



Laws and Paws

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FROM THE CHAIR

I am honored to serve as the current Chair of the NYSBA Committee On Animals and the Law (COAL). I am extremely thankful to Barbara Ahern, who served as Chair for the past three years, for her leadership, dedication and guidance. Thank you Barbara!

COAL continues to be “a resource for (NYSBA) Members and the Public about non-human, animal-related legal matters and associated humane considerations.” As a COAL member, I have learned a great deal about animal law over the years. Animal law touches on numerous practice areas, as can be seen in some well known cases. Happy The Elephant (which sought habeas corpus relief for an animal), the classic case of Leona Helmsley leaving \$12 million to her Maltese, Trouble (pet trusts), and Flaco the beloved NYC owl (bird collisions and related legislation, e.g. NYC Local Law 15 of 2020: Bird Friendly Building Design) to name a few.

This past week an unfortunate New York animal related story made the headlines. This matter involved two rescued “pets,” a squirrel named P’nut, and his house mate, Fred, a raccoon. P’Nut was rescued after his mother was hit by a car. Fred was dropped off at the family’s door. Coincidentally the family operates a non-profit animal rescue. Both animals were allegedly euthanized, for the purpose of being tested for rabies, after P’nut bit an Agent during a raid on the home. Some preliminary questions that arise are, were the animals “pets” and was the family/rescue allowed to harbor a squirrel and a raccoon? What did the warrant allow? Were the Agents properly trained for such a situation and were their actions justified? Were other options available, such as quarantine and/or removal of the animals? Hopefully these questions will be answered in time. A New York Assemblyman has already proposed an amendment to New York’s Environmental Conservation Law, calling it “Peanut’s Law: Humane Animal Protection Act.” The amendment would allow for humane treatment and due process for sanctuary animals in New York.

As to Flaco the owl, his story and related legal issues are addressed in Jim Sarlis’ article “The Death Of Flaco The Owl Reminds Us That Bird Collisions Are A Serious Problem.” The article discusses the widely publicized story of NYC’s beloved owl Flaco, who escaped captivity and ultimately perished after colliding with a building.

In addition, this issue of Laws and Paws includes the first place winner of the Committee’s 2024 Annual Student Writing Competition. I am happy to say that we had a record number of submissions this year. I thank all of the law students who took the time to write and submit papers, as well as the Student Writing Subcommittee for all of their hard work.

I hope you find this issue of Laws and Paws as informative and thought-provoking as I did.

Sincerely,
Kirk Passamonti

2024 LEGISLATION SUBCOMMITTEE REPORT

BILLS PASSED AND SIGNED INTO LAW IN 2024

FINAL STATUS OF ALL BILLS SUPPORTED BY THE COMMITTEE ON ANIMALS AND THE LAW

In the 2023-24 Legislative Sessions, the New York State Bar Association's Committee on Animals and the Law (COAL) issued positions on a total of thirty-five bills under consideration by the legislature and the governor. All position memoranda are available on the COAL webpage at <https://nysba.org/committee-on-animals-and-the-law-legislative-memos/>. If you are interested in more information on any bill summarized in this report, please see the text of the bill, which can be accessed through the public portion of the Legislative Retrieval Service (LRS), which provides the bill status, text, summary and sponsor's memo for all legislation at <http://public.leginfo.state.ny.us/navigate.cgi>.

I. Bills Signed into Law

S.8015 (May) / A.8526 (Hunter) – Chapter 65 of the Laws of 2024, effective 1/1/24

Conforms the urban deer management pilot program for the city of Syracuse to existing deer management provisions and the provisions governing the activities of nuisance wildlife specialists currently in the Environmental Conservation Law.

This 2024 law is a chapter amendment to the 2023 law (Chapter 683) that created a pilot program for the management of deer in the city of Syracuse. The chapter amendment conforms provisions of the pilot program to current provisions of the Environmental Conservation Law for the management of deer and the activities of nuisance wildlife specialists, who will implement the deer management practices authorized under the pilot program. It goes into effect on the same date as Chapter 683 of 2023, and expires when that law expires three years later, on December 31, 2026. The COAL did not take a position.

A.8559 (Thiele) / S.8052 (Palumbo) – Chapter 83 of the Laws of 2024, effective 1/1/24

Conforms the urban deer management pilot program for the town of Southold, Long Island, to existing deer management provisions and the provisions governing the activities of nuisance wildlife specialists currently in the Environmental Conservation Law.

This 2024 law is a chapter amendment to the 2023 law (Chapter 704) that created a pilot program for the management of deer in the town of Southold, on Long Island. The chapter amendment conforms provisions of the pilot program to current provisions of the Environmental Conservation Law for the management of deer and the activities of nuisance wildlife specialists, who will implement the deer management practices authorized under the pilot program. It goes

into effect on the same date as Chapter 704 of 2023, and expires when that law expires three years later, on December 31, 2026. The COAL did not take a position.

II. Bills Passed by Both Houses but Not Yet Delivered to the Governor

S.4198-B (Comrie) / A.4243-B (Carroll)

Enacts provisions to require the state to identify areas along NYS highways, thruways and parkways that are appropriate for wildlife crossings.

This bill, the “New York Wildlife Crossing Act,” directs the NYS Department of Transportation (NYSDOT) and the NYS Thruway Authority (NYSTA) to identify locations on NYS highways, thruways and parkways where wildlife crossings are most needed to increase public safety and to improve habitats for animals living near these roads. Roads and highways frequently cut through animal habitat areas, causing animals to cross the roads and collide with vehicles. Culverts, bridges, underpass tunnels and overpass bridges can address the human-caused barriers to normal wildlife movement and remove the public safety hazard on the roads where animals cross. NYSDOT and NYSTA are directed by this bill to develop a wildlife crossings priority list of the top ten locations where action should be taken to mitigate the hazards of frequent wildlife crossings. Federal funding is allocated to the states for action to develop wildlife crossings, and the agency actions required to be taken by this bill will allow those funds to be used for wildlife crossings in New York. In addition, DOT is required to update design guidance for highway design to incorporate wildlife passage features in new road construction. This bill will take effect immediately upon being signed into law.

The COAL supported – COAL Memo in Support #23.

A.6244-C (Stern) / S.4993-C (Martinez)

Allows dogs to be in NYS Parks and establishes restrictions for them in the parks.

This bill amends the Parks, Recreation and Historic Preservation Law by adding a new Section 3.27, Dogs allowed in state parks, that provides for dogs to be admitted to NYS Parks under the jurisdiction of the Office of Parks, Recreation and Historic Preservation (OPRHP); it establishes certain restrictions to ensure that they will not endanger wildlife or wild birds, or negatively affect the experience of other park users. Under this bill, dogs entering state parks must be accompanied by an owner or custodian who will have the dog under their direct supervision and control. The OPRHP Commissioner may limit the presence of dogs in each state park as he or she deems appropriate, including limiting their presence to certain times of day or of the year. Dogs will not be allowed in swimming or sunbathing areas, on golf courses or on playgrounds. Dogs must be leashed, except they may run free in areas designated as unleashed areas. All dogs entering a state park must be fully vaccinated; any dog determined to be a dangerous dog under provisions of the Agriculture and Markets Law is not permitted in a park. The OPRHP Commissioner is permitted to establish penalties for violation of the restrictions in the bill, and to exclude dogs if the owner or custodian has failed to comply with the provisions of the law or any rule or regulation adopted pursuant to it. This bill will take effect 180 days after being signed into law.

The COAL supported – COAL Memo in Support #32.

A.6947-A (Pretlow) / S.6796-A (Addabbo)

Strengthens enforcement of the NYS law prohibiting the slaughter of race horses and race horse breeding stock.

This bill amends Sections 382 and 386 of the Agriculture and Markets Law to provide additional enforcement mechanisms to ensure that the anti-slaughter provisions of the laws that apply to race horses and race horse breeding stock are recognized and followed. It requires signage at livestock auctions stating that it is illegal to sell or transfer a Thoroughbred or Standardbred race horse or breeding stock for the purpose of slaughter for human or animal consumption, and explicitly stating the penalties for violation of this law. The bill requires the Department of Agriculture and Markets to make a good faith effort to have an agent at every livestock auction where horses are being sold, who shall review the health certificates for all Thoroughbred or Standardbred horses being sold. This bill will take effect immediately upon being signed into law.

The COAL supported – COAL Memo in Support #24.

A.8276 (Hunter) / S.7845 (Breslin)

Regulates pet insurance and provides standards for pet insurance policies sold for the coverage of accidents and illnesses of pets.

This bill amends the Insurance Law by adding a new Section 1113(34) to define “pet insurance,” and adding a new Section 3462, Pet insurance, to provide a comprehensive regulatory framework for the pet insurance industry in the state. Under the bill, the insurer must disclose to the purchaser of a pet insurance policy whether the policy excludes coverage for any pre-existing condition, a heredity disorder, congenital anomaly or chronic condition. It allows the purchaser of any policy a 30-day period to review the terms of the policy and provides a right of return within that 30-day period. The bill requires the insurer to disclose other information related to the payment of claims and any requirements that the insured must satisfy to continue coverage. This bill is based on a model act developed by the National Association of Insurance Commissioners to ensure that purchasers of pet insurance policies are aware of all the provisions of any policy they may purchase. This bill will take effect 180 days after being signed into law, and will apply to all policies entered into, renewed or amended after that date.

The COAL supported – COAL Memo in Support #31.

III. Bills Not Passed by the Legislature in 2024 on which the COAL Took a Position and Issued a Memorandum

S.142 (Gianaris) and A.3569-A (Zebrowski)

Restricts the performance of surgical devocalization procedures on dogs and cats.

These bills add a new section 365-A to the Agriculture and Markets Law providing that surgical devocalization of a dog or cat may only be performed by a veterinarian, and only to treat or relieve a physical illness, disease or injury or to correct a congenital abnormality, or when determined by a veterinarian to be necessary to preserve the life of the animal. “Devocalization” is a surgical procedure on the larynx or vocal cords of the animal that reduces or softens the

animal's barking. These bills would prohibit the performance of devocalization surgeries when there is no physical or medical reason why it is necessary. These bills were introduced as companion bills in 2023, but an amendment to the Assembly bill in 2024 eliminated a veterinarian's ability to perform surgical devocalization on a dog or cat under six months of age, when the procedure is necessary and the only alternative for the animal is death or euthanasia. A second Senate bill, **S.9847 (Gianaris)**, identical to A.3569-A, was subsequently introduced at the end of the 2024 Legislative Session. Both S.142 and S.9847 were passed by the Senate in 2024. The COAL supported S.142 / A.3569 – COAL Memo in Support #21.

