

NO CRACKS IN THE WALL: THE STANDING BARRIER AND
THE NEED FOR RESTRUCTURING ANIMAL PROTECTION
LAWS

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I. INTRODUCTION

The public outcry following dog-fighting charges brought against the now-infamous NFL star Michael Vick has recently brought the laws concerning animals into the spotlight.¹ While legally treated as property,² animals are categorically distinct from other property, as they are able to feel pain and form emotional bonds with other animals, including human beings.³ Animals, therefore, need special protections in addition to those afforded to all types of property.⁴

Largely due to a growing public concern regarding the treatment of animals, laws directed at protecting animals have been passed at both the federal and state levels.⁵ However, many of these laws prove inadequate in practice due to their many restrictions, piecemeal enactment, and a lack of enforcement. Furthermore, litigation under them is difficult because of the existence of a standing barrier: animals, as property, do not have standing to file suit on their own behalf, and people often are not able to file suit on behalf of the animals needing protection.⁶ Many people attempting to further the rights and protections of animals try using past judicial decisions to better formulate arguments that will allow courts to find that they have standing to sue, thereby permitting access to the proper forum to challenge violations of the “rights” of animals. However, until the court system completes a considerable transformation regarding its view of animals as property, adequate protection of animals will only occur upon the passage and enforcement of improved animal welfare laws.

This Note examines the current status and inadequacies of laws concerning animals, the standing barrier, and the consequent need for new legislation. Part II provides a brief overview of the legal treatment of animals in the United States. Part III discusses the background of standing and difficulties facing those attempting to

¹Clifton Brown, *Dogfighting Charges Filed Against Falcons' Vick*, N.Y. TIMES, July 18, 2007, at D1, available at <http://www.nytimes.com/2007/07/18/sports/football/18vick.html>.

²LISA YOUNT, ANIMAL RIGHTS 9 (2004); Lauren Magnotti, Note, *Pawing Open the Courthouse Door: Why Animals' Interests Should Matter When Courts Grant Standing*, 80 ST. JOHN'S L. REV. 455, 455, 457 (2006).

³Magnotti, *supra* note 2, at 457-58.

⁴*Id.*

⁵*See* Animal Welfare Act of 1970, 7 U.S.C. §§ 2131-2156 (2008); Marine Mammal Protection Act of 1972, 16 U.S.C. §§ 1361-1421h (2008); Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1543 (2008); OHIO REV. CODE ANN. § 945.01 (West 2008); TENN. CODE ANN. § 44-17-403 (West 2007). *See generally* Magnotti, *supra* note 2 (arguing for greater consideration of animals' interests in the legal realm).

⁶Magnotti, *supra* note 2, at 455-56. *See generally* Animal Legal Def. Fund, Inc. v. Espy, 23 F.3d 496 (D.C. Cir. 1994) (holding animal welfare groups and individuals did not have standing to sue to expand the definition of “animals” to include birds, rats, and mice); Animal Legal Def. Fund v. Quigg, 932 F.2d 920 (Fed. Cir. 1991) (holding farmers, animal organizations, and husbandry groups did not have standing to sue for injunction against animal patents); Int'l Primate Prot. League v. Inst. for Behavioral Research, Inc., 799 F.2d 934 (4th Cir. 1986) (holding individuals and animal rights organizations lacked standing to sue for guardianship of primates used in research after chief of research found guilty of cruelty to animals).

bring cases in federal and state courts because of a lack of standing to sue. Part IV discusses the reasons for the court system's reluctance to hear cases involving animals, thus emphasizing the need for new legislation to deal with such matters outside of the courtroom. Part V discusses the problems with current animal protection legislation and suggests that better legislation is necessary to eliminate those problems through a restructuring of statutory language and enforcement mechanisms. Part VI provides a sample of possible new, comprehensive legislation that is applicable in any situation requiring protection for animals.

II. A BRIEF OVERVIEW OF THE LEGAL TREATMENT OF ANIMALS IN THE UNITED STATES

The status of animals throughout the history of American law is fairly static. When assigning legal rights in 1787, the framers of the U.S. Constitution did not confer any rights onto those creatures born with four, six, or even zero, legs.⁷ In the eyes of the law, animals were and still are nothing more than property, with no legal rights of their own.⁸

Because animals are technically private property, many believe the government should not infringe on the rights of the property owners to use their property as they see fit.⁹ Historically, the legal system has supported the right of individuals to own and use private property as they wish.¹⁰ Laws regulating the use of one's own animals may be considered a violation of an individual's right to use one's property for his or her benefit.¹¹ This view has allowed the law to maintain animal owners' rights to exploit their animals for science, agriculture, entertainment, fashion, and to have "free reign to dispose of their own property as they wish, including killing an animal without necessity."¹²

Others believe that the designation of animals as property is incorrect and therefore laws made under this view are inadequate.¹³ Those who would not classify animals as property argue that "[p]roperty, in general, is inanimate. Animals are sentient. Therefore, putting animals in the same category as inanimate possessions

⁷See U.S. CONST. (1787).

⁸YOUNT, *supra* note 2.

⁹Joanne M. Pyc, *Changing the Animal Legal Paradigm Using the United States Tax Code*, 30 CAP. U. L. REV. 947, 955 (2002).

¹⁰Panel, *The Legal Status of Nonhuman Animals*, 8 ANIMAL L. 1, 50 (2002).

¹¹Carole Lynn Nowicki, *The Animal Welfare Act: All Bark and No Bite*, 23 SETON HALL LEGIS. J. 443, 447-51 (1999).

¹²*Id.* at 448-49. Another problem with this view is that many believe that, because people value their own property, laws are not necessary to protect animals. *Id.* at 448.

[T]he law assumes that people will protect the value of their own property by not harming it. This incorporates the assumption that self-interest will prevent an owner from causing pain or torture to her animals unless there is a good reason for doing so. As a result, anti-cruelty statutes only minimally regulate the behavior of animal owners.

Id. at 448-49.

¹³Pyc, *supra* note 9, at 956.

does not make sense.”¹⁴ Additionally, animals have been found to have many traits similar to humans that are *not* shared with other property, such as the ability to feel physical pain and exhibit certain emotions.¹⁵ Although animal activists have been able to distinguish animals from other types of property, “courts continue to uphold this property characterization.”¹⁶

This perception of animals as property proves a difficult hurdle in finding balance between competing human and animal interests.¹⁷ Humans generally protect the interests of animals only where such protection proves necessary to ensure maximum exploitation of their “investment” (i.e. the animal).¹⁸ “Institutionalized animal exploitation is permitted because society has determined that economic efficiency outweighs the inhumanity of an animal’s suffering or death. Thus, only activities without any social benefit are prohibited by statute.”¹⁹ Unfortunately for

¹⁴*Id.*

¹⁵Elizabeth L. DeCoux, *In the Valley of the Dry Bones: Reuniting the Word “Standing” with its Meaning in Animal Cases*, 29 WM. & MARY ENVTL. L. & POL’Y REV. 681, 713 (2005). See also *Animal Legal Def. Fund v. Glickman*, 154 F.3d 426, 428 (1998) (referencing an “appropriate plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates”). “Scientific research has provided a [great] wealth of understanding to us that we cannot rightly ignore. We now know that mammals share with us a great many emotive and cognitive characteristics, and that the higher primates are very similar to humans neurologically and genetically.” Thomas G. Kelch, *Toward a Non-Property Status for Animals*, 6 N.Y.U. ENVTL. L.J. 531, 539 (1998).

¹⁶Nowicki, *supra* note 11, at 447.

¹⁷Gary L. Francione, *Reflections on Animals, Property, and the Law, and Rain Without Thunder*, 70 LAW & CONTEMP. PROBS. 9, 9 (2007).

¹⁸*Id.* Gary L. Francione states that people:

[M]ay as a matter of personal choice attach a higher value to our companion animals, such as dogs and cats, but as far as the law is concerned, even these animals are nothing more than commodities. As a general matter, we do not regard animals as having any intrinsic value and we protect animal interests only to the extent that it benefits us to do so.

Id. This “attachment of higher value” to companion animals in no way deters from the argument that animals are protected only so far as we see use for them. The higher value given to companion animals is merely a means by the owner to secure the prolonged exploitation of these animals to fulfill their human interests of needing companionship and protection from their pets.

¹⁹Nowicki, *supra* note 11, at 449-50. An argument that protecting animals and discouraging violence against them is beneficial to society stems from the link between violence to animals and violence to other people. Kara Gerwin, *There’s (Almost) No Place Like Home: Kansas Remains in the Minority on Protecting Animals From Cruelty*, 15 KAN. J.L. & PUB. POL’Y 125, 135 (2005). “[M]ost courts agree . . . [that] cruel treatment of animals . . . lead[s] to cruel treatment of humans.” *Id.* According to Gerwin:

Children who are violent to animals may be on a path to lifelong violence. Many serial killers and mass murderers “have a long history of abusive acts towards animals.” Studies have shown that “[a]ggressive acts against animals are an early diagnostic indicator of future psychopathy, which, if unrecognized and untreated, may escalate in range and severity against other victims.”

animals, few activities involving the use of animals have *no* plausible benefit to humans, leaving the door wide open for the legal exploitation of animals to continue.²⁰

Animals are used by humans for a wide variety of reasons²¹; their use as a source of food exemplifies the imbalance between human and animal interests.²² Because of the increasing demand in the highly profitable meat industry, many anti-cruelty regulations provide exemptions for common farming practices.²³ According to Mariann Sullivan²⁴ and David J. Wolfson²⁵:

Approximately ten billion animals, excluding fish, are killed annually in the United States for food. These animals are regularly confined for life to very small areas—some no bigger than themselves—virtually unable to move a muscle, are mutilated and castrated without anesthesia, are handled and slaughtered in inhumane ways, and are genetically engineered to increase production in ways that cause them to be ill and malformed. This mistreatment goes on, day after day, animal by animal, endlessly.²⁶

Such treatment is a means to literally feed the people of the United States' "tremendous addiction to meat."²⁷ An imbalance of interests results because people are willing to ignore the "cost" of animal suffering so long as the meat industry continues to provide affordable meat.²⁸ This leaves farm animals at the mercy of the

Id. Thus, those who go to work day after day, inflicting pain and suffering on defenseless animals, may grow immune, or even begin to enjoy, the suffering they are inflicting, and may eventually take their violent behavior outside of the workplace and into society. *Id.*

²⁰Nowicki, *supra* note 11, at 450.

