

Rebuttal to Senator Santorum's "Setting the Record Straight"

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On July 27, 2005 Senator Santorum read his statement to Congress, clarifying his interpretation of PAWS (Pet Animal Welfare Statute S1139/HR2669).

SANTORUM: July 27, 2005 - Mr. President, on May 26, 2005 I introduced with my colleague Senator Durbin the "Pet Animal Welfare Statute" of 2005, or "PAWS." PAWS amends the Animal Welfare Act to strengthen the Secretary of Agriculture's authority to deal with the problems of substandard animal dealers.

RESPONSE: Local and state laws are already in place to deal with animal cruelty, sanitation and nuisance violations. Additional federal regulations providing an additional layer of coverage are unwarranted.

SANTORUM: PAWS strengthens the Secretary of Agriculture's authority to deal with substandard animal dealers by making four important improvements to the Animal Welfare Act. First, it will bring under coverage of the Animal Welfare Act high volume dealers who are in every respect like those dealers currently regulated, but are evading regulation because they sell animals exclusively at retail. PAWS will continue to exempt real retail pet stores, and will add a new exemption for small dealers and hobby and show breeders. . .

RESPONSE: First, there is a connotation by using the term "evade" that breeders/sellers are engaging in illegal activity by pursuing the hobby or small business of selling pets, show animals, service dogs and assistance dogs to the public at retail. Second, to say that PAWS "strengthens" authority is an innocuous statement for a measure that will reverse a federal court ruling (DDAL vs Veneman, Anne 2003) upholding USDA's position that retail sellers were not to be regulated. Reversing this decision by enacting PAWS could result in filing of lawsuits to uphold the original decision. Third, the exemption for small dealers, hobby and show breeders is based on numbers. Numbers should not be used as they are subject to change. No proof has been provided that the numbers being used as a threshold in PAWS has any relevance to quality of care or need for regulation. The numbers are not and never will be written in stone; they will be subject to change. In addition, adding more dealers to inspect without enormous funding does not strengthen the Secretary's authority but instead weakens it – not an effective use of resources.

SANTORUM: Third, PAWS will create an incentive for dealers to quickly correct serious problems by giving the Secretary authority to temporarily suspend dealers' licenses for up to 60 days if a violation is placing the health of an animal in imminent danger.

Finally, PAWS will strengthen the authority of the Secretary to obtain injunctions to shut down dealers who fail to comply with the law.

RESPONSE: This eliminates due process to which every citizen is entitled and contradicts the 4th amendment.

Bypassing local authorities adds unthinkable amount of work to USDA staff attorneys. The existing Animal Welfare Act specifically requires that injunctions be sought in the federal district in which an alleged violator resides or conducts business. USDA attorneys, mostly based in Washington, will be traveling all over the entire country attending violation cases in lieu of these being handled by local attorneys.

To realize the impact PAWS has on AWA enforcement, one must go beyond the mindset that violations only occur in situations that are life threatening to animals. Violations could be improper food containers, a clogged sanitation drain that left standing water, animals of the wrong age or sex kenneled together, or dog houses that do not meet the inspectors approval, etc. The violation could be written as one violation for the condition OR a separate violation for each animal. Interpretation is at the discretion of the investigator.

In addition the current AWA reads: "each violation and each day during which a violation continues shall be a separate offense." The small breeder/hobbyist or small business owner may be so afraid of unreasonable high fines and threat of unwarranted federal litigation that they find it easier to just give up their rights and abandon their pursuit. This would certainly be a plus for HSUS/DDAL/PETA who seek to end all animal breeding.

SANTORUM: The marketplace for animals has changed dramatically since the 1970s when the current animal dealer provisions of the Act were written. At that time only retail pet stores and small hobby and show breeders sold pet animals, so regulating wholesale sellers and exempting persons who sold animals at retail and were regulated by the market made some sense. With the advent of the internet, mass national marketing channels, and mass importation of puppies for resale, there are a large number of unregulated dealers who are in every respect identical to the dealers regulated by the Act, except that they evade regulation by selling exclusively at retail. By regulating these high volume retail sellers, we will assure that they meet the same standards for the humane care and treatment of animals that breeders and brokers selling at wholesale have been meeting for 30 years.