S.460-A (Sepulveda) / A.768-A (L.Rosenthal)

Includes wildlife within the animals covered by the provisions of the aggravated animal cruelty statute.

This bill amends Agriculture and Markets Law (AML) Section 353-a (aggravated cruelty) to extend the protection of this section of law to wildlife, in addition to companion animals. Violation of AML Section 353-a is a felony. Currently, while intentionally killing or causing serious injury to a companion animal is a felony, those same actions perpetrated against wildlife are only a misdemeanor under Section 353 of the Agriculture and Markets Law. It is logically inconsistent to give protections to a rabbit, rat, frog or other animal kept as a pet when those same protections would not apply to them if they were living as wildlife. The COAL takes the position that pain and suffering inflicted upon wildlife should be treated the same as pain and suffering caused to a companion animal. This bill, like crimes in the Penal Law, changes the focus of this offense to the conduct being proscribed rather than the nature of the victim. The COAL supported – COAL Memo in Support #1.

S.761 (Krueger) / A.776 (L.Rosenthal)

Amends the definition of aggravated animal cruelty to eliminate the description of the injury caused to the animal as a "serious" injury.

This bill amends the definition of "aggravated cruelty to animals" to eliminate the element of the severity of the physical injury caused to an animal as the basis for the criminal charge and conviction. Specifically, it proposes amendments to the elements of the crime of aggravated cruelty to animals under the Agriculture and Markets Law Section 353-a (1) by eliminating the requirement that the injury to the animal be "serious." Prosecutors report that some courts have refused to find defendants guilty of felony aggravated cruelty because by the time the case involving the animal is before the Court, the animal has recovered from its serious injuries. Even though the other elements of the aggravated cruelty charge have been met, the inability to see a serious injury on the animal at the time of trial has resulted in the reduction of the charge, in many cases, to the misdemeanor crime of cruelty to animals. This change in the law would make it more likely for the more serious charge to be sustained regardless of an animal's recovery from the act of cruelty. The COAL supported – COAL Memo in Support #2.

S.1455 (Serrano) / A.1226 (L.Rosenthal)

Requires additional information to be submitted to DEC by a nuisance wildlife control operator.

This bill requires nuisance wildlife control operators (NWCOs) to include in their reports to the Department of Environmental Conservation (DEC) the incidents and reasons when they used lethal, rather than non-lethal methods, to control nuisance wildlife. The bill also requires that the DEC's list of NWCOs include any enforcement actions taken against NWCOs related to violations of nuisance wildlife control laws and regulations. These changes are made by an amendment to Environmental Conservation Law Section 11-0524 (Nuisance wildlife control operators). The goal is to increase the information available to the public on the activities of NWCOs, and to allow the public to make informed choices when deciding to contract with a NWC, and to select one who has demonstrated a commitment to using humane, non-lethal methods for managing nuisance wildlife whenever possible. The COAL supported – COAL Memo in Support #3.

S.1619 (Addabbo) / A.110 (L.Rosenthal)

Prohibits the use of leg-gripping traps in hunting.

This bill amends the Environmental Conservation Law, Sections 11-1101, 11-1901 and 11-1903 to prohibit the use of wildlife leg-gripping traps, which are used to trap furbearing animals such as beavers, raccoons, foxes and coyotes. These traps are triggered by springs once an animal steps into them, clamping onto the animal's limb and holding the animal in place until it is discovered by the trapper. Leg-gripping traps inflict tremendous pain on animals and also present significant risks of trapping non-target species, including humans and family pets, since they do not discriminate between the animals intended to be ensnared in the traps and any other animals nearby. More humane trapping alternatives exist and are readily available. The COAL supported – COAL Memo in Support #4.

S.1659 (Bailey) / A.111 (L.Rosenthal)

Provides for a court-appointed advocate for animals in proceedings involving animals.

This bill adds a new Article 22-B, Section 858-a, to the Judiciary Law to provide that in any civil or criminal proceeding regarding the welfare of an animal, the court may appoint a special advocate to represent the interests of the animal and to help ensure the well-being of any living animal victim. The advocate will provide the parties and the court with information and recommendations relating to the interest of the animal. The list of individuals willing to serve as advocates on a voluntary basis, consisting of supervised law students and attorneys, would be maintained by the Office of Court Administration. The COAL supported – COAL Memo in Support #6.

S.1673 (Addabbo) / A.420 (L.Rosenthal)

Requires the installation of fire protection systems at pet stores to protect the animals housed there.

This bill requires licensed pet dealers that house animals on their premises to have and maintain a fire protection system, including an automatic sprinkler system connected to a municipal water supply, that meets the standards set forth in the legislation. Specifically, this bill amends the Agriculture and Markets Law by adding Section 409, Fire protection requirements for pet stores, to require that this equipment be installed at a pet store in order to provide protection to any animals in the building if a fire should break out. The requirements of the bill are restricted to buildings that are not zoned as residential. The COAL supported – COAL Memo in Support #9.

S.1960 (Addabbo) / A.270 (L.Rosenthal)

Prohibits the use of performance-enhancing drugs in horseracing.

This bill amends the Racing, Pari-Mutuel Wagering and Breeding Law by adding a new Section 902-a, Prohibitions on use of performance-enhancing drugs, that prohibits providing a horse with a performance-enhancing drug if the horse will participate in a race in New York State and prohibits entering any horse in a New York State race if the horse is under the influence of a performance-enhancing drug. The performance-enhancing drug most commonly used is furosemide (Lasix), a drug that has been implicated in many sudden deaths of horses while racing. Use of this drug and others endangers both the lives and health of the horses and of the jockeys riding them. Enforcement of this prohibition is provided by required drug testing of horses using an accredited third-party conformity assessment body test; violations of the prohibition are by both civil penalties and suspension from racing in New York. The recently-passed federal law, the Horseracing Integrity and Safety Act (HISA), may pre-empt state action on drugs in Thoroughbred racehorses, but the prohibitions in the bill would still apply to Standardbred racehorses and would protect them from deaths and injuries incurred as a result of racing while under the influence of a performance-enhancing drug. The COAL supported – COAL Memo in Support #22.

S.1968 (Sepulveda) / A.3798 (L.Rosenthal)

Authorizes emergency medical care personnel to provide basic first aid to dogs and cats on the scene of an emergency.

This bill authorizes emergency medical care personnel to provide basic first aid to dogs and cats present at the scene of an emergency. Specifically, this bill amends Public Health Law Section 3103 (Immunity from liability) and adds a new Section 3018 (Basic first aid to dogs and cats). Additionally, the bill amends Education Law Sections 6702, 6703 and 6705 related to the practice of veterinary medicine by identifying emergency first responders and allowing them to provide treatment to a dog or cat on the scene of an emergency if no persons there require medical attention at the time. The bill provides that in order to be authorized to provide a treatment to an animal, a first responder must be trained to provide the same treatment to a human. The proposed law strikes a balance between the need to provide life-saving medical care

to dogs and cats in an emergency and the need to ensure that any humans requiring treatment on the scene of an emergency will be the first ones treated by the medical professionals responding to the emergency. A.3798 was passed by the Assembly in 2024. The COAL supported – COAL Memo in Support #7.

S.3279 (Brisport) / A.790 (L.Rosenthal)

Prohibits the sale of fur products in NYS, and extends the prohibition to the manufacture, sale, display for sale, trading, giving, donating, or otherwise distributing fur products in NYS.

This bill adds a new Section 399-bbbb to the General Business Law prohibiting, with exceptions, the sale and manufacture of fur products. The bill prohibits the commercial sale, procurement, manufacturing, retail display, giving, donating, trading, or other distributions of a new or used fur product within New York State. Violators would be subject to fines ranging from \$500 to \$1,000. Definitions of fur and fur products include exceptions for types of leather, cowhide, and sheepskin products. Used furs held by individuals not normally engaged in the fur business, non-profit organizations, manufacturers of used fur products, thrift stores and pawn shops are also excepted. There is an additional exemption for the manufacture, sale, and distribution of fur products to conform to or comply with a religious or cultural practice. The undefined terms, “religious or cultural practice,” allowing for exemption from the prohibitions in the bill, are overly broad terms that can virtually eliminate the effect of the bill’s prohibitions. Due to these provisions in the bill, the COAL opposed the passage and enactment of this legislation in its present form. The COAL Memo in Opposition was not distributed in 2024.

S.3431-A (Skoufis) and A.1148-A (Zebrowski)

Regulates animal fighting and promotion of animal fighting; provides appropriate punishment for individuals associated with such activities.

These bills, introduced as identical bills in 2023 but amended differently during the 2023 legislative session, propose significant revisions to the Agriculture and Markets Law (AML) related to the crimes of animal fighting and promoting animal fighting found in AML Sections 350 and 351. They add additional sections of law to conform the penalties for animal fighting to New York’s penal code and amend AML Section 374 to provide for forfeiture of animals used in animal fighting as an additional penalty. Two notable changes to existing animal fighting prohibitions include the establishment of newly-defined offenses related to the facilitation of animal fighting, including the possession of bait animals, and the addition of Section 351-c Promoting enterprise animal fighting, a felony. By increasing the penalties for all animal fighting related activities and defining the enterprise related offenses which establish grounds to invoke the federal Racketeer Influenced and Corrupt Organizations Act (RICO), this legislation addresses many of the weaknesses undermining the current law. S.3431-A was passed by the Senate in 2024. The COAL supported – COAL Memo in Support #13.

S.4081 (Brisport) / A. 5499 (L.Rosenthal)

Provides financial assistance to social services recipients for guide dogs, hearing dogs and service dogs.

This bill amends the Social Services Law (SSL) to increase eligibility and income deductions for disabled people who have guide dogs, hearing dogs and service dogs, by repealing SSL Section 303-a and adding new SSL Section 131-y. This bill defines a service dog more broadly than the federal Americans with Disabilities Act (ADA), allowing for greater eligibility of this financial assistance. The bill affects deductions from declared income in two ways. First, a dog's veterinary expenses can be added to a dog's food expenses as necessary living expenses for the purpose of determining the amount of federal social security income benefits and/or additional state payments that an eligible disabled person may receive. Second, the monthly minimum income deduction for an eligible disabled person goes up from \$35 to \$50, although there is no limit on the actual amount that an eligible disabled person can deduct as necessary living expenses for the amount spent on veterinary care and dog food. The bill also expands the beneficiaries of this benefit under the SSL by including those who receive supplemental nutrition assistance program benefits, medical assistance for needy persons, and/or additional state payments under the same SSL chapter. The COAL supported – COAL Memo in Support #11.

S.4163 (Hoylman-Sigal) / A.1149 (L.Rosenthal)

Prohibits insurers from canceling renters' insurance based on ownership of a specific breed of dog.