²¹Melanie L. Vanderau, *Science at Any Cost: The Ineffectiveness and Underenforcement of the Animal Welfare Act*, 14 PENN ST. ENVTL. L. REV. 721, 721 (2006). Animals are also used for companionship, labor, scientific research, and entertainment purposes. *Id.*

²²*Id.* See Mariann Sullivan & David J. Wolfson, *What's Good for the Goose . . . The Israeli Supreme Court, Foie Gras, and the Future of Farmed Animals in the United States*, 70 LAW & CONTEMP. PROBS. 139, 139 (2007).

²³Sullivan & Wolfson, *supra* note 22, at 154-55.

²⁴"Mariann Sullivan is the deputy chief court attorney at the New York State Appellate Division, First Department. She is a former chair of the animal law committee of the Association of the Bar of the City of New York and a member of the animal law committees of the New York State Bar Association and the American Bar Association." *Id.* at 139, n. a1.

²⁵"David J. Wolfson is a corporate partner at Milbank, Tweed, Hadley & McCloy LLP and an adjunct professor at NYU Law School where he teaches animal law. He also teaches animal law at Columbia Law School." *Id.* at 139, n. aal.

²⁶*Id.* at 139.

²⁷*The Legal Status of Nonhuman Animals*, *supra* note 10, at 51. "Humans farm about 150 million tons of meat each year." Kelch, *supra* note 15, at 531.

²⁸Ellen P. Goodman, *Animal Ethics and the Law*, 79 TEMP. L. REV. 1291, 1304 (2006) (reviewing Cass R. Sunstein & Martha C. Nussbaum eds., *A REVIEW OF ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS* (2004)). "If we are unhappy knowing that animals

useless (as this Note will later explain) “protective” statutes, such as the Humane Methods of Slaughter Act of 1958.²⁹

Even so, over the past few decades society has slowly become more sympathetic to animal activists³⁰ seeking to ensure humane treatment for all animals.³¹ The law, however, has not kept up with such views. Statutes have been passed on both the federal and state levels providing regulations for the treatment of animals, but, as this Note will illustrate, much of this legislation has proved inadequate.³² In addition to the problems with the statutes themselves, “[t]he status of animals as property impacts . . . standing in animal rights cases.”³³ As property, animals do not have any protected rights and therefore cannot claim violation of such rights in a court of law.³⁴ Additionally, “[s]ince animals are property and have no rights, representatives of animals cannot assert the interests of animals in the judicial system.”³⁵ Thus, animals are left with no legal recourse to defend themselves against brutal and inhumane exploitation.³⁶

are suffering in factory farms, we have a choice between changing the conditions that cause this suffering, or . . . persuad[ing] people not to worry about animal suffering.” *Id.*

²⁹7 U.S.C. §§ 1901-1906 (2008).

³⁰While most have a tendency to group “animal rights activists” together with “animal welfare activists,” each group actually represents two very distinct views. Jacqueline Tresl, *The Broken Window: Laying Down the Law for Animals*, 26 S. ILL. U. L.J. 277, 278 (2002). “An animal rights activist believes animals should be granted rights separate and apart from humans. By contrast, the animal welfarist is unconcerned with rights and concerned instead that animals not be subjected to unnecessary pain and suffering.” *Id.* Thus, under a welfarist view, animals may still be used by humans; many animal rights groups, however, have mantras similar to that of People for the Ethical Treatment of Animals: “animals are not ours to eat, wear, experiment on, or use for entertainment.” *Id.*

³¹A large number of animal activist groups have emerged in this country, such as the Animal Legal Defense Fund, People for the Ethical Treatment of Animals, and The American Society for the Prevention of Cruelty to Animals, exemplifying a growing interest concerning the rights and treatment of animals. See Animal Legal Defense Fund, <http://www.aldf.org> (last visited Nov. 1, 2008); People for the Ethical Treatment of Animals, <http://www.peta.org> (last visited Nov. 1, 2008); The American Society for the Prevention of Cruelty to Animals, <http://www.asPCA.org/site/PageServer> (last visited Nov. 1, 2008).

³²See Animal Welfare Act of 1970, 7 U.S.C. §§ 2131-2156 (2008); Marine Mammal Protection Act of 1972, 16 U.S.C. §§ 1361-1421h (2008); Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1543 (2008); OHIO REV. CODE ANN. § 945.01 (West 2008); TENN. CODE ANN. § 44-17-403 (West 2007).

³³Kelch, *supra* note 15, at 535.

³⁴*Id.*

³⁵*Id.*

³⁶YOUNT, *supra* note 2. See generally Magnotti, *supra* note 2 (discussing the often brutal treatment of animals and difficulty getting such cases into court because of their status as property).

III. THE STANDING REQUIREMENT AS A BARRIER TO THE COURTROOM

A federal or state court will not hear a case without first finding that the plaintiff has standing to sue.³⁷ “Standing” is defined as “[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.”³⁸ This requirement comes from an interpretation of the case or controversy requirement provided in Article III of the Constitution, which states, in relevant part, “The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution [and] the Laws of the United States . . . [and] to Controversies to which the United States shall be a Party; to Controversies between two or more states . . . [and] between Citizens of different States.”³⁹ Thus, anyone attempting to file suit in a court of law must satisfy the judge that he or she has standing to sue.⁴⁰

The purpose of the standing requirement is to ensure that a plaintiff is legally warranted to have his or her claim decided in a court of law.⁴¹ A “proper plaintiff” is one for whom “the court is resolving an actual concrete controversy: something that will be presented in an adversarial way by the parties, something that is capable of judicial resolution, not some hypothetical situation.”⁴² The standing requirement alleviates a court’s duty to hear frivolous and speculative lawsuits.⁴³ Those without legitimate controversies will be removed from court, allowing plaintiffs with a legal right to a judicial decision access to the system for resolution of his or her claim.

To establish standing, a plaintiff must, at a minimum, fulfill three “constitutional” requirements, as well as any additional “prudential” requirements as determined by the court.⁴⁴ Under the Constitution, standing may exist where a plaintiff can show (1) an “injury-in-fact,” (2) causation, and (3) redressability.⁴⁵ Each of these “core” constitutional requirements “is an essential and unchanging part

³⁷See generally *Animal Legal Def. Fund, Inc. v. Espy*, 23 F.3d 496 (D.C. Cir. 1994) (holding animal welfare groups and individuals did not have standing to sue to expand the definition of “animals” to include birds, rats, and mice); *Animal Legal Def. Fund v. Quigg*, 932 F.2d 920 (Fed. Cir. 1991) (holding farmers, animal organizations, and husbandry groups did not have standing to sue for injunction against animal patents); *Int’l Primate Prot. League v. Inst. for Behavioral Research, Inc.*, 799 F.2d 934 (4th Cir. 1986) (holding individuals and animal rights organizations lacked standing to sue for guardianship of primates used in research after chief of research found guilty of cruelty to animals).

³⁸BLACK’S LAW DICTIONARY 1442 (8th ed. 2004). “Third-party standing” is defined as “[s]tanding held by someone claiming to protect the rights of others.” *Id.*

³⁹U.S. CONST. art. III, § 2 cl. 1. State constitutions also have constitutional standing requirements. See, e.g., OHIO CONST. art. IV.

⁴⁰*Id.* See also BLACK’S LAW DICTIONARY, *supra* note 38.

⁴¹*Warth v. Seldin*, 422 U.S. 490, 498 (1975).

⁴²Panel, *Confronting Barriers to the Courtroom for Animal Advocates: Legal Standing for Animals and Advocates*, 13 ANIMAL L. 61, 63 (2006).

⁴³*Id.*

⁴⁴*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

⁴⁵*Id.* at 560-61.

of the case-or-controversy requirement of Article III” that a plaintiff “bears the burden of establishing.”⁴⁶

The first constitutional standing requirement that a plaintiff must establish is that the plaintiff has suffered an injury-in-fact.⁴⁷ An injury-in-fact occurs when a legally protected interest is invaded by the act (or failure to act) of another.⁴⁸ In cases involving injuries to animals, it is not enough to show that an animal has suffered an injury, because animals generally do not have their own legally protected interests.⁴⁹ Rather, the plaintiff must show *he or she* has suffered an actual injury or has some personal stake in the outcome.⁵⁰

Numerous courts have furthered clarified the injury-in-fact requirement.⁵¹ In *American Society for the Prevention of Cruelty to Animals v. Ringling Brothers and Barnum & Bailey Circus*,⁵² the U.S. Court of Appeals for the District of Columbia ruled an injury-in-fact may be found where the “invasion of a judicially cognizable interest . . . is (a) concrete and particularized and (b) actual or imminent.”⁵³ In that case the court found an injury-in-fact where a former circus elephant caretaker witnessed the mistreatment of his charges.⁵⁴ In so finding, the court determined that because of his personal emotional attachment to the elephants, the caretaker satisfied the prerequisites because he witnessed the alleged mistreatment and had a present desire to visit the elephants under humane conditions.⁵⁵ Finding these injuries as neither hypothetical nor conjectural, the court ruled that the plaintiff suffered an injury-in-fact.⁵⁶

⁴⁶*Id.* at 560 (citing *Allen v. Wright*, 468 U.S. 737, 751 (1984)).

⁴⁷*Id.* at 560.

⁴⁸*Am. Soc’y for the Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus*, 317 F.3d 334, 336 (D.C. Cir. 2003).

⁴⁹*See generally id.* (determining whether an elephant trainer and animal rights group had standing to sue where elephants had been subjected to inhumane treatment by circus). “Since nonhuman animals are property and lack legal personhood, courts view their injuries as ‘tangential’ to the true injury—that injury suffered by the person or organization bringing the suit.” Marguerite Hogan, Comment, *Standing for Nonhuman Animals: Developing a Guardianship Model from the Dissents in Sierra Club v. Morton*, 95 CAL. L. REV. 513, 522 (2007).

⁵⁰ “[T]he injury must affect the plaintiff in a personal and individual way.” *Lujan*, 504 U.S. at 561, n.1.

⁵¹*See generally Ringling Bros.*, 317 F.3d 334 (holding a former circus elephant caretaker who witnessed the mistreatment of his charges had standing to sue); *Animal Legal Def. Fund v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998) (holding regular visitors to primate exhibitions had standing when they repeatedly witnessed primates living in inhumane conditions).

⁵²317 F.3d 334 (D.C. Cir. 2003).

⁵³*Id.* at 336 (quoting *Bennett v. Spear*, 520 U.S. 154, 167 (1997)).

