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COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS

HR 5852 – “Great Ape Protection Act”

THIS LEGISLATION IS APPROVED, WITH RECOMMENDATIONS

This legislation proposes to eliminate invasive biomedical research and testing on all great apes – gorillas, chimpanzees, orangutans, bonobos and gibbons – and to prohibit the use of Federal funds for this purpose. It further prohibits the breeding of great apes for use in invasive research and prohibits the knowing import, export, transport, movement, delivery, receipt, possession, rental, loan, purchase or sale of great apes for the conduct of invasive research. The effectiveness of the statute would be the date that is three years after the date of its enactment. This legislation is approved in all respects; provided, however, that it is recommended that the legislation be expanded to cover, in addition, a prohibition on behavioral research; and provided further, however, that we do not appreciate the need for a three-year deferral of effectiveness of the proposed statute and, accordingly, do not support this one provision.

Purposes of the Act

The stated purposes of the Act are fourfold:

- (1) prohibit invasive research and the funding of such research both within and outside of the United States on great apes;
- (2) prohibit the transport of great apes for purposes of invasive research;
- (3) prohibit the breeding of great apes for purposes of invasive research;
and
- (4) require the permanent retirement of federally owned great apes.

With regard to chimpanzees specifically, the practical effect of the enforcement of this legislation would be to save from further suffering the approximately 1200 chimpanzees still

held in laboratories in the United States, and to cause the retirement from such research to permanent sanctuary of approximately 600 chimpanzees owned by the Federal Government.

Congressional Findings Stated in the Act

Section 1 of the Act sets forth thirteen findings which form the rationale for the proposed legislation. These are as follows:

“(1) Advances in scientific knowledge reveal that our nearest living relatives, great apes (including chimpanzees, bonobos, gorillas, orangutans and gibbons), bear an exceedingly close genetic relationship to humans.

(2) Great apes are highly intelligent and social animals and research laboratory environments involving invasive research cannot meet their complex social and psychological needs.

(3) Confinement of great apes for purposes of invasive research causes these intelligent and sentient animals to experience harmful stress and suffering, such as profound depression and withdrawal, self mutilation that can result in physical wounding, hair pulling, rocking, and other traumatized or psychotic behaviors.

(4) Invasive research performed on great apes, and the breeding of great apes for these purposes, are economic in nature and substantially affect interstate commerce.

(5) The majority of invasive research and testing conducted on great apes in the United States is for the end purpose of developing drugs, pharmaceuticals, and other products to be sold in the interstate market.

(6) The total costs associated with great ape research have a direct economic impact on interstate commerce.

(7) Care in a research laboratory for a single great ape over the lifespan of the great ape of more than 50 years can cost between \$300,000 and \$500,000, compared to an approximate cost of \$275,000 for high quality care in a sanctuary.

(8) An overwhelming majority of invasive research procedures performed on great apes involve some element of interstate commerce, such that great apes, equipment, and researchers have traveled across state lines.

(9) The regulation of animals and activities as provided in this Act are necessary to effectively regulate interstate and foreign commerce.

(10) Australia, Austria, Japan, the Netherlands, New Zealand, Sweden, and the United Kingdom have banned or severely limited experiments on great apes and several other countries and the European Union are considering similar bans as well.

(11) The National Research Council (NRC) report entitled 'Chimpanzees in Research and Strategies for their Ethical Care, Management, and Use,' concluded that--

- (A) there is a 'moral responsibility' for the long-term care of chimpanzees used for scientific research;
- (B) there should be a moratorium on further chimpanzee breeding;
- (C) euthanasia as a means of general chimpanzee population control is unacceptable; and
- (D) sanctuaries should be created to house chimpanzees in a manner consistent with high standards of lifetime care, social enrichment, and cognitive development.

(12) In December 2007, amendments to the Chimpanzee Health Improvement, Maintenance, and Protection (CHIMP) Act were signed into law, requiring the Federal Government to provide for permanent 'retirement' of chimpanzees who are identified 'as no longer being needed in research'.

(13) In May 2007, the National Institutes of Health's National Center for Research Resources' (NCRR) decided to permanently end funding for the breeding of Government-owned chimpanzees for research.”

Discussion

This bill is welcome and timely for several reasons. First, it is a logical extension of the amended CHIMP ACT (cited in the above-identified findings)(42 U. S. C. 287a-3a), effective December 26, 2007. That Act retired from further invasive biomedical research into Federally funded sanctuaries chimpanzees already subjected to such experiments, with certain limitations. A number of other countries limit or prohibit outright any biomedical research on great apes on ethical grounds alone, regardless of whether there might be possible scientific value in any such experiments.¹ No sentient being should be subjected to wanton,

¹ In 1997, Great Britain banned all biomedical research on great apes: chimpanzees, gorillas, bonobos, orangutans. In 2002, Article 10E of the Dutch Animal Testing Law prohibited all testing after that date on those types of apes. Similarly, in 2003, Sweden banned invasive biomedical research on great apes though not behavioral research by means of a binding regulation passed by its Board of Agriculture. Austria amended its animal protection laws in December, 2005 to ban research on chimpanzees, gorillas and orangutans. In 1999, New Zealand amended its Animal Welfare Act to ban the use of “nonhuman hominids” in research, testing, or teaching, unless such research, testing or teaching was in the best interest of the nonhuman hominid. There is a moratorium on chimpanzee research in Japan. Further, on November 20, 2007, the European Union banned all

prolonged cruelty, whatever such being's level of intelligence. However, the high intelligence, large size and social nature of great apes means that separation from their natural environment and social group and confinement in a laboratory involves an inherent cruelty even before these animals are subjected to any invasive biomedical experimentation.

