

## PAWS and Rescue

by Sharon A Coleman, Esq., President of The Animal Council 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://web.archive.org/web/20070607201844/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.

<http://web.archive.org/web/20070414233754/www.nopaws.org/depth.htm>