This bill amends Insurance Law Section 3421 to make it unlawful for an insurance company to refuse to issue or renew; cancel or impose an increased premium; exclude, limit, restrict or reduce coverage under any renter's insurance policy on the basis of the ownership or harboring of a specific dog breed (or mixture of breeds) on the premises. The bill applies this protection to renters in one, two, three or four family dwellings, giving them the same protections against arbitrary insurance cancellation provided to homeowners by this section of law. The COAL supported – COAL Memo in Support #19.

S.4363-A (Fernandez) / A4005-A (Glick)

Prohibits the use of certain wild animals, including felidae, kangaroo, non-human primates, ursidae and wallaby in traveling animal acts.

This bill prohibits the use of certain wild animals in traveling animal acts, including circuses, petting zoos, carnivals and other similar entertainments. The wild animals covered under this bill are felidae (wild cats), kangaroo, non-human primates, ursidae (bears) and wallaby. The specific "uses" of animals prohibited by the bill includes requiring these wild animals to perform tricks, give rides to people, or participate as accompaniments for the entertainment, amusement, or benefit of a live audience. The prohibition applies to any of these entertainments for which animals are transported to the location of the animal act that will take place. Livestock and

companion animals are not covered by the bill. The COAL supported – COAL Memo in Support #14-A.

S.4533 (Harckham) / A.416 (L.Rosenthal)

Expands requirements for teaching humane education in schools, and provides for enforcement.

This bill expands the existing requirement for teaching the humane treatment and protection of animals in schools to include publicly funded secondary schools. Current law, Section 809 of the Education Law, is limited to primary schools. The bill provides for the incorporation of curricula on the humane treatment and protection of animals, the importance they play in nature, the necessity of controlling animal populations so animals are not subject to abandonment and cruelty, and the respect for animals, into existing curricula in secondary schools. In addition, the bill requires the Commissioner of Education to maintain records verifying all schools' compliance with the existing humane education law and this expansion of it, a measure that will allow for better compliance and enforcement. The COAL supported – COAL Memo in Support #16.

S.4717 (Sanders) / A.3149 (Hunter)

Authorizes the Department of Veterans' Affairs to provide eligible veterans with financial assistance for the purchasing, training and upkeep of service and emotional support dogs.

This bill authorizes the Department of Veterans' Services to provide eligible veterans with financial assistance for the purchasing, training and upkeep of service dogs and emotional support dogs. Specifically, this legislation amends the Veterans' Services Law by adding a new Section 29-b to provide grants to veterans suffering from PTSD and/or traumatic brain injury for the purchase and training of a service dog and/or an emotional support dog. It also provides monthly financial assistance for the upkeep of the dog. The COAL supported – COAL Memo in Support #5.

S.4976-A (Harckham) / A.2084-A (Glick)

Prohibits the use of lead ammunition in the taking of wildlife on state-owned land and on land contributing surface water to the New York City water supply.

This bill amends Environmental Conservation Law Section 11-0901 (3)(h) to prohibit the use of lead ammunition in the hunting of wildlife on state-owned land or land contributing surface water to the NYC water supply. The proposed ban on lead ammunition is limited in scope, applying only to public lands and to land area contributing surface water to the New York City water supply system, and requiring the use of non-lead ammunition in those areas. Its purpose is to reduce lead in hunted animals and birds, and in forested areas where lead shot is used, to reduce lead exposure in humans and wildlife. The bill also requires that the syllabus provided by DEC to localities that sell hunting licenses include information on this lead ammunition prohibition. The COAL supported – COAL Memo in Support #8.

S.5203 (Skoufis) / A.1409 (Zebrowski)

Expands the definition of “dangerous dog” to include a dog that caused death to a companion animal, farm animal or domestic animal while trespassing on another person’s property.

This bill expands the set number of circumstances under which a judge may order that a dog is determined to be a “dangerous dog.” Specifically, this legislation amends the Agricultural and Markets Law Section 123 to add an additional circumstance, allowing a judge or justice to determine that the dog is a dangerous dog when the dog, without justification, trespasses on another person’s property and causes the death of a companion animal, farm animal or domestic animal. A dangerous dog will be required to be euthanized or permanently confined. The COAL opposed – COAL Memo in Opposition #10.

S.5325 (Martinez) / A.8211 (Lunsford)

Conforms sentencing for the crime of aggravated cruelty to animals, a felony, to the sentencing provided for other felonies.

This bill amends Section 353-a(3) of the Agriculture and Markets Law (AML), which provides for the sentence of imprisonment that accompanies a conviction of aggravated cruelty to animals, a felony offense defined by AML Section 353-a (1). As originally enacted into law, this felony offense carried a sentence of imprisonment as defined in the Penal Law (Section 55.10), but limited the term of imprisonment to a maximum of two years. The Penal Law provides that an unclassified felony such as this one is subject to a term of imprisonment fixed by the court, and that it shall not exceed four years. This bill will remove the two-year limitation on the term of the sentence for a conviction of felony aggravated cruelty to animals, in acknowledgement that this felony is as serious as any other felony offense, and should be punished accordingly. S.5325 was passed by the Senate in 2024. The COAL supported – COAL Memo in Support #30.

S.5341 (Addabbo) / A.2718 (Paulin)

Provides for the licensing of pet grooming facilities and inspections, establishes standards of care and requires record keeping.

This bill amends the General Business Law by adding a new article 29-CCC establishing licensing and regulation of pet grooming facilities. Licensed pet grooming facilities must meet the standards of care for the safety and well-being of the pets in their care. Pet grooming is “big business” but is still largely unregulated in most states, including New York. Preventable pet injuries and deaths are increasing as the demand for grooming services increases. Pet shows, exhibitions and self-service facilities are exempt from these requirements. The COAL supported – COAL Memo in Support #17

S.6257-A (Sanders) / A.1903-A (Glick)

Provides for uniform standards for the coloring of wind turbine rotor blades to decrease bird collisions and deaths.

This bill amends Section 94-c of the Executive Law to require that the Office of Renewable Energy Siting, in consultation with the Department of Environmental Conservation, establish standards for the coloring of wind turbine rotor blades in order to minimize bird collisions and deaths. The current white or gray color of the blades, mandated by the Federal Aviation Administration to make the blades more visible to aircraft, does not allow birds to see the blades and recognize them as a hazard; an estimated 681,000 birds collide with the turbine blades and die annually in the US. A change in coloration will allow birds to recognize the blades as a hazard and avoid them. This legislation will only go into effect after the FAA changes their current rule on coloration to allow for different coloration of wind turbine blades. A.1903-A was passed by the Assembly in 2024. The COAL supported – COAL Memo in Support #27.

S.6315-A (Brisport) / A.54-A (L.Rosenthal)

Establishes standards of acceptable tethering for dogs restrained outdoors on a leash, and restricts the keeping of dogs tethered outdoors when dangerous weather conditions exist.

This bill adds a new Section 353-g to the Agriculture and Markets Law defining and setting standards for the outdoor restraint of dogs. It defines dangerous weather conditions, cruel conditions and inhumane tethering, all of which pose dangers to dogs tethered outdoors, and prohibits tethering of dogs under any of these conditions; it restricts the hours when a dog may be tethered outdoors and the duration of any outdoor tethering; it requires appropriate shelter, food, water, shade and dry areas where the dog is tethered; and it defines the type of tether (leash) that is appropriate and that will not endanger the dog. The specific requirements for acceptable tethering in this bill will allow for better enforcement of outdoor tethering that is cruel and inhumane and places the dog in danger. Violations of the tethering provisions established by this bill are a civil offense punishable by a fine ranging from \$50 to \$3,000. The COAL supported – COAL Memo in Support #29.

S.6365 (Hinchey) / A.2881 (Lupardo)

Requires vacated property to be inspected for animals left behind; provides for the animal to be turned over to officials responsible for the care of abandoned animals.

This bill amends Agriculture and Markets Law Section 373 to require that certain newly vacant property be inspected for any animals that may have been abandoned in the premises. The bill requires an owner, lessor, or designee of property that has become vacant as a result of an eviction, foreclosure, forfeiture or default on a mortgage, trust deed or land sales contract, or abandonment of the property, to inspect such property within three days of the time when such person knew or should have known of such vacancy to see if any animals were left behind in the premises. The person who discovers the animal will not be deemed to be owner of such animal. If an owner, lessor, or designee discovers an animal that appears to have been abandoned, that

person must notify a dog control officer, a police officer, or an agent of a duly incorporated society for the prevention of cruelty to animals. Violators of this inspection requirement would be subject to fines ranging from \$500 to \$1,000. S.6365 was passed by the Senate in 2024. The COAL supported – COAL Memo in Support #15.

S.6905 (Skoufis) / A.7624 (L.Rosenthal)

Prohibits the use of primates in entertainment acts.

This bill, the Primate Protection Act, adds a new Section 380-a to the Agriculture and Markets Law that prohibits the use of primates in any entertainment act, defined as any exhibition, act, circus, trade show, carnival, ride, parade, race, performance or similar undertaking designed for the entertainment or amusement of a live audience. The prohibition will prevent the physical and psychological harms, and reduction in life spans, inflicted on primates when they are forced to perform in entertainment acts and subjected to the unhealthy living conditions that are part of their lives as part of these entertainment acts. The bill amends the Environmental Conservation Law to prohibit the Department of Environmental Conservation from issuing a permit to any entertainment act using a primate. The COAL supported – COAL Memo in Support #30.

S.7098-A (Hoylman-Sigal) / A.7808-A (Kelles)

Enacts the Feathered Lives Also Count Act (FLACO) to reduce bird fatalities resulting from collisions with buildings.

This bill adds a new Section 148 to the Public Buildings Law to provide for the use of bird-safe features, practices and strategies in state-owned buildings and, where practicable, state-leased buildings. The Commissioner of General Services is directed to incorporate those features, practices and strategies that will reduce bird fatalities resulting from collisions with buildings into state-owner buildings constructed, acquired or substantially altered. The Commissioner is also directed to work with the Department of Environmental Conservation to develop and regularly update a design guide for buildings with features for reducing bird fatalities resulting from collisions with buildings, and including methods and strategies in the management of those buildings that will reduce bird deaths from building collisions. S.7098-A was passed by the Senate in 2024. The COAL supported – COAL Memo in Support #25-A.

S.7287-A (Brisport) /A.3505-A (L.Rosenthal)

Requires higher education research facilities to make available certain information on their website regarding the adoption of dogs or cats retired from research.

