing numbers.

As the Supreme Judicial Court of Massachusetts opined as long ago as 1931, “[t]he natural, essential, and unalienable rights of men to acquire, possess and protect property are subject to reasonable regulation in the interest of public health, safety and morals.” Indeed, a wide variety of statutes and ordinances affecting animals in general and dogs and cats in particular (who, sadly, are still considered by the law to be mere “property”) have been upheld against constitutional challenge.

ISAR has been down this road before, with our Model Mandatory Spay/Neuter Statute. Abundant examples of animal protection laws which have been held constitutional on the federal, state, and municipal levels appear at [http://house.ethersense.com/~isaronline/wp-content/uploads/2015/01/constitutionality\\_of\\_mandatory\\_sn\\_statutes.pdf](http://house.ethersense.com/~isaronline/wp-content/uploads/2015/01/constitutionality_of_mandatory_sn_statutes.pdf)

---

<sup>10</sup> We shall soon see that it’s unfortunate the ordinance itself did not fully implement the findings.

## Federal cases

### Airborne Hunting Act<sup>11</sup>

In *U.S. v. Bair*, 488 F.Supp. 22, 9 Env'tl. L. Rep. 20, 324 (D.Neb. Feb 14, 1979), and *United States v. Helsey* 615 F.2d 784 (1979, CA9 Mont) the AHA was held constitutional as an appropriate exercise of Congress's Interstate Commerce Power.

The Airborne Hunting Act (16 U.S.C. § 742j-1) was attacked in *U.S. v. Red Frame Parasail, Buckeye Model Eagle 503 (serial number 4159)*, 160 F.Supp.2d 1048, 179 A.L.R. Fed. 769 (D.Ariz. Jul 24, 2001). A big game guide flew at low altitudes, scouting "trophy" animals to be hunted. This conduct fell squarely within the plain meaning "to harass" included in implementing regulations of the Airborne Hunting Act (AHA), which prohibited use of aircraft "to disturb, worry, molest, rally, concentrate, harry, chase, drive, herd, or torment" animals. Accordingly, "harass" as used in the AHA was not unconstitutionally vague under Due Process Clause.

### Animal Welfare Act<sup>12</sup>

In *Haviland v. Butz*, 177 U.S. App. D.C. 22, 543 F.2d 169 (1976), the plaintiff argued that the act, as written and intended, did not embrace animal performances and that the Secretary of Agriculture could not expand its coverage. The court held that: (1) the statutory listing of covered enterprises was not exhaustive, and that the secretary was empowered to promulgate such rules, regulations, and orders as he deemed necessary in order to effectuate the purposes of the statutory scheme; (2) the animal act, traveling from state to state and using facilities of interstate communication, was subject to regulation by Congress in the exercise of its interstate commerce power; and (3) the classification effected by the act's definition of "exhibitor" was rationally related to a legitimate governmental interest.

### Atlantic Coastal Fisheries Cooperative Management Act<sup>13</sup>

In *Medeiros v. Atlantic States Marine Fisheries Com'n*, 327 F.Supp.2d 145, 2004 A.M.C. 2408, (D.R.I. May 24, 2004), a fisherman challenged a regulation limiting the number of lobsters he could land. He invoked the Fifth, Tenth, and Fourteen, arguing that the limit was without a rational basis and violated equal protection because it did not restrict the lobsters that could be caught in traps.

The court ruled that because the regulation neither burdened a fundamental right (nor involved a "suspect" classification like race), it would be reviewed under a

---

<sup>11</sup> Airborne Hunting Act, 16 U.S.C. § 742j-1.

<sup>12</sup> Animal Welfare Act of 1970, Sections 20(a), (c), 7 U.S.C. Sections 2149(a), (c).

<sup>13</sup> 16 U.S.C. Sections 5101-5108.

rational-basis standard. The conservation of coastal lobster fishery resources was deemed to be a legitimate governmental objective, and the regulation was a measure designed to reduce lobster mortality. The degree to which the rule accomplished its purpose was irrelevant to a rational-basis inquiry.<sup>14</sup>

#### Bald and Golden Eagle Protection Act<sup>15</sup>

In *United States v. Kornwolf*, 276 F.3d 1014, 1015 (8th Cir. 2002), the court ruled that the Act and the Migratory Bird Treaty Act—prohibiting of the sale of lawfully acquired bird parts—did not constitute a taking in violation of Fifth Amendment property rights for which just compensation was payable.

*United States v. Top Sky*, 547 F.2d 483 (9th Cir. 1976), held that the Fort Bridger Treaty of 1868 did not reserve to Indians the right to sell eagles or eagle feathers or parts, and *United States v. Top Sky*, 547 F.2d 486 (9th Cir. 1976), held that the Act was not unconstitutionally overbroad.

*United States v. Bramble*, 894 F.Supp. 1384, 1395 (D. Haw. 1995) held that the provisions of the Migratory Bird Treaty Act prohibiting taking, killing or possessing of migratory birds, or any part thereto, as well as the Bald and Golden Eagle Protection Act making it illegal to take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import any bald eagle or golden eagle or any part thereof, are valid exercises of Congress's power under the Commerce Clause because the birds covered by the act travel interstate.

In *United States v. Lundquist*, 932 F.Supp. 1237 (D. Or. 1996), the defendant was charged with violations of Bald and Golden Eagle Protection Act. The court ruled that the Act's limitation on possession of eagle parts did not violate the defendant's right to free exercise of religion under Religious Freedom Restoration Act; (2) that the defendant's privacy rights were not violated by the Act; and (3) possession of eagle parts thus, was within authority of Congress to regulate pursuant to the Interstate Commerce Clause.

#### Endangered Species Act<sup>16</sup>

*Gibbs v. Babbitt*, 214 F.3d 483, 485, (4th Cir. 2000), was an action challenging the validity of a regulation limiting the taking of red wolves on private land. The court held that the regulation was valid under the Interstate Commerce Clause because it regulated economic and commercial activity, and was an integral part of an overall federal scheme to protect, preserve, and rehabilitate endangered species.

---

<sup>14</sup> Under the law applicable to the fisherman's claim---that the statute authorizing the rule encroached on state sovereignty---only the State of Rhode Island had standing to make that argument.

<sup>15</sup> 16 U.S.C. Sections 668-668d

<sup>16</sup> 16 U.S.C. Sections 1531-1544.

*Rancho Viejo, LLC v. Norton*, 323 F.3d 1062, 1063 (D.C. Cir. 2003), involved a species of toad and a real estate development company whose proposed commercial housing project had a substantial relation to interstate commerce. Accordingly, the government's regulation of the project did not violate the Interstate Commerce Clause, even though toad did not travel outside of state and the proposed development was located wholly within the state.

*United States v. Billie*, 667 F.Supp. 1485, 1486 (D. Fla. 1987) was a prosecution of a Seminole Indian for violating the Endangered Species Act. The court ruled that the Act applied to noncommercial hunting of Florida panther on Seminole Indian reservation, applicability of the Act on reservation hunting was not so vague as to prohibit prosecution of the Indian, and the Act's prohibition against taking of Florida panthers did not unconstitutionally infringe upon a Seminole Indian's right to free exercise of religion, where use of panther parts was not indispensable to Seminole religious practice.

*United States v. Hill*, 896 F. Supp. 1057 (D. Colo. 1995) ruled that Congress did not violate the Constitution when it delegated to the Secretary of the Interior power to determine what was “an endangered or threatened species,” rather than defining those terms in the Endangered Species Act.

#### Humane Slaughter Act<sup>17</sup>

*Jones v. Butz*, 374 F. Supp. 1284 (S.D.N.Y. 1974) was a Free Exercise and Establishment Clause challenge to the Act's exempting from the humane slaughter requirement livestock killed in accordance with Jewish ritual methods. The three-judge federal district court ruled that the exemption was constitutional, and the Supreme Court of the United States held that the case did not present a “substantial constitutional question.”<sup>18</sup>

#### Wild Free-Roaming Horses and Burros Act<sup>19</sup>

*Kleppe v. New Mexico*, 426 U.S. 529 (1976), was an extremely important decision by the Supreme Court of the United States. The Act protected all unbranded and unclaimed horses and burros on federal land from capture, branding, harassment and death. The New Mexico Livestock Board argued that it, not the federal government, had the power to control those animals and that the statute was unconstitutional. The Supreme Court disagreed, upholding the Act as an appropriate exercise of Congressional power.

---

<sup>17</sup> 7 U.S.C. Sections 1901-1906.

<sup>18</sup> Professor Henry Mark Holzer was counsel to the plaintiffs in this case.

<sup>19</sup> 16 U.S.C. Sections 1331-1340.

## State cases

Many challenges to animal-related legislation have been brought on the constitutional *procedural* ground of what lawyers call “void for vagueness”—meaning that the law fails to convey to a person of ordinary intelligence exactly the conduct that is proscribed. Most of those challenges have failed, while only a few have succeeded. The constitutional “vagueness” challenges that have succeeded usually benefit from the laws’ poor draftsmanship and, occasionally, unsympathetic judges.

*Substantively*, virtually all constitutional challenges to animal-related legislation have failed on the ground that the laws have been well within the established state police power, no matter what constitutional provisions were alleged to have been violated.<sup>20</sup>

One example is the Illinois Humane Care For Animals law—prohibiting a person from owning, breeding, trading, selling, shipping or receiving animals which one knows or should know are intended to be used for fighting purpose—which was held to be reasonably related to the proper governmental purpose of eliminating the evils associated with animal fighting, and thus does not violate the requirement of due process of law by exceeding the state's police power.<sup>21</sup>

Another example is Oklahoma’s prohibition of cockfighting, which did not constitute a “taking” of private property, a violation of an individual’s right to contract, or impinge on his right to travel. Nor did Washington State’s similar anti-cockfighting statute violate the Constitution’s Equal Protection Clause.

Other examples of how animal-related state laws survived constitutional challenges include presence at a cockfight, uncompensated slaughter of diseased cattle, criminalization of cockfighting, licensing, regulation of animal dealers, removal of dead animals, taxing dog owners, pound seizure, anti-cruelty law, destruction of diseased horses), regulation of dogs, “Pooper Scooper” law), destruction of dogs running at large).

Just as federal and state animal-related statutes have survived constitutional challenges, so too have municipal laws.

---

<sup>20</sup> Exceptions are cases where, for example, seizure and destruction of fighting animals, or other interference with animal ownership, without notice or a hearing, violated due process of law, and cases invoking the Cruel and Unusual Punishments Clause of the Eighth Amendment. In one case, the court ruled that no notice or opportunity to be heard was necessary when two policemen killed a cow they believed to be diseased.

<sup>21</sup> The unsuccessful constitutional challenge was brought by and association of game fowl breeders.

### Municipal cases

In *Zageris v. City of Whitehall*, 72 Ohio App. 3d 178; 594 N.E.2d 129 (1991), a city ordinance provided: “(a) No person shall keep or harbor more than three dogs, excluding puppies less than four months old, in any single family dwelling, or in any separate suite in a two-family dwelling or apartment dwelling, within this City. The terms ‘dwelling’ and ‘suite’, as used in this section, include the parcel of land upon which the building containing the dwelling or suite is located, and also all out-buildings located on that parcel of land. (b) Whoever violates this section is guilty of a misdemeanor of the fourth degree.”

