ANIMAL FIGHTING PROHIBITION ENFORCEMENT ACT OF 2005

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
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ANIMAL FIGHTING PROHIBITION ENFORCEMENT ACT OF 2005

THURSDAY, MAY 18, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 11:31 a.m., in Room 2141, Rayburn House Office Building, the Honorable Howard Coble (Chairman of the Subcommittee) presiding.

Mr. COBLE. Good morning, ladies and gentlemen. We will convene the hearing. There will be a floor vote imminently, I am told, and we don't have a reporting quorum present, so Mr. Scott and I are going to give our opening statements, and then perhaps we'll be able to move along after that.

This hearing is to examine the issue of animal fighting in this country and whether Congress should take additional steps to address the issue. Animal fighting is not restricted to cockfighting, but also includes pitting dog against dog, or dogs against other animals, such as bears or wild hogs. Often small knives are attached to the animal for use in the fight.

In 1976 Congress passed a law to ban the sponsor or exhibit of animals that were moved to interstate or foreign commerce in an animal fighting venue. The law also made it illegal to transport an animal in interstate or foreign commerce for participation in an animal fighting venue.

On May 13th, 2002, Congress enacted amendments to the Animal Welfare Act. The changes made it a crime, regardless of State law, for exhibiting, sponsoring, selling, buying, transporting, delivering or receiving a bird or other animal in interstate or foreign commerce for the purpose of participation in an animal fighting venue such as cockfighting or dogfighting. For States where fighting among live birds is allowed under the law, the act only prohibited the sponsor or exhibit of a bird for fighting purposes if the person knew that that bird was moved in interstate or foreign commerce.

Currently dogfighting is prohibited in all 50 States and cockfighting is outlawed in most States under specific laws prohibiting it or general prohibitions against animal fighting. In a few States the practice is not specifically outlawed. However, general animal cruelty statutes may be interpreted to outlaw such activities. In two States cockfighting is legal. Dogfighting and cockfighting are legal in some United States territories. Although the possible fines

were increased in 2003 from $5,000 to $15,000, the possible term of imprisonment of the Animal Welfare Act dealing with animal fighting has not been updated since the original enactment in 1976.

H.R. 817, the "Animal Fighting Prohibition Enforcement Act of 2005," would establish criminal penalties under title 18, authorizing jail time of up to 2 years for violations of Federal animal fighting law, rather than the misdemeanor penalty up to 1 year which currently exists under title 7.

Supporters of this legislation believe that the increased penalties will encourage law enforcement to target animal fighting operations and discourage the promotion of animal fighting events. Because most States already have laws against animal fighting and the animal fighting industry relies on transport of animals over State lines, supporters of the bill believe a combined Federal-State approach is essential to give law enforcement officers the tools to crack down on animal fighting.

Opponents of this legislation, however, contend that it is an unnecessary infringement of States' rights. The States that choose to allow fighting among live birds should be allowed to continue these fighting venues as long as the State legislatures and voters determine it is lawful. The Federal Government does not need to enact additional legislation to combat these venues, according to the opponents.

I look forward to hearing from our distinguished panel today. And even though there's a vote on now and we still don't have a reporting quorum present, I think, Bobby, let's go ahead and we'll hear from the distinguished gentleman from Virginia, the Ranking Member, for his opening statement. Then we will briefly adjourn and go vote and return.

Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I'm pleased to join you in convening this hearing on H.R. 817, the "Animal Fighting Prohibition Enforcement Act of 2006." I'm a cosponsor of this bill, along with 226 of my House colleagues, including 28 of the 40 Members of the Judiciary Committee and 51 Members of the Senate, where an identical bill has already passed by unanimous consent. This bill has been supported by over 500 organizations and almost 400 local law enforcement agencies.

What the bill does is to modify already existing Federal law to make it a felony with a fine of up to 2 years imprisonment as opposed to the current penalties of a misdemeanor with a fine and up to 1 year of imprisonment for transporting animals involved in interstate—for transporting animals interstate for fighting. DOJ priorities mean that this is rarely a prosecution under this law because even if there is, the misdemeanor plea gets bargained, leaving many violators willing to consider this merely a potential cost of doing business.

I believe that such a violator is much more likely to think twice about risking a felony record and as much as 2 years in prison. I'm generally not in favor of more Federal criminal law enforcement in areas of traditional State jurisdiction, and not generally in favor of raising criminal penalties to entice DOJ to do its job. I prefer to direct DOJ to enforce the law and provide the resources to do so.

However, I believe a few prosecutions with felony convictions can have a major impact, and that's why I'm supporting the bill.

One of the more recent concerns regarding interstate and international transport of birds for cockfighting is the fear that it could cause the transmission of bird flu, and apparently, this has already occurred in Asia.

So, Mr. Chairman, I'd like to use the remainder of my time to show a brief video clip providing important documentation of that concern.

Mr. COBLE. Without objection.

[Videotape played.]

Mr. COBLE. I thank the gentleman. We will depart for our vote, and I implore the Members, if you can, to come back so we can mark up our four pending bills, and then we will hear from out distinguished panel.

So you all rest easy in the meantime.

[Recess.]

Mr. COBLE. Folks, I apologize for this, but this is the nature of the beast oftentimes, what oftentimes goes awry, but you all rest easy. We ought to be able to get started pretty soon.

[Pause.]

Mr. COBLE. Folks, we're doing this procedurally irregularly, but I think that's what we're going to have to do. We're just going to have to wait until a reporting quorum shows up. At that time, we will suspend and mark up. And, Mr. Lungren, if you need to go to your meeting, you may do so. We look forward to seeing you back later.

Ladies and gentlemen, we have four distinguished witnesses with us today. Our first witness is Mr. Wayne Pacelle. Am I pronouncing that correctly, Mr. Pacelle?

Mr. PACELLE. Close enough, Mr. Chairman.

Mr. COBLE. Thank you. Mr. Pacelle is the Chief Executive Officer of the Humane Society of the United States, where he began working as a Vice President of Government Affairs and Media in 1994. Prior to his work with the humane society he served as Executive Director of the Fund for Animals. Mr. Pacelle was graduated from Yale University with a dual major in history and studies in the environment.

Our second witness is Mr. Mark Pollot, the Executive Director of the Foundation for Constitutional Law, and an attorney and independent consultant on constitutional, environmental, international and public policy matters. Mr. Pollot was formerly with the Special Assistant to the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice. Mr. Pollot was graduated summa cum laude from the University of San Diego School of Law.

Our third witness is Corporal David Hunt. Corporal Hunt is an investigator with the Franklin County, Ohio Sheriff's Department Special Investigations Unit, of which he is a supervisor and lead detective for all gambling and dogfighting investigations. In 1997 and 2003, Corporal Hunt received awards of merit for his work in these fields. His investigations of illegal dogfighting have resulted in 59 arrests and over 50 convictions. Corporal Hunt attended the Sinclair Community College in Dayton, Ohio, and as the profes-

sional football players like to say, Corporal Hunt, THE Ohio State University in Columbus, Ohio.

Our final witness is Dr. Francine Bradley. Dr. Bradley has received numerous awards relating to the field of poultry health, and is a member of the Poultry Science Association's Long Range Planning Committee, the World's Poultry Science Association Executive Committee, and serves as chair of the World's Poultry Science Association Lab Station Committee. She received her BA, MS and PhD degrees from the University of California at Davis, where she currently works in the Department of Animal Science.

We are pleased to have you all with us today, and it is the custom of the Subcommittee to administer an oath to our witnesses, so if you all would please stand and raise your hands.

[Witnesses sworn.]

Mr. COBLE. Let the record show that the witnesses have responded in the affirmative, and we will start, Mr. Pacelle, with you. We need to remind you, as we have previously advised you, we operate under the 5-minute rule. When you see the amber light appear on the panel in front of you, that is your warning that you have a minute remaining. Now, after the red light comes on, we may—Mr. Scott and I may dispatch Corporal Hunt and have him take you into custody. We won't be that cruel, but when the red light appears, that is your warning to wrap it up if you would.

Mr. Pacelle, why don't you start us off?

TESTIMONY OF WAYNE PACELLE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, HUMANE SOCIETY OF THE UNITED STATES

Mr. PACELLE. Thank you, Mr. Chairman, and thank you so much for holding the hearing with Ranking Member Scott. Appreciate your bringing this issue to the attention of the Committee. Also want to thank Representative Green for introducing this legislation, and thank all of the Members of the Subcommittee who are cosponsors of this bill.

I represent the Humane Society of the United States, which is the Nation's largest animal welfare organization. Nine in a half million members and supporters in the United States, 1 of every 31 Americans, is directly associated with the HSUS. We fight to protect animals, and we work very much on the issue of animal cruelty, and I really believe that it is a universal value these days that animal cruelty is wrong and that society should do something about it. This is codified in all 50 States. There are 50 States with anti-cruelty laws that target malicious acts of animal cruelty, and it's not surprising then that all 50 States now have anti-dogfighting laws and 48 States have anti-cockfighting laws, codifying this basic notion that staged animal fights are wrong and inhumane.

In 1976 when the Congress adopted a law in the Animal Welfare Act banning the interstate transport of fighting animals, no State made dogfighting or cockfighting a felony. Now 48 States in these last 30 years have adopted felony-level penalties for dogfighting and 32 States have adopted felony-level penalties for cockfighting. The march is inexorable toward all 50 States having strong anti-cruelty laws that treat the most vicious forms of animal cruelty with felony-level penalties.

So the questions before us today are should the penalty provisions of the Federal Animal Fighting Law, which bans the interstate transport of foreign commerce in fighting animals, should they be updated to reflect the emerging national consensus that this form of animal abuse is a social ill and that people who violate our animal fighting laws should face meaningful penalties? The second question is should the Federal animal fighting law be better aligned with State animal fighting laws, given in the last 30 years, we haven't updated the jail penalties for the animal fighting law, and the States have done so to the tune of 48 of the 50 have done so.

You know, we have many controversial questions in our society about the use of animals, but animal fighting is not one of them. This is an inhumane and barbaric act, and it has very few defenders in this country. That's why you have 500 organizations supporting the legislation, you have no credible organizations opposing this legislation.

I want to make three very brief points about why we should strengthen this law, in addition to those opening remarks. One is the animal cruelty. These are staged animal fights where animals are not just suffering for a moment, sometimes they're suffering for hours. The longest ever dogfight, according to our information, lasted a full 5 hours with pit bulls attacking each other over that time. Many of the dogs die from hemorrhaging or shock, even if they're a winner in the fight, later on.

Hog-dog fights, an appalling practice where hogs have their tusks cut off. They're released in a pen, and then pit bulls are set upon the hog to attack the animal just for the titillation of the people watching. I think all of you know this is one of the cock-fighting magazines, *The Feathered Warrior*. You'll see in this magazine all sorts of ads for the knives and the ice-pick like devices called gaffes, which are affixed to all of the birds' legs to enhance the bloodletting, gouged eyes, punctured lungs, all sorts of grievous wounds inflicted on these birds.

So the animal cruelty is the most compelling argument and it's the reason that the Humane Society is primarily interested in this bill. But we cannot help but notice that these animal fighting ventures are associated with other criminal activities. Just last week there were two people murdered at a cockfight in Starr County, Texas. We've seen public corruption associated with cockfighting: Law enforcement officers in Hawaii arrested for providing a protection racket for cockfighting; the South Carolina Department of Agriculture Commissioner was providing a protection racket; and in Tennessee some of the most shocking information, two major cockfighting pits shut down this last year.

I want to read just a few excerpts to give you a flavor of what is going on in these cockfights. This is from the U.S. Attorney in the Eastern District of Tennessee from the brief filed in court. "On March 15, 2003, a cooperating witness reported observing approximately 182 cockfights at the Del Rio cockfight-pit. On average, between $2,000 and $20,000 was gambled by the spectators on each fight."

So if you take 182 cockfights with an average of $10,000, it's $1.82 million gambled at a single cockfighting derby on a single evening.

Another excerpt: "The cooperating witness observed a girl approximately 10-years-old with a stack of $100 bills gambling on several different cock fights. Vehicles were observed in the parking lot bearing license plates from North Carolina, South Carolina, Alabama, Georgia, Kentucky and Virginia." Affirming the point that this is an interstate activity. People are congregating from multiple States to engage in these criminal enterprises.

A third quick quote: "On May 17th, a cooperating witness attended the Del Rio cockfights and observed that a full capacity crowd of approximately 600 to 700 people were present at the fights."

You saw also the video about the bird flu. My testimony refers to the very real link between bird flu and cockfighting.

Just in conclusion, Mr. Chairman, the House and Senate passed felony penalties during consideration of the Farm Bill in 2002, so what Mr. Green's legislation does is simply affirms what the House and Senate already tried to do. U.S. Attorneys have told us it's tough for them to make cases with misdemeanor penalties. They want the felony level provisions. We want to provide it to them. Local law enforcement, we work with them all the time. They want this tool. You'll hear from a law enforcement officer today. We urge you to support this legislation. We're grateful for the hearing.

[The prepared statement of Mr. Pacelle follows:]

PREPARED STATEMENT OF WAYNE PACELLE

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Testimony of Wayne Pacelle
President and Chief Executive Officer
The Humane Society of the United States

May 18, 2006
Before the Subcommittee on
Crime, Terrorism, and Homeland Security

Promoting the protection of all animals
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Thank you Mr. Chairman for the opportunity to testify in support of H.R. 817, the Animal Fighting Prohibition Enforcement Act. I am Wayne Pacelle, president and CEO of The Humane Society of the United States, the nation's largest animal protection organization with 9.5 million members and constituents – one of every 31 Americans. The HSUS has worked to combat animal fighting since our organization's inception in 1954, conducting animal fighting workshops for law enforcement, publishing a manual for law enforcement personnel, and collaborating with law enforcement agencies in investigating and raiding illegal animal fights. Our investigators have been undercover at dogfights, cockfights, and hog-dog fights, documenting animal abuse, gambling, and other illegal conduct. We have worked extensively at the state and federal level in advocating for the adoption of strong anti-animal fighting laws, and we have sought funding and provided training for enforcement.

I want to thank the primary author, Representative Mark Green, along with his partners in this legislative effort, Representatives Elton Gallegly and Roscoe Bartlett. I also thank Representatives Collin Peterson, Earl Blumenauer, and Robert Andrews, who are original cosponsors of this legislation, and who, at one time or another during the past 7 years, have been authors or co-authors of bills or amendments in Congress to crack down on animal fighting activities.

H.R. 817 has 227 cosponsors – a majority of the House -- and included among the cosponsors are 28 of the 40 members of the House Committee on the Judiciary. An identical Senate companion bill, S. 382, introduced by Senator John Ensign and Arlen Specter, has 51 cosponsors and was approved by unanimous consent in April 2005. The House and Senate bills have more than 500 endorsing groups, including all major humane organizations, the American Veterinary Medical Association, the National Chicken Council, the National Coalition Against Gambling Expansion, the National Sheriffs' Association, and nearly 400 local law enforcement agencies covering all 50 states. The only organizations opposing the legislation are cockfighting, dogfighting, and hog-dog fighting organizations. No legitimate agricultural groups or law enforcement groups oppose this legislation, to our knowledge.

History of Animal Fighting Issue in Congress and Scope of Proposed Legislation

Congress first passed legislation to combat animal fighting 30 years ago. In 1976, the House overwhelmingly passed amendments to the Animal Welfare Act (7 U.S.C. 2156) to create a new section of the Act to bar any interstate transport of animals for fighting purposes. The Senate passed legislation banning interstate transportation of dogs for fighting, but did not include the anti-cockfighting language. When the matter went to conference, lawmakers retained anti-cockfighting language, but created a loophole that allowed interstate transport of fighting birds to states, territories, and countries where cockfighting was legal.

In 2002, the House and Senate approved provisions in the Farm bill to close that loophole and to ban any interstate or foreign transport of fighting animals, including birds. Both the House and the Senate also passed enforcement provisions to make any violation of

the section a felony. But when the Farm Bill went to conference – even though the animal fighting provisions in the House and Senate bills were identical -- the upgrade in the jail time was removed, and the penalties for violating the law remained as misdemeanor penalties.

Under current federal law, it already is illegal to:

1) Sponsor or exhibit an animal in an animal fighting venture if the person knows that any animal was bought, sold, delivered, transported, or received in interstate or foreign commerce for participation in the fighting venture.

2) Knowingly sell, buy, transport, deliver, or receive an animal in interstate or foreign commerce for purposes of participation in a fighting venture, regardless of the law in the destination.