This bill requires higher education research facilities to make available certain information regarding the adoption of retired research dogs or cats on their website. It amends Section 239-b of the Education Law, enacted in 2016 as the Research Animal Retirement Act. The existing statute provides for the adoption of dogs and cats used by research facilities in their research

once they are retired. It requires a research facility to provide information on its website that will make it easier for the public to find facilities that have dogs and cats formerly used in research that are eligible for adoption, and to provide information on the number of dogs and cats released to organizations that provide for such adoptions. The provisions of this bill are designed to ensure that the 2016 law providing for the adoption of retired research dogs and cats is being implemented by research facilities in the state, and that dogs and cats retired from research are given an opportunity to live the remainder of their lives with adoptive families. The COAL supported – COAL Memo in Support #20.

S.7556 (Addabbo) / A.7586 (Woerner)

Authorizes the NYS Gaming Commission to participate in the interstate compact adopting uniform rules for medications given to Standardbred horses, and providing for drug testing.

This bill amends the Racing, Pari-Mutuel Wagering and Breeding Law by adding a new Article XI-A, the Interstate Compact on Anti-Doping and Drug Testing Standards, which will apply to Standardbred horses and Standardbred horse racing, and will establish uniform rules for the use of drugs and medications in Standardbred horses that will be racing. By passage of this bill, New York agrees to participate in the Compact and to be bound by its rules. The bill provides for the creation of a Compact Commission to carry out the purposes of the Compact, adopt rules relating to the administration of drugs, medications and other substances to Standardbred horses that will be racing, and provide for enforcement. Each state that provides, by legislative action, for participation in the Compact agrees to be bound by its provisions and the rules adopted by the Compact Commission. The Compact and the rules adopted by the Compact Commission will protect the health, safety and welfare of Standardbred horses and drivers. The COAL supported – COAL Memo in Support #28.

S.7608 (Gianaris) / A.7903 (L.Rosenthal)

Provides continuing education credit to veterinarians for providing free veterinary care services to individuals in shelters.

This bill amends Section 6704-a (2)(a) of the Education Law, which requires veterinarians to complete a certain amount of mandatory continuing education in each licensure term. The bill allows veterinarians to receive a certain amount of “self-instructional coursework” credit for the provision of free veterinary care services to the pets of individuals receiving temporary housing assistance in shelters, emergency housing and refugee safe houses. These individuals depend on their pets for support and companionship during difficult times, but they may not have the financial resources to pay for their veterinary care. The COAL supported – COAL Memo in Support #26.

THE DEATH OF FLACO THE OWL REMINDS US THAT BIRD COLLISIONS ARE A SERIOUS PROBLEM

By Jim D. Sarlis, Esq.

Every year, as many as one billion birds in the United States die from flying into buildings, wind turbines, and other structures built by humans.¹ That comes out to a few million per day! A quarter million die annually from such collisions in New York City alone. In fact, these numbers are surely underestimates in that, for every collision victim found, three more typically go unseen, flying out of sight before falling or being carried away by predators.²

This is a tragedy of epic proportions, not only because of the vast numbers involved, but also because much of this carnage is preventable.

DEFINING THE PROBLEM

Birds fly from place to place, both individually and as a flock. They also migrate across vast distances. They not only travel at high altitudes and substantial velocities, but also have to make navigational decisions – often in split seconds – based on visual cues. Anything that confuses or misleads, is deceptive or distorts, could lead to disaster.

When it comes to why birds keep hitting windows and other man-made structures, it all stems from a simple yet brutal problem: birds simply don't perceive glass and other structures the way we do. This mismatch between what birds perceive and our architectural norms is the problem in a nutshell.

WHO IS FLACO THE OWL?

Flaco (March 15, 2010 – February 23, 2024) is the name of a male Eurasian eagle-owl that became somewhat of a celebrity in the New York City area. He had been living at mid-Manhattan's Central Park Zoo until someone cut open the protective wire mesh of his long-time enclosure, which allowed Flaco to escape. This happened some time around February 2, 2023 and the perpetrator was never apprehended. Thereafter, Flaco took up residence in and around Central Park. Because Flaco had been living in captivity for so long, there were concerns that he would be unable to fly around, hunt, and find food on his own. So the zoo staff tried to recapture Flaco to bring him back to the zoo. When they spotted him near the zoo right after he escaped, the staff stayed with Flaco all night long in order to keep an eye on him. They continued to monitor Flaco and attempted to recapture him over the next several weeks. They tried to lure Flaco by tempting him with his favorite foods and by playing recordings

¹ See, e.g., Scott R. Loss, Tom Will, Sara S. Loss, Peter P. Marra "Bird–building collisions in the United States: Estimates of annual mortality and species vulnerability," *The Condor*, 116(1), 8-23, (2 January 2014). One billion is the oft-quoted number, while the median estimate is around 600 million. The estimates vary widely but seem reliably to be from several hundred million to one billion. This uncertainty stems from the fact that, despite the magnitude of bird-building collisions and mortality, and the associated conservation threat posed to bird populations and the ecosystem, there currently exist no U.S. figures based on systematic analysis of multiple data sources. *Id.* Another study concluded that "annual mortality may be minimally 621 million–1.7 billion or as high as 730 million–2 billion in the United States, with potentially billions more worldwide." Klem, Saenger, Brogle, "Evidence, consequences, and angle of strike of bird–window collisions," *The Wilson Journal of Ornithology*, February 12, 2024, <https://meridian.allenpress.com/wjo/article-abstract/doi/10.1676/23-00045/498924/Evidence-consequences-and-angle-of-strike-of-bird?redirectedFrom=fulltext>.

² Audubon.org website, "Reducing Collisions With Glass," <https://audubon.org/news/reducing-collisions-glass>.

of eagle-owl bird calls, but their efforts were unsuccessful. Apparently, Flaco's changed living conditions made it more of a challenge to find ways to entice him.

Flaco's rapidly developing human fan base started showing up to catch a glimpse of the famed owl. The media started reporting on Flaco's whereabouts – he was spotted on water towers, fire escapes, and various spots in Central Park.

While the zoo wanted to return Flaco to his exhibit out of several concerns, including the fear that Flaco might eat rats or other prey that had been poisoned or that he might collide with a building or vehicle,³ some people wanted Flaco to live freely in the park. A petition was even circulated advocating that he remain free. After Flaco was seen successfully flying, swooping, catching and eating prey such as rats, and otherwise seemingly adapting to life on his own, Zoo officials decided to stop attempts to recapture him.

Flaco gained fame and attention in the press and among the general public, not only because they were pulling for him, but also because he was somewhat exotic in that his species was not native to North America. The scientific name for the species is *Bubo bubo*, sometimes also called the *Uhu*.⁴ It is one of the largest owl species, with wingspans that can reach 188 centimeters (6 feet 2 inches). Its eyes have a distinctive orange color. They inhabit various natural habitats, from mountains to wooded areas and wetlands. They tend to breed on cliff ledges. They are nocturnal predators, preferring a diet consisting of small mammals and rodents, but will also eat reptiles, amphibians, fish, and insects. Their territory consists of a huge 51.4 million kilometer swath across Europe and Asia.⁵

Flaco managed to live free and on his own for a little over a year until, on February 23, 2024, he succumbed to injuries resulting from his collision with a building in uptown Manhattan.⁶ There were memorials to Flaco on social media and people left flowers at the tree he frequented in Central Park.⁷

GLASS WINDOWS ARE A MAJOR CULPRIT IN SUCH TRAGEDIES

First of all, glass can be so transparent that it is invisible to birds, so that they do not even perceive that there is a barrier in their path. This can have disastrous results not only when a bird thinks there is nothing in its way, but also when it sees things through the glass that it may be attracted to, like trees, plants, even some interior lighting. But beyond that, for birds, glass windows can even be *worse* than invisible. By reflecting trees or clouds or a clear sky, they look like inviting places to fly into rather than

³ Sullivan, Will, "Flaco, the Famous Owl that Escaped the Central Park Zoo, Dies After Hitting a Building," Feb. 26, 2024, Smithsonian website Flaco, the Famous Owl That Escaped the Central Park Zoo, Dies After Hitting a Building | Smart News | Smithsonian Magazine <https://www.smithsonianmag.com/smart-news/flaco-the-famous-owl-that-escaped-the-central-park-zoo-dies-after-hitting-a-building>.

⁴ Eurasian Eagle Owl - Animal Corner, <https://animalcorner.org/animals/eurasian-eagle-owl/> Its taxonomic classification is as follows: Kingdom: Animalia, Phylum: Chordata, Class: Aves, Order: Strigiformes, Family: Strigidae, Genus: *Bubo*, Species: *Bubo bubo*. *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

obstacles to avoid. Thus, regardless of whether the glass is transparent or reflective, birds often fly into it without realizing it is there.⁸

THE GOOD NEWS IS THAT THERE ARE STEPS PEOPLE CAN TAKE TO REDUCE THE RISK

The risk of such collisions can be greatly reduced by taking some fairly simple and often inexpensive steps. The U.S. Fish and Wildlife Service,⁹ as well as other organizations such as the Fatal Light Awareness Program (“FLAP”),¹⁰ and World Birds, and Bird Collisions Program of the American Bird Conservancy,¹¹ offer a plethora of recommendations:

1. One popular and straightforward strategy is to place things on the exterior of windows to make it more obvious to birds that a barrier is present, as well as to minimize potential reflections. Examples include:

Adding Tape Strips or Collision Stickers

Adding strips of tape, window decals, collision stickers, sun catchers, mylar strips, masking tape, or other self-stick items on the outside surface of the window makes the window visible to birds. Keep in mind that placing just one or two stickers on a large glass window will not prevent collisions -- they must cover most of the glass, with the spaces in between being too narrow for birds to fly through (usually cited as not more than 5 cm or 2 inches apart). Note that silhouettes of flying birds, especially those that resemble big birds like hawks and falcons, have long been a popular approach thought to stop birds from hitting windows, but they are often ineffective unless installed as explained here. The silhouette does not make smaller birds avoid the area, and people often place just one or two decals on large windows, leaving most of the glass untreated and dangerous.

Covering the Window with Paint or Even Soap

Any applied coating, including paint or even soap, will discourage birds by adding a film that will be visible for birds to see. Whether done as a grid pattern or artwork design, keep in mind that with this method, paint or soap may have to be applied fairly often in order to maintain the film, making sure to leave no clear or transparent areas visible on the window that the birds might believe they could fit through.

2. Another solution is to install special tapes or films designed specifically to be visible to birds without being too obstructing to the humans’ view. Examples include:

Using Translucent Bird Tape for Windows

When a bird sees its own reflection in a window, often it will think that the reflection is actually another bird and attack it, leading to a collision with the glass. The application of an inexpensive and easy to apply translucent tape, in correctly spaced lines across the window, will help the bird detect the presence of a barrier and discourage the collision. It makes windows visible to birds without obstructing outdoor views.