The statute was upheld against constitutional challenge: “An enactment such as Section 505.13 falls within the police powers of a legislative body if it has a real and substantial relation to the public health, safety, morals or general welfare of the public and is neither unreasonable nor arbitrary. \* \* \* As stated in [the] *Downing* [case], the regulation of dogs falls within the legitimate range of police power. The present ordinance represents a legislative determination that more than three grown dogs in any single-family dwelling unit or in any separate suite in a two-family or apartment dwelling is a detriment to the general welfare of the public.” \* \* \* The ordinance presently in dispute does bear a real and substantial relation to the general welfare of the community.” (See also *Village of Carpentersville v. Fiala*, 98 Ill. App.3d 1005 (1981), *Village of Jefferson v. Mirando*. 101 Ohio Misc.2d 1 (1999)).

*Kovar v. City of Cleveland*, 102 N.E.2d 472 (1951), involved the reprehensible practice of “pound seizure.” A challenge was made to Section 2911-3 of the Municipal Code of the City of Cleveland, alleging that it did not empower the dog warden to deliver unredeemed impounded stray dogs to hospitals or laboratories for experimental purposes, and that any attempt to do so was without authority and constituted a gross abuse of discretion by such public officer.

According to the court, “[t]his section of the General Code of Ohio is a part of Title 12 dealing with Municipal Corporations, and is found in Division II ‘General Powers, Chapter 1, Enumerated Powers.’ This section directly authorizes a municipal corporation [i.e., the City of Cleveland] to regulate and prohibit the running at large of dogs and provide against the injury and annoyance therefrom, and to authorize the disposition of them when running at large, contrary to the provision of any ordinance.” The court continued: “Both by its constitutional right of home rule and by the powers conferred upon municipal corporations by § 3633 GC, the City of Cleveland has the right, in the interest of the safety and health of its citizens, to provide that no dog should be permitted to run at large unless muzzled and to provide that any dog found at large unmuzzled should be impounded. The City has the right to impound unmuzzled dogs even though they may have been registered under the provisions of the General Code of Ohio dealing with that subject hereinabove referred to.” As to sale of impounded dogs to laboratories and hospitals, “[i]f the City Council desires to define more

specifically the means of disposing of dogs impounded it is their duty to do so. Such matter is for the consideration of the City Council and not the courts.”

*Greater Chicago Combine and Center, Inc. v. City of Chicago*, 2004 U.S. Dist. LEXIS 25706 (2004) involved a Chicago ordinance that made it unlawful to “import, sell, own, keep or otherwise possess any live pigeon” in any residential district within the City.

A homing pigeon organization challenged the ordinance on state and federal constitutional grounds: exceeding the City’s home rule and police power authority, equal protection, and due process.

The City of Chicago argued that the ordinance was enacted in order to address residential concerns about noise, smell, and droppings—in other words, concerns within the City’s police power to legislate on matters of the public health, safety and welfare. Especially since pigeons are known to carry the histoplasmosis disease. (One could add morals, in the sense that keeping pigeons could be considered cruel.)

The ordinance was upheld.

*Humane Society-Western Region v. Snohomish County*, Slip Copy, 2007 WL 2404619 (2007) dealt with a county code that established a durational requirement for how long shelters could retain animals, and imposed certain standards regarding repetitive dog barking.

Essentially, the shelters raised a federal due process claim, which the court rejected because it found the county was acting constitutionally within its police powers in legislating for the public health, safety and welfare.

*City of Akron ex rel. Christine Resch v. City of Akron*, 159 Ohio App.3d 673 (2005) addressed a city ordinance that criminalized allowing cats to run at large and authorized animal control to impound them.

The ordinance had been enacted because of cat-caused problems such as scratched automobiles, public defecation and urination (even using children’s sand boxes), and other property damage.

Federal due process and equal protection challenges were rejected for the now-familiar reason that legislation of this sort is well within the municipality’s police powers.

*Rhoades v. City of Battle Ground*, 115 Wash. App. 752 (2002) presented the question of whether a prohibition of exotic animals within the city limits was constitutional.

The predictable equal protection and due process challenges were made. They and other arguments failed because the city had a right (indeed, a duty) to protect its citizens from the dangers posed by exotic animals.

*Muehlieb v. City of Philadelphia*, 574 A.2d 1208 (1990) is an important case for two reasons.

A provision of the Pennsylvania Department of Agriculture's Dog Law limited to fifty the number of dogs that could be kept on any one property during a calendar year.

The City of Philadelphia's Animal Control Law limited the number of dogs at a residential dwelling to twelve dogs. It had been enacted to protect the health and safety of the residents of the City, and to abate nuisances.

Muehlieb had twenty dogs, which would have been legal under the state provision, but not the City's ordinance. Thus the question was whether the state "fifty" dog statute "preempted" the city ordinance.

The court's answer was that it did not. No intention was found in the state legislation to prevent cities from dealing with its own dog problems, especially since the state law had been enacted to protect dogs and the city ordinance was aimed at protecting humans from dog-created nuisances.

Thus, not only are dog limitations constitutional, but dog-related legislation is allowed to coexist at different levels of government so long as the "higher" level does not manifest a clear intent to "preempt" the "lower" levels from occupying the same area of law.

*Hannan v. City of Minneapolis*, 623 N.W.2d 281 (2001), is another case that presented a preemption issue. The City Code of Ordinances contained "dangerous" and "potentially dangerous" animal provisions. A notice of destruction was issued for plaintiff's dog because of its behavior. In addition to making constitutional arguments which were rejected, plaintiff claimed that the Minneapolis Code provision was preempted by a state statute. The court disagreed, and precisely stated the core principle of preemption: "Local regulations will be preempted when the legislature has fully and completely covered the subject matter, clearly indicated that the subject matter is solely of state concern or the subject matter is of such a nature that local regulation would have unreasonably adverse effects on the general populace."

## Summary

Congress has prohibited hunting animals from the air, regulated animal performances, limited the number of lobsters that can be taken, protected eagles, shielded endangered and threatened species, enforced humane slaughter methods, exerted control over wild horses and burrows—and all constitutional challenges against this legislation has failed.

States have legislated concerning animals on a variety of topics: fighting, licensing, taxation, regulation of dealers, public sanitation, running at large, number and breed restrictions—and in case after case the statutes have been upheld against substantive constitutional challenges.

Municipalities have enacted ordinances dealing with the number of animals that can be owned, the areas they can be kept, the species and breeds they can be; the impounding of animals and how they are to be disposed of; the possession of dangerous and exotic animals; the rules by which shelters must operate—and, just as with state statutes, these and similar municipal ordinances have been consistently upheld against substantive constitutional challenges.

Moreover, not only have states and municipalities each enacted animal protection legislation, but under the constitutional preemption doctrine in virtually all cases the courts have allowed the state statutes and municipal ordinances to coexist—thus providing two layers of laws benefiting animals.

The meaning of the federal, state and municipal laws just surveyed is unmistakable: *If anti-commercial retail sales laws serve the public health, safety, welfare or morals, they will survive constitutional scrutiny.*

## 2.

### **Congress and the prohibition of sales of dogs and cats**

Congress enacted the Animal Welfare Act<sup>22</sup> in 1966<sup>23</sup> with the initial, narrow aim of regulating and licensing animals used in science and research.<sup>24</sup> Specifically, the AWA regulates, “who may possess or sell certain animals and the living conditions under which the animals must be kept.”<sup>25</sup>

Since its enactment, the AWA’s scope has been considerably expanded through amendments, which address pet protection and other subjects.<sup>26</sup>

The AWA’s provisions that affect the breeding and sale of dogs—which are in no sense intended to be, or are, anti-breeding or anti-overpopulation—authorize the Secretary of Agriculture to “promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers . . . .” The act also requires the Secretary to “promulgate standards to govern the transportation in commerce, and the handling, care, and treatment in connection therewith. . . .” The devil is, of course, in the details—more specifically in the *regulations* promulgated by the Secretary to fill out the broad, even vague grant of power delegated by the Act itself. This is a major reason that a stand-alone statute, such as ISAR’s proposed Model Statute, is necessary.

The AWA’s definition of “animal” makes the act applicable to any warm-blooded animal kept as a pet, and thus includes dogs and cats.

The act requires the licensing of “dealers,” defined as “any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or . . . whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes.”<sup>27</sup>

Importantly, the statutory term “dealer” encompasses most commercial dog but not cat breeders, thus subjecting dealers, at least in theory, to the AWA’s regulations, licensing requirements, penalty provisions, and also inspection regimen which is supposed to be conducted by the USDA.<sup>28</sup> (The government’s Animal Care Report a few years ago listed over 9,200 regulated breeder facilities, but only 102 inspectors to conduct the statutorily-mandated inspections.)

---

<sup>22</sup> 7 U.S.C. Sec. 2131-59 (2006).

<sup>23</sup> *Laws that Protect Dogs in Puppy Mills*, American Society for the Prevention of Cruelty to Animals (ASPCA), available at <http://www.aspc.org/>.

<sup>24</sup> David Farve, *Overview of the U.S. Animal Welfare Act*, The Legal and Historical Animal Center, May 2002, available at <http://www.animallaw.info>.

<sup>25</sup> *Id.* (Emphasis added.)

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

<sup>27</sup> 7 U.S.C. Sec. 2132 (2006).

<sup>28</sup> *Laws that Protect Dogs in Puppy Mills*, ASPCA, available at <http://www.aspc.org/>.

However, in an unfortunate loophole which ISAR's Model Statute plugs, *the AWA "dealer" definition exempts retail pet stores* (i.e., ISAR's "commercial retail sales outlets"), breeders who do not gross more than \$500.00 annually from the sale of animals, *breeders who sell directly to the public, and breeders who sell animals online.*<sup>29</sup> These loophole exemptions within the AWA<sup>30</sup> allow some breeders to avoid regulation altogether.

To its credit, some years ago the Doris Day Animal League filed a petition with the Department of Agriculture seeking to close this loophole by changing the definition "retail pet store" to include "non-residential business establishments used primarily for the sale of pets to the ultimate consumer." Ultimately, the League's petition was unsuccessful and breeders who sell directly to the public or gross less than \$500.00 annually from the sale of animals remain exempt from the AWA's provisions.<sup>31</sup>

Effectuating the mandated and crucially important licensing requirements, penalty provisions, and inspection regimen already provided for in the AWA are problematic at best. Inspections to ensure breeders are not violating animal care standards have never been a priority for the USDA.<sup>32</sup> Worse, too many breeders fail even to apply for a license, allowing them to operate their business under the USDA's radar and thus avoid inspections altogether.<sup>33</sup>

In sum, as well intentioned as the AWA may have been in its conception, and as marginally useful as some of its amendments may be, insofar as the breeding and commercial retail sale of dogs is concerned the Act falls far short. For that reason, ISAR believes that the purported federal regulation of the retail sale of dogs must be severed from the AWA, and embodied in a stand-alone statute aimed at the specific abuses from which these animals suffer at the commercial retail sales level.