3) Knowingly use the Postal Service or any interstate instrumentality to promote an animal fighting venture in the U.S. (e.g., through advertisement), unless the venture involves birds and the fight is to take place in a state that allows cockfighting. As explained on USDA's website explaining the federal animal fighting law, "In no event may the Postal Service or other interstate instrumentality be used to transport an animal for purposes of having the animal participate in a fighting venture, even if such fighting is allowed in the destination state."

Current law applies to dogfighting, cockfighting, hog-dog fights, and other fights between animals "conducted for purposes of sport, wagering, or entertainment," with an explicit exemption for activities "the primary purpose of which involves the use of one or more animals in hunting another animal or animals, such as waterfowl, bird, raccoon, or fox hunting."

H.R. 817 seeks to import the animal fighting provisions of the Animal Welfare Act and place them in Title 18, and to build on them by authorizing jail time of up to two years for violations of federal animal fighting law, and to create a new crime prohibiting interstate and foreign commerce in the primary implements used in cockfights.

Federal Animal Fighting Law is Unquestionably Constitutional

There is no question that Congress has the power to ban the interstate transport of fighting birds. Indeed, the 2002 amendments making interstate transport a misdemeanor have already been upheld in the federal courts.

Shortly after the 2002 amendments, the United Gamefowl Breeders Association (UGBA) and other cockfighting interests challenged the measure in Federal District Court in Lafayette, Louisiana, claiming among other things that the measure exceeded Congress' authority under the Commerce Clause. The cockfighters lost on every single claim they raised.

In an extensive opinion, Judge Rebecca F. Doherty – who was nominated to the federal bench by George H.W. Bush – concluded that the ban was a legitimate exercise of Congress' power to regulate interstate commerce because Congress was aware when it enacted the ban that "a substantial amount of money was expended annually as a result of the flow across state lines of gamefowl for the purpose of cockfighting ventures." UGBA v. Veneman, No. 03-970 (W.D. La. May 31, 2005). Judge Doherty unequivocally rejected the argument that Congress lacks the power to restrict immoral uses of the channels of interstate commerce, explaining that "it is no argument against congressional authority to declare that Congress is acting on 'moral' grounds against those committing acts which an overwhelming majority of states have declared to be criminal."

Recognizing the weakness of their Constitutional arguments, the cockfighters did not even bother to file an appeal.

A few days later, a three-judge panel of the Court of Appeals for the Eighth Circuit reached the same decision, rejecting a nearly identical suit claiming that the nationwide ban violates the Commerce Clause, is unconstitutionally vague, and effectuated a "taking" of private property in violation of the 5th Amendment. Slavin v. USA, 403 F.3d 522 (2005). Here again, no appeal of the decision was taken.

In the face of multiple federal court decisions declaring that the current misdemeanor provisions banning interstate transport are consistent with the Commerce Clause, the Due Process Clause, and Supreme Court "takings" jurisprudence, there really are no plausible legal arguments against enacting felony penalties for these prohibitions.

Background on Animal Fighting Practices and State Laws

There exists a virtual national consensus that animal fighting should be a crime. Massachusetts was the first state to ban animal fighting in 1836, and a majority of states banned the activity during the 19th century, indicating that this activity offended basic American sensibilities relating to cruelty to animals more than a century ago.

All 50 states now ban dogfighting, and cockfighting is prohibited in 48 states. Voters have approved ballot initiatives in Arizona, Missouri, and Oklahoma in the last decade to outlaw cockfighting in those states and to make it a felony in each of them. Cockfighting is legal only in parts of Louisiana and New Mexico, and reputable public attitude surveys reveal that more than 80 percent of citizens in each of those two states want to see cockfighting outlawed and made a felony; dogfighting is already a felony in both states. In recent years, the practice of hog-dog fighting has come to light, principally in the South. Once learning of the phenomenon, state lawmakers have reacted swiftly. Alabama, Louisiana, and Mississippi have passed legislation specifically banning hog-dog fights. Similar legislation is pending in South Carolina.

Animal fighting raids have gone up dramatically in recent years. Based on our tracking of arrests reported in the media, there have been 517 animal fighters arrested so far in 2006 in 83 different raids (449 cockfighters in 42 raids and 68 dogfighters in 41 raids). However, animal fighting continues to thrive nationwide despite increasing attention by

state and local law enforcement agencies. They simply can't do the job on their own. They need the federal government to do its part to curb this activity that so often involves interstate and foreign movement of fighting animals.

There are three nationally circulated, above-ground cockfighting magazines -- *Grit & Steel*, *The Feathered Warrior*, and *The Gamecock*—that collectively have more than 20,000 subscribers, and there are numerous web sites such as Pitfowl.com and Gamerooster.com. There are at least 10 underground dogfighting magazines. Strong state and federal laws, along with adequate enforcement, are needed to crack down on illegal operators and deter individuals from participating in this conduct.

All animal fighting spectacles operate on the same principles. Animals are typically bred for fighting purposes, and trained for fighting. They are placed in a pit – often after they are provided with stimulants to make them more aggressive or blood-clotting drugs – with another animal and then goaded to fight.

Dogfights may last several hours, and it is not unusual for one or both dogs to die from blood loss or shock, as a result of hundreds of bite wounds. Cockfighting roosters have knives or gaffs attached to their legs, and the birds kick one another, with the strapped weapons piercing lungs, gouging eyes, and inflicting other grievous wounds. In hog-dog fights, boars' tusks are cut off and they are placed in a pen. One or more pit bulls are then released, and the dogs attack the hog, resulting sometimes in the ears of the boar being torn off or their jowls being ripped open. Most of the injuries are sustained by the hogs, not the dogs.

The people who instigate and watch animal fights enjoy the spectacle, just as people in ancient Rome watched staged fights between gladiators or animals. Dogfighters profit by setting higher stud fees for winning dogs. The puppies of champion fighters are sold for $1,000 a dog or more. A successful cockfighter can sell a breeding trio, a cock and two hens, for several thousand dollars. The cost of raising that rooster and two hens is minimal, but the profits are substantial. Fighting animals are sold to people across state lines, with the cockfighting magazines providing hundreds of ads for "breeding trios." With the misdemeanor penalties in existing law offset by such large profits, the fighters do not even think twice before shipping these animals all over the country. The other prime motivation is illegal wagering, as spectators gamble on the combatants. No state or local jurisdiction allows this form of gambling as a regulated, legal enterprise.

Animal Fighting Associated with Other Criminal Conduct

Dogfighting and cockfighting are often associated with other criminal conduct, such as drug traffic, illegal firearms use, and violence toward people, as indicated in a set of press excerpts that I'm providing for the hearing record. Some dogfighters steal pets to use as bait for training their dogs; trained fighting dogs also pose a serious threat to other animals and to people, especially children.

There was a double homicide in Starr County, Texas at a cockfight this month. In the Carolinas, earlier this year, there were two homicides associated with animal fights. Also in February a man was shot and killed at a cockfight in Sacramento, Cal., for a total of five people murdered at animal fights in just the past four months.

A particularly disturbing aspect of cockfighting is the common presence of young children at these spectacles. Children as young as six years old have been observed making wagers and acting as runners for bettors at cockfighting clubs. During a raid in Sutter County, Cal. two young children were abandoned at the side of the arena by the adults who had brought them to the cockfights. In another California case, a mother of a six-year-old boy was assaulted by her husband when she refused to allow him to take their son to a cockfight. He was subsequently arrested for spousal abuse and possession of gamecocks for fighting purposes and illegal paraphernalia.

Last year, agents from the FBI and other federal and state law enforcement agencies shut down two of the nation's largest cockfighting pits, the Del Rio Cockfighting Pit and the 440 Cockfighting Pit in Cocke County, Tennessee. These raids were part of a larger anti-corruption investigation by the FBI that has uncovered chop shops, prostitution, narcotics traffic, illegal gambling, and cockfighting in east Tennessee. Several top law enforcement officers with the Cocke County Sheriff's office were arrested, charged and convicted of a range of criminal activity; they were directly involved in illegal conduct and operating a protection racket.

In two complaints filed on June 17, 2005 in U.S. District Court in the Eastern District of Tennessee, the United States attorney reported the following facts. This information shows the scope of cockfighting activity, the attendance of hundreds of people at a single cockfighting derby, the extraordinary sums wagered at cockfights, the interstate nature of the activity, and the involvement of children at the events.

> "On March 15, 2003, a cooperating witness reported observing approximately 182 cock fights at the Del Rio cockfight pit. On average, between $2,000 and $20,000 was gambled by the spectators on each fight." (p. 6)
>
> "The cooperating witness observed a girl approximately 10 years old with a stack of $100 bills gambling on several different cock fights. Vehicles were observed in the parking lot bearing license plates from North Carolina, South Carolina, Alabama, Georgia, Kentucky, and Virginia." (pp. 6-7)
>
> "On April 26, 2003, a cooperating witness attended the cockfights at the Del Rio pit and observed more than 100 cockfights with the displayed total prize money of $20,900 posted inside the fights. The witness observed persons betting on the cockfights, to include fifteen to twenty children of approximate ages seven to fifteen betting on several cockfights." (p. 7)
>
> "On May 17, 2003, a cooperating witness attended the Del Rio cockfights and observed that a full capacity crowd of approximately 600 to 700 people were present at the fights." (p. 7)

"On May 24, 2003, a special agent of the Federal Bureau of Investigations, acting undercover, attended the Del Rio cockfights.....The agent observed approximately 200 to 300 people in attendance and the fights on this day feature two teams per person with six roosters per team. The entry fee for the roosters appears to be S100 per rooster....With approximately 100 teams participating, the operators of the Del Rio cockfight pit would have taken in that day approximately S60,000 in entry fees and between S4,000 and S6,000 in spectator admissions." (p. 8)

"On Saturday, March 8, 2003, a cooperating witness attended the cockfights at the 440 pit and observed between 300 and 400 people at the fights. The witness also observed several vehicles present at the fights bearing out of state license plates, including Alabama, Florida, Georgia, Virginia, Kentucky, North Carolina, and South Carolina....The witness observed approximately 100 different cockfights....several thousand dollars were bet on each fight by different persons observing the fights. During one fight, the witness observed one individual lose S10,000 on the fight. The witness observed approximately $20,000 to S30,000 in bets exchange hands on each fight....The witness also observed five or six children under the age of twelve inside the fights." (p. 6-7)

"On April 19, 2003, a cooperating witness attended the cockfights at the 440 pit. The witness observed between 80 and 90 fights and estimated the crowd at the fights to be between 200 and 300 people....The witness also observed twelve to fifteen children, of approximate ages six to fourteen years, betting on individual chicken fights. Each of these children was wearing an entrance fee ticked attached to their clothing. (p. 8)

"On April 26, a cooperating witness attended the cockfights at the 440 pit....While at the fights, the witness observed approximately 60 fights and estimated the crowd at the fights to be more than 300 persons. Additionally, the witness observed several children who were involved in cockfights and betting on particular fights." (p. 8-9)

"On Saturday, May 3, 2003, a cooperating witness attended the cockfights at the 440 pit, and observed 48 different cockfights....The witness observed between twelve and fourteen children, approximate ages six to thirteen, inside the establishment, with most of the children gambling on different cockfights throughout the night." (p. 9-10)

"On June 7, 2003, a cooperating witness attended the cockfights at the 440 pit. Approximately 150 people were present and there were approximately 39 separate fights. The witness observed eight to ten children present at the cockfights." (p. 10)

This litany of facts about cockfighting shows it is no benign activity. It is organized crime, where children are thrust into these dens of criminality with substantial money being wagered illegally. State and local law enforcement officials have been corrupted, and have themselves turned into criminals. The federal government has, within the last year, also been involved in a series of arrests of local law enforcement in Hawaii involving protection rackets for illegal cockfights, demonstrating that the circumstances in Tennessee are not isolated cases. And in South Carolina, state Agriculture Secretary Charles Sharpe was convicted of accepting $10,000 from organizers of a cockfighting pit in exchange for helping the group avoid legal trouble. Sharpe was removed from office and drew a two-year prison sentence for extortion and lying to a federal officer.

The Federal Law Against Animal Fighting Needs to be Strengthened, and It is Best Placed in Title 18

During consideration of the 2002 Farm bill, both the House and Senate unanimously approved felony-level penalties for illegal animal fighting ventures. The concept being considered today – an upgrade in penalties for illegal animal fighting activities – has already met with favor by both the House and Senate.

Misdemeanor penalties don't provide a meaningful deterrent to animal fighters, especially when thousands of dollars are wagered on a single dog or cock fight. Relatively small fines, and brief jail sentences, are considered a cost of doing business. To be meaningful, the penalties must offset the gain that comes from participating in these crimes.

What's more, animal fighters know that federal officials will rarely pursue cases because of the misdemeanor penalties in the statute. U.S. Attorneys have told us they are reluctant to pursue animal fighting cases if at the end of the process they can seek only a misdemeanor penalty. The only reason that the U.S. Attorney filed charges in the Tennessee cases was the massive corruption and other criminal activity associated with cockfighting in Cocke County.

It is worth noting the following recent situation: In December of 2005, North Carolina became the 32nd state to punish cockfighting as a felony. In February of 2006, two cockfights were raided in South Carolina – a misdemeanor state – and 55 people were arrested. A majority of them were cockfighters who lived in North Carolina but had traveled across state lines to escape felony penalties and fight in a state where the maximum punishment they would likely face was a $100 fine. If H.R. 817 had been law in February 2006, many of those cockfighters would have had to think twice before shopping around for the nearest state where they could go to commit their crime without fear of any serious punishment.

When the Congress enacted the federal animal fighting law in 1976, no states made animal fighting a felony. Today, dogfighting is a felony in 48 states, and cockfighting is a felony in 32 states. State laws commonly authorize jail time of 3 to 5 years or more for animal fighting. The Animal Fighting Prohibition Enforcement Act brings federal law in line with state laws and other federal laws related to animal cruelty.

Congress in 1999 authorized penalties providing up to five years in jail for interstate commerce in videos depicting animal cruelty (P.L. 106-152), and mandatory jail time of up to 10 years for willfully harming or killing a federal police dog or horse (P.L. 106-254). Since the Congress passed a law making it a felony to sell videos showing dogfighting and cockfighting, it stands to reason that the core activity – animal fighting itself – should warrant felony-level penalties also. H.R. 817 provides up to two years in jail for people who transport animals for fighting purposes in interstate or foreign commerce – still lower than other related federal and state law penalties, but at least felony level.

H.R. 817 also expands federal animal fighting law to include interstate and foreign commerce in sharp implements designed exclusively for cockfights. Razor-sharp knives known as "slashers" and ice pick-like gaffs are attached to the legs of birds to make cockfights more violent. These weapons, used only in cockfights, are sold through cockfighting magazines and the Internet. To effectively deter the movement of animals for fighting, Congress should also prohibit transport of the fighting implements that make the sport possible and have no other purpose.

Given the widespread criminal conduct associated with organized illegal animal fighting activities, it is appropriate that the crime be placed in Title 18. The FBI is often involved in interdicting narcotics traffic, and *The New York Times* just reported last week that the agency is focusing on rooting out public corruption. While this bill will not take any authority away from USDA and its Office of Inspector General, which will continue to play a major role in cracking down on illegal animal fighting ventures, the bill will augment that work by encouraging other federal departments to become more engaged on animal fighting enforcement.

Gambling with Our Lives: Cockfighting and the Spread of Avian Diseases

The initial explosion of the Asian avian influenza strain H5N1 in early 2004, leading to the deaths of over 100 million chickens across eight countries in Southeast Asia, was traced back to the trade in live birds for commerce. The timing and pattern were not consistent with known migratory bird routes. The initial spread of this disease seems to have been via the highways, not the flyways.

The riskiest segment of trade may be in fighting cocks, who are transported long distances both within and across countries' borders to be unwilling participants in the high-stakes gambling blood sport. In cockfights, the fighting implements guarantee bloodletting. Surviving birds may be sprayed with blood and infected, and even the handlers may be sprayed with blood and infected by the virus. A number of cockfighting enthusiasts, and children of cockfighters, have died.

The Thai Department of Disease Control, for example, described a case of a young man who died from bird flu and who had "very close contact to...fighting cocks by carrying and helping to clear up the mucous secretion from the throat of the cock during the fighting game by using his mouth." As one leading epidemiologist at the Centers for Disease Control commented dryly, "That was a risk factor for avian flu we hadn't really considered before."