⁸ U.S. Fish and Wildlife Service, Threats to Birds: Collisions – Buildings and Glass, <https://www.fws.gov/story/threats-birds-collisions-buildings-glass#:~:text=Every%20year%20nearly%20one%20billion,shelters%20also%20pose%20a%20threat>.

⁹ *Id.*

¹⁰ See flap.org

¹¹ See abcbirds.org

Using One-Way Transparent Film for Windows

Birds can't see glass that is clear and has no color to it. A simple method to remedy this issue is to install a one-way transparent film over the window. These films allow people to see clearly through their window from the inside but will look opaque from the outside. As side benefits, these one-way transparent films can offer the homeowner some privacy and may even reduce the home's cooling costs.

Using Frosted or Decorative Window Films

Frosted or decorative window films can be an attractive addition to windows, while simultaneously helping birds to avoid a deadly collision with glass. Perforated window film creates an opaque surface on the outside of the glass that looks like a solid barrier to birds, while the thousands of small perforations in the film let in ample light and permit a view of the outdoors from inside the home.

New UV Window Decals

These are fairly recent creations – they look like subtle decals to humans but glow and are very visible to birds.

3. Another method is to install external structures, screens or netting. This approach not only provides a physical buffer but also enhances visibility. Examples include:

Grilles, Mullions, and Muntins

Grilles are narrow strips of wood, vinyl, or metal used to separate (visually or physically) the glass of a window into sections, often known as panes. Mullions are vertical elements that divide a window, usually into two halves, and can also serve as a structural support of an arch. Muntins also divide a window glass into panes, and over the years have become more decorative and divide the window into a grid. These on the outside of the window can appear as a barrier for birds to avoid. Of course, for best results the bars or patterns should not leave gaps greater than 5 cm or 2 inches.

External Sun Shades or Awnings

Installing External Shutters

These shutters resemble blinds and can be opened, to let light in, or closed, thus becoming an opaque covering that keeps light out. Closing the shutters makes it clear to birds that there is a barrier or obstacle in the way. As a side benefit, much like shades and awnings, shutters can also conserve energy.

Mosquito/Insect Screens

Besides keeping bugs out of your home, these screens can also discourage birds from flying into windows. It is best to use screens made out of dark mesh so that it can be visible to birds.

Bird Netting

The idea is to cover the outside of the window glass with netting that sits at least 3 inches from the glass to provide a firm enough barrier, taut enough to bounce birds off before they actually hit the glass. The best size for a bird net would be a small-mesh netting with openings of about

5/8 of an inch – that’s because, with this mesh, birds won’t get their heads or bodies entangled but will instead bounce off unharmed. These bird nets can be mounted on a frame, such as a storm-window frame, for easy installation and removal.

4. The choice of windows, glass, and building materials can affect the risk of collisions:¹²

UV glass

A relatively new and more permanent solution is to choose glass that is made of bird-friendly UV reflective glass, which is more visible to birds, making it a good option for new window installations or replacements.

Frit and Acid-Etched Patterns

Ceramic frit and acid-etched patterns can be an attractive and effective option to stop birds from flying into windows.

Opaque and Frosted Glass

Opaque and frosted glass can also reduce the risk of window collisions, provided the outside surface of the glass is treated. However, keep in mind that glass with a frosted exterior surface can be a bit difficult to keep clean.

5. Adjusting decor to disrupt glass reflections and repositioning indoor plants away from windows to remove the visual lure that draws birds.

Move Bird Feeders and Bird Baths Either Within 3 Feet or More Than 30 Feet of Windows

Place bird feeders and bird baths either within 3 feet of windows, which is too close for a collision to be fatal, or more than 30 feet away.

Move Interior Plants Away from Windows

Plants directly visible within windows can lead to birds perceiving them as part of their habitat or otherwise a desirable place to go and may try to fly towards them.

6. Adding decorative elements:

Curtains and Other Window Dressings

Conventional curtains or other window dressings, if they are closed, can signal that there is an obstacle in the flight path of a bird. (Note that drawing interior curtains or blinds is not a completely effective option to prevent birds from hitting windows, because it does not address reflections on the outside surface of the glass.)

Ribbons or String

Ribbons or string hung on the outside of the window can be an effective collision deterrent if they are closely spaced and run the entire length of the window. Consider spacing the strands no more than at 5 cm (2 inches) apart.

¹² See also discussion of Legislation, below.

Zen Curtains a/k/a Acopian Bird Savers

Acopian Bird Savers, also known as “Zen Curtains,” are closely-spaced ropes or cables that are hung down over windows. These ropes or cables can also be easily removed, need not be removed when cleaning the windows, and won’t block your view out of your windows. Yet, birds don’t fly into the glass that has these ropes or cables because they see these ropes or cables and will try to avoid them. It is recommended that the Acopian Bird Savers should be mounted on the outside of the window. (You might be tempted to create a DIY version, but make sure you don’t hang strands of things that might distract or tempt or confuse the birds, or otherwise undermine what the goal is here.)

7. Lighting:

Install Responsible Lighting

Birds that migrate at night can either be attracted to or disoriented by the lights of almost any structure. Birds that are disoriented by lights can circle structures for hours on end, which will exhaust them and force them to use up the energy they need to complete their migration. The color of the lights matters as well. Red lights and white lights (which contain visible long-wavelength radiation) disrupt birds’ geomagnetic orientation. Blue and green lights contain less long-wavelength radiation and are much less disorienting. Take steps to control when and where the light shines by using fixtures that are shielded, instead of globe-type models that spread light everywhere. It is recommended to use motion sensors rather than steady-burning lights, and include timers to ensure that the lights aren’t left on longer than necessary. And look for products that have been approved by the International Dark Sky Association, an organization that works to preserve the nighttime environment through responsible outdoor lighting.

Lights Out Advocacy to Reduce Light Pollution

Birds rely on natural light cues for their migration, navigation, communication, and reproduction. Artificial light can disrupt these behaviors, drawing them into cities and other populated areas and confusing them, making them more susceptible to collisions. The negative impacts of artificial light on migratory birds can be significant.

When sources of artificial light, such as brightly lit skyscrapers and upward-facing beams, project into these birds’ migratory airspace, this lighting may obscure the magnetic “guidelines” and/or disrupt the birds’ magnetic sense, causing them to deviate from their normal flight paths. Because of this phenomenon, New York City’s heavily-lit skies actually draws birds into the city when they otherwise wouldn’t travel through this area. And when birds travel through the city, they face a greatly increased risk of death or injury from collisions with New York City’s buildings.

WIND TURBINES PRESENT ANOTHER DANGER

The typical wind turbine has a propeller that is white in color. In fact, it often has a white tower, white rotor propeller and hub, with white blades. All of which fails to discourage birds from colliding with them. There are several ways that wind turbines can be made safer for birds. For example:

1. Using black rotor propeller blades or towers – even one blade or one stripe – can lower risks significantly.

2. Painting or manufacturing the rotor blades with ultraviolet-reflective materials can make them more visible to birds.
3. Sensors can be added to the turbines that would detect when birds are nearby and temporarily shut down the turbine to help prevent collisions.
4. Researching and locating geographical areas that have less bird traffic and less chance of impact to place turbines there.
5. Developing and utilizing new technologies that lessen the chance of harm to birds as well as other wildlife.¹³

LEGISLATION AS AN IMPORTANT TOOL IN COMBATING BIRD COLLISION RISKS

Lights Out Advocacy: Because of the connection between artificial lighting and collisions, many programs to protect migratory birds from collisions have focused on reducing night-time lighting during migration—including the Fatal Light Awareness Program (FLAP), the Toronto-based conservation society that spearheaded the lights-out movement in 1993, and NYC Audubon’s own Lights Out New York Program, founded in 2005.

NYC Audubon’s advocacy efforts focus on the creation, passage, and enforcement of legislation that would require a reduction in artificial night-time lighting during spring and fall migration. Such laws would save the lives of countless birds—and in reducing energy consumption, form a logical part of the City’s sustainability strategy.

For years, NYC Audubon advocated for legislation to reduce light at night during migration, to make the city more sustainable for birds and for people. Working alongside the Lights Out Coalition, NYC Audubon achieved a significant policy victory with the unanimous passage in the New York City Council of artificial light legislation in December 2021. Bill 274, introduced by City Council Member Helen Rosenthal, requires occupancy sensors that limit illumination in buildings owned by the City, and Bill 271, introduced by City Council Member Justin Brannan, requires that all nonessential outdoor lighting be turned off between 11pm and 6am during peak avian migration periods in City-owned buildings, as well as buildings fully leased by the City. A third Bill, 265, which would require similar provisions for privately owned buildings, was not advanced to a vote.

Kaitlyn Parkins, interim director of conservation and science for NYC Audubon, proclaimed “We’ve made a big step forward,” noting that “70% of North American bird species are migratory; of these, 80% migrate at night.” According to radar data from the Cornell Lab of Ornithology, millions of birds fly over the City every year during spring and fall migration. “The bright lights of the City skyline disrupt birds’

¹³ Simple measures can make wind turbines more bird friendly (sciencenorway.no) <https://partner.sciencenorway.no/birds-environment-green-energy/simple-measures-can-make-wind-turbines-more-bird-friendly/1732035> <https://windcycle.energy/wind-turbine-safety-protecting-people-and-birds/>; Wind Power and Birds | Audubon <https://www.audubon.org/news/wind-power-and-birds>.

migration and attract them off their routes from up to three miles away. Unable to continue their passage, they land in unsafe places, vulnerable on our sidewalks to predators and traffic, unable to find nutritious food, with a maze of built infrastructure to navigate. But many don't even make it that far, instead crashing into lit windows, their thousand-mile journeys ending abruptly in deadly collisions with glass."

BIRD SAFE BUILDINGS ACTS

In December 2019, the City Council passed milestone bird-friendly building legislation, Local Law 15, which requires that all future buildings, including those to be significantly altered, be built with bird-friendly materials that reduce bird-window collisions.

On June 15, 2023, U.S. Congress members Morgan Griffith (R-VA) and Mike Quigley (D-IL) introduced the *Federal Bird Safe Buildings Act*, legislation designed to permanently reduce bird deaths for minimal cost by requiring that any public building constructed, acquired, or significantly altered by the General Services Administration (GSA) to incorporate bird-safe building materials and design features.

PROPOSED LEGISLATION

In May 2023, City Councilmember Francisco Moya introduced a bill requiring privately-owned commercial and industrial buildings in New York City to turn off non-essential lights during migration periods. The Bill, 1039, would prohibit nighttime illumination of the exterior or interior of privately-owned buildings during peak migration season, except where individuals remain inside and where nighttime illumination is required by law, rule or zoning resolution.