⁵⁴*Id.*

⁵⁵*Id.* at 337-38.

⁵⁶*Id.* at 336. *See also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *Alternatives Research & Dev. Found. v. Glickman*, 101 F. Supp. 2d 7, 10 (D.D.C. 2000).

A plaintiff must next satisfy the “causation” element of constitutional standing. This is done by proving “a sufficient causal relationship between the challenged act and the alleged injury. A party must show that his injury reasonably can be said to have resulted from defendant’s alleged statutory infraction.”⁵⁷ Causation does not exist where the connection between the plaintiff’s injury and the defendant’s act is merely a speculative inference or is interrupted by an intervening act of a third party.⁵⁸ Rather, causation “requires a party to show that ‘the injury [is] fairly traceable to the challenged action.’”⁵⁹

The final constitutional standing requirement is established where a plaintiff can show that the issue brought before the court is redressable. A court will find an issue redressable when a party shows “‘a substantial probability’ that, if the court affords the relief requested, his injury will be removed.”⁶⁰ The likelihood of such an outcome may not be “merely ‘speculative.’”⁶¹ If the proposed remedy will not *likely* alleviate the injury suffered by the plaintiff, a court will not find standing to sue.⁶²

Some courts have established prudential requirements in addition to the constitutional standing requirements, such as demanding a plaintiff satisfy the “zone of interests” test.⁶³ This test requires that the plaintiff show “the interest sought to be protected by complainant is *arguably* within the zone of interests [Congress intended] to be protected by the statute.”⁶⁴ This does not necessitate a showing that the statute in question was created *specifically* for the protection of the plaintiff.⁶⁵ Rather, the plaintiff need only demonstrate a *slight* indication that the statute was created to protect his allegedly violated interest.⁶⁶ Thus, the zone of interests requirement may easily be established when the “proper person,” according to the court, is filing suit.⁶⁷

⁵⁷Animal Welfare Inst. v. Kreps, 561 F.2d 1002, 1009 (D.C. Cir. 1977).

⁵⁸See Animal Legal Def. Fund v. Quigg, 932 F.2d 920, 932-34 (Fed. Cir. 1991).

⁵⁹*Id.* at 932 (quoting Allen v. Wright, 468 U.S. 737, 751 (1984)).

⁶⁰*Kreps*, 561 F.2d at 1009.

⁶¹*Lujan*, 504 U.S. at 561.

⁶²*Id.* at 568-71.

⁶³Animal Legal Def. Fund, Inc. v. Glickman, 154 F.3d 426, 444 (D.C. Cir. 1998).

⁶⁴*Id.* (quoting Nat’l Credit Union Admin. v. First Nat’l Bank & Trust Co., 522 U.S. 479, 492 (1998)).

⁶⁵*Glickman*, 154 F.3d at 444 (citing Autolog Corp. v. Regan, 731 F.2d 25, 29-30 (D.C. Cir. 1984) (“[T]he zone of interests test ‘requires some indicia—however slight—that the litigant before the court was intended to be protected, benefited or regulated by the statute under which suit is brought.’ Courts should give broad compass to a statute’s ‘zone of interests’ in recognition that this test was originally intended to *expand* the number of litigants able to assert their rights in court.”).

⁶⁶*Id.*

⁶⁷Some consider such prudential requirements as nothing more than a way for judges to keep legitimate cases out of court because they personally do not find them worthy of judicial decision. See *Confronting Barriers to the Courtroom for Animal Advocates: Legal Standing for Animals and Advocates*, *supra* note 42 (“[Prudential requirements are] not . . . constitutional requirement[s], but one[s] that courts can apply at their discretion if they want to

Prudential requirements also may include prohibitions against claims involving third party rights and generalized grievances.⁶⁸ “To have standing, a party must demonstrate an interest that is distinct from the interest held by the public at large.”⁶⁹ Additionally, a plaintiff “must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.”⁷⁰ Each of these additional standing requirements creates a further obstacle for those seeking to protect animals; a plaintiff may not base his claim on the harm done to the rights of an animal, nor on the general failure of the government to provide adequate protection for an animal.⁷¹

Groups attempting to file suit to prevent the mistreatment of animals are subjected to further assessment than are individual plaintiffs.⁷² Before allowing a plaintiff-group’s case to proceed, a court will apply a three-part test, requiring the group establish that “(a) its members would otherwise have standing to sue in their own right⁷³; (b) the interests it seeks to protect are germane to the organization’s purpose⁷⁴; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”⁷⁵ The court may further consider the group’s duration and activities to determine whether they have the “longevity and indicia of commitment to preventing inhumane behavior . . . which might provide standing to . . . better known organizations.”⁷⁶ Only upon satisfaction of all required factors will a court allow a plaintiff-group to proceed with its case.⁷⁷

kick you out of court, even though you have shown that you meet all of the constitutional requirements.”).

⁶⁸ABA, A BLACKLETTER STATEMENT OF FEDERAL ADMINISTRATIVE LAW 48 (2004). A generalized grievance is a grievance “held by the public at large,” *Animal Lovers Volunteer Ass’n v. Weinberger*, 765 F.2d 937, 939 (9th Cir. 1985), often regarding “the conduct of government or the allocation of power in the Federal System,” *Flast v. Cohen*, 392 U.S. 83, 106 (1968).

⁶⁹*Weinberger*, 765 F.2d at 939 (citing *Sierra Club v. Morton*, 405 U.S. 727, 736-41 (1972)).

⁷⁰*Valley Forge Christian College v. Ams. United for Separation of Church and State*, 454 U.S. 464, 474 (1982) (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)).

⁷¹*See Weinberger*, 765 F.2d at 938-39 (holding plaintiff animal rights group did not have standing to sue where the only injury demonstrated was to goats removed through “aerial eradication” by the U.S. Navy).

⁷²*UAW v. Brock*, 477 U.S. 274, 282-83 (1986).

⁷³In other words, the constitutional and prudential requirements of standing must be satisfied. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

⁷⁴“Germane” is defined as “in close relationship, appropriate, relative, pertinent.” *Humane Soc’y of the United States v. Hodel*, 840 F.2d 45, 56 (D.C. Cir. 1988).

⁷⁵*Id.* at 53.

⁷⁶*Weinberger*, 765 F.2d at 939.

⁷⁷*See generally* *Animal Legal Def. Fund v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998) (finding animal welfare group satisfied all standing requirements); *Animal Welfare Inst. v. Kreps*, 561 F.2d 1002 (D.C. Cir. 1977) (finding environmental group satisfied all standing requirements). The degree of evidence necessary to establish standing in cases involving animals is determined by the stage of trial. *Lujan*, 504 U.S. at 561. In *Lujan*, the Court asserts

The U.S. Court of Appeals case *Animal Lovers Volunteer Association, Inc. v. Weinberger*⁷⁸ exemplifies the court system's unwillingness to find standing in cases involving animals. In this case, Animal Lovers Volunteer Association, Inc. ("ALVA") sued to enjoin the U.S. Navy from continuing its "aerial eradication" program, which entailed shooting island-bound feral goats from helicopters.⁷⁹ ALVA claimed that the program violated section 4332 of the National Environmental Policy Act.⁸⁰ However, the court refused to consider this argument after finding ALVA had no standing to sue on this matter in a court of law.

The court considered two areas where standing may be demonstrated and determined that ALVA did not satisfy either of the two.⁸¹ First, ALVA did not allege an injury to any of its members.⁸² Recognizing that courts do not find standing if an organization merely asserts an "interest in a problem, unaccompanied by allegations of actual injury to members of the organization," the court refused to grant standing to ALVA.⁸³ Additionally, because none of ALVA's members witnessed the goat-shootings and therefore suffered no "direct sensory impact," the court refused to

evidentiary requirements for the pleading, summary judgment, and final stages of trial. *Id.* As the case progresses, the level of proof that a plaintiff needs to show supporting the elements of standing increases, thus increasing the burden on those attempting to file suit for the protection of animals. *Id.*

⁷⁸*Weinberger*, 765 F.2d 937 (9th Cir. 1985).

⁷⁹*Id.* at 938.

⁸⁰*Id.* The National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 (2008), provides, in relevant part, that:

Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall (A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment; (B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations; [and] (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

42 U.S.C. § 4332. In addition:

The purposes of [the Act] are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

42 U.S.C. § 4321.

⁸¹*Weinberger*, 765 F.2d at 938-39.

⁸²*Id.* at 938.

⁸³*Id.* (citing *California v. Watt*, 683 F.2d 1253, 1270 (9th Cir. 1981), *rev'd on other grounds*, 464 U.S. 312 (1984)).

distinguish their grievance from that of the general public's "generalized abhorrence" to "the prospect of cruelty to animals."⁸⁴ Because generalized grievances are insufficient to establish standing and no individual injuries were alleged, the court affirmed the lower court's ruling that ALVA had no standing to sue on this matter.⁸⁵

*International Primate Protection League v. Institute for Behavioral Research, Inc.*⁸⁶ provides another example of the standing barrier. In that case, the International Primate Protection League, a non-profit organization specializing in protecting the well-being of primates,⁸⁷ and other corporations and individuals petitioned to prevent the return of abused primates to a research organization ("Institute") that used the animals for scientific research. After an individual animal rights activist witnessed multiple primates living in unsanitary conditions without adequate food, water, or veterinary care, the Institute and some of its employees were investigated.⁸⁸ During the investigation and subsequent trial for violations of state anti-cruelty laws,⁸⁹ the National Institute of Health took temporary custody of the primates.⁹⁰ Fearing abuse would continue upon the return of the animals, the plaintiffs filed a complaint "in which the plaintiffs purported to speak for 'their own and class interests and as next friends of seventeen (17) non-human primates[.]'"⁹¹

⁸⁴*Id.* at 938-39.

⁸⁵*Id.* at 939.

⁸⁶*Int'l Primate Prot. League v. Inst. for Behavioral Research, Inc.*, 799 F.2d 934 (4th Cir. 1986).

⁸⁷According to the International Primate Protection League website:

The International Primate Protection League ["IPPL"] was founded in 1973, and, since this time, has been working continuously for the well-being of primates. IPPL has Field Representatives in 31 countries. Its Advisory Board is composed of experts from the fields of zoology, anthropology, medicine, biology, veterinary medicine, and psychology. Many IPPL officers have lived for long periods with primates in their natural habitats.