RESPONSE: Internet sales account for one-tenth of a percent of dogs sold in the U.S. This is no reason to license thousands upon thousands of hobby breeders of dogs, cats, rabbits, guinea pigs, and birds for this reason.. Purchasing via the internet sight unseen is no different than purchasing through a magazine or farm journal long distance. It is not the duty of the federal government to monitor and regulate the purchasing habits or prerogatives of the public. Although a few unscrupulous people may sell dogs via the internet that are housed in poor conditions, these people can be dealt with by local cruelty and/or consumer protection laws. The internet is a valuable tool for connecting both quality breeders and rescue organizations with potential buyers and should not be compromised by regulating the users.

Strengthening importation regulations to ensure safety and health of animals in transit is a separate issue and should be handled as such. It does not require the licensing of thousands of small retail sellers who are not involved in the importation of pets.

SANTORUM: PAWS defines the term "retail pet store" so that only real retail pet stores are exempt, where customers can see the animals and the conditions where they are kept. PAWS also adds a specific exemption for small dealers and hobby and show breeders. Only persons who sell more than 25 dogs per year would be regulated. In addition, breeders who sell dogs and cats from fewer than 7 litters a year bred or raised on their own premises, or fewer than 25 dogs and cats per year bred or raised on their own premises, which ever is greater, would be exempt. For example, if an Irish Setter breeder has 6 litters that average 6 puppies each for a total of 36 puppies, they can sell them without being regulated. If a toy breeder has 10 litters that average only 2 puppies each for a total of 20 puppies, they can sell them without being regulated. These breeders could also sell 25 or fewer other dogs a year not bred or raised on their own premises such as stud puppies or puppies from co-ownerships, without being regulated. I firmly believe that the sport and hobby of breeding and raising dogs and cats should not be a federally regulated activity. PAWS will, for the first time, put an explicit exemption into the Animal Welfare Act to protect small hobby and show breeders from regulation.

RESPONSE: Again, setting a threshold with numbers and expanding into small retail sellers only extends the USDA's job to a level that is not enforceable – weakening the effectiveness of overall inspections and regulations and using up financial resources that would be better spent elsewhere.

SANTORUM: Some persons who sell dogs for hunting purposes have expressed a concern that PAWS will bring them under regulation. The current Animal Welfare Act already covers persons who sell hunting dogs, and has for almost 30 years. They are regulated on the same basis as those who sell dogs for pets. PAWS will continue to regulate sellers of hunting dogs on the same basis as those who sell dogs as pets. Only high volume sellers who exceed the exemptions set forth in PAWS will be subject to regulation.

RESPONSE: In October 2004, the USDA concluded an AWA current law rulemaking that determined retail sellers of dogs for hunting purposes are exempt from federal licensing, while sellers to wholesalers are licensed "dealers." PAWS, because it eliminates the longstanding wholesale-retail sales distinction in defining dealers, is PRECISELY the reason that owners of hunting and security dogs are subjected to additional potential regulation. The PAWS-USDA implementing regulations could require that any hunting dog seller have a federal license. This extra provision applies to hunting and security dog sellers, but not to owners of herding, working or toy breeds. By no stretch of the wildest imagination is this rational, or "exactly as they do ... who breed and/or sell dogs as pets."

PAWS's non-hunting, non-security dog, other breeders' and dog sellers' licensing exemption is awkwardly worded, but it's reasonably straightforward for governmentese, if you read it carefully. The AKC's consultant, management and public relations department can't seem to decide what it means. The registry's official position has changed at least three, if not four times. The key word in two critical lines is "OR," as in either or. AND, ALSO, IN ADDITION don't appear in that PAWS text.

SANTORUM: Some rescue and shelter organizations have expressed concern that because they often charge an adoption fee to those who adopt the dogs they place, these organizations will fall within the definition of "dealers" in PAWS and be regulated. True rescue and shelter organizations who do not sell dogs or cats in commerce, for profit, will not be brought under regulation by PAWS, whether or not they are formally incorporated as not for profit organizations.