A second piece of legislation, the Dark Skies Protection Act, S. 7663/A5632. would significantly reduce light pollution in New York by requiring most non-essential outdoor lighting be covered by an external shield, be motion-activated, or be turned off between 11 PM and 5 AM. Around 80 percent of migrating birds move at night but light pollution can disrupt a bird's natural sense of their environment, drawing them into urban areas and disorienting them, causing them to fly into buildings, windows, and other structures. Light pollution has also been shown to be harmful to human health and mental well being. The Dark Skies Act will help create a safer environment for birds by reducing the artificial light in our night skies.

FLACO Act

New York State Senator Brad Hoylman-Sigal (D/WFP-Manhattan) and Assembly Member Anna Kelles, along with New York City Audubon and Audubon New York (the state office of National Audubon Society), recently announced a renewed push for two pieces of legislation that will make the skies safer for birds. First of all, it was proposed that the Bird Safe Buildings Act, S. 7098/A.7808, be renamed the FLACO Act (an acronym for "Feathered Lives Also Count" Act) in honor of Flaco, to commemorate both his popularity with the public and his succumbing to the danger this legislation is intended to curb. As summarized by our NYSBA Committee on Animals and the Law in its Memo to our legislature, the Bill amends the Public Buildings Law by adding new § 148 which mandates that

the Commissioner of General Services (“Commissioner”) “incorporate features, practices, and strategies to reduce bird fatality resulting from collisions” into “state- owned buildings,” and to the extent practicable, “state-leased buildings”¹⁴ which are constructed or acquired, or for which for which more than fifty percent of the facade is substantially altered, after the bill’s effective date. The Bill requires the Commissioner to consult with the Department of Environmental Conservation (“DEC”) to develop a design¹⁵ to reduce bird fatalities resulting from collisions with covered buildings, both during all construction phases and during the maintenance of such buildings. It also mandates the development of best practices for reducing building collision-caused bird fatalities and the consideration of and participation with citizens’ science-based efforts that document bird collisions in the state. The “best practices” are to include several listed factors, including the elimination of non-essential lighting, use of bird-safe film or other after-market products and/or architectural design elements to reduce bird collisions with buildings, use of bird-friendly glass in new construction or substantial building alterations, and the placement of landscaping and green roofs on buildings.¹⁶

“I’m gutted at the death of Flaco the owl, who delighted countless New Yorkers through his presence in Central Park,” stated Senator Brad Hoylman-Sigal. “His death after apparently striking a glass window pane raises the importance of our passing common-sense laws to help stop preventable window strikes, which kill millions of birds, like Flaco, each year. By renaming our legislation to require state-owned buildings to incorporate bird friendly designs, we’ll not only honor this magnificent creature, but hopefully inspire our legislative colleagues to pass both the FLACO Act and the Dark Skies Protection Act.” Similarly, Assembly Member Anna Kelles noted: “It was a heart-wrenching story to read about the death of Flaco the owl, most specifically because it was a senseless, unnecessary, and human-driven death. If we had simply taken the small effort to add window treatments to our buildings we could have prevented his death and continued our collective awe and hope that his freedom gave to us all.” She went on to quote an astounding statistic as to the overall effect of collisions on the bird population: “According to the American Bird Conservancy we have lost 25% of all birds in the world since 1970.”

¹⁴ The bill defines state-owned building and state-leased building in Public Buildings Law §147(1)(a) and (1)(b) respectively of the proposed Bird Safe Building Act.

¹⁵ The design guide developed must be updated every five years and be disseminated to all state agencies with leasing authority for buildings, and the Commissioner must annually certify to the Governor and the Senate that the mandated design is being used.

¹⁶ S.7098-A (Hoylman-Sigal) – enacting the Feathered Lives Also Count Act (FLACO), to reduce bird fatalities resulting from collisions with buildings; passed by Senate 6/4/24; Assembly companion, A.7808-A (Kelles), remained in the Assembly Governmental Operations Committee; will be reintroduced during the 2025-2026 session.

CONCLUSION

Flaco's unfortunate, unnecessary, and premature demise was a very disturbing event that highlighted not only the ongoing and widespread tragedy of bird collisions, but also the pressing need to take ameliorative action. The dangers of bird collisions are quite preventable. It is more a matter of making achievable, affordable, and sustainable preventive measures a priority.

About the author:

Jim D. Sarlis, Esq. concentrates on Elder Law and Trusts & Estates, and recently presented a NYSBA CLE webinar on Pet Trusts. While his office is now in Queens, he was born and raised in Hell's Kitchen in Manhattan, where he attended Columbia University, Fordham University School of Law, and NYU School of Law's Master of Laws (LL.M.) program in taxation. Mr. Sarlis has been a guest lecturer at New York Law School on the subject of Will Drafting, and has taught Real Estate Law and Legal Writing in the ABA-governed paralegal program of the City University of New York. Mr. Sarlis is admitted to the New York State Bar, the Federal Courts for the Southern and Eastern Districts of New York, and the U.S. Tax Court. His household has included a lovable dog named Cody, and a playful cat named Snickers. Mr. Sarlis is also a member of COAL.

2024 Committee on Animals and The Law Student Writing Competition

First Place Winner

Pup Yeah! Using *National Pork Producers v. Ross* to Eradicate Puppy Mills

By: Caroline Amarant, George Mason University Antonin Scalia Law School

INTRODUCTION

Dogs are stacked on top of one another in cramped wire crates with no floors. Their bodily waste flows down the crates onto the dogs below. Dogs lack food and sanitary water. They have minimal shelter from extreme weather. Babies are taken from their mothers almost immediately. Adult dogs are forced to keep breeding until their bodies no longer can. Then, the adult dogs are killed or discarded.

These are average conditions in puppy mills in the United States.¹ Activists and animal advocates work tirelessly to improve conditions in puppy mills and for breeding dogs in general. Following the ruling in *National Pork Producers Council v. Ross*,² advocates now have a valuable framework to advance this goal. By using the framework of the United States Supreme Court's decision in *Ross*, states and localities can work towards eradicating these inhumane breeding practices by passing legislation or ballot initiatives preventing the sale of dogs from puppy mills.

Part I of this paper provides background on puppy mills in the United States and provides an overview of the *Ross* decision. Part II argues that *Ross* should be used as a framework for

¹ *Buyer Beware: The Problem with Puppy Mills and Backyard Breeders*, PAWS, <https://www.paws.org/resources/puppy-mills/#:~:text=Animals%20in%20puppy%20mills%20are,or%20unsanitary%20food%20and%20water> (last visited Dec. 11, 2023).

² 598 U.S. 356 (2023).

animal advocates to eradicate puppy mills through puppy mill sales bans. Part III identifies potential problems with enacting reform in this manner.

I. The Problem with Puppy Mills and the *Ross* Decision

Puppy mills have existed since the end of World War II, when farmers were encouraged by the U.S. Department of Agriculture (“USDA”) to sell dogs to support their families in a failing agricultural market.³ To increase profits, farmers purchased cheap, low-quality dog food or fed dogs table scraps.⁴ Veterinary care was too expensive, and cleaning and sanitation were ignored.⁵ Thus, puppy mills emerged. This section explains what puppy mills are, the inhumane treatment that occurs at puppy mills, health and safety risks of puppy mills, and the puppy mill to pet store pipeline. This section will then provide an overview of the Supreme Court’s decision in *National Pork Producers Council v. Ross*.

A. Puppy Mills

To understand the problems with puppy mills, it is important to define the term “puppy mill.” Puppy mills are commercial, high-volume dog breeding facilities where profit is prioritized over the health of dogs.⁶ As such, dogs sold from puppy mills are significantly cheaper than they would be from a reputable breeder, increasing demand for puppy mill dogs and exacerbating the problem.⁷

Most dogs bred by puppy mills end up in retail pet stores or on the internet.⁸ Often, a dog’s purchaser does not know where the dog came from or how it was treated. Pet stores and

³ Melissa Towsey, *Something Stinks: The Need for Environmental Regulation of Puppy Mills*, 21 VILL. ENVTL. L.J. 159, 161 (2010).

⁴ *Id.*

⁵ *Id.*

⁶ *See id.*; *Stopping Puppy Mills*, HUMANE SOCIETY OF THE U.S., <https://www.humanesociety.org/all-our-fights/stopping-puppy-mills> (last viewed Dec. 12, 2023).

⁷ *See* Katherine C. Tushaus, *Don't Buy the Doggy in the Window: Ending the Cycle That Perpetuates Commercial Breeding with Regulation of the Retail Pet Industry*, 14 DRAKE J. AGRIC. L. 501, 503 (2009).

⁸ Towsey, *supra* note 3, at 162.

online sellers tell buyers that the dogs are in compliance with American Kennel Club (“AKC”) standards or are USDA licensed. However, buyers are unaware that the AKC is simply a registry and does not guarantee the health of the dog or adequate living conditions.⁹ They also do not know that a USDA license just means that the facility is a commercial breeder.¹⁰ It does not indicate much about the quality of the breeding process and animal care because USDA-licensed facilities are only required to provide minimal standards of care under the Animal Welfare Act (“AWA”), which are often poorly enforced.¹¹ These labels lead pet owners to believe they are purchasing a humanely bred, healthy dog, which is often not the case.

1. Inhumane Treatment

In puppy mills, mother dogs spend all or the majority of their lives in small cages and receive minimal or no personal attention, all while birthing puppies at unnatural rates.¹² Mother and father dogs are either killed or abandoned when they are no longer able to breed.¹³ After puppies are born, they are quickly taken from their mother, causing emotional and behavioral issues because puppies need to socialize with their mother and littermates after birth.¹⁴

As noted, dogs live in wire cages with no floors, and the cages are stacked on top of one another.¹⁵ As such, urine and feces fall through the cages onto the dogs below, causing disease

⁹ *Id.* at 162–63; *Five Questions the Puppy Industry Doesn’t Want Dog Lovers to Ask*, AM. SOC’Y FOR PREVENTION OF CRUELTY TO ANIMALS (May 28, 2020) [hereinafter *Five Questions*], <https://www.asPCA.org/news/five-questions-puppy-industry-doesnt-want-dog-lovers-ask>.

¹⁰ *Five Questions*, *supra* note 9; *USDA Enforcement: Fiscal Year 2022*, AM. SOC’Y FOR PREVENTION OF CRUELTY TO ANIMALS, [https://www.asPCA.org/improving-laws-animals/public-policy/usda-enforcement-fiscal-year-2022#:~:text=The%20Animal%20Welfare%20Act%20\(AWA,failed%20to%20enforce%20those%20requirements](https://www.asPCA.org/improving-laws-animals/public-policy/usda-enforcement-fiscal-year-2022#:~:text=The%20Animal%20Welfare%20Act%20(AWA,failed%20to%20enforce%20those%20requirements) (last visited Dec. 12, 2023).