The movement of gaming cocks is implicated in the rapid spread of H5N1. Malaysian government officials, for example, blame cockfighters as the main "culprits" for bringing the disease into their country by taking birds to cockfighting competitions in Thailand and bringing them back infected. Thailand, a country with an estimated 15 million fighting cocks, was eventually forced to pass a nationwide interim ban on cockfighting. The Director of Animal Movement Control and Quarantine within the Thai Department of Livestock Development explained what led them to the ban: "When one province that

banned cockfights didn't have a second wave outbreak of bird flu and an adjacent province did, it reinforced the belief that the cocks spread disease." A study of Thailand published in 2006 concluded, "We found significant associations at the national level between HPAI [H5N1] and the overall number of cocks used in cock fights."

According to the Food and Agriculture Organization of the United Nations, cockfighting may also have played a role in making the disease so difficult to control. During mass culls in Thailand, for instance, bird owners received about 50 baht, about $1.25, in compensation for each chicken killed—less than the bird's market value even for meat. Some prized fighting cocks fetch up to $1,000. So it is no wonder that owners may be reluctant to report sick birds

Fighting cocks were reportedly hidden from authorities and illegally smuggled across provincial lines and country borders, not only complicating the eradication of H5N1, but potentially facilitating its spread, causing some officials to throw up their hands. "Controlling the epidemic in the capital is now beyond the ministry's competence," Thailand's Deputy Agriculture Minister told the Bangkok Post, "due to strong opposition from owners of fighting cocks, who keep hiding their birds away from livestock officials."

A different poultry virus -- exotic Newcastle disease – struck California in 2002 and inflicted major economic damage, thanks in part to cockfighting. This outbreak, which spread to Arizona, Nevada, New Mexico, and Texas, caused the destruction of nearly 4 million chickens at a cost to federal taxpayers of around $200 million and led to a multinational boycott of U.S. poultry products.

While it is only a theory that gamefowl brought the disease to this country then, it is a known fact that once END arrived, movement of gamefowl distributed the disease all over the region. It could have been isolated but for the vast network of backyard cockfighting operations. The high mobility of the gamecocks, related to meetings, training, breeding, and fighting activities, played a major role in the spread of the disease once it became established in California. Although agriculture inspectors could not pinpoint the exact route by which the disease jumped to Las Vegas and into Arizona, law enforcement had an idea. "We'll raid a fight in Merced County and find people from Nevada, New Mexico, Mexico, Arizona, and Southern California," said a detective with the Merced County California Sheriff's office. "They bring birds to fight and take the survivors home." Cockfighting also played a role in the previous exotic Newcastle disease outbreak in California which led to the deaths of 12 million chickens.

During the course of containment following the 2002 outbreak, agriculture officials were staggered by the number of illegal cockfighting operations—up to 50,000 gamecock operations in southern California alone, according to some estimates. Despite being illegal in the state for more than 100 years, and despite hundreds of arrests, state law enforcement officials say cockfighting thrives – all of this in a state with a misdemeanor penalty.

Former U.S. Agriculture Secretary Ann Veneman endorsed legislation to establish felony level penalties for violations of the federal animal fighting law in a May 2004 letter, in which she said that the bill would "enhance USDA's ability to safeguard the health of U.S. poultry against deadly diseases, such as exotic Newcastle disease and avian influenza." She indicated that cockfighting has "been implicated in the introduction and spread of exotic Newcastle disease in California in 2002-2003, which cost U.S. taxpayers nearly $200 million to eradicate, and cost the U.S. poultry industry many millions more in lost export markets....We believe that tougher penalties and prosecution will help to deter illegal movement of birds as well as the inhumane practice of cockfighting itself."

According to the cockfighters' trade association, the UGBA, there are thousands of operations that raise fighting cocks across the country. In states where raising birds for blood sports is illegal, breeders claim the cocks are being raised as pets or for show. A major 2004 report released by the USDA on biosecurity among backyard flocks across the country found that only about half of the gamefowl operations -- operations that tend to raise cockfighting birds -- were following even the most basic biosecurity fundamentals, such as paying proper attention to potentially contaminated footwear.

With American roosters participating in competitions in Asia, like the 2006 World Slasher Cup, it's clear that fighting birds are being shipped illegally around the world. All it takes is one contraband avian Typhoid Mary smuggled from Asia into some clandestine domestic cockfight to spread bird flu throughout the United States. Strengthening penalties and improving enforcement on interstate transport of fighting cocks in America, as well as putting the final two nails in the cockfighting coffin by banning the practice in Louisiana and New Mexico, may help protect the health of America's flocks and America's people.

The National Chicken Council (NCC), the trade association for the U.S. commercial poultry industry, agrees. The NCC damns cockfighting not only as "inhumane," but as posing a serious and constant threat of disease transmission to the commercial industry, and it has endorsed this legislation.

In August 2005, the North Carolina Department of Agriculture Food and Drug Safety Administrator told a gathering of federal and state officials that current U.S. Postal Service regulations "are inadequate and present great potential for contamination of the poultry industry." He estimates that each day, thousands of fighting cocks and other fowl lacking health certificates enter North Carolina, potentially placing the state's massive poultry industry at risk. "Chickens find transport a fearful, stressful, injurious and even fatal procedure," one group of researchers concluded, and it's well-documented that this high level of stress can make birds more susceptible to catching, carrying, and spreading disease. The legal and illegal international trade in fighting cocks makes the blood sport no safe bet.

Just last week, law enforcement officials in San Diego County arrested individuals attempting to bring cockfighting birds into California. Birds coming into the country from Mexico, Asia, or other countries or continents pose a grave threat of spreading

dangerous avian diseases to the United States, jeopardizing the health of poultry flocks and human populations. The idea of regulating this trade – now that 32 states have felony level penalties for this conduct – is unrealistic and fanciful. The American public will not tolerate decriminalization of cockfighting, and the best response now is the adoption of 50 state felony laws and a federal felony law that provide a sufficient deterrent to individuals who want to engage in this frivolous sport.

Opponents of this legislation argue that felony penalties would drive cockfighters underground and make it more difficult to get their cooperation during disease outbreaks. But in Asian countries where cockfighting is perfectly legal, authorities have had great difficulty getting the cooperation of cockfighters and bird flu has spread in part because of their determination to hide their birds. Here in the U.S., cockfighters have revealed their intentions to conceal their birds in the event that bird flu emerges here. Cockfighting magazines have instructed their readers to hide their "best birds" on an alternate property site and purchase months' worth of feed in advance so that, if a bird flu outbreak occurs, they won't draw attention to themselves by going to the feed store. This is an industry that already operates underground in the U.S.; it can hardly go further underground. It is time to eliminate the industry and all of the problems it fosters..

Cockfighting Is Not an Agricultural Activity

Since 1999, the UGBA and other cockfighting groups have spent hundreds of thousands of dollars to bottle up this legislation. The UGBA is a criminal syndicate, financing its federal lobbying activities at least in part from fees collected at illegal cockfights throughout the country. Staff from The Humane Society of the United States assisted the FBI in its investigation into public corruption in east Tennessee, and accompanied federal agents when they raided the Del Rio Cockfighting Pit. Our staff witnessed a letter from the UGBA on display at the pit thanking the Del Rio pit for a donation of several thousand dollars to the registered lobbyist of the UGBA. This criminal syndicate is paying lobbyists in Washington, D.C. to thwart passage of H.R. 817, and that should be unacceptable to this committee.

In fact, the Del Rio Cockfighting Pit was owned by a former president of the UGBA named Don Poteat. The day it was raided the owner's wife, Donna Poteat, was the acting Secretary of the UGBA. This is nothing new for the UGBA leadership. A prior president of the UGBA, Red Johnson, was arrested when his illegal cockfighting pit was raided some years ago in Vinton County, Ohio.

It is a distortion for cockfighting apologists to suggest that gamefowl breeders—whether the UGBA or state associations—engage in legitimate agricultural activities. The USDA and others involved in agriculture do not consider the rearing of birds for fighting to be a legitimate agriculture enterprise and do not account for the sale of cockfighting birds as part of the agricultural economy, just as we do not consider the rearing of dogs for fighting or the growing of marijuana or cocaine to be legitimate agriculture operations. Farmers grow or raise food or fiber for legitimate social purposes, such as feeding or clothing people. It is unacceptable to raise animals simply so that they can fight to the

death. It is unfortunate that cockfighters try to trade on the good reputation of farmers by attempting to associate themselves with normal agricultural practices and production methods.

Animal fighting is a bloody and indefensible practice. It is closely associated with other criminal activity. Dogfighting poses a threat to the well-being of children with the rearing of powerful and aggressive dogs. Cockfighters, given their worldwide industry, may play a central role in spreading avian influenza to this country. The leading legislative body in the world should shut the door as tightly as it can on these practices by immediately enacting the Animal Fighting Prohibition Enforcement Act. Thank you for allowing me to testify today.

Mr. COBLE. Thank you, Mr. Pacelle.

I stand corrected, best-laid plans of mice and men oft times go awry. We are plagued with a malfunctioning panel and you will not see the amber light.

So, Mr. Pollot, when the red light impacts your vision, you know that the time has expired. Mr. Pollot, good to have you with us. I stand corrected, I am told that it is now functioning. Very well, proceed, Mr. Pollot.

TESTIMONY OF MARK L. POLLOT, EXECUTIVE DIRECTOR, FOUNDATION FOR CONSTITUTIONAL LAW, ON BEHALF OF UNITED GAMEFOWL BREEDERS ASSOCIATION

Mr. POLLOT. Mr. Chairman, before I begin——

Mr. COBLE. Mr. Pollot, activate your mic, if you will.

Mr. POLLOT. Mr. Chairman, before I begin, I ask your permission that my full statement be entered into the record.

Mr. COBLE. Without objection.

Mr. POLLOT. Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to speak to you today. My name is Mark Pollot. I am appearing on my own behalf and on behalf of the United Gamefowl Breeders Association, which has 100,000 members, and exists to work to improve the perpetuation and quality of various breeds of gamefowl, and to improve marketing methods, cooperate with universities and agencies in poultry disease control, and to develop and enhance general good health of gamefowl.

I have both a medical and a legal background, some of it in government. My experience in both areas has provided me with a broad understanding of constitutional and regulatory issues, as well as an understanding of both epidemiological and public health and safety principles, and issues applicable to this bill.

I review proposed regulations and statutes by examining the language of the proposed regulation or law to understand its intent and its policy, and its history. Then I ask the following questions: 1) Is the policy underlying the regulation of law sound? 2) Is the policy well executed? 3) Is the policy understandable to the regulated public? And 4) Does it comport with the Constitution?

I reviewed H.R. 817 using these criteria, and I respectfully submit that it has problems in each of these areas that I believe argue against its passage. Other ways can be found to achieve the policies underlying H.R. 817 that do not have the problems presented by this bill, and which do not have unintended consequences that will undermine its policies.

On review it seems clear that H.R. 817 would further its primary policy, assisting some States to enforce their domestic laws in a manner that is constitutionally prohibited, inconsistent with principles of federalism, unnecessarily intrusive on the ordered liberty of individual citizens, and counterproductive to some of the stated goals of the legislation.

First. Principles of federalism prohibit such enactments as they intrude in an unconstitutional manner on the sovereign right of States to make economic and social policy decisions within the boundaries of the States. Congress should be reluctant to favor some States' policy choices over those of other States, especially with those States permitting such activities that derive veterinary

and public health and safety benefits by making sure that those activities are conducted in the open where they are subject to regulation, inspection, and oversight.

Second. Individual citizens and the residents of the United States have constitutionally protected liberty interests which are adversely affected by H.R. 817, including the constitutionally recognized right to travel in the United States, which includes the right to travel for economic purposes. The principles of law in this area deny government the ability to prohibit persons from taking or sending the stock or tools in trade of their business from a place in which the use, possession, and ownership of the stock or tool is lawful to another place where it is lawful.

Third. H.R. 817 imposes an unconstitutional first amendment burden on individuals. While certain time, place and manner restrictions can be placed on speech, the limitations imposed by H.R. 817 go beyond any currently allowed restrictions on speech. It infringes both on the rights of the speaker and on the rights of citizens to receive such information. Further, the language of 817 is sufficiently vague as to deny proper notice of illegal behavior.

Fourth. Animal and public health would be adversely affected by this bill. Directly or indirectly banning an activity does not end it in some cases, but drives it underground. Then regulatory, legal, social and other oversight mechanisms either cannot catch problems before they become major, or do so with only great difficulty and inefficiency. As a result, the very consequences the ban seeks to avoid emerge. The solution here is to bring such activities into the same regulatory universe as all other animal-related industries inhabit. Concern about assisting States in banned fowl-related activities which are banned, is better addressed by providing law enforcement assistance grants for internal domestic law enforcement.

Finally, H.R. 817 diverts Federal resources to effectuate the policy choices of individual States. Given the important matters that face the United States today, ranging from homeland security to immigration and serious crime, it seems inappropriate to apply Federal funds and law enforcement personnel and resources to effectuate a policy adopted by individual States, who presumably believe that that policy deserves the dedication of its law enforcement resources.

For all of the foregoing reasons, we respectfully ask your opposition to H.R. 817. I await your questions.

[The prepared statement of Mr. Pollot follows:]

PREPARED STATEMENT OF MARK L. POLLOT

I. INTRODUCTION

Chairman Coble, Ranking Member Scott, members of the Subcommittee, my name is Mark Pollot and I am appearing on behalf of myself and more than 100,000 members of the United Gamefowl Breeders Association represented throughout 33 states. The United Gamefowl Breeders Association ("UGBA") was founded in 1975 to represent the interest of gamefowl breeders across the nation. The UGBA's primary mission is to exchange better methods and ideas toward the perpetuation and improvement of the various breeds of gamefowl, to improve marketing methods, to cooperate with Universities and other agencies in poultry disease control, and to further develop and enhance the general good health of gamefowl.

II. BACKGROUND

The bill before this committee (H.R. 817), denominated the "Animal Fighting Prohibition Enforcement Act of 2005", would be, if enacted, the successor to provisions of the Animal Welfare Act ("the Act"). The current provisions of the Act, enacted into law as a result of language which was inserted into the 2002 Farm Bill without ever receiving a Congressional mark-up in either the House or Senate Agriculture Committee, make it a misdemeanor for a person to, among other things, transport game fowl in interstate or foreign commerce for the purposes of exhibiting game fowl in a fighting venture.[1]

The principal supporter of the gamefowl provisions of the Act was the Humane Society of the United States ("HSUS"). The HSUS and a variety of other animal rights activists and groups, including some which are considered domestic terrorist organizations, have pressed for these prohibitions on philosophical grounds. These philosophical grounds include a shared belief that a wide variety of human uses of animals should be prohibited such as, among other things, hunting, fishing, trapping, rodeos, horse racing, and even the raising of animals for food and clothing purposes. These groups, either directly or through other organizations, have been successful in getting many state legislatures to enact prohibitions on some of these activities, but have been unsuccessful in getting the legislatures of other states to go along (e.g., Louisiana and New Mexico). It was for this reasons that the HSUS and other animal rights activists turned to Congress to get it to impose their views on those states in which they failed to succeed.

The animal rights activists succeeded in getting the federal government to insert itself into what is essential a state law enforcement issue (a matter that I will discuss in more detail below) to a degree in the 2002 Farm Bill by inserting language which was not debated and explored in the appropriate committees. They enlisted the help of other groups, including commercial agriculture interests and regulators, by convincing them that gamefowl activities posed threats to other commercial bird industries[2] and that those threats could effectively be nullified by prohibitions of the type found in the Farm Bill amendments and in H.R. 817. However, if one cuts past the rhetoric and self-serving rationales offered by those pressing Congress for passage of the (now-enacted) gamefowl provisions of the Animal Welfare Act and reviews the legislative history underlying the 2002 Farm Bill amendments, the purpose of these amendments was to assist states prohibiting gamefowl activities in enforcing their domestic laws at the expense of other states.[3] In other words, Congress has enacted a statute which supports the economic policy decisions of some states at the expense of those states who have made a different economic policy choice. H.R. 817 would further this policy which UGBA believes, with substantial reason, to be constitutionally prohibited, inconsistent with the principles of federalism, unnecessarily intrusive on the ordered liberty of individual citizens, and even counterproductive to some of the stated goals of the legislation. It does this by increasing the penalties associated with gamefowl activities and imposing thereby more strict limitations.