In 2008, Congress enacted the Farm Bill,<sup>34</sup> the second federal statute affecting puppy mills and breeders.<sup>35</sup> The bill was in response to the influx of sick imported puppies that are not subject to the AWA regulations requiring humane

---

<sup>29</sup> *Id.*

<sup>30</sup> Robyn F. Katz, *Detailed Discussion of Commercial Breeders and Puppy Mills*, The Legal and Historical Animal Center, May 6, 2009, available at <http://www.animallaw.info/articles/>; *Laws that Protect Dogs in Puppy Mills*, ASPCA, available at <http://www.aspc.org/>.

<sup>31</sup> *Doris Day Animal League v. Veneman*, 315 F.3d 297 (D.C. Cir. 2003).

<sup>32</sup> Lisa Acho Remorenko, *Doggie Danger: Oprah Exposes Puppy Mills*, Santa Barbara Independent (Cal.), Apr. 11, 2008, available at <http://www.independent.com/>.

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

<sup>34</sup> In 1949, the original Farm Bill authorized mandatory commodity programs. Any changes (e.g., H.R. 6124, the 2008 Farm Bill) remain in effect for approximately four to six years, until Congress specifies the next rewrite.

<sup>35</sup> *Laws that Protect Dogs in Puppy Mills*, ASPCA, available at <http://www.aspc.org/>.

treatment.<sup>36</sup> These foreign puppies, often as a result of the abuse they suffer in offshore puppy mills potentially carry diseases that could harm humans and domestic animals.<sup>37</sup> Specifically, the Farm Bill bans the importation of puppy mill puppies less than six months old for the purpose of resale.<sup>38</sup>

A third federal statute, the Puppy Uniform Protection Statute (PUPS) was introduced in the House by Representatives Sam Farr (D-Cal.), Jim Gerlach (R-Pa.), Lois Capps (D-Cal.) and Terry Everett (R-Ala.). A companion bill was introduced in the Senate by Sen. Richard Durbin (D-Ill.) in September 2008, all in an effort to regulate commercial breeders.<sup>39</sup>

PUPS is also known as “Baby’s Bill” so named after the three-legged Bichon Frise who somehow survived nine years in a puppy mill.<sup>40</sup>

The proposed legislation intended to amend the Animal Welfare Act by defining “retail pet store” as a person that: (1) sells an animal directly to the public for use as a pet; and (2) does not breed or raise more than 50 dogs for use as pets during any on-year period.”<sup>41</sup> The bill died in committee.

However, in February 2013 United States Senators Dick Durbin (D-Ill.) and David Vitter (R-La.) introduced the “Puppy Uniform Protection and Safety Act.” It seeks to close an Animal Welfare Act loophole that has allowed large-scale online puppy breeders to skirt regulations and safety inspections. The measure also has a bipartisan group of sponsors in the House.

In support of his bill, Durbin said that “the media regularly reports stories about dogs rescued from substandard facilities -- where dogs are housed in stacked wire cages and seriously ill and injured dogs are routinely denied access to veterinary care. Online dog sales have contributed to the rise of these sad cases. This bipartisan bill requires breeders who sell more than 50 dogs a year directly to the public to obtain a license from the USDA and ensures that the dogs receive proper care.”

Although it is a small step in the right direction, the bill as drawn, just as its predecessors, is inadequate to deal with the serious commercial retail sales outlet problem that is addressed in ISAR’s Model Statute.

---

<sup>36</sup> Puppies from foreign countries are not subject to the standards of care established in U.S. regulations, such as the Animal Welfare Act, prior to their arrival in this country. But see footnote 32, above.

<sup>37</sup> *Id.*

<sup>38</sup> *Federal Lawmakers Introduce Bill to Crack Down on Abusive Puppy Mills*, HSUS, Sep. 19, 2008, available at <http://www.humanesociety.org/pets/>. See “Links to Statutes/Bills” document #2, Farm Bill. Text is available online at [http://www.usda.gov/documents/Bill\\_6124.pdf?class](http://www.usda.gov/documents/Bill_6124.pdf?class).

<sup>39</sup> *Federal Lawmakers Introduce Bill to Crack Down on Abusive Puppy Mills*, HSUS, Sep. 19, 2008, available at <http://www.humanesociety.org/pets/>.

<sup>40</sup> *About Baby, A Rare Breed of Love*, available at <http://www.ararebreedoflove.com/>.

<sup>41</sup> H.B. 6949, 110th Cong. (2008) <http://thomas.loc.gov/> (last visited May 6, 2009).

Because of Congress's failure to regulate, let alone prohibit, commercial retail sales of dogs and cats to any significant extent, let alone successfully, some state legislatures have been no longer content to stand by while commercial retail sales outlets stain their states' reputations. Recently, some states have been forced to take matters into their own hands.

### 3.

#### **States and the prohibition of sales of dogs and cats.**<sup>42</sup>

Several years ago, HSUS listed twenty-eight states with general “puppy mill” legislation that contains varying definitions of kennels, pet animal facilities, breeders, retail dealers, and outlines licensing and inspection regulations.<sup>43</sup> Unfortunately, but typically, several states provide exemptions for breeders, which allow them to operate unlicensed and thus unregulated.<sup>44</sup>

Nineteen states require inspections of breeding facilities.<sup>45</sup> Inspection requirements include a wide range of time-frames and conditions. For example, from as infrequently as every three years to as frequently as every six months, and from “only announced” inspections to “upon complaint” unannounced inspections.<sup>46</sup>

Just as the inspection requirements vary, so do the regulatory agencies.<sup>47</sup> Agencies with real or supposed oversight of dog breeders include: County Board of Supervisors, State Agricultural Commission, Town Clerk, Department of Natural Resources and Environmental Control, State Animal Health Department, Police Commissioner, County Animal Control, Sheriff’s Department, County Auditor, and the Environmental Management Office.<sup>48</sup>

A few states have passed explicit legislation regulating puppy mills by limiting the number of breeding dogs a facility can maintain: Louisiana (75), Virginia (50) and Washington (50).<sup>49</sup> An additional ten states have puppy mill legislation pending.<sup>50</sup>

In 2008, Virginia took the lead in puppy mill legislation with the passage of H.B. 538 limiting commercial dog breeders to no more than 50 dogs over the age of one year at a time.<sup>51</sup> Breeders may be exempt from the 50 dogs over the age of

---

<sup>42</sup> Part of this chapter is drawn from ISAR’s Model Anti-Breeding Monograph. Though focused on dogs, the situation of cats is regrettably similar.

<sup>43</sup> *Puppy Mill Laws: Where Does Your State Stand?*, HSUS, available at [http://www.humanesociety.org/news/press\\_releases/2012/03/hsus\\_puppy\\_mill\\_state\\_ranking\\_031212.html#.UuqHaT1dXEO](http://www.humanesociety.org/news/press_releases/2012/03/hsus_puppy_mill_state_ranking_031212.html#.UuqHaT1dXEO)

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *State Legislation*, HSUS, available at [http://www.humanesociety.org/about/departments/legislation/state\\_legislation.html](http://www.humanesociety.org/about/departments/legislation/state_legislation.html).

<sup>50</sup> *Puppy Mill Laws: Where Does Your State Stand?*, HSUS available at [http://www.humanesociety.org/news/press\\_releases/2012/03/hsus\\_puppy\\_mill\\_state\\_ranking\\_031212.html#.UuqHaT1dXEO](http://www.humanesociety.org/news/press_releases/2012/03/hsus_puppy_mill_state_ranking_031212.html#.UuqHaT1dXEO).

<sup>51</sup> H.B. 538, Gen. Assem., Reg. Sess. (Va. 2008) <http://leg1.state.va.us/> (last visited May 6, 2009); *Bill to Protect Man’s Best Friend Becomes Law*, Puppy Mill Dog’s Voice, Apr. 23, 2008, available at <http://www.puppymilldogsvoice.org/>.

one year limit if a higher number of dogs is approved by a local ordinance after a public hearing.<sup>52</sup>

Virginia defines a commercial breeder as a person who maintains 30 or more adult female dogs for the primary purpose of selling their offspring.<sup>53</sup> Also provided in the law are requirements for annual certifications by a licensed veterinarian prior to breeding, inspections by animal control officers, maintenance of records for sales, breeding history and veterinarian care. Under the new law, commercial breeders in violation can be fined \$2,500 or face up to 12 months in jail.<sup>54</sup>

Virginia's law also requires pet stores to purchase dogs only from USDA licensed dealers or persons.<sup>55</sup>

In 2008, Louisiana enacted H.B. 1193, which limits breeder operations to no more than 75 breeder dogs over the age of one year.<sup>56</sup> The bill also includes license fees for individuals or businesses that breed five or more dogs for retail sale.<sup>57</sup> Penalties for violations include a fine of not more than \$500 or imprisonment for not more than 6 months.<sup>58</sup>

Pennsylvania became the third state in 2008 to enact puppy mill legislation. H.B. 2525 specifies kennel cage size, temperature, and flooring requirements; outlines licensing requirements; and mandates exercise and bi-annual veterinarian examinations.<sup>59</sup> The statute also calls for the establishment of a Canine Health Board for the purpose of establishing standards to provide for the dogs' welfare and a Dog Law Board to advise in the administration of the Act.<sup>60</sup> Violations can lead to \$1,000 fine or up to a year of imprisonment.<sup>61</sup>

In 2009, Indiana adopted legislation regulating puppy mills. The new law which takes effect in 2010 does not limit the number of breeding dogs a facility can

---

<sup>52</sup> H.B. 538, Gen. Assem., Reg. Sess. (Va. 2008); Robyn F. Katz, *Detailed Discussion of Commercial Breeders and Puppy Mills*, The Legal and Historical Animal Center, available at <http://www.animallaw.info/articles/>.

<sup>53</sup> H.B. 538, Gen. Assem., Reg. Sess. (Va. 2008).

<sup>54</sup> H.B. 538, Gen. Assem., Reg. Sess. (Va. 2008); *Bill to Protect Man's Best Friend Becomes Law*, Puppy Mill Dog's Voice, Apr. 23, 2008, available at <http://www.pupppymilldogsvoice.org/>.

<sup>55</sup> *Id.*

<sup>56</sup> H.B. 1193, 2008 Leg., Reg. Sess. (La. 2008) <http://www.legis.state.la.us/>.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> H.B. 2525, Gen. Assem., Reg. Sess. (Pa. 2008) <http://www.legis.state.pa.us/>; *PA's New Dog Law Provides Better Protections for 'Man's Best Friend,' Says Gov. Rendell During Ceremonial Bill Signing*, Pennsylvania Dog Law Action, available at <http://www.farmshow.state.pa.us/PressReleases.aspx?PRID=194>.

<sup>60</sup> H.B. 2525, Gen. Assem., Reg. Sess. (Pa. 2008) <http://www.legis.state.pa.us/>; *Puppy Mills*, Main Line Animal Rescue, available at <http://www.mainlinerescue.com/>.