¹¹ *Id.*

¹² *Stopping Puppy Mills*, *supra* note 6.

¹³ *Id.*

¹⁴ *How Cruel Breeding Hurts Dogs*, AM. SOC’Y FOR PREVENTION OF CRUELTY TO ANIMALS, <https://www.asPCA.org/barred-from-love/puppy-mills-101/how-cruel-breeding-hurts-dogs> (last visited Dec. 12, 2023).

¹⁵ *Humane Society Veterinary Medical Association (HSVMA) Veterinary Report on Puppy Mills*, HUMANE SOC’Y VETERINARY MED. ASS’N 6–7 (May, 2013), https://www.cga.ct.gov/env/tfs%5C20130925_Task%20Force%20Concerning%20the%20Sale%20of%20Cats%20and%20Dogs%20at%20CT%20Pet%20Shops%20from%20Inhuma

and infection.¹⁶ The wire cages also cause serious foot and leg injuries as paw pads are cut and legs get stuck in the wiring.¹⁷ To make matters worse, dogs suffering in these conditions receive little or no veterinary care.¹⁸

2. Health and Safety Issues

Dogs from puppy mills are kept in close quarters with inadequate sanitation to deal with the dogs' bodily waste.¹⁹ Consequently, the transmission of diseases and parasites can occur quite easily. Not only can dogs transmit diseases and parasites to other dogs, but many zoonic diseases can be transmitted from dogs to humans.²⁰ "Viral infections such as rabies and norovirus and bacterial infections including *Pasteurella*, *Salmonella*, *Brucella*, *Yersinia enterocolitica*, *Campylobacter*, *Capnocytophaga*, *Bordetella bronchiseptica*, *Coxiella burnetii*, *Leptospira*, *Staphylococcus intermedius* and Methicillin resistance *staphylococcus aureus*" can be transmitted from dogs to humans.²¹ In addition to human health risks posed by puppy mills, the dogs face numerous health risks themselves.

As a result of the horrible conditions dogs are kept in, dogs purchased may seem healthy at first, but they can later show issues like "congenital eye and hip defects, parasites or even the deadly Parvovirus."²² Puppy mills also at times inbreed dogs, which can create congenital and hereditary conditions for dogs that may not appear until well after they are sold.²³ Dog purchasers are typically unaware of how their dog was bred and the health issues associated with

ne%20Origins%20(Archive)%5C20140123/Humane%20Society%20of%20the%20United%20States%20Veterinary%20Medical%20Association.pdf.

¹⁶ *Id.*

¹⁷ *Id.* at 6.

¹⁸ Tushaus, *supra* note 7, at 503.

¹⁹ HUMANE SOC'Y VETERINARY MED. ASS'N, *supra* note 15, at 7.

²⁰ I. Ghasemzadeh & S.H. Namazi, *Review of Bacterial and Zoonic Infections Transmitted by Dogs*, J. MED. LIFE, Dec. 15, 2015, at 1.

²¹ *Id.*

²² PAWS, *supra* note 1.

²³ *Puppy Mills*, NAT'L HUMANE EDUC. SOC'Y, <https://www.nhes.org/puppy-mills/> (last viewed Dec. 12, 2023).

puppy mill dogs, so purchasers are left to deal with these expensive and devastating issues when they later reveal themselves.²⁴

Furthermore, because breeders are mainly focused on maximizing profits, they ignore the overpopulation problems to which they are contributing.²⁵ Countless stray dogs and dogs in animal shelters need homes, but puppy mills that continuously breed dogs contribute to the overpopulation of stray dogs.²⁶ This increases public health risks due to human exposure to the aforementioned diseases that dogs can pass to humans.²⁷

Puppy mills also cause environmental harm. Breeders often improperly dispose of dogs' bodily waste and dead dog carcasses.²⁸ Pathogens (organisms that can cause diseases) from dog feces can seep into soil, contaminate other dogs, and then be transmitted from dogs to humans.²⁹ Pathogens from dog feces can also enter the public water supply through streams and aquifers.³⁰ Moreover, dog feces produce methane, a powerful greenhouse gas, and ammonia particulates, which can be carried up to 600 miles by the wind and can settle on and harm native plant species.³¹ In summary, puppy mills are linked to a myriad of health and safety concerns affecting both dogs and humans.

²⁴ See, e.g., *Attorney General James Files Lawsuit Against Pet Store that Unlawfully and Deceptively Sold Sick Puppies to Consumers*, OFF. OF THE N.Y. STATE ATT'Y GENERAL (Dec. 16, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-james-files-lawsuit-against-pet-store-unlawfully-and-deceptively>.

²⁵ Krysten Kenny, *A Local Approach to A National Problem: Local Ordinances As A Means of Curbing Puppy Mill Production and Pet Overpopulation*, 75 ALB. L. REV. 379, 381 (2012).

²⁶ *Id.*

²⁷ *Id.* at 388–89.

²⁸ *The Environmental Impacts of Puppy Mills*, HUMANE SOC'Y OF THE U.S. (2020), <https://www.humanesociety.org/sites/default/files/docs/environmental-impacts-puppy-mills-2020.pdf>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

3. The Role of Pet Stores

Pet stores are a pipeline for puppy mill dogs, playing a major role in fueling the demand for such dogs.³² In fact, most retail pet stores get their dogs almost exclusively from puppy mills.³³ John Goodwin, Senior Director of the “Stop Puppy Mills Campaign” at the Humane Society of the United States explained that puppy mills exist in part because “[p]et stores rely on high-volume, mass production facilities . . . to fill all of these glass display cases filled with a large number of puppies.”³⁴ Pet stores act as a middleman between breeders and consumers that is one step removed from inhumane breeding processes, so all consumers see is a clean, wholesome-looking process once they enter the store.³⁵ Consequently, most dog purchasers incorrectly assume that the dog they are purchasing was happily raised and healthy.

B. National Pork Producers Council v. Ross

National Pork Producers Council v. Ross centered on the dormant Commerce Clause—a heavily debated judicially-created doctrine.³⁶ In 2018, California voters passed Proposition 12, a ballot initiative that forbids the in-state sale of pork that comes from breeding pigs or their immediate offspring that are “confined in a cruel manner.”³⁷ The law defines confinement as “cruel” if it prevents a pig from “lying down, standing up, fully extending [its] limbs, or turning around freely.”³⁸

³² See Kenny, *supra* note 25, at 390.

³³ See Katherine Sloan, *Deal Without Dignity: The Misnomer of Euthanasia in the State Animal Shelter System and a Call for a No-Kill Florida*, 32 J. LAND USE & ENVTL. L. 261, 279 (2016).

³⁴ *A New Maryland Law Bans Pet Shops from Selling Dogs and Cats*, HART FOR ANIMALS, <https://www.hartforanimals.org/pet-health-blog/2a6egbx182yddlm-3hzfr-k4lcl-3mzd7-zn452-elzks-3pjta> (last viewed Dec. 12, 2023).

³⁵ *The Puppy Pipeline*, AM. SOC’Y FOR PREVENTION OF CRUELTY TO ANIMALS, <https://www.aspc.org/barred-from-love/puppy-mills-101/puppy-pipeline#:~:text=Cruel%20puppy%20breeders%20rely%20on,how%20breeding%20dogs%20are%20treated> (last viewed Dec. 12, 2023).

³⁶ Julia Levitan, *Price Gouging, the Amazon Marketplace, and the Dormant Commerce Clause*, 55 COLUM. J.L. & SOC. PROBS. 373, 387 (2022).

³⁷ *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 365–66 (2023) (citing CAL. HEALTH & SAFETY CODE § 25990(b)(2)) (noting that Proposition 12 also revised California’s standards for the sale of eggs and veal products).

³⁸ *Id.* at 366 (citing CAL. HEALTH & SAFETY CODE § 25991(e)(1)).

Pork producers strongly objected to Proposition 12 on grounds that it violated the dormant Commerce Clause, and two pork producers brought suit to challenge its enforcement.³⁹ The Commerce Clause gives Congress power to “regulate Commerce . . . among the several States.”⁴⁰ While the Commerce Clause appears to be a positive power, courts have long held that the Commerce Clause contains a further, negative command.⁴¹ This negative command is known as the dormant Commerce Clause, and it “effectively forbid[s] the enforcement of ‘certain state [economic regulations] even when Congress has failed to legislate on the subject.’”⁴² The Supreme Court has recognized that this negative implication prevents states from “discriminat[ing] against or unduly burden[ing] interstate commerce.”⁴³

The pork producers had an uphill battle, because as they admitted, Proposition 12 does not directly discriminate against out-of-state pork producers because it applies equally to in-state pork producers.⁴⁴ Instead of arguing discrimination, they put forth two theories, the first being the “extraterritoriality doctrine.”⁴⁵ Under the extraterritoriality doctrine, pork producers argued that the “dormant Commerce Clause cases suggest an additional and ‘almost *per se*’ rule forbidding enforcement of state laws that have the ‘practical effect of controlling commerce outside the State,’ even when those laws do not purposely discriminate against out-of-state economic interests.”⁴⁶ They then argued that Proposition 12 violates this rule because out-of-state producers will incur substantial compliance costs to sell their products in California.⁴⁷

³⁹ *Id.* at 367.

⁴⁰ U.S. CONST. art. 1, § 8, cl. 3.

⁴¹ *Comptroller of Treasury of Maryland v. Wynne*, 575 U.S. 542, 548–49 (2015).

⁴² *Ross*, 598 U.S. at 368 (citing *Oklahoma Tax Comm’n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995)).

⁴³ *Id.* at 369; Michael S. Knoll & Ruth Mason, *The Dormant Foreign Commerce Clause After Wynne*, 39 VA. TAX REV. 357, 361–62 (2020).

⁴⁴ Nonetheless, the pork producers did make the point that California imports the vast majority of its pork, so compliance costs would mainly fall on out-of-state producers. *Ross*, 598 U.S. at 367, 370–71.

⁴⁵ *Id.* at 371.

⁴⁶ *Id.*

⁴⁷ *Id.*

The pork producers' second theory came from *Pike v. Bruce Church*,⁴⁸ the seminal case creating the *Pike* balancing test for evaluating dormant Commerce Clause issues.⁴⁹ Under *Pike*, if a state law “effectuate[s] a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.”⁵⁰ The pork producers argued that under *Pike*, the putative local benefits of Proposition 12 do not outweigh its burdens on interstate commerce.⁵¹ The Supreme Court struck down both of these theories.⁵²

Proponents of Proposition 12 cited the fact that breeding pigs were cruelly and inhumanely treated, and this law would increase animal welfare.⁵³ They also noted that there may be health benefits to Proposition 12, because “packing animals in tiny, filthy cages increases the risk of food poisoning.”⁵⁴

The Supreme Court ultimately held that Proposition 12 did not violate the dormant Commerce Clause.⁵⁵ While there was a majority holding that the law should be upheld, there was no majority theory on *why* it should be upheld.⁵⁶ The main disagreement regarded the applicability of the *Pike* balancing test.⁵⁷ The plurality, consisting of Justices Gorsuch, Thomas, and Barrett, held that *Pike* balancing survives, but it does not apply when the things being balanced are incommensurable (e.g., economic costs versus the desire to improve humane

⁴⁸ 397 U.S. 137 (1970).