III. H.R. 817 SHOULD NOT BE ENACTED

A. PRINCIPLES OF FEDERALISM AND COMITY PROHIBIT SUCH ENACTMENTS

The Federal Constitution is built on the principle of federalism. As the United States Supreme Court has noted, each state was from the beginning, and is today,

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[1] These prohibitions apply even if the fighting venture takes place in states and foreign countries where such activities are perfectly legal. The significance of this fact will be discussed below.

[2] Note that I use the term "other commercial bird industries" in this discussion. The HSUS and other institutional supporters of the original Farm Bill amendments and H.R. 817 treat the gamefowl industry as being something other than a commercial industry when it suits them to create the impression that gamefowl activities and other related activities adversely affect legitimate commercial activities. However, while many involved in the gamefowl universe do not pursue these activities as a commercial venture (but as a hobby, a way of life, or a culturally bound pursuit), others do so as a commercial activity in whole or in part, an activity as deserving of protection and recognition as any other commercial bird activity.

[3] That this is the actual purpose of H.R. 817 as well as the Farm Bill amendments is reinforced by the fact that the title given to H.R. 817 is the Animal Fighting Prohibition Enforcement Act. Gamefowl fighting is not prohibited by either the Farm Bill amendments nor H.R. 817. The prohibitions were enacted by individual states within their borders. Such states could not constitutionally extend such bans beyond their borders. What H.R. 817, and the Farm Bill amendments before H.R. 817, did was to make it easier for those states that did enact bans to enforce their domestic laws by imposing the will of those states onto other states with the complicity of the United States.

a separate sovereign which retains all the aspects of sovereignty except those surrendered in the Constitution. Some prohibitions on invading that sovereignty are expressly stated in the Constitution, such as the language of the 9th and 10th Amendments such as, among other things, the immunity of states from suit in federal courts. Others are inherent in the structure and the history of the document itself. Some grants of federal authority in the Constitution, such as the Commerce Clause of Article I, Sec. 8, have allowed certain inroads into state sovereignty and, indeed, have been held in the past to grant extraordinary regulatory power over the economic lives of the states, the courts have, in the recent past, began to narrow that authority, bringing it closer to the historical bounds it was to be confined to by the framers and ratifiers of the Constitution. Even where the power of the United States extends over the states, the courts have held that such power should not be exercised lightly or without due deference to the rights of states to make their own decisions within their own borders.

Among the decisions that remain in the hands of the states are those decisions going to the functions of the states and the economic and social policy choices that will affect their states. In other words, states are entitled to choose what economic and social activities they will follow within their borders, decisions that cannot be dictated by the United States absent a constitutional amendment. In many areas, the United States has been allowed to influence the policy choices of states by offering them incentives (such as block grants with conditions attached which can be entered into voluntarily), but not to dictate directly.

Very clearly, the framers and ratifiers of the Constitution had no intention of allowing some states to impose their wills and legal and policy choices on other states. It was for fear that other states would attempt to do so that constitutional provisions such as the Full Faith and Credit clause exist. Indeed, it was the fear of states imposing their economic policy choices on other states that prompted the framers and ratifiers to include the Commerce Clause in the Constitution. It was there to prevent states from engaging in trade wars, imposing tariffs on other states to strong arm them into adopting policies desired by the first state, and the like. It would be ironic indeed if states were able to do indirectly, through federal legislation, what they clearly cannot do directly, and yet this is exactly what H.R. 817 seeks to do and what the Farm Bill Amendments did.[4]

It is my considered opinion that the Farm Bill Amendments are unconstitutional, and will ultimately be found to be so, as would be the provisions of H.R. 817, if it is enacted. However, even were this not so, Congress should be very reluctant to act, given the constitutional principles of federalism and comity, in such a way as to allow the policy preferences of any number of states to be imposed on states of a different view through federal legislation. States which allow gamefowl activities derive benefits from doing so. For example, they derive revenue from such activities, whether they are direct gamefowl activities or indirectly related activities such as veterinary services, feed production and manufacture and the like. Likewise, they derive veterinary and public health and safety benefits by making sure that gamefowl and related activities are conducted in the open where they are subject to regulation, inspection, and oversight.[5]

Congress should be reluctant to start down a path in which it assists those states having one policy preference over the interests of those states who do not share the same policy views. It is not hard to imagine that, should rodeos become the next target, that states who accept animal rights activists' views that rodeos are as bad

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[4] Some may point to litigation that was brought in the United States District Court in Louisiana as proof that the Farm Bill Amendments were constitutional and so, therefore, must be the provisions of H.R. 817. They should not take comfort in this fact. The Louisiana case was a single case bought in a single District Court and is binding only in that district. It was not appealed. However, there were a number of issues that were not raised in that case which will certainly be raised in future litigation either in the same District with different parties or in other Districts. Those questions going to the constitutionality of the existing law and H.R. 817, if enacted, may well cause a different result. Further, courts of appeal considering these questions may well come to a different result. In other words, a final decision regarding the constitutionality of the Farm Bill Amendments and H.R. 817 has not been rendered. Any number of persons have pointed to cases that they felt answered a question in the way they wanted only to have the rug pulled from under them in later cases.

[5] As will be discussed in more detail below, attempts to ban some activities have the effect of driving them underground, where they can no longer be effectively monitored and controlled by regulatory authorities. Most persons, including UGBA members, are law-abiding and would abide by legal limitations amounting to a ban. However, there will always be those who will not. It should be remembered that many gamefowl activities, as well as many other activities, are culturally driven and tend to continue to take place underground if the law seeks to ban them. When this happens, the mechanisms that ensure public and veterinary health and safety cannot do their jobs.

as gamefowl activities will seek to impose similar limitations on the industries which can be said to support rodeos. Likewise it is not difficult to envision states that oppose gaming or gambling from trying to impose limitations on their residents traveling to other states to gamble, or from prohibiting slot machines from being shipped in interstate commerce to states in which gaming is legal, all to enforce their policy preferences on other states.

B. H.R. 817 VIOLATES THE CONSTITUTIONAL RIGHTS OF INDIVIDUAL CITIZENS AND RESIDENTS

Individual citizens and residents of the United States have liberty interests at stake here as well.

For example, there is a constitutionally recognized right to travel in the United States which includes the right to travel for economic reasons which cannot be inappropriately burdened by the states or the federal government. For this reason, it has been held to be unconstitutional for a state to impose time-bound residency requirements for professional licensure in a state. The same principles that guide existing case law in this area would deny government the right to prohibit the regulated public from taking or sending the stock or tools of their business, trade or their hobby or sport in interstate travel from a place in which the use, possession, or ownership of the stock or tool was lawful to a place in which the activity using such stock or tool is lawful. Again, by analogy, imagine a law which prohibited shipping a gaming machine from a place in which its possession or manufacture was legal across state lines to a place which its possession and/or use is lawful.[6] This is precisely what H.R. 817 purports to do. It is my professional and personal opinion that H.R. 817, if enacted, would unconstitutionally interfere with the constitutional right to travel of UGBA members and others.

Similarly, H.R. 817 imposes a first amendment burden on individuals which cannot be sustained. While commercial speech can be subjected to somewhat more stringent regulations that other types of speech, the power of the government to prohibit even commercial speech is limited. Certain time, place, and manner restrictions can be placed, but the limitations imposed by H.R. 817 go beyond any currently allowed restrictions on commercial speech. Indeed, it infringes not only on the rights of the speaker by prohibiting him or her from advertising activities which are legal in the states in which they are carried out in states in which such activities would be illegal (again, imagine Las Vegas from being prohibited from advertising casinos in states in which casino gambling is not permitted), but also the right of citizens to receive such information. Furthermore, the way H.R. 817 is drafted, persons could be held to violate the law if they simply cite places where such activities are permitted in the context of an article arguing that such activities should not be banned anywhere. Congress should be leery of pushing such boundaries.

These are not the only constitutional problems I see in H.R. 817, but they serve as a significant example of the problems within H.R. 817.[7]

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[6] Similarly, imagine a law which prohibits persons from traveling from a state in which gaming or gamefowl activities are not lawful to one in which one or both are legal for the purposes of engaging in the gaming or gamefowl activities. A more obvious constitutional violation cannot be imagined. A law prohibiting individuals from carrying tools or possessions necessary for the enjoyment of gaming or gamefowl activities to a state in which such activities are allowed is scarcely less obviously unconstitutional. It cannot be overlooked here that the animal right organizations and activists supporting this legislation have as a stated goal the criminalization of other lawful activities involving interaction with animals such as hunting, fishing, trapping, rodeos and horse racing. Wayne Pacelle, Chief Executive Officer of the Humane Society of the United States, has made it clear that HSUS's "goal is to get sport hunting in the same category as cockfighting and dogfighting. Our opponents say that hunting is a tradition. We say traditions can change." (Bozeman Daily Chronicle, Oct. 8, 1991). It is clear that if successful here, HSUS will attempt to obtain similar laws as to these other targeted activities.

[7] Although it is not my purpose in this testimony to address every problem that H.R. 817 presents, but merely to focus on legal issues, I nevertheless stop here to note that H.R. 817, and its predecessor, the Farm Bill amendments, are utterly insensitive to the cultural impacts of its provisions. Gamefowl activities have been historically a part of the social fabric of many societies and cultures. The United States is not unique in this regard. Not only will H.R. 817 have a substantial impact on the economics of those involved directly and indirectly in the gamefowl industry, but also will have social and even religious impacts on them. I find it ironic that Congress has imposed a requirement of sensitivity to such matters in federal statutes such as the National Environmental Policy Act ("NEPA"), but refuses itself to take such considerations into account in an area which is primarily philosophically driven. Legitimate public policy considerations, such as animal health, can be readily and easily dealt with as we do in every other activity involving animals, without decimating an activity which is a way of life for many.

C. ANIMAL AND PUBLIC HEALTH CONCERNS WILL BE DISSERVED BY H.R. 817

Animal and public health issues have been cited as reasons why H.R. 817 should be enacted. I respectfully submit that animal and public health would be adversely affected by H.R. 817. The reasons for this are fairly clear.

Prior to becoming an attorney, I was a registered nurse for nearly 20 years. I am therefore familiar with the principles of epidemiology and public health. Many of these principles are as applicable to animal health as to human health except that individual humans can report their illnesses and possible illnesses directly and a variety of mechanisms exist to ensure that important public health information is gathered and transmitted to appropriate officials. Animals, however, are dependant on humans to recognize and report potential health problems and to ensure that such mechanisms that exist to catch and treat animal disease are in play. Voluntary compliance is important both in human and animal health regimes. Indeed, a primary purpose of the UGBA is to promote animal health as illustrated by my above description of the organization.

It has been my experience, both as an RN and as an attorney (including my time at the United States Department of Justice) that banning activities such as gamefowl activities does not end the activity, but merely drives it underground. Once it is driven underground, it is difficult, if not impossible, to ensure that the potential health problems created by the activity will be timely discovered and addressed.

This is not to suggest that no ban of any kind on any activity should ever be enacted. I do suggest that every situation be separately evaluated to decide whether more harm than good will result from the ban. Likewise, I do not suggest that the gamefowl breeders who are members of the UGBA would intentionally or otherwise violate the provisions of H.R. 817. Most people are law-abiding, at least when they know and can understand the law (which is by no means a given). However, as my experience shows, there will always be some who, from conviction or for economic, cultural, and other reasons, will simply continue the banned activity underground. Indeed, where activities are heavily bound with culture (as is the case here), a defiance of the ban, whether de facto or de jure will be a virtual given.

When this happens, all of the potential adverse effects of the banned activity are likely to emerge. The regulatory, legal, social, and other oversight mechanisms, both formal and informal, either cannot function to catch problems before they become major, or can only do so with great difficulty and inefficiency. As a result, the very consequences the ban seeks to avoid emerge. In this case, some may suggest that H.R. 817 is not a ban and that, therefore, what I have said here is irrelevant. However, a review of H.R. 817 demonstrates that it is so onerous and so pervasive that it amounts to a de facto ban. The solution here in not to place onerous limitations on the activities in question, but to bring them into the same regulatory universe that all other animal related industries inhabit, such as regular inspections, mandatory vaccinations, and the like.

Further, to suggest that gamefowl breeding and related activities pose a unique threat that must be met with the stringent limitations amounting to ban is disingenuous at best. The birds involved in gamefowl activities are, to the best of my knowledge and understanding, no more prone to Exotic Newcastle disease, avian flu viruses, or arboviruses than any other commercially raised fowl and are no less subject to disease control measures than any other fowl. If these things are true, it is clear that the stated health concerns are more motivated by a dislike for the gamefowl industry or for fear of political repercussions than by a fear of disease itself. For those who are motivated by a genuine concern for animal and public health safety issues, I respectfully submit that their concerns can be met in the same fashion that public and animal health and safety concerns are met when other fowl are at issue that by enacting H.R. 817. Indeed, UGBA members are as concerned as anyone about animal and human health issues. Their livelihoods, lifestyles, and culture are as threatened as anyone elses by an outbreak of avian flu virus, Exotic Newcastle disease or any other disease condition involving fowl.

The decisions about whether an activity such as gamefowl breeding and related activities should be allowed and under what circumstances are best left to the states who have the best idea what works for their state and their citizens and who can ensure that the activities are carried out in a safe and appropriate manner. The legislative authority of the United States should not be used by some states to impose their policy views on other states simply because it would make enforcement of their own policy preferences within the borders of their own states simpler.

D. H.R.817 INAPPROPRIATELY DIVERTS FEDERAL RESOURCES

H.R. 817 diverts federal resources to effectuate the policy choices of individual states. Given the important matters that face the United States today, ranging from homeland security to immigration and serious crime, it seems inappropriate to apply federal funds and law enforcement personnel and resources to effectuate a policy adopted by individual states who presumably believe that the policy deserves the dedication of law enforcement resources. It is not unreasonable to suggest that a state should not adopt a policy that it is not willing to dedicate its own resources to strenuously enforce.

IV. CONCLUSION

For all of the foregoing reasons, we respectfully ask for your opposition to HR 817.

Mr. COBLE. Thank you, Mr. Pollot.

Corporal Hunt, before we hear from you, Mr. Scott and I are pleased to welcome the distinguished gentlemen from California, Wisconsin and Massachusetts, Lungren, Green and Delahunt, respectively.

Corporal Hunt.

TESTIMONY OF DAVID R. HUNT, DEPUTY, FRANKLIN COUNTY SHERIFF'S OFFICE, COLUMBUS, OH

Mr. HUNT. Thank you, Mr. Chairman, Members of the Committee. As mentioned, my name is Corporal David Hunt, and I'm a Deputy with the Franklin County Sheriff's Office in Columbus, Ohio. I'm in my 25th year with the Sheriff's Office, the past 14 years of which assigned to the Special Investigations Unit conducting vice and narcotics investigations. I have been investigating illegal dogfighting since February of 2002.

I am here today to speak in support of H.R. 817, the "Animal Fighting Prohibition Enforcement Act of 2005." Having worked illegal animal fighting investigations for the past 4 years, I continually see the need to make this activity a felony offense at the Federal level. Dogfighters often travel across State lines to engage in large-scale dogfights, where the purses are in the tens of thousands of dollars. Other peripheral criminal activity such as drug trafficking, gambling and illegal firearms possession is typically associated with dogfighting.

In January 2003, my agency executed a search warrant on such an event in progress, arresting 40 individuals. Three fights were scheduled that evening with people attending from New York, Washington, D.C., Virginia and Alabama. Two of the dogs slated to fight that night were from Buffalo, New York, with another dog coming from Richmond, Virginia. Over $30,000 in cash was seized at the fight, as each fight had a $10,000 purse. Additional cash from gambling, drugs and a .50 caliber handgun were also confiscated.

In July of 2003, a patrol deputy with my agency stopped a vehicle from South Carolina that was found to be transporting 9 scarred pit bull dogs. Subsequent investigation revealed that this subject was a canine courier service utilized by dogfighters for transporting fighting dogs for sale, trade and breeding. One of the dogs was destined to a convicted dogfighter in Columbus. Interview of the driver revealed that he had picked up and dropped off fighting dogs in Georgia, Alabama, Louisiana, Missouri and Illinois

prior to being stopped in Ohio. Under Ohio statutes, no criminal charges could be filed.

In October 2003, a dogfighter from Williamson, West Virginia brought a pit bull to Columbus to deliver to a confidential informant working for me. This meeting, which was audio and videotaped documented the dogfighter talking about fighting dogs, breeding dogs for fighting, past dogfights, and even inviting the CI to attend a match in West Virginia.