<sup>61</sup> H.B. 2525, Gen. Assem., Reg. Sess. (Pa. 2008) <http://www.legis.state.pa.us/>.

maintain, but does set a minimum standard of care for dogs and requires breeders to pay an annual registration fee.<sup>62</sup>

Oregon and Washington have enacted puppy mill legislation limiting the number of breeding dogs a breeder can maintain. Oregon's legislation limits large scale breeding facilities to 50 dogs; requires minimum care for housing and exercise; and requires pet stores to provide buyers with information concerning the dog's place of origin, health history and registry information.<sup>63</sup> The new legislation prohibits commercial dog breeders from keeping more than 40 breeding dogs over the age of one year; requires a veterinarian to certify female dogs are in suitable health for breeding; requires commercial dog breeders to keep records; and allows for the inspection of commercial dog breeders.<sup>64</sup>

Of states considering puppy mill legislation, the definition of a breeder differs. Various states allow a maximum of from 20 to 50 breeding dogs.<sup>65</sup> Some states such as Illinois, Massachusetts and Texas list explicit kennel requirements for wire flooring, temperature control and ventilation.<sup>66</sup> Texas requires daily exercise periods for dogs kept by breeders.<sup>67</sup>

While there has been success obtaining some puppy mill legislation in Indiana, Louisiana, Maine, Oregon, Pennsylvania, Tennessee, Virginia and Washington, recently introduced bills in seven other states failed to be enacted.<sup>68</sup>

State legislation even merely regulating breeders, let alone putting them out of business, has failed for a variety of reasons. For example, legislation introduced in Minnesota met resistance from veterinary groups, hobby breeders, and cruelty investigators (!).<sup>69</sup>

---

<sup>62</sup> *Governor Signs Bills on Teen Drivers, Puppy Mills*, WTHR (Ind.), May 7, 2009, available at <http://www.wthr.com/>. See "Links to Statutes/Bills" document #4, IN House Act No. 1468. Available online at <http://www.in.gov/>.

<sup>63</sup> *Oregon Senate Votes to Crack Down on Abusive Puppy Mills*, HSUS, available at [http://www.humanesociety.org/news/press\\_releases/2009/06/oregon\\_senate\\_votes\\_puppy\\_mills\\_060209.html](http://www.humanesociety.org/news/press_releases/2009/06/oregon_senate_votes_puppy_mills_060209.html).

<sup>64</sup> H.B. 2843, 79<sup>th</sup> Leg., 1<sup>st</sup> Sess. (W. Va. 2009) <http://www.legis.state.wv.us/>.

<sup>65</sup> *State Legislation*, HSUS, available at [http://www.humanesociety.org/about/departments/legislation/state\\_legislation.html](http://www.humanesociety.org/about/departments/legislation/state_legislation.html).

<sup>66</sup> H.B. 198, 184<sup>th</sup> Gen. Ct., Reg. Sess. (Mass. 2009); Nicole Sica, *Puppy Mill Bill Introduced in Texas by State Rep. Thompson*, Examiner (N.Y.), available at <http://www.examiner.com/>; *Puppy Mill Legislation Update*, ThoughtsFurPaws, available at <http://thoughtsfurpaws.com/dogs/puppy-mill-legislation-update/>.

<sup>67</sup> H.B. 2470, 2009 Leg., 75<sup>th</sup> Sess. (Or. 2009) <http://landru.leg.state.or.us/>; *Indiana Puppy Mill Bill Passes*, Animal Law Coalition, available at <http://www.animallawcoalition.com/>; *Puppy Mill Bill Introduced in Texas by State Rep. Thompson*, Examiner (N.Y.), Mar. 13, 2009, available at <http://www.examiner.com/>.

<sup>68</sup> *State Legislation*, HSUS, available at [http://www.humanesociety.org/about/departments/legislation/state\\_legislation.html](http://www.humanesociety.org/about/departments/legislation/state_legislation.html).

<sup>69</sup> Beth Walton, *Animal Activists Target Puppy Mills Across the State*, City Pages, Jan. 14, 2009, available at <http://www.citypages.com/>.

While the laudable goal of these state efforts to regulate puppy mills may have been motivated by concern about the inhumane treatment of the living machines that are prisoners of these enterprises, there have consistently been two fundamental problems.

The first, of course, is that every one of these statutes, those enacted and proposed, have been satisfied to *regulate* rather than *abolish* the mass commercial breeding of dogs. This is exactly the problem ISAR's Model Statute seeks to eliminate through *prohibition*.

ISAR categorically rejects the premise that soft *regulation* of that dirty business is a step in the direction of ultimate abolition, because the existing and proposed statutes contain so many exemptions, and the breeders so easily escape surveillance and compliance, that the laws are of little, if any, effect. Indeed, they are counter-productive, because under the camouflage of regulation, of appearing to have the factory-like mass breeding "under control," the politicians and too many of the public are lulled into the false sense of security that nothing is "really wrong."

ISAR's extensive research into this subject has found no attempt on a state level to ban entirely the business of commercial dog breeding—which is our ultimate goal. *As it is the goal of our Model Statute regarding commercial retail sale of dogs and cats.*

It is a sad reality that many individuals and families when deciding to bring a pet into their home think first, and often only, of pet stores or other commercial retail sales outlets as the places to acquire a dog or a cat.<sup>70</sup> These commercial retail sales outlets, whether small local shops or superstores, vary widely in the sources of their dogs. Once the animals arrive at the stores, their quality of onsite treatment, housing and living conditions similarly vary.

Current state laws regarding the commercial retail sale of dogs and cats differ greatly in terms of coverage and enforcement. Many states either have no laws regulating commercial retail sales outlets, or laws that are woefully inadequate.<sup>71</sup> *At best—or worst!*—they merely regulate, but do not prohibit.

Of those states that have regulations, several provide only the most basic kennel restrictions and enforcement guidelines. Some states have statutes dealing only with the administration and collection of licensing fees, with no specific standards as to treatment, housing, transportation, living conditions and sale of dogs and cats.

---

<sup>70</sup> Their choices of a pet store is all the more regrettable when one realizes that shelters and rescue organizations are overflowing with dogs and cats that need a home, even pure bred animals.

<sup>71</sup> Ashley Duncan, *Detailed Discussion of Retail Pet Stores*, Animal Legal & Historical Center, Aug. 2006, available at <http://www.animallaw.info/articles/>.

While animal shelters generally focus primarily on the adoption of local, and perhaps regional, dogs and cats, commercial retail sales outlets regularly receive their animals from out-of-state—even animals who have been transported in, and are part of, interstate commerce. Even dogs which have been transported internationally.

The latter kind of long-distance, high-density travel is extremely stressful on dogs and cats, and usually leads to a myriad of health problems. Death from stress, respiratory complications, and other maladies is common. Shippers, dealers and brokers of these dogs and cats blame veterinarians or owners, but never themselves.<sup>72</sup> In an effort to deal with these problems, some patrons of commercial retail sales outlets have sought tighter restrictions to protect the health of these dogs during travel, which is their most susceptible period.<sup>73</sup> However, these calls for reform have been met with indifference, even resistance by commercial retail sales outlets. Again, reform has not come, nor will it ever come, voluntarily. It must come through coercive laws.

Many states require commercial retail sales outlets to record basic data relating to individual dogs, such as the dates of acquisition and sale of each animal, the animals' identification numbers, the breeder's name and contact information. Also, the purchaser's name and contact information.<sup>74</sup> Generally, the commercial retail sales outlets must keep such information on file for at least one year to facilitate inspections.

The level of specificity in statutory language can make a substantial difference in how protective a statute really is. States like California provide extremely specific regulations as to how animals must be housed and treated while resident in commercial retail sales outlets.

Other states, such as Connecticut, require only that dogs be treated “humanely,” with no further definition. Commercial retail sales outlets themselves have a very different perception from the general public as to what constitutes humane treatment. Some states, such as Maryland, barely provide any protection at all, outside of prohibiting “cruel” treatment. Indiana, in fact, has actually repealed laws concerning licensing pet stores and kennels, retaining language allowing only for taxation of such facilities.

---

<sup>72</sup> Pete Keesling, *Readers Respond to “Healthy Pets” Legislation*, The Gilroy Dispatch (Cal.), Oct. 1, 2008, available at [http://www.gilroydispatch.com/lifestyles/columnists/pete\\_keesling/readers-respond-to-healthy-pets-legislation/article\\_759f266f-7a79-5484-95c4-1b964c5c5680.html](http://www.gilroydispatch.com/lifestyles/columnists/pete_keesling/readers-respond-to-healthy-pets-legislation/article_759f266f-7a79-5484-95c4-1b964c5c5680.html).

<sup>73</sup> *Pet Store Customers Call for Tougher Laws*, WFSB (Conn.), available at <http://petoftheday.com/talk/archive/index.php/t-142606.html>; *Latest News*, New Jersey Consumers Against Pet Shop Abuse, available at <http://www.animalconcerns.org/resource.html?itemid=200602041613480.380967&catid=5>.

<sup>74</sup> *The Current State of Pet Shop Laws*, Born Free USA, available at [http://www.bornfreeusa.org/b4a1\\_petshoplaws\\_currentstate.php](http://www.bornfreeusa.org/b4a1_petshoplaws_currentstate.php).

Some states provide only rudimentary standards, such as certain types of enclosures. For example, New York statutes only require “adequate” amounts of food, water, and ventilation. Other states, such as Nevada, have very specific and well-defined standards, requiring specific amounts of food, water and ventilation. While commercial retail sales outlets may object to such well-defined standards as being too onerous or complex, in providing for more objective standards these statutes enable enforcement officials to more easily ascertain compliance or non-compliance.

It is shameful that the current national scourge of dog and cat overpopulation is something only some states address in their laws, and then inadequately.

Despite the unfortunate nomenclature and court decisions which liken the sale of dogs and cats to the selling of inanimate objects such as used cars, some jurisdictions have enacted so-called “Lemon Laws” to protect the purchasers of dogs and cats from commercial retail sales outlets. The well-meaning intention of these “Lemon Laws” is to prevent the sale to an unaware purchaser of animals with undisclosed health problems.

Dog Lemon Laws allow purchasers to return animals within a certain period of time (between two weeks and two years, depending on the state) for a full refund if a disease or injury is found. These Lemon Law provisions are only found in about a dozen states.<sup>75</sup> However, even in states lacking Lemon Laws, the state Attorney General or the State Department of Consumer Affairs may have jurisdiction to impose penalties on commercial retail sales outlets.<sup>76</sup>

Fines also vary wildly between states. In Rhode Island, a commercial retail sales outlet operating without a license only faces a \$50 fine for a first-time offense. However, many other states allow for fines up to \$1,000 for violations, regardless of the scope or nature of the offense.

*But Lemon Laws apply only after a commercial retail sale.*

More stringent protections on the retail level for dogs continue to be introduced in state legislatures.<sup>77</sup> In particular, protections for consumers who purchase dogs who are sick, injured, or congenitally ill, the Lemon Laws mentioned above, appear to be gaining in popularity. The introduction of such laws may put pressure on commercial retail sales outlets to not only improve conditions on their premises, but also to refrain from using suppliers, such as large-scale puppy mills, with track records of providing unhealthy animals caused by inbreeding,

---

<sup>75</sup> *Lemon Laws and Consumer Protection Laws*, Companion Animals Protection Society, available at <http://www.caps-web.org/laws-and-legislation>.