International Primate Protection League, *About Us*, <http://www.ippl.org/about.html> (last visited Jan. 31, 2008). For more information about the International Primate Protection League, visit its home page at <http://www.ippl.org>.

⁸⁸The animal rights activist obtained employment from the Institute while enrolled as an undergraduate student, thereby granting him access to witness the inadequate treatment at the facilities first-hand. *Int'l Primate Prot. League*, 799 F.2d at 936.

⁸⁹A jury convicted the principal defendant in the criminal action, Dr. Edward Taub, of one count of cruelty to animals under Maryland's anti-cruelty statute. *Id.* at 935, 937. However, the Maryland Court of Appeals held that the statute did not apply to federally funded medical research programs and reversed the conviction. *Id.* at 937. *See generally* Taub v. State, 463 A.2d 819 (Md. 1983) (reversing conviction of chief researcher upon finding that state anti-cruelty laws cannot be used to bring charges against researcher where research conducted under federally funded program).

⁹⁰*Int'l Primate Prot. League*, 799 F.2d at 936.

⁹¹*Id.*

Alleging violations of the Animal Welfare Act,⁹² the plaintiffs sought designation by the court as guardians of the primates.⁹³ The plaintiffs presented two financial injuries in an attempt to satisfy the standing requirements.⁹⁴ First, the court dismissed the argument that the plaintiffs are entitled to sue to make certain federally funded organizations abide by the law by “holding that payment of taxes does not purchase authority to enforce regulatory restrictions.”⁹⁵ Second, the court determined that contributions made voluntarily by the plaintiffs to help care for the animals during the trial did “not establish ‘a personal stake in the outcome of the controversy’” sufficient to establish standing.⁹⁶

Two non-financial injuries also proved insufficient to establish standing for the plaintiffs.⁹⁷ The plaintiffs argued that they had standing because they were:

individuals and members having a personal interest in the preservation and encouragement of civilized and humane treatment of animals, whose own aesthetic, conservational, and environmental interests are specifically and particularly offended by the matters [in this case] and which interests, along with their educational interests, will be detrimentally impacted upon if the relief sought is not granted.⁹⁸

The court rejected the plaintiffs’ argument, quoting the Supreme Court that “‘a mere interest in a problem; no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself’ to create standing.”⁹⁹ Additionally, the court refused the plaintiffs’ argument that language of the Animal Welfare Act provides individuals with a private cause of action.¹⁰⁰ Explaining that statutory construction provides the basis for whether such a right exists, the court ruled that “[t]o accord plaintiffs standing to sue by virtue of a private cause of action would not conform to the aims of Congress in the Animal Welfare Act.”¹⁰¹ Finding the plaintiffs had no standing to sue, the court affirmed the lower court’s granting of a motion to dismiss.¹⁰²

Although a few courts have found standing to sue in cases where the true victim is an animal, such outcomes provide nothing more than false hopes for animal

⁹²Animal Welfare Act of 1970, 7 U.S.C. §§ 2131-2156 (2006). For a further discussion of the Animal Welfare Act, see *supra* Part V.

⁹³*Int’l Primate Prot. League*, 799 F.2d at 936-37.

⁹⁴*Id.* at 937-38.

⁹⁵*Id.*

⁹⁶*Id.* at 938 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

⁹⁷*Id.*

⁹⁸*Id.*

⁹⁹*Id.*

¹⁰⁰*Id.* at 940.

¹⁰¹*Id.*

¹⁰²*Id.* at 941.

activists.¹⁰³ Inconsistencies and a lack of reasoning based on precedent plague such decisions.¹⁰⁴ “Courts simply declare some . . . to have standing and others to lack standing, without so much as a passing nod to the established precedent governing standing determinations.”¹⁰⁵ Thus, cases such as *Ringling Brothers*¹⁰⁶ do not open the courts up to protect animals, but merely “provid[e] a ‘small window for standing’ in certain, *very limited* situations.”¹⁰⁷

IV. JUDGES’ USE OF THE STANDING BARRIER TO PROMOTE THEIR GOAL OF KEEPING CASES INVOLVING ANIMALS OUT OF THE COURTROOM

Many animal advocates, both individuals and organizations, still have a great deal of difficulty providing animals with their “day in court,” due to many courts’ highly strict construction of the standing requirements.¹⁰⁸ Courts often choose “to narrow standing, [to] narrow the rights of individuals to come into court bit by bit,” using both constitutional and prudential arguments.¹⁰⁹ Stemming from the courts’ desire to keep lawsuits involving animals out of the court system, this trend will continue, making the system even less accessible for animal advocates.¹¹⁰

The main reason courts want to limit cases concerning the rights of animals in the court system is that such cases seem inconsequential when the system is already “overrun” with cases dealing strictly with human matters.¹¹¹ According to David Wolfson,¹¹² a fear exists that “to provide greater protection [to animals] would involve such a large number of lawsuits, cases brought before the courts . . . would overburden a legal system that is already stretched to perhaps its capacity at this point.”¹¹³ It follows that the courts fear a massive influx of cases brought by animal activists if a more lenient approach is applied to the standing requirements.

These concerns are unfounded. History has shown that when the law has granted wider protection where society necessitates, the courts have not been “overrun” with

¹⁰³See generally *Ringling Bros.*, 317 F.3d 334 (holding a former circus elephant caretaker who witnessed the mistreatment of his charges had standing to sue); *Glickman*, 154 F.3d 426 (holding regular visitors to primate exhibitions had standing when they repeatedly witnessed primates living in inhumane conditions).

¹⁰⁴DeCoux, *supra* note 15, at 682.

¹⁰⁵*Id.*

¹⁰⁶317 F.3d 334. See also *Glickman*, 154 F.3d 426 (holding regular visitors to primate exhibitions had standing when they repeatedly witnessed primates living in inhumane conditions).

¹⁰⁷Francione, *supra* note 17, at 28 (emphasis added).

¹⁰⁸See generally cases cited *supra* note 37.

¹⁰⁹*The Legal Status of Nonhuman Animals*, *supra* note 10, at 63 (quoting Professor Nicholas Robinson, Pace University School of Law).

¹¹⁰*Id.*

¹¹¹*Id.* at 62.

¹¹²Sullivan & Wolfson, *supra* note 22.

¹¹³*The Legal Status of Nonhuman Animals*, *supra* note 10, at 62.

unnecessary lawsuits.¹¹⁴ The complexity of bringing a lawsuit, along with the large amount of resources required, has, and will continue, to protect the system from frivolous lawsuits because many are not willing to risk a loss should their challenge prove unsuccessful. This irrational fear is not a justifiable reason for the courts to continue stretching technicalities in a discretionarily abusive manner to keep animal activists out of the system.

Another concern the courts may have regarding litigation involving animals is the necessity of using expert witnesses should such controversies proceed to trial. Plaintiffs in cases involving the mistreatment of animals must prove the animal or animals in question were subjected to physical or emotional pain, or that they were not provided adequate food, water, exercise, shelter, or healthcare.¹¹⁵ Determinations of this kind often require knowledge of animal and veterinary sciences, which most judges and juries do not possess.¹¹⁶ Thus, judges and juries require experts to help them “wad[e] through the scientific principles involved” in reaching the correct outcome.¹¹⁷

Generally judges do not favor the use of expert witnesses by opposing parties in trials for a variety of reasons.¹¹⁸ First, respectable experts often refuse to participate in litigation because “they distrust[] the adversarial process to represent their views in an objective fashion or to expose the scientific truth.”¹¹⁹ Second, the practice of “shopping for experts”¹²⁰ by parties offers a high likelihood of biased testimony that will be given great weight by the jury.¹²¹ Third, use of experts opens the court up to the possibility of “junk science,” which is “a term developed to describe the type of expert testimony relied upon by some plaintiffs which is purported to lack credible

¹¹⁴Good examples of such necessary granting of wider protection include the Environmental Movement of the 1970s, the Women’s Rights Movement, the Civil Rights Movement, protection for sexual harassment, and protection for disabled persons. *Id.* at 62, 64.

¹¹⁵*See, e.g., Ringling Bros.*, 317 F.3d at 335 (finding in favor of a former elephant caretaker who witnessed abuse that had a negative impact on the animals’ behavior); *Glickman*, 154 F.3d at 438, 444 (holding regular visitors to primate exhibitions had standing when they repeatedly witnessed primates living in inhumane conditions).

¹¹⁶*Id.*

¹¹⁷Karen Butler Reisinger, *Court-Appointed Expert Panels: A Comparison of Two Models*, 32 IND. L. REV. 225, 226 (1998).

¹¹⁸*See generally id.* (discussing the use of experts and expert panels in toxic tort litigation).

¹¹⁹*Id.* at 232.

¹²⁰*Id.* “Shopping for experts is a partisan practice whereby parties select an expert based on the conformity of the expert’s opinion to that party’s theory of the case. This practice, according to commentators, helps obscure the truth rather than reveal it for resolution by the jury.” *Id.* Indeed, “[p]artisan experts . . . often fail to clarify issues for the jury because the expert may tailor testimony to meet the needs of the client rather than make a full disclosure.” *Id.* at 234.

¹²¹“The great weight given to expert testimony introduced by a party when the issues in question are relatively precise has been frequently criticized.” George J. Alexander, *Premature Probate: A Different Perspective on Guardianship for the Elderly*, 31 STAN. L. REV. 1003, 1017 (1979).

scientific foundation.”¹²² Finally, courts tend to shy away from the added cost of expert testimony, which greatly increases the overall cost of litigation.¹²³ This aversion to expert witnesses provides another motive for courts to refrain from allowing cases involving animals past the standing barrier.

The current judicial system does not allow many cases involving animals to reach the courts, and this will not change in the near future. Although the fears held by the courts are not of significant concern, many judges feel that such concerns are legitimate.¹²⁴ Additionally, the existing older generation of judges does not embrace the concerns held by this country’s younger generations regarding the necessity and moral duty to protect animals.¹²⁵ Before animal activists can hope for leniency from the courts in finding standing for cases involving animals, they will have to wait out several cycles of justices before the majority shares the growing concerns of the American people. Because the court system will not soon change its views regarding cases involving animals, animal activists must instead turn to legislation in order to provide adequate protection to animals.

V. THE MANY PROBLEMS WITH CURRENT ANIMAL PROTECTION LAWS GENERATE A NEED FOR NEW LEGISLATION THAT PROVIDES MORE INCLUSIVE LANGUAGE AND IMPROVED ENFORCEMENT MECHANISMS

The federal government has enacted a variety of legislation in an effort to protect specified animals.¹²⁶ The best known example¹²⁷ of such legislation is the Animal Welfare Act of 1970 (“AWA”).¹²⁸ The AWA provides recordkeeping,

¹²²Reisinger, *supra* note 117, at 232.