This case was presented to the U.S. Department of Agriculture, Office of the Inspector General, who agreed to adopt it for Federal prosecution. Upon meeting with an Assistant U.S. Attorney for the Southern District of Ohio, the USDA agent and myself were advised that the U.S. Attorney's Office would not accept this case as it was a Federal misdemeanor. We were further advised that the only Federal misdemeanor that would be prosecuted I the Southern District of Ohio was interference with a flight crew.

The investigation was then referred to the Franklin County Prosecutor's Office, who agreed to prosecute the West Virginia dogfighter. This subject eventually pled guilty to State charges and cooperated on other dogfighting investigations. Many underground fighting publications chronicle fights that occur across the United States, and are typically attended by fighters from other States. Many dogfighters in Central Ohio routinely travel to Louisiana to purchase desired fighting dog bloodlines. I currently have investigations that reach into States that border Ohio, and have to rely on the appropriate local law enforcement agency for assistance. Most law enforcement officers are unaware or uneducated on dogfighting. Thus, many of these investigations fail to come to fruition.

My office has an excellent relationship with the USDA Office of Inspector General, as well as the Federal Bureau of Investigation. Making this law a Federal felony will significantly assist local law enforcement. Teaming up with Federal law enforcement will aid in the pursuit of those individuals who routinely cross State lines to engage in this vicious illegal activity.

Thank you very much.

[The prepared statement of Mr. Hunt follows:]

PREPARED STATEMENT OF DAVID R. HUNT

Testimony of Corporal David R. Hunt
Deputy
Franklin County Sheriff's Office
Columbus, OH

Before the Subcommittee on Crime, Terrorism, and Homeland Security
May 18, 2006

My name is Cpl. David R. Hunt and I'm a deputy with the Franklin County Sheriff's Office in Columbus, Ohio. I am in my 25th year with the Sheriff's Office, the past 14 years assigned to the Special Investigations Unit conducting vice and narcotics investigations. I have been investigating illegal dog fighting since February 2002.

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In July 2003, a patrol deputy with my agency stopped a vehicle from South Carolina that was found to be transporting nine (9) scarred pit bull dogs. Subsequent investigation revealed that this subject was a "canine courier" service utilized by dog fighters for transporting fighting dogs for sale, trade, or breeding. One of the dogs was destined to a convicted dog fighter in Columbus. Interview of the driver revealed that he had picked up, and dropped off, fighting dogs in Georgia, Alabama, Louisiana, Missouri, and Illinois prior to be being stopped in Ohio. Under Ohio's statutes, no criminal charges could be filed.

In October 2003, a dog fighter from Williamson, West Virginia brought a pit bull to Columbus to deliver to a confidential informant working for me. This meeting, which was audio and video taped, documented the fighter talking about fighting dogs, breeding dogs for fighting, past dogfights, and even inviting the CI to attend a match in West Virginia.

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My office has an excellent relationship with the USDA Office of Inspector General as well as the Federal Bureau of Investigation. Making this law a federal felony will significantly assist local law enforcement. Teaming up with federal law enforcement will aid in the pursuit of those individuals who routinely cross state lines to engage in this vicious illegal activity.

Mr. COBLE. Thank you, Mr. Hunt.
Dr. Bradley.

TESTIMONY OF FRANCINE A. BRADLEY, PhD, DEPARTMENT OF ANIMAL SCIENCE, UNIVERSITY OF CALIFORNIA AT DAVIS, DAVIS, CA

Dr. BRADLEY. Mr. Chairman, before I begin, I ask your permission that my full statement be submitted for the record.

Mr. COBLE. Without objection, it will be done.

Dr. BRADLEY. Thank you. Chairman Coble, Ranking Member Scott, Members of the Subcommittee, my name is Dr. Francine Bradley. I'm the Extension Poultry Specialist at the University of California at Davis. While the university has not taken a position on H.R. 817, I am appearing on my own behalf as a poultry scientist with intimate knowledge of the gamefowl community. This is my 25th year as a poultry scientist with the university. I work with poultry producers of every scale and direct the statewide 4-H poultry program. I serve as Director of the Pacific Egg and Poultry Association, a commercial poultry trade association, a Director of the Pacific Poultry Breeders Association, and I'm the Treasurer of the World's Poultry Science Association.

The term "game fowl" refers to breeds of chickens that were historically bred for the purpose of cockfighting or directly developed from that stock. They include the Old English Game, the Modern Games, the Aseels and others. Game fowl breeds are popular with poultry fanciers, that is, those people who raise birds for show. Game fowl were used to create one of today's most significant commercial breeds, the Cornish. Both male and female game fowl will fight, as will any chicken or chicken-like bird. Game fowl are popular exhibition breeds.

The enforcement of H.R. 817, if passed, would fall to officers of the law, with the assistance of local animal control authorities. The same bird that can be used for an organized cockfight can also be exhibited at a poultry show. Law enforcement officers are neither poultry scientists nor poultry judges. They cannot distinguish between a bird that will be fought and one that will be shown. No one can. Animal control officers are well trained in the area of household pets. They receive no mandatory training from qualified poultry scientists about the identification or management of poultry. In fact, there are animal control officers who particularly dislike chickens and the people who keep them. An additional problem that I have witnessed over and over again is that some misinformed individuals automatically assume that chickens owned by a Hispanic, a Samoan, or a Filipino must be cockfighting birds. While it is illegal to fight chickens in most of the United States, it is not illegal to own them.

In 2003, the game fowl breeders in California approached the University of California and the California Department of Food and Ag to obtain a documentation process for the disease prevention efforts many of them were already taking. They also wanted to encourage other game fowl breeders to participate in such programs. At the direction of the State Veterinarian, I worked with CDFA veterinary staff to develop the Game Fowl Health Assurance, GFHA, program. Since September of 2003, thousands of game fowl

cultures have been tested by the California Animal Health and Food Safety Lab. To date, no sample from, nor whole bird submission of game fowl, has tested positive for any catastrophic or reportable poultry disease.

The game fowl owners in this voluntary program attend multiple educational sessions. They receive training in biosecurity, culturing their birds, using the diagnostic lab, and vaccination. In subsequent years they attend continuing education classes and maintain their flock sampling through culture and whole bird submission.

For many, this is the first Government or university program they've ever participated in, and as each new game fowl breeder starts the program, the word spreads and interest grows. Passage of H.R. 817 would have disastrous implications for those of us in the science and veterinary communities. If owning game fowl can be perceived as violation of H.R. 817, game fowl breeders will not self-identify. They'll not come forward for educational classes, and most importantly, they won't use the Federal or State disease hotlines, and they won't be submitting their birds to their local diagnostic labs.

Cockfighting has been illegal in most of the United States for decades. It's been illegal in foreign countries in many parts of the world for centuries. Yet, this activity has not been legislated out of existence. The best way to keep our Nation's birds healthy is to have access to and communication with all bird owners. When the GFHA program was being developed, my veterinary advisors told me that we should test the game fowl for Exotic Newcastle Disease. The fame fowl breeders told us they wanted the birds tested for avian influenza. They said—and this was in 2003—that they though avian influenza was going to become more important than Exotic Newcastle Disease.

Your Judiciary Subcommittee has "Homeland Security" in its title. Homeland Security is conducting avian influenza sessions across the Nation. In April we had one such session in the Central Valley of California. The game fowl community was represented. One game fowl breeder took off from work and made a 700-mile round trip to attend. Game fowl breeders are actively participating in disease prevention and Homeland Security programs.

Passage of H.R. 817 will drive the game fowl community into dark corners. As scientists, educators and veterinary professionals, my colleagues and I will have difficulty working with these individuals, who will now be in fear of harsh fines and prison time.

Disease organisms do not distinguish between types of chickens. Avian influenza is an equal opportunity disease. All bird owners must be educated and protect their birds. Every living creature has value. A single game fowl specimen may be worth $1,000 or more. Many game fowl breeders have birds from genetic strains that have been maintained by their families for generations. To them the birds are priceless. To suggest that game fowl owners care less for the health of their animals than do other bird owners is preposterous. To promote the health of the Nation's poultry and to allow our effective educational programs to continue, I respectfully ask you to oppose H.R. 817.

Thank you.

[The prepared statement of Dr. Bradley follows:]

PREPARED STATEMENT OF FRANCINE A. BRADLEY

I. INTRODUCTION

Chairman Coble, Ranking Member Scott, members of the Subcommittee, my name is Dr. Francine Bradley. I am the Extension Poultry Specialist with the University of California at Davis. While the University of California has not taken a position on H.R. 817, I am appearing on behalf of myself, as a poultry scientist with intimate knowledge of the game fowl community. This is my 25th year as a poultry scientist with the University of California. I work with poultry producers of every scale and direct the statewide 4-H poultry program. I serve as a Director of the Pacific Egg and Poultry Association (a commercial poultry trade association), a Director of the Pacific Poultry Breeders' Association (an association of poultry fanciers), and the Treasurer of the World's Poultry Science Association (an international body of poultry scientists).

II. BACKGROUND

The term game fowl refers to those breeds of chickens (both large and bantam) that were historically bred for the purpose of cock fighting or directly developed from that stock. Those breeds include the Old English Games, the Modern Games, Aseels, and others. Game fowl breeds are popular with poultry fanciers, that is, those individuals who raise birds for exhibition purposes. Game fowl were used to create one of today's most commercially significant chicken breeds, the Cornish. Both male and female game fowl will fight, as will any chicken or chicken-like bird, and they are also exhibited.

III. THE DANGERS IN ENACTING H.R. 817

The enforcement of H.R. 817, if passed, would fall to officers of the law, with the assistance of local animal control authorities. As I mentioned in the previous section, the same bird that be used for organized cock fighting, could also be exhibited at a poultry show. Law enforcement officers are neither poultry scientists nor poultry judges. How will they distinguish between a bird that will be fought and one that will be shown? They cannot; no one can do this. Animal control officers are well trained in the areas of cats, dogs, and other small pets. They receive no mandatory training from qualified poultry scientists about the identification or management of poultry. In fact, there are animal control officers who particularly dislike chickens and the people who keep them. An additional problem that I have witnessed over and over involves the ethnicity of the poultry owner. There are some who automatically assume that chickens plus an owner who is Hispanic, Samoan, or Filipino equals cock fighter. While it is illegal to fight chickens in most of the United States, it is not illegal to own them.

In 2003, game fowl breeders in California approached the University of California and the California Department of Food and Agriculture (CDFA) to obtain a documentation process for the disease prevention efforts many of them were already taking. In addition, they wanted to encourage other game fowl breeders to participate in health maintenance programs. At the direction of our California State Veterinarian, I worked with CDFA veterinary staff to develop the Game Fowl Health Assurance (GFHA) Program. Since September of 2003, thousands of game fowl cultures have been tested by the California Animal Health and Food Safety (CAHFS) laboratories. To date no sample from, nor whole game fowl, has tested positive for any reportable or catastrophic poultry disease.

The game fowl owners in this voluntary program attend multiple educational sessions during their first year. They receive training in biosecurity, culturing their birds, using the diagnostic laboratories, and vaccination methods. As they move into their second and subsequent years of certification, the game fowl breeders attend continuing education classes and maintain their flock sampling through culture and whole bird submissions.

For many in the GFHA Program, this is the first government or university sanctioned activity in which they have participated. As each new game fowl breeder starts the program, the word spreads and interest grows. Passage of H.R. 817 would have disastrous implications for those in the science and veterinary communities. If owning game fowl can be perceived as violation of H.R. 817, game fowl breeders will not self identify. They will not come forward for educational classes. Most importantly, they will not use government services such as the CDFA or United States Department of Agriculture (USDA) disease hot lines. They will not be submitting sick birds to the diagnostic laboratories in their states.

IV. H.R. 817 DOES NOT PROMOTE BETTER BIOSECURITY FOR THE NATION'S POULTRY

Cock fighting has been illegal in most of the United States for decades. It has been illegal in some foreign countries for centuries. Yet, this sport has not been legislated out of existence, neither here nor around the world.

The best way to keep all the nation's birds healthy is to have access to and communication with all bird owners. When the GFHA Program was being developed, my veterinary advisers at CDFA suggested that the game fowl only be tested for Exotic Newcastle Disease. The game fowl breeders told us they wanted their birds to be tested for Avian Influenza also. They said, and this was in 2003, that their feeling was that Avian Influenza would turn out to be more of a problem than Exotic Newcastle Disease!

Your Judiciary Subcommittee has Homeland Security in its title. Homeland Security is conducting sessions dealing with Avian Influenza across the nation. In late April, one such Avian Influenza Workshop was held in the Central Valley of California. The game fowl community was represented. One game fowl breeder took off from work and made a 700 mile round trip to attend. Game fowl breeders are actively participating in disease prevention and Homeland Security programs.

Passage of H.R. 817 will drive the game fowl community into dark corners. As scientists, educators, and veterinary professionals, my colleagues and I will have difficulty working with these individuals who will now be in fear of harsh fines and prison time.

Disease organisms do not distinguish between a commercial meat bird and a bantam chicken. Avian Influenza is an equal opportunity disease. All bird owners must be educated and protect their birds. Every living creature has value. The feed store chick purchased for fifty cents may be a child's favorite pet. Leghorn hens may be the basis for a family business and livelihood. Poultry fanciers have as much passion for their chickens as others do for their dogs. A single game fowl specimen may be worth one thousand dollars or more. Many game fowl breeders have birds from genetic strains that have been maintained by their families for generations. To them the birds are priceless. To suggest that game fowl owners care less for the health of their animals than do other bird owners is preposterous.

To promote the health of the nation's poultry and to allow our effective educational programs to continue, I respectfully ask you to oppose H.R. 817.

Mr. COBLE. Thank you, Doctor. Thank you all for your testimony. We impose the 5-minute rule against us as well. We're not exempted from the red light, so if you all could keep your questions tersely, we would appreciate that.

Mr. Pacelle, given the fact that there's already criminal penalties in Federal law in title 7 for moving animals in interstate or foreign commerce for the purposes of animal fighting, why do you feel this legislation is necessary?

Mr. PACELLE. Thank you, Mr. Chairman. I believe it's necessary for a few reasons. One is that there still remains a thriving underground dogfighting, cockfighting, and hog-dogfighting set of industries. There are three above-ground cockfighting magazines here. You can see in the pages of these magazines, which you can subscribe to, the sale of fighting birds is advertised, and it's obviously going across State lines. Here we have just the direct flouting of Federal law here, and we have seen in so many cases with the huge amount of money to be won for purses and in side bets at cockfights and dogfights, these folks are willing to deal with a $5,000 fine or a $1,000 fine routinely.

Mr. COBLE. Mr. Pacelle, what's the name of that publication, and where is it published, if you know?

Mr. PACELLE. Yes, there are three of them. This is *The Feathered Warrior,* and then this is *The Gamecock,* and the third is called *Grit and Steel.* Two of them are published in Arkansas and one is published in South Carolina.

Mr. COBLE. I thank you.

Mr. Pollot, you contend that the enactment of this bill would result in the forcing of the views of supporting States upon the non-supporting States. Now, in this contention, Mr. Pollot, are you suggesting—strike that. Are you saying that it is your belief that this activity does not affect interstate or foreign commerce?

Mr. POLLOT. No, Your Honor, I'm not suggesting that. There are—excuse me, Your Honor, I'm too used to talking to judges.

Mr. COBLE. That's all right.

Mr. POLLOT. Mr. Chairman, no.

Mr. COBLE. You just promoted me.

Mr. POLLOT. I'm not suggesting that. I mean, clearly, they are interstate commerce, but even the Interstate Commerce Clause has limitations. Federalism is in fact one of those limitations. I note that during the recent Senate confirmation hearings on two Supreme Court Justices, Members of this Committee expressed concern because they saw that courts are in fact narrowing to a degree the very broad Commerce Clause authority that some courts have given over the years. These questions that I raise are not questions that have been raised in either of the two pieces of existing litigation in this. There is a belief expressed by the Supreme Court that States are separate sovereigns, entitled to their own domestic laws, and there is no constitutional basis, I believe, for Congress to choose the policy for States that it likes, and thereby, enact a law that some—in effect, takes away the decisions of the sovereign State to decide what goes on within its own borders.

Mr. COBLE. I thank you, sir.

Let me get back to you, Mr. Pacelle. I'll give you a chance to respond to that. I want to ask Corporal Hunt a question.