<sup>76</sup> *The Current State of Pet Shop Laws*, Born Free USA, available at [http://www.bornfreeusa.org/b4a1\\_petshoplaws\\_currentstate.php](http://www.bornfreeusa.org/b4a1_petshoplaws_currentstate.php).

<sup>77</sup> A good resource cataloging recent proposed animal welfare legislation, including pet store regulations, can be found at Born Free USA, *2008 State Legislation*, [http://www.bornfreeusa.org/b4\\_legislation.php](http://www.bornfreeusa.org/b4_legislation.php).

disease, and inhumane living conditions. Still, however, they continue to allow commercial retail sales.

*Regulation is not enough. Prohibition is essential.*

Indeed, Belgium and Croatia have placed an outright ban on the sale of dogs at commercial retail sales outlets, and the Australian state of New South Wales is considering a similar ban. The New South Wales legislation would allow the sale of dogs, cats, and other mammals only by registered breeders, shelters, and veterinarians.<sup>78</sup> At least one legislator in the country has gone so far as to propose banning commercial retail outlets altogether, due to the extensive abuse that occurs.<sup>79</sup> *This is the position of International Society for Animal Rights.*

Looking at this international movement toward increased regulation, and even prohibition, of commercial retail outlet sales of dogs, it is apparent that the United States lags behind most other countries. As that trend continues to grow, international pressure may result in state governments, and perhaps even the federal government, reexamining their own statutory schemes. *But neither the animals, nor we, can wait for that to happen. And again, regulation is not enough. Prohibition is essential.*

Unsurprisingly, there are powerful opponents to these commercial retail outlet laws, particularly pet store operators such as Petland and breeder organizations such as the American Kennel Club.<sup>80</sup>

Because in reality there is little or no legal protection for dogs and cats at the commercial retail sales outlet end of the breeder-facilitator production pipeline, only a drastic prohibition will suffice.

Many animal rights/welfare activists believe the City of West Hollywood, California, has done enacted such a prohibition.

---

<sup>78</sup> Laura Allen, *An Idea Whose Time Has Come: Banning the Sale of Dogs and Cats by Pet Stores*, Animal Law Coalition, Oct. 19, 2007, available at <http://www.animallawcoalition.com/>.

<sup>79</sup> *Id.*

<sup>80</sup> Pete Keesling, *Readers Respond to "Healthy Pets" Legislation*, The Gilroy Dispatch (Cal.), Oct. 1, 2008, available at [http://www.gilroydispatch.com/lifestyles/columnists/pete\\_keesling/readers-respond-to-healthy-pets-legislation/article\\_759f266f-7a79-5484-95c4-1b964c5c5680.html](http://www.gilroydispatch.com/lifestyles/columnists/pete_keesling/readers-respond-to-healthy-pets-legislation/article_759f266f-7a79-5484-95c4-1b964c5c5680.html)

4.

**THE WEST HOLLYWOOD ORDINANCE**

On February 16, 2010, the City of West Hollywood, California, enacted an ordinance—the first of its kind in the United States—concerning the commercial retail sale of dogs and cats within its jurisdiction.<sup>81</sup>

The West Hollywood ordinance, with ISAR’s comments in brackets and courier font, follows:

**California - West Hollywood**

**West Hollywood California.**

**Chapter 9.50 Retail Sale of Dogs and Cats**

9.50.010 Findings. [“Findings,” as noted above, are essential predicates to legislation at every level of government. They provide the explicit rationale(s) for enactment of the laws, and usually enable reviewing courts to understand why they were passed]

a. Existing state and federal laws regulate dog and cat breeders, as well as pet stores that sell dogs and cats. These include the Lockyer-Polanco-Farr Pet Protection Act (California Health and Safety Code Section 122125 et seq.); the Polanco-Lockyer Pet Breeder Warranty Act (California Health and Safety Code Section 122045 et seq.); the Pet Store Animal Care Act (California Health and Safety Code Section 122350 et seq.); and the Animal Welfare Act (“AWA”) (7 U.S.C. Section 2131 et seq.). [True, that they regulate, but these statutes do not prohibit. Moreover, they are shot full of exceptions (see the following paragraphs), which undermine their meaning, enforcement and effectiveness]

b. The Lockyer-Polanco-Farr Pet Protection Act requires pet dealers (i.e., retail sellers of more than fifty dogs or cats in the previous year; not including animal

---

<sup>81</sup> In 2006, the City of Albuquerque, New Mexico, had enacted an ordinance comprehensively *regulating* companion and other animals (<http://www.cabq.gov/pets/rules-tools/heart-ordinance/heart-ordinance-text>). However, neither sections 9-2-3-11 nor 9-2-4-4 of that ordinance, nor any others, contain an outright *prohibition* of commercial retail sales of companion animals. The Albuquerque law has been hailed by many in the animal protection movement as a groundbreaking attempt to cope with the overpopulation and related problems affecting companion animals. In certain respects the ordinance is a step forward for animal protection. In other respects, not.

shelters and humane societies) to have a permit, maintain certain health and safety standards for their animals, sell only healthy animals, and provide written spay-neuter, health, animal history and other information and disclosures to pet buyers. [So much for principle. Under this statute, what is the fate of dogs and cats number 1 to 49?] If after fifteen days from purchase a dog or cat becomes ill due to an illness that existed at the time of sale, or if within one year after purchase a dog or cat has a congenital or hereditary condition that adversely affects the health of the dog or cat, an owner is offered a refund, another puppy or kitten, or reimbursement of veterinary bills up to one hundred and fifty percent of the purchase price of the puppy or kitten. [This provision, when properly understood, underscores the overwhelmingly prevalent attitude that companion animals are fungible and that their injury or death can be recompensed by replacement or money]

c. The Pet Store Animal Care Act requires every pet store that sells live companion animals and fish to formulate a documented program consisting of routine care, preventative care, emergency care, disease control and prevention, veterinary treatment, and euthanasia. [So, it is acceptable in California for pet stores to sell companion animals. All that's needed is a "documented program"]

d. The Polanco-Lockyer Pet Breeder Warranty Act offers protection similar to that of the Lockyer-Polanco-Farr Pet Protection Act, except that it applies only to dog breeders who sold or gave away either three litters or twenty dogs in the previous year. [Ditto]

e. The Animal Welfare Act requires, among other things, the licensing of certain breeders of dogs and cats. These breeders are required to maintain minimum health, safety and welfare standards for animals in their care. The AWA is enforced by the United States Department of Agriculture ("USDA"). [A couple comments here. "Minimum" almost always becomes the "maximum." And few breeders, if any, employ even minimum standards, let alone higher ones. In reality, there is virtually no enforcement of even those minimum standards]

f. According to The Humane Society of the United States, American consumers purchase dogs and cats from pet stores that the consumers believe to be healthy and genetically sound, but in reality, the animals often face an array of health problems including communicable diseases or genetic disorders that present immediately after sale or that do not surface until several years later, all of which lead to costly veterinary bills and distress to consumers. [True]

g. A review of state and USDA inspection reports from more than one hundred breeders who sold animals to the nation's largest retail pet store chain revealed

that more than sixty percent of the inspections found serious violations of basic animal care standards, including sick or dead animals in their cages, lack of proper veterinary care, inadequate shelter from weather conditions, and dirty, unkempt cages that were too small. [True]

h. A 2005 undercover investigation of California pet stores revealed that nearly half of the pet shops visited displayed animals that showed visible signs of illness, injury, or neglect, and nearly half of the stores also sold animals showing clear symptoms of psychological distress. [True. The abuse of companion animals at every mile on the road from conception to sale is well known to the animal protection movement, and increasingly, but slowly, to the public]

i. According to The Humane Society of the United States, hundreds of thousands of dogs and cats in the United States have been housed and bred at substandard breeding facilities known as “puppy mills” or “kitten factories,” that mass-produce animals for sale to the public; and many of these animals are sold at retail in pet stores. Because of the lack of proper animal husbandry practices at these facilities, animals born and raised there are more likely to have genetic disorders and lack adequate socialization, while breeding animals utilized there are subject to inhumane housing conditions and are indiscriminately disposed of when they reach the end of their profitable breeding cycle. [True]

j. According to USDA inspection reports, some additional documented problems found at puppy mills include: (1) sanitation problems leading to infectious disease; (2) large numbers of animals overcrowded in cages; (3) lack of proper veterinary care for severe illnesses and injuries; (4) lack of protection from harsh weather conditions; and (5) lack of adequate food and water. [True]

k. While “puppy mill” puppies and “kitten factory” kittens were being sold in pet stores across the Los Angeles area during the past year, more than thirty-five thousand dogs and sixty-seven thousand cats were euthanized in Los Angeles city and county shelters. [True. Now multiply this by every state, city, county, town and village in America]

l. The homeless pet problem notwithstanding, there are many reputable dog and cat breeders who refuse to sell through pet stores and who work carefully to screen families and ensure good, lifelong matches. [True, but their companion animals are vastly outnumbered by the victims of puppy mills and kitten factories]

m. Responsible dog and cat breeders do not sell their animals to pet stores. The United Kennel Club (UKC), the second oldest all-breed registry of purebred dog pedigrees in the United States and the second largest in the world, asks all of its member breeders to agree to a code of ethics which includes a pledge not to sell

their puppies to pet stores. Similar pledges are included in codes of ethics for many breed clubs for individual breeds. [There is no way to quantify the extent of compliance with what is merely a voluntary promise]

n. Within the past year, there has been significant community activity within the City of West Hollywood and across the Los Angeles metropolitan area to convince local pet store operators to convert from puppy sales to a humane business model offering adoptable homeless dogs and cats to their customers. [Had the efforts at convincing been successful, there would have been much less need for this ordinance. So much for voluntary action]

o. Across the country, thousands of independent pet stores as well as large chains operate profitably with a business model focused on the sale of pet services and supplies and not on the sale of dogs and cats. Many of these stores collaborate with local animal sheltering and rescue organizations to offer space and support for showcasing adoptable homeless pets on their premises. [True, but there is more money to be made in the flesh trade]

p. While the City Council recognizes that not all dogs and cats retailed in pet stores are products of inhumane breeding conditions and would not classify every commercial breeder selling dogs or cats to pet stores as a “puppy mill” or “kitten factory,” it is the City Council’s belief that puppy mills and kitten factories continue to exist in part because of public demand and the sale of dogs and cats in pet stores. [True]

q. The City Council finds that the current state of retail sale of dogs and cats in pet stores in the City of West Hollywood is inconsistent with the city’s goal to be a community that cares about animal welfare. [Indeed, countenancing the sale of companion animals by pet stores is the antithesis of caring about animal welfare, let alone animal rights]

r. The City Council believes that eliminating the retail sale of dogs and cats in pet stores in the city will promote community awareness of animal welfare and, in turn, will foster a more humane environment in the city. [True]

s. The City Council believes that elimination of the retail sale of dogs and cats in pet stores in the city will also encourage pet consumers to adopt dogs and cats from shelters, thereby saving animals’ lives and reducing the cost to the public of sheltering animals. (Ord. 10-836 § 1, 2010) [True]

[What are we to make of these “Findings”? Two California and one Federal statute exhibit some concern for some companion animals, but not much.