¹²³“Expert testimony ‘contributes substantially’ to the high cost of litigation.” David J. Damiani, *Proposals for Reform in the Evaluation of Expert Testimony in Pharmaceutical Mass Tort Cases*, 13 ALB. L.J. SCI. & TECH. 517, 533 (2003).

¹²⁴*The Legal Status of Nonhuman Animals*, *supra* note 10, at 62.

¹²⁵“[O]ur legal system abhors change.” Clayton Gillette & Joyce Tischler, Symposium Introduction, *Confronting Barriers to the Courtroom for Animal Advocates*, 13 ANIMAL L. 13, 19 (2006).

¹²⁶*See* Animal Welfare Act of 1970, 7 U.S.C. §§ 2131-2156 (2008); Marine Mammal Protection Act of 1972, 16 U.S.C. §§ 1361-1421h (2008); Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1543 (2008).

¹²⁷This Note should be read as an overview of deficiencies in federal and state protective legislation in general. This author chooses to utilize the AWA (as well as other legislation) throughout this Note to exemplify such deficiencies. This Note should not be read as a criticism of any one statute in particular, but rather as a criticism of animal protection statutes in general.

¹²⁸7 U.S.C. §§ 2131-2156; Karen L. McDonald, Comment, *Creating a Private Cause of Action Against Abusive Animal Research*, 134 U. PA. L. REV. 399, 402 (1986). According to Thomas G. Kelch:

[t]he legislative history of the [AWA] states that small helpless creatures deserve the care and protection of a strong and enlightened public, and that the statute reflects a philosophy of caring for animals. In addition, the history states that the legislation is an effort to demonstrate America’s humanity toward lesser creatures and establish by law the humane ethic that animals should be accorded the basic creature comforts of adequate housing, ample food, reasonable handling, decent sanitation, sufficient

transportation, and general treatment regulations for animals used in laboratory research.¹²⁹ Primarily enforced by the U.S. Department of Agriculture, each laboratory is required to appoint an Institutional Animal Committee in charge of overseeing the treatment of animals used by that facility.¹³⁰ Such committees are made up of members chosen at the facility's discretion, merely requiring the inclusion of at least one veterinarian and one member not otherwise associated with that facility.¹³¹ The committee is responsible for reporting violations to the Department of Agriculture, the Secretary of which may then conduct further investigations and impose penalties.¹³²

State governments have also attempted to create statutory protection for animals through anti-cruelty statutes,¹³³ often with inadequate results. Generally, such statutes "provide the principal . . . legal protection to animals in America" by classifying animal cruelty as a criminal offense.¹³⁴ In an effort to stop the neglect, torture, and needless death of animals, such statutes provide for penalties including jail time, fines, counseling, community service, restitution, and seizure of the abused animal.¹³⁵ Although intended to protect animals from inhumane treatment, along with the federal animal protections statutes, various shortcomings within society and the statutes themselves allow for insufficient enforcement.¹³⁶

ventilation, shelter from extremes of weather and temperature, and adequate veterinary care including appropriate use of pain-killing drugs. Similarly, the legislative history of the Animal Welfare Act Amendments of 1976 states as its purposes assuring of humane treatment of certain animals and increasing the protection afforded animals in transit.

Kelch, *supra* note 15, at 542.

¹²⁹McDonald, *supra* note 128, at 403.

¹³⁰*Int'l Primate Prot. League v. Inst. for Behavioral Research*, 799 F.2d 934, 939 n.4 (1986) (citing 7 U.S.C. § 2143).

¹³¹*Id.*

¹³²*Id.* (citing 7 U.S.C. §§ 2134, 2146). Such penalties may include a cease and desist order, fines up to \$1000 per violation per day, and removal of mistreated animals. *Id.* (citing 7 U.S.C. §§ 2146(a), 2149(b)). However, animals are only removed where "the [suffering] animal 'is no longer required by the research facility to carry out the research, test, or experiment for which such animal has been utilized.'" *Id.* at 939 (quoting 7 U.S.C. § 2146(a)).

¹³³SONIA S. WAISMAN ET AL., *ANIMAL LAW: CASES AND MATERIALS* 472 (3d ed. 2006).

¹³⁴*Id.* While nine states (Alaska, Arkansas, Hawaii, Idaho, Kansas, Mississippi, North Dakota, South Dakota, and Utah) maintain only misdemeanor anti-cruelty laws, forty-one states and the District of Columbia have established felony anti-cruelty laws. *Id.* at 472, note b.

¹³⁵*Id.* at 472-73.

¹³⁶Those primarily responsible for enforcement of the state anti-cruelty laws (police and prosecutors) often harbor resentment against having to enforce what they deem as trivial laws, and do not always receive adequate training. *Id.* at 475. In addition, community pressures and financial restraints may also hamper anti-cruelty law enforcement, as many citizens may consider the use of resources to provide for animal care as a waste of tax dollars. *Id.*

A. *Current Animal Protective Legislation Has Limited Applicability that Does Not Allow for Adequate Protection of All Animals in Necessary Circumstances*

One general problem with many animal protection statutes is their limited application. At both the federal and state levels, these statutes significantly limit the type of animals deemed worthy of such protection.¹³⁷ For example, the U.S. Department of Agriculture explicitly excludes birds, rats, mice, horses (except when used for research), and other farm animals from the AWA.¹³⁸ Similarly, many state statutes exclude several varieties of fowl and are enforced only in situations involving dogs, cats, and horses.¹³⁹ Such pervasive exceptions and limitations render the statutes useless for the protection of numerous animals.¹⁴⁰

Limited applicability problems also arise under the context of the type of activities regulated or prohibited under the statutes. Many protective statutes apply only in select circumstances.¹⁴¹ The federal Marine Mammal Protection Act of 1972,¹⁴² for instance, allows for government mandated exceptions to its taking and importation prohibitions for scientific research, public displays, commercial fishing operations, photography, education, and commerce.¹⁴³ Additionally, many state anti-cruelty statutes do not apply to treatment of farm animals during “customary farming practices.”¹⁴⁴ According to Sullivan and Wolfson, “[a]lthough all fifty states

¹³⁷See generally *Animal Legal Def. Fund, Inc. v. Espy*, 23 F.3d 496 (D.C. Cir. 1994) (holding animal welfare groups and individuals did not have standing to sue to expand the definition of “animals” to include birds, rats, and mice). “Most anti-cruelty laws . . . [exclude] whole classes of animals, such as wildlife or farm animals.” WAISMAN, *supra* note 133, at 474.

¹³⁸9 C.F.R. § 1.1 (2008). The Department of Agriculture defines “animal” for purposes of the AWA as:

[A]ny live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research; horses not used for research purposes; and other farm animals, such as, but not limited to, livestock or poultry used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.

Id.

¹³⁹David J. Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 ANIMAL L. 123, 131 (1996).

¹⁴⁰See *id.* See generally *Taub v. State*, 463 A.2d 819 (1983) (holding Maryland anti-cruelty statute does not apply to animals used in federally funded scientific research).

¹⁴¹Most state anticruelty laws exclude “traditional veterinary practices; animals used for medical, educational or scientific research; hunting, fishing and trapping; animals and specific practices used in agricultural industries; pest control; animals and practices used in entertainment . . . [and] animal training methods.” WAISMAN, *supra* note 133, at 474.

¹⁴²16 U.S.C. §§ 1361-1421h (2008).

¹⁴³*Id.* § 1371(a)(1). See *Animal Welfare Inst. v. Kreps*, 561 F.2d 1002, 1004 (D.C. Cir. 1977); WAISMAN, *supra* note 133, at 654.

¹⁴⁴Sullivan & Wolfson, *supra* note 22, at 154-55.

currently have criminal laws . . . prohibiting . . . cruelty to animals, these laws have not . . . limited in any way even the cruelest farming practices. A majority of states simply exclude ‘customary’ farming practices from legal restriction.”¹⁴⁵

The AWA provides another example of applicability problems. The goal of the AWA is to “ensure that animals intended for use in research facilities are provided humane care and treatment.”¹⁴⁶ However, “[t]he AWA explicitly asserts that ‘[n]othing in this Act . . . shall be construed as authorizing the Secretary [of Agriculture] to promulgate rules, regulations, or orders with regard to design, outlines, guidelines, or performance of actual research or experimentation by a research facility.’”¹⁴⁷ In essence, regulation under the AWA only allows for protection before and after experiments; animals are virtually defenseless during the most critical phase.¹⁴⁸ Viewed by many as deficient, this approach is sometimes described as allowing regulators to “peer through the window of the laboratory door, [while] the scientist still holds the key to the lock.”¹⁴⁹

Such limiting exceptions do not belong in effective animal protection statutes. The majority of animals excluded from particular statutes are precisely those requiring the most protection regarding the regulated activity. For instance, the Humane Methods of Slaughter Act of 1958,¹⁵⁰ which “requires that livestock slaughter ‘be carried out only by humane methods’ to prevent ‘needless suffering,’” excludes chickens from protection.¹⁵¹ Because approximately seven billion broiler chickens are slaughtered each year in the United States, this statute provides insufficient protection for all affected animals.¹⁵² Comparable discrepancies plague many of the animal protection statutes currently in operation, necessitating more inclusive legislation to provide for realization of their intended purposes.¹⁵³

Similarly, those activities which are excluded from certain regulatory statutes generally take place where the affected animals are in the most danger of suffering inhumane treatment. “Customary” farm practices, exempt from most state anti-cruelty statutes, often consist of unimaginably cruel practices.¹⁵⁴ Many such practices include castration and tail removal of pigs without anesthetic, housing of

¹⁴⁵*Id.*

¹⁴⁶McDonald, *supra* note 128, at 404 (citing 7 U.S.C. § 2131).

¹⁴⁷JORDAN CURNUTT, ANIMALS AND THE LAW: A SOURCEBOOK 471 (2001).

¹⁴⁸*Id.*

¹⁴⁹*Id.*

¹⁵⁰7 U.S.C. §§ 1901-1906.

¹⁵¹Wolfson, *supra* note 139, at 126.

¹⁵²*Id.* at 131.