Corporal Hunt, it is my firm belief that international drug traffickers and domestic drug traffickers, for that matter, contribute very generously to terrorism. With this in mind, in your experience, are the operators of these animal fighting events generally engaged in other types of criminal activity, and if so, what types?

Mr. HUNT. Thank you, Mr. Chairman. Absolutely. Every dogfighting search warrant—and I can only address dogfighting. I've only done two cockfighting investigations in my career. But specifically articulating to dogfighting, every search warrant I have executed, I've recovered drugs at. Dogfighting appears to be quote, unquote "sport" of many drug traffickers. They have a lot of disposable income. There's also the machismo pride involved with it. The two really go hand in hand. So I would tend to agree with you on that.

Mr. COBLE. Could it in fact lead to terrorism too, perhaps?

Dr. Bradley, let me—Mr. Pacelle, I can tell by his body language he wanted to be heard—I'll get to you subsequently, Doctor.

But go ahead, Mr. Pacelle.

Mr. PACELLE. Thank you, Mr. Chairman. I just want to say that the Federal law that has existed since 1976 and was upgraded in 2002, does not ban cockfighting or dogfighting in any State, it just bans the interstate transport and the foreign commerce in animals for fighting purposes. So in Louisiana, if Louisiana chooses to continue to allow cockfighting—and the Senate Ag Committee just passed a bill to make it a felony in that State, so I think it's just a matter of time—Louisiana can still stage cockfights legally under

this law. It doesn't ban what's happening in a State, it simply bans the interstate transport of the animals. So Louisiana can't send birds to other States, and birds cannot come from other States and go into Louisiana.

Mr. COBLE. I thank you. My red light appears, Mr. Scott. I'll get you the next round, Dr. Bradley.

Mr. Scott?

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Pacelle, is there anything in this bill that is legal now that would be illegal if the bill passes?

Mr. PACELLE. Yes. The bill creates one new criminal activity, which is the interstate transport and foreign Commerce in cockfighting implements, which have no other known purpose but to be affixed to the birds' legs. So the knives and the gaffes which are attached with a little strap to the birds' legs, you could not use them in interstate or foreign commerce. And these magazines are full of ads for these cockfighting implements.

Mr. SCOTT. The transport of the animal itself is already illegal, and the only thing that's changed is the penalty?

Mr. PACELLE. That's correct.

Mr. SCOTT. Mr. Pollot, if that's the case, why would it be unconstitutional to pass the bill? Are you assuming that the present law is unconstitutional?

Mr. POLLOT. Yes, Congressman and Mr. Chairman, I am. And I suspect there will be further litigation on that point. It kind of brings up the issue that in the written testimony Mr. Pacelle has pointed to two cases that I briefly referred to before as establishing that these bans are constitutional.

However, first of all, one thing we know is that there is no such thing as black letter law. Reality is, for example, on the death penalty, the Supreme Court has been back and forth over that for many, many, many decades, and who knows what will happen? Secondly, these are two cases in two courts in the United States, and they are binding only in those courts. One of them was a takings case, which presumes the legality of the regulation and determines whether or not a fifth amendment taking has occurred. And thirdly, the cases that have been brought raise only certain issues, constitutional issues, not the constitutional issues I raise, and the one thing we can say for sure is that as general practice, courts do not answer questions that have not been asked.

Mr. SCOTT. Well, one of your claims is that it restricts transportation. Leaving one State to do something that's legal in another State, would that be a violation of the Constitution?

Mr. POLLOT. It would be a violation of the individual's right. I think it has federalism implications. Let me be clear that there are absolute prohibitions in the Constitution like the ninth and tenth amendments on Federal action, but there are also policies in the Constitution that even where it is lawful for Congress to do something, Congress should be wary of doing so. But there are also individual liberties in the constitutional right to travel.

Mr. SCOTT. Well, there's another bill that's gone through this Committee where you're trying to prohibit escorting or transporting a child from one State to another to avoid the local State abortion

laws, doing something that's legal in the other State. Would that be unconstitutional under the same rationale?

Mr. POLLOT. Constitutional questions are often very fact specific. Something having to do with the transportation of a minor across State lines for immoral purposes is a far different question than——

Mr. SCOTT. Wait a minute. Immoral? If it's legal in the other State, would that—how do you get immorality and——

Mr. POLLOT. Well, first of all, by taking a minor across the State line to do anything that would avoid medical liability, medical oversight laws, raises different questions, which I have not, obviously, had the time to analyze. I would say that I cannot venture a strong opinion on that unless I had the opportunity to sit down. But I don't think that my position here automatically means that some other law involving health and safety issues that have national importance beyond a policy like that involved in cockfighting, which by the way, I have to say the organization I'm representing has nothing to do with cockfighting. It's a gamefowl breeders association.

Mr. SCOTT. What are game fowl?

Mr. POLLOT. A game fowl, as described by Dr. Bradley over here, I think that's a fair assumption, a fair definition of what game fowl are. They are not bred solely for fighting, despite what many people believe. I, myself, have sat in on a show.

Mr. SCOTT. In fact, what else are they bred for?

Mr. POLLOT. For show. The word "fancier", as Dr. Bradley pointed out, refers to people who breed particular animals for show. I have three dogs, all of which are considered hunting breeds. I don't hunt with those breeds. I have two Westies and a Lab. My possession of them is no way an indication that I hunt with them. I happen to like those dogs.

Mr. SCOTT. Mr. Pacelle, did you want to comment?

Mr. PACELLE. Thank you. The idea that the United Gamefowl Breeders Association is not a pro-cockfighting organization is entirely absurd. UGBA formed in 1975 to fight the law that Congress passed in 1976 on cockfighting. Most of the leaders of the UGBA have been arrested for illegal cockfighting activities. In fact, the gentleman who was running the Del Rio pit, who I mentioned, he was a past president of the United Gamefowl Breeders Association, and his wife was the secretary of the organization. A gentleman in Ohio, in Vinton County, Red Johnson, was arrested for running an illegal cockfighting pit in Ohio. He was also a past president of the UGBA. This is a cockfighting organization through and through.

Now, that's not to say that game fowl can have another purpose, but the people at the UGBA are not interested in shows, they're interested in cockfighting. We fight them at the State level. Dr. Bradley has appeared in many States opposing anti-cockfighting legislation. This whole kind of show of that these people are into game fowl for show purposes is a charade.

Mr. SCOTT. Mr. Chairman, my time is up, but he did refer to Dr. Bradley by name and——

Mr. COBLE. Without objection.

Mr. SCOTT. Thank you.

Dr. BRADLEY. I just want to comment that the game fowl breeds are described in the American Poultry Association's American Standard of Perfection. The game fowl members of organized game fowl organizations do show their birds. Within the last month, I was at a show in Southern California, all game fowl breeds, and they were being judged by the President of the American Poultry Association.

Mr. COBLE. The gentleman's time has expired.

The primary sponsor of the bill before us, the distinguished gentleman from Wisconsin, Mr. Green.

Mr. GREEN. I thank the Chairman for yielding me time. Just something that I don't think we went through in the initial testimony, but it's important. The organizations that are endorsing this legislation include the U.S. Department of Agriculture, the National Chicken Council, the American Veterinary Medical Association, so as Wayne indicated, the support is pretty broad-based, and these are organizations that are among the most reputable organizations with respect to animal safety and health that we have in the Nation.

A question for Mr. Pollot, just so I am clear as to what your position is, your organization's position on cockfighting. Obviously, we're talking here about the Federal legislation before us. Do you and your organization support cockfighting bans at the State level?

Mr. POLLOT. To the best of my knowledge, the UGBA has not advocated, publicly supported, or otherwise taken a position on cockfighting.

Mr. GREEN. So they're neutral on the subject of cockfighting at the State level.

Mr. POLLOT. That is not why they exist. If you look at their bylaws——

Mr. GREEN. I'm not asking why they exist. I'm asking whether they support cockfighting bans at the State level?

Mr. POLLOT. I imagine there are probably members of the UGBA who do and members who don't. To the best of my knowledge, they have not taken any kind of an official position on it, and if they have, I'm unaware of it, and I can't really speak for individual members.

Mr. PACELLE. I'm sorry, but Mr. Pollot is just plain wrong, and is unfamiliar with what the UGBA is. I mean this is the group that we fight at the State level on cockfighting. They don't emerge on dogfighting issues, but at every anti-cockfighting hearing, whenever a bill is advanced at the State level, it's the UGBA or its State affiliates, the Louisiana GBA, the Virginia GBA, all of those State affiliates, they're all cockfighters. That's not to say again that game fowl cannot be used for show purposes, just like pit bulls. You can use a pit bull and show a pit bull for show, or you can use a pit bull for a fight. But the fact that you could do that doesn't mean that these people are not involved in animal fighting, which is what they are.

UGBA was formed to fight the Federal bill that former Representative and former Speaker Tom Foley introduced in 1975 to ban the interstate transport of fighting animals.

Mr. GREEN. I guess I bring it up, because, obviously, Mr. Pollot has been making legal arguments about federalism and constitu-

tionality. What you're saying, Wayne, is that in your experience, while they may raise those arguments here at the hearing, as an organization they have been actively involved in the underlying substance. They are fighting cockfighting bans is what you're saying.

Mr. PACELLE. Without any question, and we'd be happy to submit letters and other materials from the UGBA and the State GBAs to support this contention.

Mr. GREEN. I would appreciate that.

Yes, Mr. Pollot?

Mr. POLLOT. I imagine, I mean just as I belong to organizations that I have a difference of opinion on some matters than other members of my organization, I can join an organization for the primary purpose of the organization, and disagree with those members. I am more than a little bit concerned about an attack on the organization. I think the focus here ought to be on the merits of the——

Mr. GREEN. I don't think I'm attacking the organization. I'm just trying to understand where the organization is coming from, because obviously the arguments that have been made have been arguments of federalism and constitutional arguments. That is obviously a different matter than the underlying subject of cockfighting here. And I think it is important that we do understand, as Members, the background, the context and the larger position that's held by the organizations that are coming before us.

Mr. POLLOT. Mr. Chairman and Congressman Green, first of all, Congressman Green, I was not suggesting that you were. I am suggesting, however, that Mr. Pacelle is using an *ad hominem* attack.

Maybe it will help clarify my position somewhat. I think nobody who believes in the principles of federalism—and that includes the UGBA members—can disagree with the proposition that States have the right, as a matter of public policy, to decide whether to allow——

Mr. GREEN. I don't think anybody here is doubting whether or not States have the right here. The question is whether organizations support—my time is running out.

What I would like to get at real briefly—and, Mr. Pacelle, you can perhaps respond to this—we had testimony that somehow enforcing a Federal ban on animal fighting with interstate transportation related to animal fighting will hurt our ability to fight animal diseases. Perhaps as an organization somewhat concerned about animal health, you might be able to respond to that.

Mr. PACELLE. Yes. I do want to say that—regarding the previous question—we are critical of the UGBA. We believe that the UGBA is an organized criminal association, to be quite honest with you. But on the animal health issues, it's quite plain that the National Chicken Council, which is not a group that the Humane Society is normally aligned with—this is the poultry producers of the United States—they support this legislation because they view cockfighting and the movement of birds across the country and across national boundaries as a threat. These birds are in underground commerce, and they're the birds that are not part of any regimented program. They're not part of any legitimate industry, and therefore, may spread diseases.

I want to say just finally, Mr. Green, that in California, Exotic Newcastle Disease, which is a respiratory disease—it's a bird influenza—there was an outbreak in 2002, and it extended to 2003. The source of the disease is not clear. It is apparent that it came from Mexico, but it was the network of backyard cockfighting operations that spread the disease. The Federal Government spent $200 million trying to contain the disease and reimbursing owners of birds that were destroyed. Four million birds were destroyed.

So you have the USDA——

Mr. COBLE. Mr. Pacelle, if you can wrap up, we're going to have a second round.

Mr. PACELLE. Sure. I'm sorry. That's sufficient.

Mr. COBLE. We'll have a second round. And, Dr. Bradley, we have not intentionally ignored you, but you want to insert your oars into these waters now?

Dr. BRADLEY. Yes, sir, I'd like to.

Mr. COBLE. If you can do that briefly, then I want to recognize Mr. Delahunt.

Dr. BRADLEY. Thank you, Mr. Chairman. This issue of Exotic Newcastle Disease in Southern California and Congressman Green's reference to the USDA, there has been mention made of former Secretary Ann Veneman's comments, both in your talking points and written testimony. She misspoke in my opinion, and I wrote her an extensive letter on the point, by saying that they were implicated. Other people have taken this to mean that they were at fault. It is important to note in the Exotic Newcastle Disease outbreak of 2002, the very first isolation in California was in companion birds—those are pet birds—that were in a pet store in Northern California.

The three indexed chicken cases, the first three cases in chickens, two involved game fowl, one was a backyard egg-laying flock. It's very important to know, the reason that we knew about the disease in chickens was because the two people who owned the game fowl, one gentleman, as soon as his birds became sick, took them to the diagnostic laboratory in San Bernardino, just what he should do. The gentleman took his birds to a private poultry practitioner also in Southern California, also what he should do. The owner of the backyard egg-laying flock, which by the way, was a veterinarian, not a poultry vet, she had 21 chickens. She waited until 18 died until she told anyone.

So I put forward to you the people who acted responsibly were the game fowl owners.

Mr. GREEN. Mr. Chairman, could I just—I mean the question that Mr. Pacelle was responding to was whether or not this legislation would make it harder to enforce animal safety, not the other issues that have been brought up.

Mr. COBLE. I thank the gentleman.

Now, folks, as we all know, one of the purposes for hearings is to present Members the opportunity to examine both sides of the issue. This panel is serving this purpose very well. We're getting both sides, and that's the purpose of it. We appreciate you all being forthright.

I'm pleased to recognize the distinguished gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Yes, thank you, Mr. Chairman.

Mr. Pollot, what's your opinion of cockfighting, your personal opinion?

Mr. POLLOT. My personal opinion is it doesn't interest me in the slightest.

Mr. DELAHUNT. Do you approve of it?

Mr. POLLOT. I've never seen one. I don't have enough information to approve or disapprove.

Mr. DELAHUNT. Okay. Dr. Bradley?

Dr. BRADLEY. All chickens fight. You can't make a chicken fight that doesn't want to fight.

Mr. DELAHUNT. I understand that, but I'm asking you your opinion of organized cockfighting.

Dr. BRADLEY. I never advocate breaking the law. In areas, States and countries where it's legal——

Mr. DELAHUNT. I'm not asking you——

Dr. BRADLEY. Would you allow me to explain?

Mr. DELAHUNT. No. I don't have enough time. So the rules here are that I ask the question, and if you could give me a succinct direct answer, it would be profoundly appreciated. I'm just simply asking you your personal opinion. I'm not asking you about a legal analysis.

Dr. BRADLEY. I apologize.

Mr. DELAHUNT. No, no need to apologize.

Dr. BRADLEY. I am not opposed to cockfighting where it's legal, but I believe in the type of rules where it's not necessary that the birds fight to the death.

Mr. DELAHUNT. Okay. Thank you. That's very informative.

Dr. BRADLEY. You're welcome.

Mr. DELAHUNT. I'd like to, you know, inform my own understanding. I haven't had a chance to really read the statute, but in terms of showing, if you will, game fowl, as opposed to the fighting of the birds. The law, as it currently exists, does not prohibit showing game fowl. Is that correct, Mr. Pollot?

Mr. POLLOT. I believe that that's correct.

Mr. DELAHUNT. Is that correct?

Dr. BRADLEY. Yes, sir.

Mr. DELAHUNT. And that's your understanding too, Mr. Pacelle?

Mr. PACELLE. Without any question. Just as like with pit bulls, you can show pit bulls. You just can't fight them. And with game fowl, you can show game fowl, you just can't fight them.

Mr. DELAHUNT. I guess my concern, when I listen to you, Professor Bradley, about the response of a law enforcement agency, I would suggest—and in a previous career I was the chief prosecutor in a jurisdiction in Massachusetts—you know, no responsible prosecutor would seek to charge an individual for showing game fowl. There has to be significant additional evidence that would prove beyond a reasonable doubt that there was an intent to have these game fowl engage in cockfighting. I mean I have difficulty understanding your argument.

Dr. BRADLEY. Right. Well, I'm happy that people are better educated about game fowl in your State than in mine. My experience has been it's often the case you'll have a police officer going down an alley, say, looking for a stolen car, looking over back fences.

These chickens, person comes out of the house and it's a person of color, there is an assumption made, oh, those kind of people——

Mr. DELAHUNT. Can I interrupt again?