Despite this – or perhaps because of it – countless companion animals, of whom there are far too many, suffer abuse at the hands of breeders, facilitators and commercial retail sellers] Voluntary compliance with proper ethical standards regarding the treatment of companion animals is inadequate]

9.50.020 Retail Sale of Dogs and Cats.

a. Definitions. For purposes of this chapter, the following definitions shall apply:

1. “Animal shelter” means a municipal or related public animal shelter or duly incorporated nonprofit organization devoted to the rescue, care and adoption of stray, abandoned or surrendered animals, and which does not breed animals.
2. “Cat” means an animal of the Felidae family of the order Carnivora.
3. “Certificate of source” means a document declaring the source of the dog or cat sold or transferred by the pet store. The certificate shall include the name and address of the source of the dog or cat.
4. “Dog” means an animal of the Canidae family of the order Carnivora.
5. “Existing pet store” means any pet store or pet store operator that displayed, sold, delivered, offered for sale, offered for adoption, bartered, auctioned, gave away, or otherwise transferred cats or dogs in the City of West Hollywood on the effective date of this chapter, and complied with all applicable provisions of the West Hollywood Municipal Code.
6. “Pet store” means a retail establishment open to the public and engaging in the business of offering for sale and/or selling animals at retail.
7. “Pet store operator” means a person who owns or operates a pet store, or both.
8. “Retail sale” includes display, offer for sale, offer for adoption, barter, auction, give away, or other transfer any cat or dog.

*b. Prohibition.* No *pet store* shall display, sell, deliver, offer for sale, barter, auction, give away, or otherwise transfer or dispose of dogs or cats in the City of West Hollywood on or after the effective date of the ordinance codified in this chapter. *[This is the ordinance’s core provision. Note that its prohibition extends only to “pet stores” but not to any other commercial retail seller of dogs and cats. For this reason alone, the ordinance is*

lacking. But that is not the only reason, as paragraphs "c" and "d" below make all too clear. In addition, while the ordinance's prohibition embraces sales etc. in the City of West Hollywood, it does not address the increasingly widespread practice of Internet purchase of dogs and cats—including by persons from the City of West Hollywood. Nor does the ordinance address the problem of a "give away" of a dog or cat under exigent circumstances, such as death of a custodian or birth of a litter under non-breeding circumstances]

c. Existing Pet Stores. An existing pet store may continue to display, offer for sale, offer for adoption, barter, auction, give away, or otherwise transfer cats and dogs until September 17, 2010. [In light of the ordinance's "Findings," reciting the sound reasons for the law's enactment, a six month grace period for pet stores to dispose of its "inventory" of companion animals (humanely, of course!) is much too long. Half that time would even be too long]

d. Exemptions. This [ordinance/statute] does not apply to:

1. A person or establishment that sells, delivers, offers for sale, barter, auctions, gives away, or otherwise transfers or disposes of only animals that were bred and reared on the premises of the person or establishment; [**This paragraph guts the entire ordinance.** It is bad enough that its core prohibition expressly applies only to pet stores, thus making the law inapplicable to every other commercial retail source of dogs and cats. It is far worse that the exemption contained in this paragraph can legitimately be read to expressly allow puppy farms and kitten factories to continue to operate. It is beyond irony that the ordinance affects only pet stores, but not far worse offenders]

2. A publicly operated animal control facility or animal shelter; [This language could be tighter]

3. A private, charitable, nonprofit humane society or animal rescue organization; [Ditto] or

4. A publicly operated animal control agency, nonprofit humane society, or nonprofit animal rescue organization that operates out of or in connection with a pet store. [Ditto]

e. Adoption of Shelter and Rescue Animals. Nothing in this chapter shall prevent a pet store or its owner, operator or employees from providing space and appropriate care for animals owned by a publicly operated animal control agency, nonprofit humane society, or nonprofit animal rescue agency and maintained at the pet store for the purpose of adopting those animals to the public. (Ord. 10-836 § 1, 2010) [Although this provision appears to be positively motivated, the language could be tighter]

**MODEL STATUTE PROHIBITING  
COMMERCIAL RETAIL SALE OF DOGS AND CATS**

Introduction

The Albuquerque and West Hollywood ordinances seemingly prohibiting commercial retail sale of dogs and cats and a few similar laws now proposed throughout the United States, though not ideal, reflect a conscientious attempt to deal with the worsening problems of companion animal overpopulation and its consequential adverse impact. (See ISAR's Monograph Model Statute Prohibiting Commercial Retail Sale Of Dogs.)

However, as noted in the Memorandum, there are problems with the Albuquerque and West Hollywood ordinances (and their progeny) which are not only inconsistent with the laws' avowed intentions, but actually undermine their purpose.

Lest there be any mistake about the foundational intention of ISAR's Model Statute Prohibiting Retail Sale of Dogs and Cats, we here state it categorically:

*Having concluded that overpopulation of dogs and cats and the attendant social and other problems it engenders will not be solved by mere regulation of puppy mills, kitten factories, breeders, facilitators and commercial retail sellers, ISAR supports an outright prohibition on: (1) the commercial retail sale of dogs and cats within the jurisdictions enacting the prohibition, and (2) the purchase by persons within those jurisdictions of cats or dogs bred in a manner inconsistent with the provisions of ISAR's [Anti-Breeding Statute](#) no matter where bred.*

As we have explained in the Memorandum, among the major faults of virtually all animal protection legislation is its failure to set forth explicitly the fundamental legislative premises upon which the statutes and ordinances are based. ISAR has sought to remedy that omission by making clear in our Model Statute exactly upon what premises ISAR's proposed legislation rests.

Again, lest there be any misunderstanding, having recognized that even the most stringent regulatory laws (which are few and far between) have made no noticeable impact on the companion animal overpopulation tragedy, ISAR now seeks to greatly reduce the flow of dogs and cats through the production pipeline by closing off their sales at the point of destination. Not just at pet stores, but at all commercial retail sales points.

As a matter of principle, ISAR deplors the commercial, and most other, breeding of dogs and cats. We have hoped that until the day comes when ISAR's view of how to deal with the overpopulation problem is accepted as a moral imperative, and is translated into law subject to virtually no exceptions, we would have to be content with the statutory provisions set forth in our other monographs—if they were rigorously and intelligently enforced.

Because ISAR no longer believes that outcome is likely, *as a matter of principle and policy we now support an outright prohibition on commercial retail sales of dogs and cats.*

In ISAR's monograph "[The Policy and Law of Mandatory Spay/Neuter](#)" we wrote that:

Let's assume that mandatory spay/neuter laws are enacted by every state in the United States, in the real world there will be statutory exceptions, some people will violate the law, underground breeding will proliferate, foreign sources of companion animals will attempt to fill the void.

In other words, while mandatory spay/neuter laws will surely reduce the population of unwanted companion animals in the United States (and possibly contribute to a widespread national No-Kill policy), in the harshness of the real world the problem of too many dogs and cats will continue to exist no matter what.

This sad fact must be taken into account when government considers mandatory spay/neuter legislation. Those laws must be grounded not in hope, sentiment, or a benevolent opinion of mankind, but rather in the world as we find it. A world where companion animals are too often thought of as virtually inanimate objects, property to be used and abused by humans.

It is in this context that the subject of mandatory spay/neuter must be considered.

The relevance of our earlier observation for this Model Statute is ISAR readily acknowledges that a ban on the commercial retail sale of dogs and cats will never be enacted federally, let alone by every state. But even if one was, "there will be statutory exceptions, some people will violate the law, underground breeding will proliferate, foreign sources of companion animals will attempt to fill the void."

So why has ISAR devoted substantial research and other resources to the preparation of the Monograph and Model Statute?

Primarily for two reasons, policy and practicality.

As to policy, for decades—through our legal, legislative and humane education efforts—ISAR has been working to solve the dog and cat overpopulation problem ([www.isaronline.org](http://www.isaronline.org)--etc).

This Model Statute is yet another means of advancing that policy goal.

As to practicality, we believe that a growing trend of village, town, city, county and even state West Hollywood-like statutes and ordinances, while not ending the commercial retail sale of dogs and cats, will make it more difficult for casual purchasers to acquire them. For example, despite the weaknesses in the West Hollywood ordinance examined at length in the Memorandum, the casual buyer

of a dog or cat must now go elsewhere to purchase one. If Los Angeles County had a no-sale statute, buyers would have to go elsewhere. And so on.<sup>82</sup>

### The Statute Findings

Whereas, there have been and are today within the United States countless unwanted dogs and cats lacking permanent homes, that are a major cause of dog and cat overpopulation; and

Whereas, a major source of such dogs and cats are commercial breeders who operate puppy mills and kitten factories, and other breeders; and

Whereas, the treatment of dogs and cats and their physical conditions at the hands of breeders, puppy mills, kitten factories, facilitators and commercial retail sales outlets are a matter of political, economic, legal and moral concern affecting the public, health, safety, welfare, and environment; and

Whereas, although some of the dogs and cats produced by breeders, puppy mills, kitten factories and elsewhere, and sold by facilitators and commercial retail sales outlets, may be healthy, many are not; and

Whereas, many of the dogs and cats produced by breeders, puppy mills, kitten factories and elsewhere, and sold by facilitators and commercial retail sales outlets have an adverse impact on the public health, safety, welfare, morals and environment; and

Whereas, the social impact of these dogs includes, but is not limited to, the transmission of disease, the injury and sometimes death of humans and other animals and the drain on public finances; and

Whereas, many of these animals and others from random sources are eventually euthanized by shelters, humane societies, and similar organizations; and

Whereas, euthanizing dogs and cats except for *bona fide* medical reasons is inhumane and abhorrent to the people of the United States; and

Whereas, euthanizing dogs and cats except for *bona fide* medical reasons is not an effective, economical, humane, or ethical solution to the problem of dog and cat overpopulation; and

Whereas, one of the most effective, economical, humane, and ethical solutions to the problem of dog and cat overpopulation is to substantially reduce, if not entirely eliminate, their breeding, facilitation and their commercial retail sale without which there would be substantially less breeding; and

---

<sup>82</sup> We are using the West Hollywood ordinance as the template for this Model Statute, and making such changes as are necessary to correct the deficiencies in that law, as explained at length in the Memorandum.