¹⁵³For instance, the purpose of the Humane Methods of Slaughter Act of 1958 is to prevent the “needless suffering” of livestock and “that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods.” 7 U.S.C. § 1901 (2006). The stated purpose of the AWA is to ensure the humane treatment and transport of animals used in research, used for exhibition, or kept as pets. 7 U.S.C. § 2131 (2006).

¹⁵⁴Wolfson, *supra* note 139, at 133-34.

sows in gestation crates,¹⁵⁵ abuse of “downed” and young cattle, providing inadequate nourishment and living space to veal calves,¹⁵⁶ and various abuses of poultry.¹⁵⁷ Similarly, research studies exempted from AWA regulation often include extremely cruel and painful inflictions of injuries on defenseless animals, such as severing nerves in primates’ limbs to study the effects of strokes¹⁵⁸ or intentionally causing head injuries.¹⁵⁹ In allowing such broad exemptions under the language of the statute, a great deal of destructive behavior is allowed to slip through unimpeded by regulation, much to the detriment of the “protected” animals.¹⁶⁰

Limited applicability problems can be remedied by giving greater control to enforcement agencies through statutory provisions. Using the AWA again as an example, current law does not allow the government to have any regulation power

¹⁵⁵*Id.* at 134 (“[P]igs are castrated and have their tails removed without anesthetic. Moreover, gestating (pregnant) sows and farrowing (birthing) sows are housed in stalls where they are unable to turn around. Such intensive farming practices result in health problems, including lameness or high death rates, which are aggravated by uncontrolled genetic selection for production traits such as rapid growth. Genetic problems are increasing; some pigs are so excitable that quiet humane handling at the slaughter plant is very difficult.”).

¹⁵⁶*Id.* (“Agribusiness subjects cattle of all ages to inhumane practices. For example, day-old baby calves are transported from the dairy farm before they are able to walk, resulting in calves being thrown, dragged, or trampled. This practice is becoming increasingly accepted at dairies in some parts of the country. Furthermore, cattle farmers often drag downed, crippled cows and will sell cows for slaughter when they are physically unfit to travel. Some communities consider this an accepted practice, but most good producers condemn the abuse of downers. Most downer cows are emaciated or in poor physical condition before they leave the farm. Veal calves are housed in stalls where they are unable to turn around. The calves are fed a liquid diet that does not allow the normal function of the calf’s rumen. In addition, cattle are dehorned, castrated and hot-iron branded without anesthetic.”).

¹⁵⁷*Id.* (“Poultry are also victims of cruel husbandry practices, such as the removal of chicken’s beaks. Additionally, the starvation of laying hens to make them enter the next laying cycle is a common practice. This is termed ‘forced moulting.’ Egg layers are housed without access to a nest box in a manner that does not allow the birds a full range of motion. Another common practice is the disposal of male chicks or live unhatched eggs by suffocation. Agribusiness does not restrict its cruel practices to chickens. For example, geese are force-fed for the *foie gras* trade by pump-feeding food down the birds’ throats.”).

¹⁵⁸*Int’l Primate Prot. League v. Inst. for Behavioral Research, Inc.*, 799 F.2d 934, 936 (4th Cir. 1986) (“Taub, the chief of the Behavioral Biology Center of the Institute of Behavioral Research (IBR), was studying the capacity of monkeys to learn to use a limb after nerves had been severed. Funded by the National Institutes of Health (NIH), the project amplified Taub’s earlier research in this area and attempted to discover benefits for the rehabilitation of human patients suffering from a serious neurological injury such as a stroke.”).

¹⁵⁹McDonald, *supra* note 128, at 404 (“In head injury tests at the University of Pennsylvania, precise amounts of pressure were applied to monkeys’ heads with a pneumatic hammer-like mechanism. Helmets that had been placed on the monkeys’ heads were then removed by the researchers with hammers and chisels, thus raising serious doubts about the validity of the researchers’ findings as well as concerns about the level of pain to which the monkeys were subjected.”).

¹⁶⁰*See generally id.* (demonstrating a variety of abuse suffered by animals at the hands of scientific researchers).

over the research experiment itself.¹⁶¹ Animals, therefore, are left to the mercy of the scientists, who often heed no concern to the well-being of their subjects.¹⁶² Reform to animal protection statutes can give limited discretion to those regulated to conduct their business as they choose while enabling the government to intercede should such conduct overstep the bounds of humanity. This can be accomplished by new legislation providing sufficiently broad oversight to enforcement agencies to provide the intended protection to all animals covered by the regulations. Applying such standards to all protective animal legislation will afford some much-needed protection to those animals at risk while still allowing enough discretion for scientists and others subject to regulation to carry on “business as usual” with minimal interference.

B. Peer Enforcement of Protective Animal Regulations Shield Industries Using Animals from Objective Enforcement, Allowing Such Industries to Disregard Such Regulations

Animal protection regulations are primarily enforced by administrative agencies through the use of oversight committees.¹⁶³ Such systems of implementation do not lead to adequate enforcement largely due to the makeup of such committees, which consist primarily of others involved in that area of regulated conduct.¹⁶⁴ This system, known as “peer review,” allows a great deal of opportunity for disregard of such regulations.¹⁶⁵

Peer review is an ineffective means of carrying out animal protection statutes. The assumption that fellow overseers will satisfactorily perform their review allows frequent opportunity for abuses to be overlooked. In *Taub v. State*¹⁶⁶ an animal care committee “assumed that the treatment of the [animals in a research facility] were satisfactory simply because the laboratory had been inspected by the Department of

¹⁶¹CURNUTT, *supra* note 147, at 471.

¹⁶²Many scientists do not regard the treatment of their research subjects as important. Their only concern is the outcome of such experiments. McDonald, *supra* note 128, at 404.

¹⁶³For example, the Marine Mammal Protection Act of 1972, 16 U.S.C. §§ 1361-1421h (2006), and the Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1543 (2006), are administered by the Department of Commerce “through the National Oceanic and Atmospheric Administration and the [National Marine Fisheries Service] . . . and the Department of the Interior, through the [U.S.] Fish and Wildlife Service.” WAISMAN, *supra* note 133, at 620, 653 (citing 16 U.S.C. §§ 1362(11), 1533(a) (2006)). The Animal and Plant Health Inspection Service is in charge of managing the Animal Welfare Act of 1970, 7 U.S.C. §§ 2131-2156 (2006). United States Department of Agriculture, *About APHIS*, http://www.aphis.usda.gov/about_aphis/ (last visited Nov. 3, 2008). See Robert J. Masonis, Comment, *The Improved Standards for Laboratory Animals Act and the Proposed Regulations: A Glimmer of Hope in the Battle Against Abusive Animal Research*, 16 B.C. ENVTL. AFF. L. REV. 149, 176-78 (1988). For enforcement of state anti-cruelty laws, see WAISMAN, *supra* note 133.

¹⁶⁴McDonald, *supra* note 128, at 402-08.

¹⁶⁵*Id.*

¹⁶⁶463 A.2d 819 (Md. 1983).

Agriculture and the project was funded by the [National Institutes of Health].”¹⁶⁷ Additionally, as fellow participators in a particular trade, committee members are likely to defer to decisions of those they are inspecting, and may not find fault in inhumane customs. Thus, peer review provides nothing more than a one-sided check on regulated organizations and activities, providing little to no benefit for the animals those regulations were created to protect.¹⁶⁸

While new administrative agencies should be granted power over implementation of protective legislation, committees within the administrative agencies should remain primarily responsible for oversight of the treatment of animals. However, the composition of such committees is in need of restructuring. Many of these committees are made up of scientists or tradesmen and those with something to lose should the laboratory or business come under legal scrutiny.¹⁶⁹ “In Sweden a scientist must receive the approval of an oversight committee consisting of a scientist, a technician, and a layperson before beginning an experiment on animals.”¹⁷⁰ Animal protection statutes should be reformed to create similar requirements for all oversight committees responsible for ensuring the humane treatment of animals. The addition of multiple laypersons would provide a viewpoint more in accordance with society as a whole as to what constitutes inhumane treatment, rather than merely that of the scientific or other business community. Animals could count on these unbiased committee members to object when otherwise traditional trade practices prove cruel and unnecessary.

¹⁶⁷McDonald, *supra* note 128, at 406 (citing *The Use of Animals in Medical Research and Testing: Hearing Before the Subcomm. on Science, Research and Technology of the H. Comm. on Science and Technology*, 97th Cong. 43 (1981) (statement of Alex Pacheco, Chairperson, People for Ethical Treatment of Animals)).

¹⁶⁸For example, the United States General Accounting Office concluded:

Incomplete and inconsistent inspection records made it difficult to determine the frequency and scope of humane handling and slaughter violations. [The Food Safety and Inspection Service] was unable to produce at least 44 of its inspection records that document violations of the Humane Methods of Slaughter Act (HMSA) and implementing regulations. Also, inspectors did not always document violations of the HMSA . . . [and] the records that FSIS provided did not consistently document the scope and severity of each incident.

U.S. GEN. ACCOUNTING OFFICE, REPORT TO CONGRESSIONAL REQUESTERS: HUMANE METHODS OF SLAUGHTER ACT: USDA HAS ADDRESSED SOME PROBLEMS BUT STILL FACES ENFORCEMENT CHALLENGES I (2004).

¹⁶⁹Masonis, *supra* note 163, at 177.

¹⁷⁰McDonald, *supra* note 128, at 432 n.62 (citing Karl Johan Öbrink, *Swedish Law on Laboratory Animals*, in *SCIENTIFIC PERSPECTIVES ON ANIMAL WELFARE* 56-58 (W. Jean Dodds & F. Barbara Orlans eds., 1982)). “If the proposed experiment does not adequately account for the animals’ interests, the committee works with the scientist to develop an alternate experimental method. Further, the local health authorities receive reports on each experiment.” *Id.*

C. Delegation of Enforcement Responsibility to Several Separate Departments and Agencies Provides Inadequate Enforcement and Must Be Allocated to One Primary Department

While the AWA and other animal protection statutes were created with good intentions, the current mode of enforcement through a multitude of separate agencies has led to a disjointed and inefficient effort. For instance, at the federal level, the Humane Methods of Slaughter Act and the AWA are enforced by the U.S. Department of Agriculture¹⁷¹ while the Marine Mammal Protection Act is enforced by the U.S. Department of Commerce through the National Marine Fisheries Service.¹⁷² Additionally, enforcement of the Endangered Species Act is “split between the [Department] of the Interior . . . and the [Department] of Commerce.”¹⁷³ State enforcement is also divided among departments, such as in New Jersey where oversight of the “health and well-being” of livestock is executed by the New Jersey Department of Agriculture,¹⁷⁴ while animal control, animal facility inspection, and veterinary supervision are all managed through the New Jersey Department of Health and Senior Services.¹⁷⁵

Due to these broad distributions of responsibility, much opportunity exists for careless and disorganized “enforcement” of animal protection statutes.¹⁷⁶ Because of

¹⁷¹Humane Methods of Slaughter Act of 1958, 7 U.S.C. §§ 1901-1906 (2006); Animal Welfare Act of 1970, 7 U.S.C. §§ 2131-2156 (2006).