Dr. BRADLEY. Yes.

Mr. DELAHUNT. Do you have any data?

Dr. BRADLEY. I've testified in these cases, sir.

Mr. DELAHUNT. Where that has only been——

Dr. BRADLEY. There was no paraphernalia, no cockfighting pit. The birds were confiscated, taken by animal control. Many died in the possession of animal control.

Mr. DELAHUNT. There had to be, there had to be additional evidence indicating some sort of organized plan to engage in a banned, prohibited practice of game fighting.

Dr. BRADLEY. No, sir.

Mr. DELAHUNT. Were there convictions on those cases that you testified in?

Dr. BRADLEY. Many of them, luckily, there weren't convictions.

Mr. DELAHUNT. Okay. Mr. Pacelle?

Mr. PACELLE. Again, some of the investigators at the Humane Society of the United States have been at odds with Dr. Bradley. In criminal cases she is often advanced as the expert witness, you know, by the cockfighters involved. And I believe in all of those cases, it did lead to prosecution. And I'm not aware of any individual cases where you didn't have an abundance of evidence, whether it's the fighting implements, betting slips, scarred or wounded animals. All of that in the aggregate is what the prosecutors rely on. And when we advance information to law enforcement officials, it's incumbent on them to assemble a sufficient amount of evidence to make the prosecution stick.

Dr. BRADLEY. In several of the recent cases they didn't get to court because they were thrown out because there wasn't sufficient evidence, but this was after the people's birds had been taken, had been mistreated, housed improperly. Some of them died in the care of animal control.

Mr. DELAHUNT. My time is up.

Mr. COBLE. As I say, I think this issue is important to warrant a second round, and we will do that. I am pleased to recognize the distinguished gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. And I'll try to keep my questions relatively brief.

I would just note that the Hamilton County Sheriff's Department in Cincinnati is contained within Hamilton County, is one of the 390 local sheriff's departments that have endorsed the specific legislation that we're talking about here today. Since the Hamilton County folks are not here, but the Franklin County, Ohio folks, where Columbus, our capital, is located, is represented by Corporal Hunt, perhaps, Corporal, I could ask you a couple of questions.

What benefit do you see from having Federal law enforcing the animal fighting laws that we've been discussing here, why should the Feds get involved, and what benefits do you see from us doing that?

Mr. HUNT. Thank you, Congressman. As referenced in my testimony, I have had at least one situation where I did take a case to the United States Attorney's Office for the Southern District, and

it was declined because it was a Federal misdemeanor. Their policy was that they don't prosecute Federal misdemeanors. So I think if the legislation were to pass as a felony, obviously, you had to have the prosecutorial entity on board. There's certainly a desire to enforce these laws, not only at the local, but at the Federal level. We just need the proper tools to do it. And as I mentioned, having the U.S. Attorney's Office on board would certainly facilitate that.

Mr. CHABOT. Thank you. And finally, do you have an opinion as to which Federal law enforcement agency would be best equipped to assist in the enforcement of these laws?

Mr. HUNT. My initial response would be probably the Federal Bureau of Investigation. They certainly have more resources, but also realizing that they are extremely taxed with other responsibilities, homeland security and whatnot, that possibly the U.S. Department of Agriculture would have a substantially lighter caseload to where they could pursue this more aggressively.

Mr. CHABOT. Thank you very much.

Mr. Chairman, in the interest of time, I'll yield back the balance of my time. Thank you.

Mr. COBLE. Thank you, Mr. Chabot. You have more time if you have another question.

We'll start a second round pending the arrival of a reporting quorum. Dr. Bradley, I had a couple questions for you, but my friend from Massachusetts has opened the door, and I want to pursue this a little more thoroughly. He asked your opinion on this.

Now, folks, let the record show I have never attended a cockfight, so I come to you without the benefit of being—I'm not implying, Doctor, that you have. I didn't mean that. But here's the question I want to ask. Am I correct in assuming that some cockfights are performed without the affixing of knives, and some don't have the knives?

Dr. BRADLEY. That is correct, Mr. Chairman. Different cultures have different rules. In some cultures they fight what they call the naked heel, or just with the natural spur that the birds are hatched with, and they don't attach any other implement.

Mr. COBLE. You responded to Mr. Delahunt, Doctor, that you do not endorse cockfighting where the animals are permitted to be fought until they die. Do you favor cockfights where the knives are affixed to the——

Dr. BRADLEY. That's an interesting question, Mr. Chairman. Many people—and I don't think it's surprising—they find the idea that you're attaching a sharp blade to a bird to fight to be a very scary thing. It was long ago explained to me by many in the game fowl community, that the wounds inflicted with a gaffe or another type of knife are cleaner wounds and the birds can recover better than with a naked heel. And at some of the cockpits, you will have veterinarians on site that will stitch up the birds, apply veterinary care at the end of a fight.

So the people who believe in using the attached implements feel that it is in the interest of the welfare of the bird.

Mr. COBLE. Doctor, do you know of any study or studies on birds engaged in cockfighting that would indicate that those birds are more or less prone to spread disease than birds that conversely do

not participate in cockfighting? Do you know one way or the other about that?

Dr. BRADLEY. The disease is not specific to any type of bird, and it's certainly not limited to chickens. It's important to note in the video that was shown, they showed dead swans being taken away, the natural reservoir of high-path H5N1 are wild ducks and terns. It spreads to other chickens. It can spread to other types of birds, to mammals. But chickens, any type of chicken is not the natural reservoir of that disease.

Mr. COBLE. Thank you, Doctor.

Corporal, which Federal law enforcement agency do you believe would be best equipped to assist in the enforcement of these laws if this bill is enacted?

Mr. HUNT. Certainly, in my opinion, the FBI would have greater resources available to them. There's more field offices. There's also a greater working environment with that agency, with local law enforcement, not that USDA doesn't, but we routinely work with the FBI in other criminal investigations. There's already a very strong liaison program. So my opinion, I think the FBI would be the most suited for that.

Mr. COBLE. I think we have at least been on the fringes of this question, but let me get it in the record. Do you believe, Corporal Hunt, that given the fact that animal fighting is already prohibited in most States, why do you think it needs to be prohibited by the Federal Government?

Mr. HUNT. As I mentioned earlier, most of these parties will travel in interstate commerce of this activity. They may travel into smaller jurisdictions where local law enforcement resources may be virtually nonexistent. A certain county may only have a sheriff and two deputies. They don't have the resources to investigate it. Whereas, if the person was traveling in interstate, the FBI could, or the appropriate Federal agency could adopt it.

Mr. COBLE. Mr. Pollot and Mr. Pacelle, do you all want to weigh in on this before I yield to Mr. Scott?

Mr. PACELLE. Thank you. One of the additional reasons, Mr. Chairman, is—is now the threat of avian diseases. It's a very compelling Federal interest to stop the interstate and international movement of birds that could spread Exotic Newcastle Disease, avian flu. When you're talking about California with Exotic Newcastle Disease, 200 million Federal dollars went in to contain this, that would be spilled milk compared to avian influenza if cockfighting birds spread that to the United States.

You know, in these fights in Asia that we've seen, one of the ways that it was spread is that the knife wounds sometimes are delivered to the lungs of the birds, so the birds lungs fill with blood, the bird goes down. The handler then picks up the bird, puts his mouth over the bird's head and sucks the blood out of the lungs. I can't imagine a more direct pathway from animal to human in terms of the spread of disease than putting a bird's head in your mouth and sucking the blood out of the lungs. This is a—it's dangerous international industry.

Mr. COBLE. Dr. Bradley, very quickly, and then it's coming to Mr. Scott.

Dr. BRADLEY. Certainly, that's a very good way to transmit the disease. We also saw in Eastern Turkey, small children who were so upset that their only pet, their only possession, their chicken was sick, that they were kissing the chicken. The way to prevent the spread of disease is to educate, not castigate or criminalize. We have to educate people how to prevent the spread of disease.

Mr. COBLE. Mr. Pollot, very quickly.

Mr. POLLOT. Mr. Chairman, two things. First, I believe it is a far more efficient use of Federal resources to provide such things as law enforcement assistant grants to the States that ban this, rather than finding ways to unofficially ban it. And I know Mr. Pacelle said that it's not a ban, but in impact it is.

Secondly, I was also interested in Mr. Pacelle's answer to Congressman Delahunt's comment earlier about the disease issue, when his own words were: this is an underground commerce, and therefore, they're not expected, they're not this, they're not that, which emphasizes the point that if you do drive it underground, you are far more likely to end up with a disease problem than if you recognize it and expose it to the regulatory universe.

Mr. COBLE. I thank the gentleman.

The distinguished gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you.

Corporal Hunt, I too haven't attended one of these things. You mentioned the fact that the purse in one of these was $10,000? What does that mean?

Mr. HUNT. Very simply, there's a contract entered into between the two fighters, and they will agree upon the purse or the prize of the outcome of that particular fight. Traditionally, each fighter will put up half of the purse, winner take all. So in a $10,000 purse, each dogfighter or each owner of the fighting dog is putting up $5,000 for that.

Mr. SCOTT. And how much is bet on the side at one of these fights?

Mr. HUNT. It can range from the hundreds to the tens of thousands. As I mentioned, you know, a lot of drug dealers will be there; a lot of disposable incomes available.

Mr. SCOTT. Does the operator of this thing—how does he make money?

Mr. HUNT. Sometimes he may receive a portion of the overall event.

Mr. SCOTT. What do you mean a portion of the overall event?

Mr. HUNT. There's typically an admission charged. The right that I hit, it was $30 to walk in and view the fight. So the person promoting the event took in all the door proceeds.

Mr. SCOTT. Do they get any cut of the gambling proceeds?

Mr. HUNT. Sometimes that is possible.

Mr. SCOTT. And also, you indicated the Department of Justice officials said they don't prosecute misdemeanors. Did they make it clear that if it were a felony, they would prosecute?

Mr. HUNT. I really don't recall that, Congressman. I know we were dealing with the matter at hand, and I can't recall if that came up or not.

Mr. SCOTT. But they would not prosecute because it was just a misdemeanor.

Mr. HUNT. And again, this was an Assistant U.S. Attorney who was the duty attorney. I don't know if that was written policy of their office or not.

Mr. SCOTT. Dr. Bradley, are you concerned that if these birds are transported interstate that diseases could in fact get out of control?

Dr. BRADLEY. Any time you have bird movement, Congressman, and birds congregating, there is the risk of disease. We all experience that when we go to a poultry show or if you have to have commercial birds going across State lines. That's why it's important to have the people who own the birds, move the birds, and receive the birds be educated about signs of disease and where they can go for assistance.

Mr. SCOTT. Well, if these are being transported essentially for illegal purposes, they're not going to—I mean, doesn't that open you up to things you have no control over if they're not prosecuted, if they're not deterred from transporting these birds interstate?

Dr. BRADLEY. My role is not a regulatory person. I'm an educator, so I want the ability to work with people who own chickens, whatever type of chickens they are, so they know about disease prevention and health maintenance.

Mr. SCOTT. Mr. Pacelle?

Mr. PACELLE. Dr. Bradley is essentially suggesting that we have a regulatory program for monitoring the animal fighting industry, and I don't think the American public is going to tolerate decriminalizing animal fighting. The trends are in the opposite direction. More and more States every year are adopting felony-level penalties not only because they consider animal fighting a social ill and that it's inhumane and barbaric, but it's often associated with other criminal activity. Why are these upstanding citizens suddenly—you know, who are involved in narcotics traffic, illegal gambling, violence against people, why are they suddenly going to be, you know, paying attention to disease issues for their birds? I mean, we're not going to decriminalize this. We're not going to see repeals of State laws on dogfighting and cockfighting.

Mr. SCOTT. Thank you.

Mr. COBLE. The gentleman's time has expired.

The distinguished gentleman from Florida, Mr. Feeney, and we're also glad to have the other distinguished gentleman from Florida, Mr. Keller, with us. Mr. Feeney?

Mr. FEENEY. Mr. Chairman, thank you. I don't have any questions at this time.

Mr. COBLE. Very well. Mr. Keller?

Mr. KELLER. Same, Mr. Chairman. No questions.

Mr. COBLE. Oh, I thought you had gone, Bill. I didn't see you. Mr. Delahunt?

Mr. DELAHUNT. If I could impose upon Mr. Pacelle, I would request, Mr. Chairman, that those magazines that you held up be introduced and made part of the record of this particular hearing.

Mr. PACELLE. Mr. Delahunt, thank you. You know, we will submit samples of the three aboveground cockfighting magazines as well as many of the dogfighting magazines, *Sporting Dog Journal, American Pit Bull, Terrier Gazette.* These are appalling magazines, and, frankly, they're used through the Postal Service to promote illegal animal fighting activities. And I think that it raises very sig-

nificant legal questions for enforcement authorities by promoting this conduct, the Federal——

Mr. DELAHUNT. Mr. Chairman, if we can make these magazines part of the record, I'd request that you have Committee staff refer these magazines to the Department of Justice for review to report back to the Committee whether there are any violations of existing criminal statutes.

Mr. COBLE. Without objection, that will be done.

Mr. DELAHUNT. Thank you.

You know, I am interested in—Mr. Pollot, this organization you belong to, are you on the board of directors?

Mr. POLLOT. No, I'm not a member of the organization.

Mr. DELAHUNT. Oh, you're not?

Mr. POLLOT. No. I represent the organization.

Mr. DELAHUNT. So you're their counsel?

Mr. POLLOT. For some purposes.

Mr. DELAHUNT. For some purposes.

Mr. COBLE. Mr. Delahunt, if you would suspend just a moment, I thank you all for being here, and once Mr. Delahunt——

Mr. DELAHUNT. It looks like a full house here today.

Mr. COBLE. We have a full house, and once Mr. Delahunt completes his questioning, we will mark up. And if the panelists would remain, I'd like to visit with you all before you leave.

Mr. DELAHUNT. May I have another 10 or 15 minutes of time for——

Mr. COBLE. The gentleman from Massachusetts may continue.

Mr. DELAHUNT. What have you represented them in, Mister——

Mr. POLLOT. We are looking at the constitutionality of the existing law.

Mr. DELAHUNT. Okay. You don't disagree with the proposition that the current legislation is simply an enhancement of the penalty so that the same constitutional concerns that you articulate don't change, there is no new legal theory, at least that I can discern.

Mr. POLLOT. Mr. Chairman and Congressman, I hate to sound like a lawyer, but yes and no. Mr. Pacelle had pointed out there is a provision here that is not in existing law with respect to——

Mr. DELAHUNT. Oh, with respect to the——

Mr. POLLOT. With the paraphernalia.

Mr. DELAHUNT. The knives and the——

Mr. POLLOT. Right, and I'd also point out——

Mr. DELAHUNT. What do you call them, gaffs?

Mr. PACELLE. G-a-f-f-s.

Mr. POLLOT. Like a fishing gaff, I believe.

Mr. DELAHUNT. Fishing gaff?

Mr. PACELLE. Like a curved ice pick.

Mr. DELAHUNT. What else—what other kind of instruments do they use in these cockfights?

Mr. PACELLE. There are short knives, there are long knives, or gaffs. Those are—you use the same implement on both birds for an even—for an even fight. So, you see——

Mr. DELAHUNT. That really does sound barbaric, at least in my opinion, knives, long knives, ice picks. You know, I have to suggest that—and you were earlier referring to the Commerce Clause and

its implications. I really don't see an issue there. But then you went on to talk about policy. I would suggest, respectfully, that the United States Congress has articulated the Federal Government's policy in terms of the transportation of these animals for purposes of cockfighting. I mean, I wasn't here when the law was passed, but I would have supported it. And it seems rather clear that this is the policy of the Government of the United States.

Mr. POLLOT. Well——

Mr. DELAHUNT. Other than the constitutional Federal—you know, federalism arguments that you make.

Mr. POLLOT. Congressman, I'm not disputing that this may well be the policy of the Federal Government, although it's not uniform with respect to game fowl as opposed to other kinds of fighting animals. However——

Mr. DELAHUNT. What other fighting—I'm not really into the fighting animal subculture——

Mr. POLLOT. I understand, Congressman.

Mr. DELAHUNT. But if you could—what other—just for my edification.

Mr. POLLOT. Well, the reason I raise that is that the law does not—the Federal policy as it exists does not treat them the same.

Mr. DELAHUNT. Is discriminatory against the animal kingdom as to who we let fight and who we don't let fight.

