

Why Is a Federal Appeals Court Talking About Cats?

by: Donald Scarinci

The recently 11th Circuit Court of Appeals recently issued a [much-publicized ruling about cats](#). But these aren't just any felines, they are the descendants of a six-toed cat given to Earnest Hemingway in 1935.

While a legal dispute over cats may seem trivial at first blush, it actually involves some weighty legal issues, including the [Commerce Clause of the U.S. Constitution](#). The cats reside at the [Ernest Hemingway Home and Museum](#) in Key West, Florida, where they are fed and cared for by Museum staff. Since Hemingway was first given "Snowball" during the time he lived at the former home, its progeny have thrived and populated the property. The current total stands at 44 cats. The cats are a prominent part of the Museum tour and are featured in gift shop merchandise and promotional literature.

Several years ago, a Museum visitor complained to the U.S. Department of Agriculture about the Museum's care of the cats. USDA inspectors responded by visiting the Museum and ultimately sought to oversee the care of the cats under the Animal Welfare Act. In addition to obtaining an exhibitor's license, the agency required the Museum to implement a number of changes, including caging the cats in individual shelters at night, or alternatively, constructing a higher fence or an electric wire atop the existing brick wall or hiring a night watchman to monitor the cats. The Museum has resisted the federal government's attempts to regulate the Hemingway cats, appealing all the way to the 11th Circuit.

The legal question before the court was whether the USDA and its Animal and Plant Health Inspection Service have the authority to regulate the Museum as an animal exhibitor under the Animal Welfare Act. The law defines an "exhibitor" as "any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary."

As highlighted in the court's [opinion](#), because the Museum does not dispute that it exhibits the Hemingway cats to the public for compensation, "the crux of this case appears to be whether the Museum's exhibition of cats is a '*distribution . . . which affects [interstate] commerce.*'" Ultimately, the appeals court agreed that the USDA is authorized to regulate the Hemingway cats under its broad interpretation of the statute.

"The exhibition of the Hemingway cats is integral to the museum's commercial purpose, and thus, their exhibition affects interstate commerce," the court said. "For these reasons, Congress has the power to regulate the museum and the exhibition of the Hemingway cats."

Despite the ruling, the court did acknowledge that the USDA's regulations, which general apply to circus and zoo animals, may be a bit heavy handed for Hemingway's house cats.

"We appreciate the museum's somewhat unique situation, and we sympathize with its frustration," the justices stated. "Nevertheless, it is not the court's role to evaluate the wisdom of federal regulations implemented according to the powers constitutionally vested in Congress."