

## HARASSMENT LAW VOIDED

In December, the United States Court of Appeals for the Second Circuit issued an opinion confirming the unconstitutionality of Connecticut's hunter-harassment law. A federal trial court had invalidated that law, but the state appealed to the second circuit (see the Spring 1988 *HSUS News*). The law as enacted made it unlawful for anyone to harass or interfere with anyone engaged in the lawful taking of wildlife or who was "in preparation" for such taking.

The court of appeals determined that the statute criminalized a substantial amount of constitutionally protected speech and that the state of Connecticut had made no showing that protecting hunters from harassment was a compelling state interest so as to justify the restriction on speech that protests or opposes hunting.

The court further found that the law, in seeking to protect people who were not only hunting but also preparing to hunt, had the potential for restricting anti-hunting speech in circumstances taking place long before the actual act of hunting.

## HSUS ACTS IN DRUG CASES

In the fall of 1988, the HSUS Office of the General Counsel filed briefs *amicus curiae* (as "friends of the court") with the United States Supreme Court and the United States Third Circuit Court of Appeals opposing a policy by the Food and Drug Administration (FDA) that may hamper veterinarians' ability to prescribe drugs to animals in need of treatment.

For years, the FDA has per-

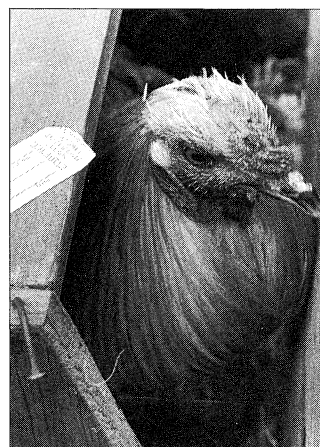


*Opponents of hunting may express their views without fear of Connecticut's anti-harassment statute, struck down recently.*

mitted veterinarians to purchase in bulk form animal drugs that the practitioners would then combine for use in treating their animal patients, in spite of the fact that the FDA had not approved such drugs for the particular clinical uses the veterinarians had chosen. However, in 1986, citing federal labeling violations, the FDA seized from manufacturers in Illinois and New Jersey numerous lots of drugs in bulk form which were being held for later sale to veterinarians, who would compound them into finished drug products for the treatment of farm animals. The manufacturers opposed the seizures, which caused two lawsuits.

The courts in these cases issued conflicting decisions over whether the FDA had the authority under the Food and Drug Act to approve such drugs prior to their clinical use and whether Congress had intended to interfere with the discretion that veterinarians have traditionally employed in compounding their own drugs when necessary. The issues may ultimately have to be decided by the U.S. Supreme Court, and The HSUS, in its brief, urged the court to take the case to clarify these matters.

While veterinarians disagree about the extent of the potential impact of the FDA's new, more restrictive policy, we are concerned that the new FDA position will result in significant suffering on the part of animals in need of veterinary care, since veterinarians will be reluctant to compound their own drugs. There are a number of commonly encountered diseases afflicting both food and companion animals for which there are no currently approved drugs, but which have been regularly treated by using unapproved drugs. Veterinarians also find it



*A fighting cock seized in a California raid is evidence of illegal activity.*

necessary to use even FDA approved drugs in manners other than that for which they have been approved. Antibiotics, for example, frequently need to be prescribed in much higher doses than are sanctioned by FDA labeling. In addition, recently emerging veterinary specialties such as oncology, ophthalmology, and cardiology rely heavily upon the use of drugs approved by the FDA only for human use. These specialties and related research would be set back by the FDA's restrictive policy. Moreover, many drugs are approved only for use in particular species, even though veterinarians commonly use them in other species requiring treatment, particularly exotic or unusual species.

While The HSUS recognizes the great value of the FDA's regulation of new drugs to ensure safety and effectiveness, we believe that the paramount consideration must be to ensure needed individualized treatment of animals to prevent suffering.

## SPECTATORS, BEWARE

In January 1989, the Supreme Court of the United States declined to review a decision of a California district court of appeals which upheld the constitutionality of a California statute that criminalizes being present at a cockfight as a spectator. The Supreme Court's decision not to review the case means that the state appellate court's opinion remains in effect and that spectators at cockfights in California may continue to be prosecuted. ■

*The law notes are compiled by HSUS General Counsel Murdaugh Stuart Madden and Associate Counsel Roger Kindler.*