Mr. POLLOT. Yes, but aside from that, the Constitution——

Mr. DELAHUNT. I doubt, with all due respect, Mr. Pollot, that that would rise to the level of a constitutional classification issue based upon the Equal Protection Clause.

Mr. POLLOT. I'm not suggesting—I have not raised an Equal Protection argument at all. I mean, frankly, animals don't have equal protection rights, and Congress is certainly free to choose. My point—I pointed that out only to recognize that the policy is there, but it is not uniform across the statute. The issues I raise are federalism——

Mr. DELAHUNT. Well, how is it not uniform across the statute? Because there are other——

Mr. POLLOT. Certain types of activities are totally banned. Certain types are not.

Mr. DELAHUNT. Like—give me an example?

Mr. POLLOT. Dogfighting is, cockfighting is not.

Mr. DELAHUNT. Okay. What other—like I said, I'm brand new to this subculture, so if we—what other animals do we—or they pay to see fight?

Mr. PACELLE. Well, it's dogs for fighting, and then we spoke earlier before you arrived, Congressman, hogs are released, have their tusks removed and pit bulls are sicced upon them to tear them up.

Mr. POLLOT. Also bears, if I recall correctly. I did want to——

Mr. DELAHUNT. I thank you, Mr. Pollot. I would just conclude by saying, you know, I really find that all just barbaric, disgusting, and unacceptable in a civilized society, and with that I yield back.

Mr. COBLE. I thank the gentleman.

Folks, I would like for you all—if you all can, I'd like to visit with you after we adjourn. I thank the witnesses for their testimony. The Subcommittee very much appreciates this. In order to ensure

a full record and adequate consideration of this important issue, the record will be left open for additional submissions for 7 days.

Also, any written questions that a Member wants to submit to any of the witnesses must be submitted within the same 7-day period.

This concludes the legislative hearing on H.R. 817, the "Animal Fighting Prohibition Enforcement Act of 2005." Again, we thank those in the audience as well as the panelists, and if you all could, without undue inconvenience, I would like to visit with you four very briefly after we conclude our markup.

The hearing stands adjourned.

[Whereupon, at 1:33 p.m., the Subcommittee proceeded to other business.]

APPENDIX

Material Submitted for the Hearing Record

PREPARED STATEMENT OF THE HONORABLE MIKE PENCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

MICHAEL R. PENCE
SIXTH DISTRICT, INDIANA

CHAIRMAN
REPUBLICAN POLICY COMMITTEE

COMMITTEES
AGRICULTURE
JUDICIARY
INTERNATIONAL RELATIONS

Congress of the United States
House of Representatives
Washington, DC 20515–1406

Statement of Congressman Mike Pence
U.S. House of Representatives Committee on the Judiciary
Subcommittee on Crime, Terrorism and Homeland Security
May 18, 2006

Mr. Chairman, I thank you for holding this hearing today. I want to commend my colleague Rep. Mark Green for introducing this legislation, which I am proud to cosponsor. We deal with many important subjects in this committee and in this Congress, and animal welfare matters are not often a subject we confront. But that does not mean the subject is unimportant or frivolous. This subject warrants not only our attention, but our decisive action.

It simply is not healthy and not right for people to take pleasure in watching dogs tear one another apart, with the animals dying from blood loss or shock. And it is not healthy or right to watch birds, with knives affixed to the legs, slash one another to death. My State of Indiana outlaws this conduct, and allows courts to impose felony-level penalties for individuals who perpetrate these crimes.

There is abundant evidence that people who exhibit malicious cruelty to animals are also a danger to people. It should surprise no one that organized animal fights are also the scene of other criminal conduct, such as gambling, which I vehemently oppose. It particularly disturbs me to learn that people bring their children to cockfights and dogfights. Such spectacles can only desensitize these children to life.

I am pleased that we are addressing this important legislation today, and I hope this committee and the House of Representatives passes the legislation in short order.

WRITTEN SUPPLEMENT TO TESTIMONY OF MARK L. POLLOT

Mark L. Pollot

Supplement to Testimony Before the Judiciary Subcommittee on Crime, Terrorism and Homeland Security

on H.R. 817

Hearing Date: May 18, 2006

I. INTRODUCTION

Chairman Coble, Ranking Member Scott, members of the Subcommittee, my name is Mark Pollot. I presented written and oral testimony in the above-referenced hearing on behalf of myself and the United Gamefowl Breeders Association ("UGBA") represented throughout 33 states. I am submitting this supplemental testimony pursuant to the Subcommittee's determination to leave the record open for a week to permit the submission of additional material subsequent to the hearing. We find it necessary to confront certain allegations raised by the witness for the Humane Society of the United States ("HSUS").

In my prior testimony, I noted that the United Gamefowl Breeders Association represented the interests of over 100,000 persons. If the UGBA is to present itself as does the HSUS (combining members and "constituents"), UGBA represents the interests of millions of individuals.

HSUS has represented in its written and oral testimony that the UGBA and its members and supporters are engaged in a grand criminal conspiracy. HSUS witness Wayne Pacelle made specific allegations that officers of the UGBA had been arrested and/or convicted for criminal behavior involving gamefowl. Now, on the one hand, these allegations are totally irrelevant to my testimony. They constitute, as I noted in my response to questions from the Subcommittee, *ad hominem* attacks which serve to do no more than to demonstrate that Mr. Pacelle could not confront the points of my testimony

on the merits.[1] Nevertheless, since these allegation seek to discredit UGBA as an organization and are false, both UGBA and I feel obliged to make sure that the record before this Subcommittee and the Congress be corrected.

II. THE ALLEGATION THAT OFFICERS OF UGBA WERE ARRESTED AND/OR CONVICTED OF GAMEFOWL-RELATED CRIMES IS UNTRUE

First, both UGBA as an organization (which is not, as Mr. Percelle suggests, a cockfighting organization) does not condone or advocate illegal actions. Indeed, the thrust of my testimony was that H.R. 817 itself violates the most fundamental law of this country, the United States Constitution.[2] I also suggested that the Congress could further its policy of supporting those states that did not allow gamefowl fights without the constitutional problems that plague H.R. 817 by making available law enforcement assistance grants to those states trying to curb activities illegal in their states. Certainly, whenever asked, I suggest that persons who disagree with constitutional laws engage in the political process to change those laws rather than break those laws.

Mr. Percelle's allegations with regard to the supposed criminal nature of UGBA and its officers are demonstrably false. For example, Mr. Percelle testified that a Red Johnson of Ohio was an officer of UGBA and arrested and/or convicted of a gamefowl crime. While I cannot speak to whether Mr. Johnson committed a gamefowl crime, I can state

[1] It should be noted that Mr. Percelle could not make any such allegation with respect to me, and could not. The most he could say was to make a weak claim that I simply "don't know [my] clients." He made not attempt to confront the merits of my testimony.

[2] In the context of the hearing I was asked for my personal opinion of cockfighting and whether H.R. 817 or its predecessor constituted a federal policy. I respectfully suggest that such questions were not relevant to the point of my testimony. The constitutionality of a law is wholly independent on whether the policy embodied in the law is wise or well executed. If it is a wise, well executed policy, it is void *ab initio* if it violates the constitution. If it is a poor policy or badly executed, but constitutional, it should be opposed in the political process, not in court. I may even agree with the policy of the law, but the constitution should not be sacrificed simply because I or others might not like the result in a particular case.

that at least one problem for Mr. Percelle is that Red Johnson is not and never has been a UGBA officer, a fact of which Mr. Percelle could not have been unaware, except in the exercise of willful ignorance.

Mr. Percelle also stated that a man named Don Poteat was a UGBA officer who committed a gamefowl-related crime or crimes. Mr. Poteat had indeed been elected UGBA president, but resigned in writing three days after his election. It is my understanding that he was arrested with allegations that he had committed a gamefowl related crime about one-and-a-half years *after* he resigned.[3] It cannot with any honesty be alleged therefore, that an officer of UGBA committed a crime related to gamefowl.[4]

III. CONCLUSION

I respectfully request that this supplemental testimony be included in the record in the above-referenced matter.

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[3] I also understand that there was no trial on the charge and no conviction. Of course, merely being arrested does not establish that a crime was committed nor that the defendant was guilty of committing one.

[4] It is ironic that Mr. Percelle should attempt to rely on such allegations considering that – for example – it is my understanding Mr. J. P Goodwin, whose is a director for the HSUS is – according to information on Lexus-Nexus, an admitted, convicted felon.

PREPARED STATEMENT OF W. RIPLEY FORBES, DIRECTOR OF GOVERNMENT AFFAIRS, AMERICAN HUMANE SOCIETY

PREPARED TESTIMONY

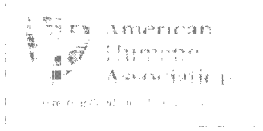
E. Ripley Forbes, Director
Government Affairs
American Humane Association

H.R. 817, the "Animal Fighting Prohibition Enforcement Act"

Subcommittee on Crime, Terrorism, and Homeland Security

Committee on the Judiciary

May 30, 2006



American Humane Association
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Statement in Support of H.R. 817

The American Humane Association wishes to thank the Subcommittee on Crime, Terrorism, and Homeland Security for holding a hearing on H.R. 817 and for allowing us to submit written testimony. American Humane strongly supports the "Animal Fighting Prohibition Enforcement Act." Animal fighting is a patently cruel and vicious activity that cannot be tolerated in a humane society. We believe criminal prosecutions accompanied by serious, credible penalties, are the best ways to combat animal fighting.

The cruelty and brutality inherent in animal fighting are shocking. The animals involved, whether dogs, fowl, other animals, suffer painful injuries and death. The wounds endured in the fighting pit are the most obvious consequence, but the violence goes beyond the events themselves. Losing animals who manage to escape a fight with their lives are often killed by their owners after the fight. Moreover, purveyors of animal fights put their animals through grueling training regimens that consist of more suffering and often endanger their lives.

As animals are trained and acclimated to the violent world of fighting, they become increasingly difficult to keep as pets or to safely live among other animals and people. Dogs that are trained for the fighting pit develop aggressive tendencies that make them a threat even to those who take no part in animal fighting. Recent stories of dog attacks reported in the media have alerted Americans to the dangers posed by savage dogs, and have led some state and local governments to enact sweeping laws aimed at specific breeds such as pit bulls. These attacks, and the fear they inspire, are usually the result of dogs that have been bred for or by animal fighting operations. Moreover, the indiscriminate breeding practices that produce animals for the fighting circuit have added to already serious animal overpopulation issues, with many animal shelters now forced to euthanize an inordinate number of dogs, many of which have histories of being involved in fighting.

The negative impact of animal fighting runs even deeper as a result of misconceptions that this practice is a healthy tradition or a family activity. In many areas of our nation, children are taken out to observe animal fights at a young age. These developing children become dangerously desensitized to blood, violence, and suffering as they witness animals attack each other, and are taught that inflicting pain is an acceptable form of amusement. Behavioral science teaches us that lessons learned early in childhood determine behavior and character for the rest of our lives; exposing children to violence and telling them that it is acceptable, teaching children that fighting animals to the death is an honored family tradition, is not the way to raise a humane, well-adjusted generation.

The provisions contained in this bill are vital to the success of a Federal effort to stop animal fighting.

Current federal law does not provide penalties strong enough to discourage people from taking part in these events. Incredibly high sums are wagered on animal fighting events; for many individuals involved, small fines may be seen as a mere cost of doing business. Moreover, federal prosecutors are hesitant to seek indictments for violating the current laws, which provide only for misdemeanor penalties. The bill's provision for up to two years in prison for engaging in animal fights is a marked improvement, and should help discourage individuals from taking part in this cruel practice.

The provision contained in § 49(e) outlawing the sharp knives and gaffs used in cock-fighting is also important to ensuring that those who take part are punished. Although cock-fighters are difficult to catch, the sharp steel weapons used to enhance the birds ability to wound each other are often found by law enforcement agents. The sharp knives and gaffs serve no lawful purpose aside from cock-fighting.

In addition to the commendable provisions mentioned above, American Humane asks that the subcommittee consider adding a time limited reporting provision to the bill. A reporting provision would require the Attorney General to periodically report back to Committee on the status of federal prosecutions initiated under this bill, and on the progress in combating illegal animal fighting. When legislation aims to eradicate a crime by increasing penalties and expanding federal statutes against that crime, there is value assessing the impact of the legislation on the number of Federal prosecutions for animal fighting and the incidence of the practice. Adding a section to the bill asking for a report from the Attorney General could assist the Committee in monitoring the effectiveness of the legislation.

Dog-fighting is already illegal in every state, and cock-fighting is illegal in every state but two. Public opinion is clearly moving against events in which animals are forced to fight each other for the enjoyment of spectators. American Humane strongly supports H.R. 817 as an important step towards eliminating animal fighting. Law enforcement agencies must be given the tools they need to go after animal fighters, and our children must be taught that injuring and killing animals for human enjoyment is unacceptable.

On behalf of the membership and supporters of American Humane, we urge the Subcommittee to approve HR 817 and report it to the full committee.

Thank you.

Founded in 1877, the **American Humane Association** is the oldest national organization dedicated to protecting both children and animals. Through a network of child and animal protection agencies and individuals, the American Humane Association develops policies, legislation, curricula, and training programs to protect children and animals from abuse, neglect, and exploitation. The nonprofit membership organization, headquartered in Denver, raises awareness about The Link® between animal abuse and other forms of violence, as well as the benefits derived from the human-animal bond. American Humane's regional office in Los Angeles is the authority behind the "No Animals Were Harmed"® End Credit Disclaimer on TV and film productions, and American Humane's office in Washington is an advocate for child and animal protection at the state and federal levels.

LETTER FROM KURT P. HENJES, ASSISTANT GENERAL COUNSEL FOR GLAXOSMITHKLINE, TO THE HONORABLE HOWARD COBLE

GlaxoSmithKline

Chairman Howard Coble
Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary
House of Representatives
Office 2468
Rayburn House Office Building
Washington, D.C. 20515

May 30, 2006

Dear Chairman Coble:

It was an honor and a pleasure for GSK to testify before the U.S. House of Representatives' Subcommittee on Crime, Terrorism and Homeland Security on May 23, 2006. GlaxoSmithKline (GSK) continues to support passage of the Animal Enterprise Terrorism Act (H.R. 4239) and it is GSK's sincere hope that Mr. Trundley's testimony and visual aids will play a positive role in moving the bill through the legislative process.

As you will recall, Mr. Trundley's testimony utilized three slides presented electronically as well as in static poster displays. One of the slides consisted of an anonymous letter that was distributed on the school grounds of a GSK employee's child. The letter alluded to the substance abuse treatment of the child's mother, as well as other personal taunts and defamations about the family. Due to ongoing concerns about the well-being of our employees and their families, GSK respectfully requests that the slide I have just described be redacted from the Subcommittee's record.

GSK appreciates the Subcommittee's attention to our request and GSK thanks you again for the opportunity to testify in support of H.R. 4239. Please feel free to contact me or Philip Thevenet if more information is needed or if GSK can be of any service to you and the Subcommittee on Crime, Terrorism and Homeland Security.

Sincerely,

Kurt P. Henjes
Assistant General Counsel

Cc: Phillip Thevenet
William Trundley

STATEMENT FROM THE AMERICAN VETERINARY MEDICAL ASSOCIATION IN SUPPORT OF H.R. 817

H.R. 817 The Animal Fighting Prohibition Enforcement Act of 2005

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The American Veterinary Medical Association (AVMA) **supports** H.R. 817, The Animal Fighting Prohibition Enforcement Act of 2005. This bill amends Title 18, United States Code, to strengthen prohibitions against animal fighting.

The AVMA represents 73,000 veterinarians, approximately 86% of the veterinarians in the United States. The mission of the AVMA is to advance the science and art of veterinary medicine. As one of its primary objectives, the AVMA promotes the welfare and humane treatment of animals. In this regard, H.R. 817 is consistent with the AVMA position on animal fighting:

> *The AVMA supports laws against the use and/or transport of domestic or foreign animals for fighting ventures. Further, the AVMA recommends that animal fighting be considered a felony offense.*

The AVMA recognizes the significant negative impact that animal fighting has on animal and human health:

- 2002-2003: Cockfighting implicated in the introduction and spread of Exotic Newcastle Disease in California and other Western states
  - Eradication of this outbreak cost US taxpayers over $200 million
  - Millions of dollars lost in domestic and foreign markets of US poultry industry
- 2004: Fatal human case of Avian Influenza in Thailand was linked to the practice of cockfighting in that country

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