¹⁷²50 C.F.R. § 216.8 (2008).

¹⁷³WAISMAN, *supra* note 133, at 620. Under the Department of the Interior, the U.S. Fish and Wildlife Service is responsible for “listing species and designating their critical habitat” for all threatened and endangered species, “except those species over which the Secretary of Commerce was granted jurisdiction by an executive reorganization in 1970. Commerce oversees most marine species, including anadromous fish (fish that migrate from freshwater to saltwater), but excepting marine birds and sea otters.” *Id.* This responsibility is delegated from the Secretary of Commerce to the National Marine fisheries Service. *Id.*

¹⁷⁴State of New Jersey Department of Agriculture, *About the Division*, <http://www.state.nj.us/agriculture/divisions/ah/about/> (last visited Oct. 31, 2008).

The Division of Animal Health [under the Department of Agriculture] maintains disease control programs to protect the health and well being of livestock in New Jersey. The division tracks information about emerging diseases around the world that may impact the Garden State, conducts epidemiological investigations of livestock diseases and drug residues, operates an animal health diagnostic laboratory, manages a contagious equine metritis quarantine facility in Long Valley for imported horses and supports an aggressive Johne’s disease control program.

Id.

¹⁷⁵State of New Jersey Department of Health and Senior Services, *Office of Animal Welfare*, <http://www.state.nj.us/health/animalwelfare/index.shtml> (last visited Oct. 31, 2008). Under the Department of Health and Senior services:

The Office of Animal Welfare is dedicated to promoting and protecting the health, safety and welfare of companion animals in the state of New Jersey. The Office of Animal Welfare works to promote responsible pet care and to ensure that pets do not suffer due to abuse, neglect or lack of proper care.

Id.

¹⁷⁶See McDonald, *supra* note 128, at 406 (citing *The Use of Animals in Medical Research and Testing: Hearing Before the Subcomm. on Science, Research and Technology of the H.*

this, the protection of animals requires new legislation that creates individualized agencies to enforce both existing and new animal protections statutes, under the direction of one specific department.¹⁷⁷ This will alleviate problems of miscommunication between the agencies, as well as deluded reliance on other agencies' findings.¹⁷⁸

The USDA's enforcement of the AWA provides a clear example of why an increase in oversight and power for regulatory agencies is not adequate and enforcement must be regulated under one primary department (specifically the U.S. Department of the Interior, at the federal level, and the Department of Natural Resources, or its equivalent, in each state). The main problem with the AWA does not lie solely with the USDA's lack of *power* to regulate use of animals in agriculture and science, but also its lack of *willingness* to enforce regulations.¹⁷⁹ "Congress, concerned with the [AWA's] poor enforcement, has often had to foist

Comm. on Science and Technology, 97th Cong. 43 (1981) (statement of Alex Pacheco, Chairperson, People for Ethical Treatment of Animals)).

¹⁷⁷This system can be modeled after the Victoria, Australia Bureau of Animal Welfare. In Victoria:

[t]he Bureau of Animal Welfare is located in the Biosecurity Victoria branch of the Department of Primary Industries. It was formed to be the focal point for liaison, co-ordination and co-operation in animal welfare matters between the states, Commonwealth governments, local government and animal welfare agencies in Victoria. The functions of the Bureau are to: [p]rovide administrative and technical support to the Victorian Animal Welfare Advisory Committee (AWAC), Domestic Animals Management Implementation Committee (DAMIC), Wildlife and Small Consultancies Animal Ethics Committee, Prevention of Cruelty to Animals Inspectors Group, Animal Ethics Committee Advisory Committee and the Responsible Pet Ownership Education Advisory Committee; [r]esolve issues raised by animal welfare agencies and organisations responsible for animal welfare and management; [f]acilitate the operation of the Prevention of Cruelty to Animals Act 1986, Prevention of Cruelty to Animals Regulations 1997, Domestic (Feral and Nuisance) Animals Act 1994, Domestic (Feral and Nuisance) Animals Regulations 2005, Impounding Livestock Act 1994 and Impounding Livestock Regulations 2008; [r]eview and develop codes of practice, guidelines and standards for the protection and promotion of good welfare for all animals; [p]rovide advice to Municipalities to facilitate their implementation of the Domestic (Feral and Nuisance) Animals Act 1994, the Domestic (Feral & Nuisance) Animals Regulations 1996 and the Impounding Livestock Act 1994; [r]egulate the use of animals in research and teaching; [p]rovide representation on the Primary Industry Standing Committee's Animal Welfare Committee to liaise with animal welfare representatives from Australian and New Zealand governments, the CSIRO, and Animal Health Australia; and [m]onitor animal welfare developments in other states/territories, countries, research organisations and welfare organisations.

Department of Primary Industries, *Agriculture, Food & Forestry: Animal Welfare*, <http://www.dpi.vic.gov.au/dpi/nrenfa.nsf> (follow "Animals & Livestock" hyperlink; then follow "Animal Welfare" hyperlink) (last visited Oct. 31, 2008).

¹⁷⁸McDonald, *supra* note 128, at 406 (citing *The Use of Animals in Medical Research and Testing: Hearing Before the Subcomm. on Science, Research and Technology of the H. Comm. on Science and Technology*, 97th Cong. 43 (1981) (statement of Alex Pacheco, Chairperson, People for Ethical Treatment of Animals)).

¹⁷⁹Sullivan & Wolfson, *supra* note 22, at 166-67.

more money upon the [USDA] than requested, demonstrating what appears to be the USDA's fundamental disinterest in the task."¹⁸⁰ However, the USDA still maintains only 110 inspectors to oversee over 10,000 licensed facilities.¹⁸¹ The USDA's obvious apathetic attitude toward enforcement of the AWA necessitates the transfer of control to new agencies made up of people without ties to the "business" of animal exploitation.

The USDA, as the primary enforcer of the AWA, is not likely to strictly implement many of the regulations provided for in the federal statute.¹⁸² The USDA is "entrusted primarily with promoting agriculture, not just regulating it. Moreover, the promotion of agriculture has increasingly meant the promotion of corporate agribusiness."¹⁸³ The economic priority of the USDA is further evidenced by a 2008 USDA News Release, which quotes Agricultural Secretary Mike Johanns as saying:

[President Bush's] agricultural budget provides important resources that are necessary to promote economic opportunities and to preserve our commitment to our farmers, ranchers, rural citizens, and families in need. This budget aims to enhance our country's vibrant ag[riculture] economy, advance renewable energy, protect America's food supply, improve nutrition and health, and conserve our natural resources.¹⁸⁴

The news release, which does not mention animal welfare even in passing, commends the budget as meeting "the Department's most important priorities."¹⁸⁵ As such, the department has been in a sense "captured" by the agricultural industry's economic motive, leading to lenient enforcement of AWA regulations.¹⁸⁶

This "capture" of the USDA by the agricultural business industry is further demonstrated by the makeup of much of the USDA personnel. Many employed by the USDA have current or recent ties with many of the organizations the AWA is

¹⁸⁰*Id.* at 167.

¹⁸¹*Id.*

¹⁸²Kelch, *supra* note 15, at 543.

¹⁸³Sullivan & Wolfson, *supra* note 22, at 159.

¹⁸⁴Press Release, USDA, News Release No. 0024.07 (Feb. 5, 2007).

¹⁸⁵*Id.*

¹⁸⁶Kelch, *supra* note 15, at 543. One author writes:

Unfortunately, the USDA has a conflict of interest and their ties to big agribusiness win out against the suffering of animals who are considered to be mere property in the American legal system. This conflict stems from the fact that the USDA must "promote and police American agriculture." Lately, the USDA has focused more on this promotion due to "the beef industry's large donations to the Republican Party, and its political appointees." However, both political parties are vulnerable to the financial lobbying of the meat industry.

Robyn Mallon, *The Deplorable Standard of Living Faced by Farmed Animals in America's Meat Industry and How to Improve Conditions by Eliminating the Corporate Farm*, 9 MICH ST. U. J. MED. & L. 389, 412 (2005).

meant to regulate, as well as to economic and business oriented groups.¹⁸⁷ Three examples include the Deputy Secretary of Agriculture Chuck Conner, Deputy Under Secretary for Farm and Foreign Agricultural Services Floyd D. Gaibler, and the Deputy Under Secretary for Marketing and Regulatory Programs J. Burton Eller, Jr.¹⁸⁸ Mr. Conner has a degree in Agricultural Economics and, prior to his current position, was president of the Corn Refiners Association¹⁸⁹ and served on the National Economic Council.¹⁹⁰ Mr. Gaibler also holds a degree in Agricultural Economics and is the former vice president of the Agricultural Retailers Association and the International Dairy Foods Association, and former executive director of the National Cheese Institute/American Butter Institute.¹⁹¹ Mr. Eller's credentials boast "a variety of executive posts with the National Cattlemen's Association, including Executive Vice President and Chief Operating Officer."¹⁹² Such associations, especially with the National Cattlemen's Association, exemplify the USDA's strong attachment to the economic and "big business" aspects of agriculture that lead to its lenient enforcement of AWA regulations.¹⁹³

The interests of animals would be better served by granting sole enforcement responsibility of protective animal legislation to the U.S. Department of the Interior for a variety of reasons.¹⁹⁴ First, this Department is already responsible for enforcement of some animal related statutes; assigning responsibility for all such statutes to one department allows for less opportunity for miscommunication and

¹⁸⁷See generally USDA, *USDA Biographies*, http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB?contentidonly=true&contentid=usda_bios.xml (last visited Oct. 31, 2008).

¹⁸⁸*Id.*

¹⁸⁹The Corn Refiner's Association is "a national trade association representing the corn refining industry." USDA, *USDA Biographies, Acting Secretary of Agriculture Chuck Conner*, http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB?contentidonly=true&contentid=usda_bios.xml (last visited Oct. 31, 2008).