RESPONSE: From Sharon A Coleman, of The Animal Council:

PAWS AND "RESCUE" ISSUES have inspired claims by proponents that AWA only covers "commerce" in a business sense and would exclude non-profit rescue organizations. Rather, the word "commerce" in federal law relates to the federal power to regulate commerce under the United States Constitution Commerce Clause Article I, §8, of the Constitution "[t]o make all Laws which shall be necessary and proper for carrying into Execution" its authority to "regulate Commerce with foreign Nations, and among the several States." The term "commerce" was included in AWA in the 1970 amendments to provide jurisdiction within states as long as an activity had some impact on interstate commerce so that there would be no requirement that animals cross state lines. Historically the Commerce Clause has been broadly interpreted by the Supreme Court as to what has impact on interstate commerce, because this concept enables use of the federal government's police power. The recent Supreme Court decision in the medical marijuana case, Gonzales, Attorney General, Et Al. V. Raich Et Al. available at <http://www.supremecourtus.gov/opinions/04slipopinion.html> provides a current reference on the broad judicial interpretation of "commerce" for federal purposes. The Court noted that even "Congress' power to regulate purely local activities that are part of an economic "class of activities" that have a substantial effect on interstate commerce is firmly established."

Such activities need not be conducted as a profit-making business.

COMMERCE INCLUDES RESCUE since animals transferred in rescue transactions are a significant portion of the total market for animals. Rescue animals are particularly involved with the alleged reasons for PAWS, i.e. use of the internet and imports as well as frequent interstate transport and sales of animals from undocumented sources and unregulated standards of care – often involving large numbers of animals. There are no convincing policy reasons to exclude the rescue sector from inclusion in the PAWS dealer definition except as to those shelters operated under the PAWS pet store definition and thus excluded as dealers. The additional wording in the dealer definition, i.e. "dealer" means any person who, in commerce, for COMPENSATION OR PROFIT, ... would only exclude operators who received nothing of tangible value in exchange for placing animals. It is possible to structure rescue placements with no compensation, but many rescue organizations derive significant funding from these charges. Rescue transactions are legally treated as sales unless expressly excluded or treated differently for specific purposes by law, e.g. sales tax, warranties, etc. Note that the "consideration" required for a legally enforceable contract can be only a promise to do or not do something and not money or anything else of monetary value. The purposes of the AWA are to ensure the welfare of animals in commerce, which includes rescue animals, so excluding private rescue from proposed regulation of retail sellers defeats the statutory purpose to protect animals.

SANTORUM: Some high volume dealers in cats and dogs who will be brought under coverage of the Animal Welfare Act by PAWS, but who are still small enough that they breed and raise dogs or cats in essentially a residential environment, have expressed concern that they will be forced to build kennels and catteries and will no longer be able to raise animals in a residential environment. There is nothing in PAWS, or in the current Animal Welfare Act, that precludes persons from breeding and raising animals in a residential setting, provided the animals are properly housed and cared for. In implementing PAWS, the Secretary of Agriculture will have to assure that the animal care regulations take into account breeders and dealers who conduct their operations in a residential setting.

RESPONSE: The burden of writing standards to allow breeders to raise dogs and cats in residential settings will fall on the USDA. The current standards are written for commercial facilities. The USDA will be faced with the overwhelmingly difficult task of promulgating regulations that apply to small dealers and breeders in a variety of settings as varied as there are homes and different for both dogs and cats and small animals which are also covered in PAWS. In addition, USDA must decide whether to follow performance standards or engineering standards in developing these new regulations. Either way is a no win situation. Performance standards are being challenged by animal rights groups in favor of engineering standards. Newly developed regulations allowing breeding inside the home will be challenged by commercial breeders who must comply with current more costly regulations. Lawsuits will be inevitable as all sides attempt have their version of requirements enacted into law.

SANTORUM: I want to make clear that PAWS is a very different piece of legislation than the bills that Senator Durbin and I have introduced in previous Congresses. PAWS does not require or justify creating any new animal care standards, like our previous legislation did. . . .

RESPONSE: See paragraph above and Senator Santorum's comment that new regulations need to be written to allow breeding and raising animals in a residential setting (which in turn will require USDA to promulgate new standards of care).

These new residential standards must also be written to include breeders of birds (sold as pets), hamsters, gerbils, guinea pigs, rabbits, and all warm-blooded animals now included in retail sales.