Further, the provisions of the Animal Welfare Act, and the regulations promulgated pursuant thereto, specifically provide that they are intended to prevent unnecessary suffering and promote alternative research.² In 2005, the United States Department of Agriculture's Office of the Inspector General issued an audit report that noted, among many other critical findings, that: (1) the number of research facilities cited for violations of the Animal Welfare Act had increased during the examination period; (2) some of the Institutional Animal Care and Use Committees (IACUCs) did not ensure that unnecessary and/or repetitive experiments would not be performed on laboratory animals; and (3) inspections revealed that IACUCs do not effectively monitor the search for alternative research, veterinary care, review of painful procedures, and the use of animals.

Decisional law also illustrates the difficulty of enforcing laws intended to protect laboratory animals in the court system. In *Taub v. State*, 296 Md. 439, 463 A. 2d 819 (1983), Dr. Taub's state court conviction for animal cruelty was dismissed though it had been proven his laboratory monkeys dwelt in squalor and received no veterinary care. The Appeals Court ruled that Federal preemption applied inasmuch as his laboratory operated on a Federal grant. In an unreported case available on the Internet, *State of New Mexico v. Dr. Donald Rick Lee, D. V. M. and Charles River Laboratories, Inc.* (June 14 2007), the New Mexico Court of Appeals ruled that the gross neglect that resulted in the death of two chimpanzees and the serious illness of another as a result of inhumane conditions in research laboratories could not be prosecuted criminally under state animal cruelty laws.

As a matter of information, we note that, on February 5, 2008, a new five-year plan to further reduce, refine and replace the use of animals in research and regulatory testing was unveiled at a symposium marking the 10-year anniversary of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM).³ According to Dr. Elias A.

cosmetic testing on any animals effective March 2009. The *Jerusalem Post* reported that on May 1, 2007, effective immediately, Israel's Knesset banned all animal testing of cosmetics and cleaning products.

² See, *inter alia*, 9 CFR, Chapter 1, Subchapter A, Part 2, Subpart C, Section 2.31(d)(1) which provides, in relevant part, as follows: "the IACUC (Institutional Animal Care and Use Committee) shall determine that the proposed activities or significant changes meet the following requirements: (i) procedures involving animals will avoid or minimize discomfort, distress, and pain to the animals; (ii) the principal investigator has considered alternatives to procedures that may cause more than momentary or slight pain or distress to the animals and has provided a written narrative description of the methods and sources: e. g., the Animal Welfare Information Center, used to determine that other methods were not available; and (iii) the principal investigator has provided written assurance that the activities do not unnecessarily duplicate previous experiments.

³ See January 2008 NIH Publication No. 08-6410, NICEATM-ICCVAM Five-Year Plan (2008-2012), A Plan to advance alternative test methods of high scientific quality to protect and advance the health of people, animals and the environment. NICEATM is the National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods. ICCVAM is a permanent interagency committee composed of representatives from 15 federal regulatory and research agencies, including the National Institutes of Health (NIH), that use, generate or disseminate toxicological information. ICCVAM promotes the development, validation, and regulatory acceptance of scientifically sound new, revised, and alternative testing methods that protect human and animal health and the environment. In *Healthday News*, in *The Washington Post* on February

Zerhouni of the National Institutes of Health, “The idea here is to move the 20th century paradigm of testing one compound at a time on many animals to the 21st century paradigm of testing five to 10,000 compounds against 5,000 to 20,000 conditions in cells that are specific to human toxicology.”⁴

We recommend that this legislation be expanded to include behavioral experiments on any great apes. Their behavior during these experiments is not studied in their own natural setting, so it tells the observer little about them. Confining these animals in a laboratory and then studying the resulting stressed out-of-context behavior to learn about our own behavior only seems to inform us that human beings will engage in highly inhumane and questionable activity in the name of science. Ethical considerations, as well as sound scientific and fiscal policy favor the cessation of research on great apes. The evidence indicates that such research is inhumane and a waste of resources.

14, 2008, Steven Reinberg reported that the National Institutes of Health, the Environmental Protection Agency, and the National Toxicity Program had signed a memorandum of understanding to immediately commence testing some chemicals using alternative testing methods.

⁴ Quoted in *The Washington Post*, February 14, 2008, Healthday News by Steven Reinberg.