¹⁹⁰*Id.*

¹⁹¹USDA, *USDA Biographies, Floyd D. Gaibler Deputy Under Secretary for Farm and Foreign Agricultural Services*, http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB?contentidonly=true&contentid=usda_bios.xml (last visited Oct. 31, 2008).

¹⁹²USDA, *USDA Biographies, J. Burton Eller, Jr. Deputy Under Secretary for Marketing and Regulatory Programs* http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB?contentidonly=true&contentid=usda_bios.xml (last visited Oct. 31, 2008).

¹⁹³The National Cattlemen's Beef Association "work[s] to increase profit opportunities for cattle and beef producers by enhancing the business climate and building consumer demand." National Cattlemen's Beef Association, <http://www.beefusa.org> (last visited Oct. 31, 2008).

¹⁹⁴Implementation of such federal legislation is justified under the Commerce Power of the federal government. The U.S. Constitution provides that Congress shall have the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. CONST. art. I, § 8, cl. 3 (emphasis added). Accordingly, any use of animals transported across state lines, including for agriculture, entertainment, or scientific research, may be regulated by the federal government.

better allocation of resources.¹⁹⁵ Next, unlike the Department of Agriculture, the Department of the Interior has a mission to protect resources, rather than determine the best way to utilize them for greatest economic benefit.¹⁹⁶ Thus, the Department of the Interior would not have any conflicts of interest in enforcing regulations that protect animals used in economic enterprises. Additionally, the general personnel makeup of the Department does not include those with ties to agribusiness or other groups that may have goals detrimental to animal interests.¹⁹⁷ This alleviates some concerns of ulterior motives or outside influence leading to lenient and insufficient enforcement.¹⁹⁸

The five goals proclaimed by the Department of the Interior provide further evidence that enforcement of animal use regulations should be their responsibility. First, the Department seeks to “[p]rotect the Nation’s [n]atural, [c]ultural, and [h]eritage [r]esources.”¹⁹⁹ As such, protection of animals fits neatly into the overall departmental scheme. Second, the Department strives to “[m]anage [r]esources to [p]romote [r]esponsible [u]se and [s]ustain a [d]ynamic [e]conomy.”²⁰⁰ This goal covers the use of animals in many different economic enterprises, including agriculture, entertainment, and scientific research. Third, the Department’s goal to “[p]rovide recreation opportunities for America” must include regulation of animal use for entertainment purposes, including such activities as public animal showcases and horseback riding in national parks.²⁰¹ The Department’s fourth goal of serving communities by “[s]afeguard[ing] lives, property and assets, advanc[ing] scientific knowledge, and improv[ing] the quality of life for communities we serve” plays directly into the use of animals in scientific research.²⁰² More important, however, is the clear connection between this goal and the role that protective regulation plays in bettering society as a whole due to the connection between animal abuse and violence towards other people.²⁰³ Finally, the goal to “[m]anage the Department to be highly skilled, accountable, modern, functionally integrated, citizen-centered and result-oriented” would provide the tools necessary for the efficient enforcement of

¹⁹⁵The United States Department of the Interior is partially responsible for enforcement of the Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544 (2008). See WAISMAN, *supra* note 173.

¹⁹⁶The mission of the Department of the Interior is to “*protect and provide access to our Nation’s natural and cultural heritage* and honor our trust responsibilities to Indian Tribes and our commitments to island communities” (emphasis added). U.S. Department of the Interior, *DOI Mission*, <http://www.doi.gov/secretary/mission.html> (last visited Oct. 31, 2008).

¹⁹⁷See generally U.S. Department of the Interior, *DOI Key Officials*, <http://www.doi.gov/secretary/officials.html> (last visited Oct. 31, 2008).

¹⁹⁸Kelch, *supra* note 15, at 543.

¹⁹⁹See U.S. Department of the Interior, *supra* note 196.

²⁰⁰*Id.*

²⁰¹*Id.*

²⁰²*Id.*

²⁰³See generally sources cited *supra* note 19.

animal protection laws.²⁰⁴ Thus, the goals already in place by the Department of the Interior provide an ideal structure for the enforcement of animal protection laws.

In accordance with the above suggestions for enforcement of federal legislation, enforcement of state animal regulatory laws would be best conducted by each state's Department of Natural Resources (or equivalent department). The structures and missions of these departments closely resemble that of the U.S. Department of the Interior.²⁰⁵ For instance, the Ohio Department of Natural Resources was created to "[put] into execution a long term comprehensive plan and program for the development and wise use of the natural resources of the state, to the end that the health, happiness and wholesome enjoyment of life of the people of Ohio may be further encouraged."²⁰⁶ In carrying out this "plan and program," the Department enforces laws regulating resource management, economic development, recreation, and health and safety. Just as the similarly organized U.S. Department of the Interior is best suited to enforce protective animal legislation, thus are the comparable state Departments of Natural Resources.

VI. SUGGESTED LEGISLATIVE MODEL

The following suggested legislative model will help lawmakers in drafting more inclusive and efficient legislation for the protection of animals. In accepting all of the provisions of this model, federal legislators will ensure their goal of protecting "helpless creatures."²⁰⁷ Lawmakers at the state level may also utilize the model by implementing the definitions, regulations, and oversight methods into their state's current anti-cruelty laws or in creation of new laws. Using the model as a guideline in drafting legislation will help alleviate many of the problems of enforcement and exclusion that currently exist in animal protection statutes.

²⁰⁴See U.S. Department of the Interior, *supra* note 196.

²⁰⁵See generally Maryland Department of Natural Resources, *Our Mission: Maryland Dept. of Natural Resources*, <http://www.dnr.state.md.us/mission.asp> (last visited Oct. 31, 2008) ("The Department of Natural Resources preserves, protects, enhances and restores Maryland's natural resources for the wise use and enjoyment of all citizens."); Washington State Department of Natural Resources, *Welcome to Washington DNR*, <http://www.dnr.wa.gov/AboutDNR/Pages/Home.aspx> (last visited Oct. 31, 2008) (stating a mission "[t]o provide professional, forward-looking stewardship of our state lands, natural resources, and environment . . . [and] [t]o provide leadership in creating a sustainable future for the Trusts and all citizens."); Wisconsin Department of Natural Resources, *DNR Mission Statement*, <http://www.dnr.state.wi.us/aboutdnr/missionstatement.html> (last visited Nov. 16, 2008) (stating a mission "[t]o protect and enhance our natural resources: our air, land and water; our wildlife, fish and forests and the ecosystems that sustain all life. To provide a healthy, sustainable environment and a full range of outdoor opportunities. To ensure the right of all people to use and enjoy these resources in their work and leisure. To work with people to understand each other's views and to carry out the public will. And in this partnership consider the future and generations to follow.").

²⁰⁶Ohio Department of Natural Resources, <http://www.dnr.state.oh.us/aboutus/tabid/10748/Default.aspx>, (last visited Nov. 3, 2008). The Ohio Department of Natural Resources states as its mission: "To ensure a balance between wise use and protection of our natural resources for the benefit of all." *Id.*

²⁰⁷Kelch, *supra* note 15, at 542.

(I) No person, institution, or corporation may subject an animal to unnecessarily painful, cruel, or inhumane treatment.

(A) "Animal" includes all creatures, including domestic, feral, and wild, that are neither humans nor plants, whether warm-blooded or cold-blooded, including, but not limited to, non-human mammals, reptiles, birds, amphibians, fish, and all sentient beings. This definition shall be narrowed only in those situations where a broad definition will produce absurd or impossible results. This definition shall not be read to include viruses, bacteria, unicellular organisms, or other microorganisms. This definition shall be read to include those animals created through genetic manipulation, in accordance with this section.

(B) Inhumane treatment includes, but is not limited to, (1) treatment that causes unnecessary or intense pain, (2) extended deprivation of basic necessities, including, but not limited to, food, water, companionship, adequate shelter, medical treatment, and exercise, (3) treatment that causes psychological and emotional instability, and (4) treatment that leads to unnecessary or painful death.

(C) "Unnecessary pain" is defined as pain that is not absolutely necessary in the course of treatment to ensure a benefit to the animal itself. Intense pain that does not produce a benefit for the animal itself, but merely provides a benefit to those utilizing the animal for economic or intellectual gain, constitutes unnecessary pain and is prohibited under this statute. Unnecessary pain shall not be read as limited by the definition of intense pain.

(D) "Intense pain" is defined as pain exceeding the limits of humanity, either directly resulting from method of infliction or indirectly caused thereby, resulting in such physical or mental suffering as to amount to cruelty or torture.

(II) "Person, institution, or corporation" includes, but is not limited to, any individual, commercial and non-commercial establishments, schools, laboratories, research centers, medical centers, military organizations, farms, parks, circuses and other amusement establishments, zoos, and fisheries.

(III) This statute hereby establishes a Division of Animal Welfare, created under the United States Department of the Interior, to be established no less than nine months after passage of this statute.

(A) The Division of Animal Welfare will oversee the enforcement of this statute to ensure the humane treatment of animals.

(B) The Division of Animal Welfare may create lower agencies to help with enforcement of this statute, all of which will report to the Division of Animal Welfare.

(C) The Division of Animal Welfare and its lower agencies will have supreme authority over the treatment of animals, subject only to the oversight of the Secretary of the United States Department of the Interior; a person, institution, or corporation subject to this statute may submit reports explaining their use of animals prior to a final determination. Nothing in this section shall be construed to allow leniency when determining whether treatment is cruel, inhumane, or unnecessary due to the motivation of the use of the animal.

(D) Individual oversight committees shall be responsible for initial investigation of each person, institution, and corporation. These committees shall be established by the Division of Animal Welfare or any of its designated lower agencies. Each committee shall consist of no less than a ten percent makeup of laypersons unaffiliated with the person, institution, or corporation under investigation, no less than two veterinarians, and no less than a seventy percent

makeup of persons unaffiliated with the person, institution, or corporation under investigation.

(1) Veterinarians participating on oversight committees must be currently licensed by a state veterinary medical licensing board registered under the American Association of Veterinary State Boards. The veterinarian must currently be in good standing under the state veterinary licensing board from which his or her license was granted.

VII. CONCLUSION

American society's perception of animals has come a long way since the country was founded over 200 years ago. However, the court system has been slow to evolve along with these views, and the standing requirement maintains a barrier for those wishing to enforce protection through litigation. While protective legislation currently exists, it does not provide the necessary means of enforcement to accomplish its objectives. Thus, the enactment of new legislation is necessary to ensure animals in this country exist under decent and humane conditions.