Whereas, such reduction or elimination, especially of commercial retail sales, will protect and advance the public health, safety, welfare, and environmental interests of its citizens; and

Whereas, existing state and federal laws merely regulate, but do not prohibit, dog and cat breeding and pet stores and other places that sell dogs and cats. These include the Lockyer-Polanco-Farr Pet Protection Act (California Health and Safety Code Section 122125 et seq.); the Polanco-Lockyer Pet Breeder Warranty Act (California Health and Safety Code Section 122045 et seq.); the Pet Store Animal Care Act (California Health and Safety Code Section 122350 et seq.); and the Animal Welfare Act (“AWA”) (7 U.S.C. Section 2131 et seq.); and

Whereas, the Albuquerque and West Hollywood ordinances are mere regulation but not prohibition; and

Whereas, the Animal Welfare Act is mere regulation but not prohibition; and

Whereas, it is commonly known that American consumers purchase dogs and cats from commercial retail sales outlets that they believe to be genetically sound and healthy, but when in reality the animals often face an array of health problems including communicable diseases or genetic disorders that become apparent immediately after sale or that do not surface until several years later, all of which lead to costly veterinary bills and distress to consumers; and

Whereas, review of state and USDA inspection reports from more than one hundred breeders who sold animals to the nation’s largest commercial retail pet store chain revealed that more than sixty percent of the inspections found serious violations of basic animal care standards, including sick or dead animals in their cages, lack of proper veterinary care, inadequate shelter from weather conditions, and dirty, unkempt cages that were too small; and

Whereas, a 2005 undercover investigation of California commercial retail sales outlets revealed that nearly half of the premises visited displayed animals that showed visible signs of illness, injury, or neglect, and nearly half of the premises also sold animals showing clear symptoms of psychological distress; and

Whereas, according to The Humane Society of the United States, hundreds of thousands of dogs and cats in the United States have been housed and bred at substandard breeding facilities known as “puppy mills” or “kitten factories” which mass-produce animals for sale to the public through commercial retail sales outlets. Because of the lack of proper animal husbandry practices at these facilities, animals born and raised there are more likely to have genetic disorders and lack adequate socialization, while breeding animals utilized there are subject to inhumane housing conditions and are indiscriminately disposed of when they reach the end of their profitable breeding cycle; and

Whereas, according to USDA inspection reports, some additional documented problems found at puppy mills include: (1) sanitation problems leading to infectious disease; (2) large numbers of animals overcrowded in cages; (3) lack of proper veterinary care for severe illnesses and injuries; (4) lack of protection

from harsh weather conditions; and (5) lack of adequate food and water, and similar problems are found at kitty factories; and

Whereas, while “puppy mill” puppies and “kitten factory” kittens were, for example, being sold in commercial retail sales outlets such as pet stores throughout the metropolitan Los Angeles area, in 2009 alone more than thirty-five thousand dogs and sixty-seven thousand cats were euthanized in city and county shelters; and

Whereas, while the legislature recognizes that not all dogs and cats sold in commercial retail outlets such as pet stores are products of inhumane breeding conditions and does not classify every commercial breeder selling dogs or cats to commercial retail sales outlets such as pet stores as a “puppy mill” or “kitten factory,” it is the legislature’s finding that puppy mills and kitten factories continue to exist in large part because of public demand and the ease with which dogs and cats can be purchased from commercial retail sales outlets such as pet stores; and

Whereas, the legislature finds that the commercial retail sale of dogs and cats in outlets such as pet stores in this jurisdiction adds to overpopulation and all of its unacceptable consequences, and is also inconsistent with the legislature’s goal of reducing the number of unwanted dogs and cats, and the principle of animal protection; and

Whereas, the legislature believes that eliminating the commercial retail sale of dogs and cats in outlets such as pet stores in this jurisdiction is a matter of political, economic, legal and moral concern affecting the public, health, safety, welfare, morals and environment and will promote humane awareness of the dog and cat overpopulation problem and, in turn, will foster a more humane environment in this jurisdiction; and

Whereas, the legislature believes also that elimination of the commercial retail sale of dogs and cats in outlets such as pet stores in this jurisdiction will also encourage consumers to adopt dogs and cats from shelters, thereby saving animals’ lives and reducing the cost to the public of sheltering animals;

NOW, THEREFORE, IT IS ENACTED AS FOLLOWS:

Commercial retail sale of dogs and cats prohibited.

A. Definitions.

For purposes of this statute the following definitions shall apply:

- “Animal shelter”: a municipal or related public animal shelter or duly incorporated nonprofit organization devoted to the rescue, care and adoption of stray, abandoned or surrendered animals, and which does not breed animals.
- “Commercial”: “relating to the buying, selling, or barter of dogs and cats in return for a monetary or non-monetary benefit.”

- “Retail”: “the selling of dogs and cats directly to purchasers.”
- “Sale”: “the transfer of ownership of dogs and cats for monetary or other consideration.”
- “Seller”: “any person or legal entity that makes a sale.”
- “Outlet”: “the place where, or through the means of which, a retail sale occurs.”
- “Purchaser”: “any person or legal entity that is the recipient of a sale.”
- “Breeder”: “any person who, or legal entity which, intentionally, recklessly or negligently causes or allows a female dog or cat to be inseminated by, respectively, a male canine or feline.”
- “Mill”: “a place where at the same time more than three female dogs or cats are kept whose sole or major purpose is producing puppies or kittens for sale.”
- “Facilitator”: “any person or legal entity, not a breeder, seller, outlet or purchaser, as defined herein, who acts as a broker, dealer, wholesaler, agent, bundler, middleman or in any similar role in the sale, purchase, trade, auction, or other transfer of the ownership of dogs or cats, whether or not such animals are in the custody or control of the facilitator at the time of transfer.”

#### B. Prohibition.

1. No commercial retail sales outlet shall consummate a sale of dogs or cats in this jurisdiction on and after the effective date of this statute.
2. On and after the effective of this statute no person within this jurisdiction shall purchase a dog or cat from outside this jurisdiction which has been bred in a mill.
3. Every purchaser of a dog or cat in accordance with Section 2 above shall produce for inspection by, and to the satisfaction of, animal control or similar authority a sworn written statement provided by the breeder and facilitator containing the following information: a) the name and address of the breeder and facilitator; b) when and where the dog or cat was bred; c) its general state of health when sold.

C. Existing commercial retail sales outlets. Commercial retail sales outlets existing as of the effective date of this statute may not consummate sales of dogs and cats more than 30 days thereafter.

#### D. Exemptions.

This statute does not apply to:

1. The sale, barter, adoption, or gift of a dog or cat made necessary because its owner can no longer care for it.
2. Surrender of a dog or cat to a publicly operated animal control facility, authorized animal shelter, or authorized private humane, rescue or similar organization.
3. Dogs or cats in the legal possession of a publicly operated animal control facility or animal shelter or duly authorized private humane, rescue or similar organization.

E. Adoption of Shelter and Rescue Animals

Nothing in this law shall prevent an outlet that does not sell dogs or cats or other mammals from providing temporary weekend space and appropriate humane and temporary care for dogs and cats legally possessed by a publicly operated animal control facility or animal shelter or duly authorized private humane, rescue or similar organization for the sole purpose of offering such dogs and cats for adoption by the public.

F. Penalties

1. First violation of this statute shall be punished by a fine of \$1,000 per dog or cat sold or purchased.
2. Each subsequent violation of this statute shall be punished by a fine of \$2,000 per dog or cat sold or purchased.
3. The fifth violation of this statute shall be punished by a fine of \$5,000 per dog or cat sold or purchased, up to six months in jail, or both.

G. Separability clause

If any provision of this statute shall be held unenforceable, the remaining parts thereof shall survive.

H. Effective date

This statute shall become effective as provided by law.

## 6.

### **COMMERCIAL RETAIL SALE OF DOGS AND CATS RAISES SERIOUS MORAL QUESTIONS**

The commercial retail sale of dogs and cats begins with their breeding of dogs in puppy mills and cats in kitten factories. As to those infernal mass-production hell-holes, in ISAR's Anti-Breeding Statute monograph we wrote:<sup>83</sup>

An elaboration of this sordid story of puppy mill and kitten factory horrors could fill many volumes, dramatizing conditions and practices which are immoral and inhumane no matter where they are found. But for them to exist in the United States, somehow seems worse.

Being in the United States, however, a nation which prides itself on possessing high standards of humaneness (at least in certain respects), much more can be done to ameliorate the plight of the countless wretched animals captive in the [companion animal] trade . . . if only our legislators and political leaders will take the matter seriously and not, as they have repeatedly, say one thing but act differently.

For example, the related issues of animal cruelty and pet adoption were brought to national attention during the 2008 presidential election. While campaigning, then-Senator Barack Obama replied to a question about animal welfare by stating, "I think how we treat our animals reflects how we treat each other. And it's very important that we have a president who is mindful of the cruelty that is perpetrated on animals."<sup>84</sup> The cited article states that in the book *A Rare Breed of Love: The True Story of Baby and the Mission She Inspired to Help Dogs Everywhere*, Obama specifically advocated pet adoption as a means to end puppy mills. However, an examination of the book itself reveals that Obama actually made only a vague, general commitment to stop animal cruelty. Obama was even photographed in front of the Lincoln Memorial holding "Baby," a puppy mill survivor . . . .<sup>85</sup>

However, despite [his] campaign promise to adopt [a] shelter dog, the President acquired a dog which had originated with a breeder. The Vice-President, despite his earlier promise to adopt a shelter dog, obtained one from a Pennsylvania puppy mill—one which had actually been cited for violations.<sup>86</sup> Unfortunately,

---

<sup>83</sup> All the following text though not blocked nor containing quotation marks is taken from that Monograph.

<sup>84</sup> *Author Who Featured Obama in a Book About Adoption Speaks Out About His Broken Pledge*, Examiner.com, available at <http://www.examiner.com/article/author-who-featured-obama-a-book-about-adoption-speaks-out-about-his-broken-pledge>

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* The USDA's Bureau of Dog Law Enforcement warned the puppy mill's owner about drainage and maintenance violations during an inspection in Jan. 2009, just after Biden had purchased the six-week-old puppy. During a follow up inspection, investigators found "the conditions had not improved."

the cynicism of these two politicians regarding the humane treatment of animals is widespread through the executive, legislative and administrative branches of the American government and undercuts efforts to deal with the blight of puppy mills.

Wayne Pacelle, president and CEO of HSUS, has correctly articulated one of the reasons why puppy mills are a blight on 21<sup>st</sup> Century America: “[I]t’s precisely because we are intelligent and powerful that we have responsibilities to these animals. They are helpless before us, and they rely on our good conscience.” Pacelle continues, “[T]he terrible thing is the inhumane treatment of these animals at the puppy mills. It’s awful. It’s contributing to the larger pet overpopulation crisis, which is resulting in over 4 million dogs and cats being killed every year.”<sup>87</sup>

No one can dispute that government has a moral and political obligation to protect *children* from harm.

At common law, before the enactment of modern statutes, it was the consistent policy of government to look after the interests of children (although the form and extent of that protection often left much to be desired). Laws protected children from their own folly and improvidence, and from abuse by adults. From the time of their birth, children were considered wards of the state. These common law principles have been enacted into statutes in every state in America. Modern child-protection laws reflect governmental humane concerns with physical and mental wellbeing, neglect, abuse, food, clothing, shelter, education, vagrancy, capacity to contract, lack of capacity to consent to sexual acts, and much more.

The principle underling all modern child protection legislation unites the cause of children’s rights with the parallel cause of animal rights, and [seeks to end] the immoral and inhumane treatment of [companion animals].

Government intervenes to prevent or remedy a child's fear, hunger, pain, suffering and abuse because children are incapable, mentally and physically, of protecting themselves from these conditions. So, too, are companion animals. Like children, they are alive but defenseless. Like children, they can experience fear, hunger, pain, suffering and abuse. Like children, government has a duty to protect them (though the line-drawing about which animals should be protected, in what manner, and to what extent continues to bedevil everyone from legislators to moral philosophers . . .).

This proposition—that government has an obligation to protect animals, at least some, in some manner, and at least to some extent—is not novel. The fact is that

---

<sup>87</sup> *Investigating Puppy Mills*, Oprah, available at <http://www.oprah.com/oprahshow/Investigating-Puppy-Mills>.

existing animal protection legislation in every state and at the federal level is an explicit recognition by government of its responsibility.

