

Statement of

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In Opposition to

H.B. 873

before the Pennsylvania House Judiciary Committee

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arguments were made to the Court supporting federal preemption of the Maryland statute, the Court was able to avoid addressing that issue by construing Maryland's statute not to cover research facilities. In reaching this conclusion, the Court relied very heavily on the federal role in regulating research facilities. The Court expressed its confidence that the Maryland legislature was aware of the comprehensive plan for the protection of animals used in research facilities in the Federal Animal Welfare Act (AWA) and the need to preserve the valid use of animals for that purpose. Thus, while proponents argue that Pennsylvania's exemption is out of step with the other states, that is not the case. The applicability of state anti-cruelty statutes to research involving animals has not been decided finally, but the Supreme Court of Maryland recognized that research involving animals is closely regulated by federal law and regulations.

H.B. 873 calls for the licensure of animal research facilities, and authorizes the Secretary to promulgate standards for the issuance of licenses and fees. It also provides for regulations governing humane animal care by research facilities, including inspection authority, employee training and certification, as well as for institutional animal care committees.

Twenty-one states and the District of Columbia license research facilities. Some are modeled after the AWA while others vary in scope, but none is more restrictive than the federal law. That is not the case with H.B. 873 in that it grants regulatory powers to the Secretary of Agriculture that go well beyond those limited powers provided by federal law.

A third area of H.B. 873 that raises substantial legal concerns is the section of the bill that prohibits eye irritancy and acute toxicity testing of cosmetics or household products in animals. Several federal statutes and the regulations under which those statutes are administered require the performance of these tests before products can be marketed, i.e., the Federal Hazardous Substances Labeling Act, the Toxic Substances Control Act, the Federal Environmental Pesticide Control Act, the Virus-Serum-Toxin Act and the Hazardous Materials Transportation Act. In addition to complying with federal and state laws, companies must also comply with the testing laws of other countries in order to gain regulatory approval to market their products in international commerce. If Pennsylvania prohibits testing that is required by the federal government or foreign jurisdictions, that part of the R&D process will of necessity be moved out of Pennsylvania.

Although it is true that the U.S. Supreme Court recognizes that state and local governments may enact laws in the exercise of their police power, the Court has consistently held that such laws must not unduly burden interstate commerce or frustrate federal laws mandating positive action.

Existing law allows an agent of any society or association for the prevention of cruelty to animals, incorporated under the laws of the Commonwealth, to initiate criminal proceedings. In addition, the law allows any such agent to obtain a search warrant. Under Pennsylvania law, I am sure

this committee is aware of the ease with which anyone can form a non-profit corporation, including one for the prevention of cruelty to animals, and then designate himself or herself as an agent of that corporation, and thereby obtain these impressive powers. With none of the safeguards afforded by the extensive training of law enforcement officials, such persons would have the same police powers. For the traditional type of animal cruelty cases, this special police power has apparently worked satisfactorily. However, there are great dangers in allowing such police activities in the case of research facilities, which may give rise to constitutional issues of search and seizure abuse under both the United States and Pennsylvania Constitutions.

Since the proposed amendment would extend the power to obtain search warrants to the seizure of animals used for scientific research work or in the production of products for the care or prevention of disease, the extension of this private police power could also have potentially disastrous consequences on scientific research in the Commonwealth.

Finally, the bill is proposed as an amendment to Pennsylvania's Crimes Code. Aside from questions this type of legislation raises under Article III, section 3 of the Pennsylvania Constitution, the legislative wisdom of engrafting Department of Agriculture licensing laws into Pennsylvania's penal code may be questioned.

In summary, it is essential that the Committee carefully evaluate the

legal implications of these conflicting provisions of H.B. 873. It is clear that the federal government has adopted a comprehensive regulatory scheme to promote medical research involving the humane use of animals. It is also clear that federal policy in the interest of science and medical progress clearly limits regulatory control over the actual research process involving animals. The provisions of H.B. 873 provide substantial constraints on that process and apparently conflict with federal law. The cardinal question the Committee must address in its deliberations is whether or not it intends to advocate a regulatory process for the Commonwealth that (1) goes beyond federal law to control the research process itself, and (2) is in several important respects in conflict with federal law. I do not believe that the regulatory provisions of H.B. 873 are in the best interests of the Commonwealth, and I am convinced that they clearly have the capacity to disrupt the research process to the detriment of medical science and Pennsylvania's dynamic medical-pharmaceutical research enterprise.