The genesis of that moral and legal responsibility, and the ensuing legislation, is not widely known.

Lewis Gompertz (1779-1865) was a founding member of the British Society for the Prevention of Cruelty to Animals (later the Royal Society for the Prevention of Cruelty to Animals), and probably the first public person in modern times to opine in the English language about the rights of animals.

In his *Moral Inquiries into the Situation of Man and of Brutes* Gompertz wrote that:

The dreadful situation of the brute creation, particularly of those which have been domesticated, claims our strictest attention.<sup>[88]</sup> \* \* \* Who can dispute the inhumanity of the sport of hunting, of pursuing a poor defenseless creature for mere amusement, till it becomes exhausted by terror and fatigue, and of then causing it to be torn to pieces by a pack of dogs? From what kind of instruction can men, and even women, imbibe such principles as these? How is it possible they can justify it? And what can their pleasure in it consist of? Is it not solely in the agony they produce to the animal? They will pretend that it is not, and try to make us believe so too, that it is merely in the pursuit. But what is the object of their pursuit? Is there any other than to torment and destroy?<sup>89</sup>

It seems that the crime of cruelty proceeds greatly from improper education. Subjects of moral inquiry are too often chased from the attention of youth, from a false idea that they are mere chimeras too difficult to enter into, that they only serve to confound us and to lead us into disputes, which never come to a conclusion; that they cause us to fall into eccentricities, and unfit us for all the offices of life, and at last drive us into downright madness.<sup>90</sup>

Forbid it that we should give assent to such tenets as these! That we should suffer for one moment our reason to be veiled by such delusions! But on the contrary let us hold fast every idea, and cherish every glimmering of such kind of knowledge, as that which shall enable us to distinguish between *right* and *wrong*, what is due to one individual—what to another.<sup>91</sup>

---

<sup>88</sup> Lewis Gompertz, *Moral Inquiries On The Situation Of Man And Brutes*, Fontwell Sussex: Centauer Press, Ltd, 1992, 22.

<sup>89</sup> Gompertz, 29.

<sup>90</sup> Gompertz, 30.

<sup>91</sup> Gompertz, 30. Emphasis in original.

Some two hundred years later, Gompertz's words eloquently remind us that cruelty to animals continues to demand a *moral inquiry*, including asking and answering questions about the consequences of dog (and other companion animal) overpopulation.

Anyone who looks closely at how animals are treated in America today cannot help being confused. Hunters cherish their hunting dogs, but kill and trap wildlife without conscience or regret. Stylish women coddle furry house pets, but think nothing of wearing the skins of animals. At animal farms and petting zoos, parents introduce their children to a world of innocence and beauty, but see no harm in exposing them to circus acts which degrade animals, and to rodeos, which brutalize them.

The law, too, is contradictory. It is legal to butcher livestock for food, but not to cause them to suffer during slaughter (although federal law contains an exception: "ritually" slaughtered cattle are allowed to suffer). It is legal to kill chickens for the pot, but not to allow fighting cocks to kill each other. Animals can be used for painful laboratory experiments, but they must be exercised and their cages must be kept clean. Kittens can be drowned, but not abandoned. Certain types of birds are protected, but others are annihilated. With a permit, one can own a falcon, and with a falcon, one can hunt rabbits; but rabbits cannot be dyed rainbow colors and sold at Easter Time.

It is not surprising that countless contradictions exist today in man's relationship to animals, because never has there been a consistent humane principle to guide him in dealing with those dependent creatures who share his planet. What is surprising is that animals have been accorded any decent treatment at all, considering the overwhelmingly dominant attitude, from the earliest of times, that animals could be used, abused, and even tormented, at the utterly capricious will of man. Absent from the history of ideas has been even a semi-plausible notion to the contrary, let alone a defensible, fully integrated theory of animal rights.

The problem of animal rights antedated Lewis Gompertz by thousands of years, and begins with the Book of Genesis<sup>92</sup>: "And God said: Let us make our image, after our likeness; and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth." Later, after the flood, "... Noah builded an altar unto the Lord; and took of every clean beast, and of every clean fowl, and offered burnt offerings on the altar, and the Lord smelled the sweet savour . . . ." <sup>93</sup> To express his gratitude, "God . . . blessed Noah and his sons and said unto them: Be fruitful, and multiply, and replenish the earth. And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, and upon all wherewith the ground teemeth, and upon the fishes

---

<sup>92</sup> Genesis 1:24-28.

<sup>93</sup> Genesis 8:20-21.

of the sea; into your hand are they delivered. Every moving thing that liveth shall be for food for you; as the green herb have I given you all.”<sup>94</sup>

In short, the view expressed by scripture was that animals were put on earth by God to be used by man.

The predominant Greek attitude, as expressed by its most influential philosopher, Aristotle, was no better: “. . . we may infer that, after the birth of animals, plants exist for their sake, and that the other animals exist for the sake of man, the tame for use and food, the wild, if not all, at least the greater part of them, for food, and for the provision of clothing and various instruments. Now if nature makes nothing incomplete . . . and nothing in vain, the inference must be that she has made all animals for the sake of man.”<sup>95</sup>

As to the attitude of the Romans, one need only recall history's bloody forerunner to today's bullfights and rodeos—the Coliseum—where no distinction was made between animal and human victims.

When pagan Rome gave way to Christianity, men may have fared better, but Christian charity was not extended to animals. Indeed, early Christian thought seems obediently to echo the Genesis thesis: animals exist merely to serve man's needs.

Hundreds of years passed, with no discernible change in attitudes toward animals. With the advent of St. Thomas Aquinas in the 1200s, the concept of animal servitude was reinforced. Aquinas, drawing on the Old Testament and on Aristotle, not surprisingly concluded that since all things are given by God to the power of man, the former's dominion over animals is complete.

Aquinas' theory of dominion says nothing, one way or the other, about the nature of the animals being dominated, but renowned Christian philosopher-mathematician Rene Descartes had a great deal to say on that subject. He held that animals were automatons—literally. He asserted that lacking a Christian “soul,” they possessed no consciousness. Lacking a consciousness, he concluded, they experienced neither pleasure nor pain. His conclusion was a convenient one: It allowed him to rationalize dissection of unanesthetized living creatures.

Although Descartes's hideous experiments purportedly were done to advance the knowledge of anatomy, they properly earn him a place in history as the Seventeenth Century soul mate of Mengele, the Nazi concentration camp doctor who experimented on human beings.

Although the existence of the dominant Genesis-Aristotle-Descartes view of animals, and the resultant lack of an appropriate theory of animal rights, is reason enough to explain more than fifteen-hundred years of man's maltreatment

---

<sup>94</sup> Genesis 9:1-3.

<sup>95</sup> Aristotle, *Politics*, Bk I, Ch. 8, Random House, 1941, 1137.

of animals, there is a related explanation: during this same period there was no appropriate theory of the rights of *man*.

From the days of the Pharaohs to the threshold of modern philosophy in the 1600s, man's status fell into one of two categories: oppressor or oppressed. The tyrants of Egypt had much in common with the despots of feudal Europe; the Hebrew slaves who built the pyramids, with the serfs who tilled their lords' estates. It is not surprising that cultures which regarded some men as other men's chattels would treat animals, at best, as plants, and, at worst, as inanimate objects. Accordingly, when man's lot improved, the lot of animals also improved, albeit very slightly.

The historical turning-point for the Rights of Man came with the 18th Century's Age of Enlightenment. It was a time of Adam Smith and laissez-faire capitalism, of John Locke, and of Thomas Jefferson's Declaration of Independence. Man was recognized, at least by some, to possess inalienable rights, among them the right to life, liberty and the pursuit of happiness. By no means had the world's ideas about liberty changed, but a fresh wind was blowing for man, one which would soon lead to the creation of a new Nation—one, as Lincoln would say nearly a century later, "conceived in liberty and dedicated to the proposition that all men are created equal." Surely, it is more than coincidence that at about the same time, thinkers like Voltaire, Rousseau, Pope, and Bentham were questioning man's maltreatment of animals.

Yet, despite these questions, for another two centuries the lot of animals did not improve noticeably even in the civilized world, because the attitudes of most people remained rooted in the ideas of Genesis, Aristotle, and Descartes.

Before change could come, these ideas had to be discarded. Although it was a long gestation, finally, in the last quarter-century, a handful of philosophers, scientists, theologians, and lawyers—among them Brigid Brophy, Andrew Linzey, Richard Ryder, Peter Singer, Gary Francione, and Steven M. Wise—have launched broadside attacks on the basic ideas which for so long have served to rationalize man's brutalization of the only other living species with whom he shares this planet.

But as important as that is, merely exposing fallacies and immoralities does not itself constitute propounding anything affirmative. Recognizing this, today's animal rights activists have begun to build that affirmative, defensible theory of animal rights.

An inevitable result of this growing inquiry into the rights of animals has been scrutiny of various aspects of the abuse of companion animals generally and of dogs [and cats] in particular—a particularly monstrous example of which are puppy mills [and kitten factories].

That scrutiny has led to some successes in society's efforts to alleviate, though not nearly eliminate, the puppy mill [and cat factory] abuse.

For example, to HSUS's great credit in recent years it conducted several investigations into U.S. puppy mills. It campaigned, and filed a class action lawsuit against, Petland, the largest retailer of dogs acquired from puppy mills.<sup>96</sup> HSUS lobbied for an amendment to the Farm Bill that bans the importation of dogs from foreign puppy mills. And numerous dogs were rescued from puppy mills throughout the country by HSUS itself, and through its efforts.<sup>97</sup>

Public awareness was also heightened through several puppy mill exposures featured on such television shows as Oprah Winfrey, featuring Main Line Animal Rescue (an organization that has rescued over 5,000 animals from puppy mills),<sup>98</sup> Animal Planet featuring Philadelphia's SPCA,<sup>99</sup> and National Geographic featuring Cesar Millan (the "Dog Whisperer").<sup>100</sup>

All well and good. But after all these good works and many others by countless people from every walk of life, the moral question remains: *By what right can humans treat companion animals—or for that matter, any animals—as if they were soulless automata, existing solely for man's pleasure?*

---

<sup>96</sup> Regrettably, as of Aug. 9, 2009, HSUS's complaint was dismissed. See *Judge Dismisses Lawsuit Against Petland and Hunte – For Now*, Mar. 21, 2009, available at <http://www.animallawcoalition.com/>.

<sup>97</sup> *Why Must Puppy Mill Regulations Raise Hackles?*, HSUS, May 6, 2009, available at <http://hsus.typepad.com/wayne/2009/05/puppy-mills.html>.

<sup>98</sup> *Investigating Puppy Mills*, Oprah.com, available at <http://www.oprah.com/>.

<sup>99</sup> *Inside a Puppy Mill*, Animal Planet, available at <http://animal.discovery.com>.

<sup>100</sup> *Inside Puppy Mills*, National Geographic, available at <http://channel.nationalgeographic.com/>. Millan is a dog trainer, TV host of the "Dog Whisperer" (seen in 80-plus countries), has received two Emmy nominations, and is a best-selling author.