⁴⁹ *Ross*, 598 U.S. at 377.

⁵⁰ *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

⁵¹ *Ross*, 598 U.S. at 377.

⁵² *Id.* at 371–80.

⁵³ *Id.* at 366.

⁵⁴ *Id.* at 366 (citing Alex Padilla, *California General Election—Official Voter Information Guide* (Nov. 6, 2018), <https://vig.cdn.sos.ca.gov/2018/general/pdf/complete-vig.pdf>).

⁵⁵ *Id.* at 390–91.

⁵⁶ *See Ross*, 598 U.S. 356.

⁵⁷ Paul T. Stewart, *Pike Balancing: Vulnerabilities of State Greenhouse Gas Regulations and Possible Solutions*, 44 ENVTL. L. REP. NEWS & ANALYSIS 10874, 10875 (2014).

treatment of animals).⁵⁸ They likened the task to “being asked to decide ‘whether a particular line is longer than a particular rock is heavy.’”⁵⁹ The plurality appeared to say that as long as the law concerns some moral or health issue, even if the magnitude of the issue is disputable, laws affecting interstate commerce will withstand dormant Commerce Clause scrutiny.⁶⁰

Conversely, Justices Sotomayor and Kagan, who agreed that Proposition 12 should be upheld, believed that *Pike* balancing could be used to balance economic and non-economic interests, but the pork producers failed to show a burden on interstate commerce as is required by step one of *Pike*.⁶¹ In the end, three Justices (the plurality) decided that *Pike* balancing does not apply when the things being balanced are incommensurable, and six Justices decided that *Pike* balancing is the appropriate test to apply regardless of what is being balanced, although they had differing opinions on how that balancing shakes out as applied to Proposition 12.⁶²

An important aspect of *Ross* was whether morals-based legislation affecting commerce is permissible. Despite the Supreme Court having previously held that morals-based legislation is permissible (as is legislation addressing “imperfectly understood” health risks), the pork producers argued that “California has little interest in protecting the welfare of animals raised elsewhere and the law's health benefits are overblown.”⁶³ It is here where the Court’s plurality noted its inability to balance economic costs with moral or health benefits.⁶⁴ The Court stated:

Your guess is as good as ours. More accurately, your guess is *better* than ours. In a functioning democracy, policy choices like these usually belong to the people and their elected representatives. They are entitled to weigh the relevant ‘political and economic’

⁵⁸ See *Ross*, 598 U.S. at 380–82.

⁵⁹ *Id.* at 381 (quoting *Bendix Autolite Corp. v. Midwesco Enterprises, Inc.*, 486 U.S. 888, 897 (1988) (Scalia, J., concurring)).

⁶⁰ See *id.* at 382.

⁶¹ *Id.* at 391–92 (Sotomayor, J., concurring).

⁶² See *Ross*, 598 U.S. 356.

⁶³ *Id.* at 381 (citing *Western Union Telegraph Co. v. James*, 162 U.S. 650, 653 (1986)).

⁶⁴ *Id.* at 382.

costs and benefits for themselves . . . and ‘try novel social and economic experiments’ if they wish.⁶⁵

The Court also noted that the pork producers can petition Congress to preempt the law, as Congress is the appropriate body “to identify and assess all the pertinent economic and political interests at play across the country.”⁶⁶ In the end, despite the Court’s fractured opinion, *Ross* was a major win for animal advocates.

II. How *Ross* Can be Used to Eradicate Puppy Mills in the United States

The Humane Society of the United States estimates that there are at least 10,000 puppy mills in the United States and approximately 2.6 million dogs sold each year come from puppy mills.⁶⁷ This section advocates for using *Ross* to eradicate puppy mills by enacting puppy mill sales bans. It will examine why animal advocates chose to use Proposition 12 to push the boundaries of the dormant Commerce Clause, evaluate current state and local laws aimed at reducing puppy mills, and propose a framework for a puppy mill sales ban.

A. Why Ross was Used to Advance Animal Advocates’ Position

Before discussing *how Ross* can be used to advance animal advocates’ positions regarding puppy mills, it is important to discuss *why* Proposition 12 was the vehicle animal advocates chose to advance their interests and expand their reach under the dormant Commerce Clause. There are numerous other causes animal advocates could have advanced through a ballot initiative (e.g., puppy mills, the fur trade, etc.), but they chose to focus on the treatment of farm animals. Part of the reason for doing this was certainly how inhumanely farm animals, specifically breeding pigs, are treated. Pigs are cramped in small cages and are unable to turn

⁶⁵ *Id.* at 382 (citing *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 279 (1978); *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).

⁶⁶ *Id.* at 382–83.

⁶⁷ *Stopping Puppy Mills*, *supra* note 6.

around, which is agonizing for them and forces them to lay in their own waste.⁶⁸ These conditions parallel the treatment of dogs in puppy mills. However, there was likely another reason why animal advocates chose to use Proposition 12 to advance their objectives.

Because the pork industry, and the farming industry in general, has become heavily concentrated in recent years, a law impacting the sale of pork in California had a massive effect on the industry throughout the United States.⁶⁹ Four pork processing firms control approximately seventy percent of the pork market in the United States.⁷⁰ Since these firms produce pork for the entire country, California's law forces them to either section off part of their operations specifically for California pork or alter their operations entirely to avoid mixing California and non-California pork and risking liability. This allowed advocates to use one ballot initiative to increase the humane treatment of pigs throughout the country.

In addition, animal advocates could rely on the human health issues associated with the inhumane treatment of pigs to garner support for Proposition 12. As previously mentioned, when pigs are kept in small cages where they are unable to move, they end up forced to lie in their own waste.⁷¹ This creates a significant risk of disease spreading from breeding pigs to their offspring, and from the pigs themselves to humans after slaughter.⁷² Although the *Ross* Court did not focus much on the health issues associated with confined pigs, historically courts have allowed states

⁶⁸ Hannah Truxell, *What You Need to Know About California Prop 12 and the Supreme Court Case*, HUMANE LEAGUE (July 31, 2023), <https://thehumaneleague.org/article/prop-12-supreme-court>.

⁶⁹ See *Fact Sheet: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain*, THE WHITE HOUSE (Jan. 3, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/03/fact-sheet-the-biden-harris-action-plan-for-a-fairer-more-competitive-and-more-resilient-meat-and-poultry-supply-chain/#:~:text=And%20in%20pork%2C%20the%20top,in%20the%20food%20supply%20chain.>

⁷⁰ *Id.*

⁷¹ Truxell, *supra* note 68.

⁷² Brief of American Pub. Health Ass'n, et al. as Amici Curiae supporting Respondents, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (No. 21-468) 2022 WL 3567523.

to pass laws affecting interstate commerce if there are health reasons for enacting the law.⁷³ The health risks confined pigs pose to humans create a much more tangible problem for the public because the public fears consuming diseased pork. This same logic is why courts have been historically receptive to laws regarding human health concerns—because humans have a higher propensity to act on things that directly affect them. The health-related facet of the ballot initiative created a fallback for animal advocates in the event that the Court dismissed the underlying morals-based concern. The aforementioned reasons likely impacted animal advocates’ decision to advance Proposition 12 instead of causes like puppy mills or the fur trade, which have less of a tangible negative impact on human health.

B. *Using Ross as a Framework to Eradicate Puppy Mills*

In holding that morals-based state laws affecting interstate commerce are permissible, the Supreme Court created numerous opportunities for animal advocates to advance their differing animal welfare goals. Although *Ross* directly concerned ballot initiatives, nothing in the Court’s ruling precludes animal advocates from also working to pass state laws that accomplish similar goals. A ballot initiative may be an easier way for animal advocates to create favorable laws, but because not all states allow ballot initiatives, legislation may be the only avenue in some states for animal advocates to accomplish their goals.⁷⁴

One goal that animal advocates have been working towards for years is eradicating puppy mills. The ruling in *Ross* provides a framework for animal advocates to be able to pass state laws or ballot initiatives that prohibit the sale of dogs from puppy mills. One of the most notable

⁷³ See *Gibbons v. Ogden*, 22 U.S. 1 (1824); *Willson v. Black-Bird Creek Marsh Co.*, 27 U.S. 245 (1829); *Kassel v. Consol. Freightways Corp.*, 450 U.S. 662 (1981) (noting that regulations designed to promote public health or safety must still be balanced against their burden on interstate commerce).

⁷⁴ *Initiative and Referendum States*, NAT’L CONF. OF STATE LEGISLATURES (Mar. 15, 2023), <https://www.ncsl.org/elections-and-campaigns/initiative-and-referendum-states>.

implications of *Ross* is that it allows states to restrict sales even where the concerning activity occurs far away from the regulating jurisdiction.⁷⁵ Accordingly, even if dogs are bred in puppy mills in other states, those dogs still cannot be sold in the state enacting this type of law.

However, there are some marked differences between the sale of pork and the sale of dogs. While most people purchase meat from their local butcher or grocery store, people often travel across state lines—or across the country—to purchase dogs. This creates a different dynamic, as people are more likely to travel out-of-state to purchase a dog if it is cheaper or if the specific dog or breed they want is not available in their state. To prevent people from purchasing inhumanely bred dogs from outside of the state and bringing them into the state, state laws would have to prevent the importation of dogs purchased in other states that are not in compliance with the state law. Preventing the importation of dogs purchased in other states creates different Commerce Clause issues that are outside the scope of this paper, but the difference in how dogs are purchased versus how pork is purchased is significant. This will result in state laws restricting the sale of puppy mill dogs having less of a far-reaching impact than Proposition 12.

Additionally, pork production is extremely concentrated. The reason pork producers were so upset about Proposition 12 is because there are only a few major pork producers that produce all or most of their meat a certain way, and then ship it to different states. Thus, California's law forced pork producers to change their entire operating system, creating a massive impact. Puppy mills are less concentrated. There are puppy mills and backyard breeders in every state, and changing the laws in one state will not result in the same drastic effect as Proposition 12.

⁷⁵ See *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 388–89 (2023).

However, this does not mean that animal advocates should not make these efforts, it just means they may take slightly longer to have the widespread effects that advocates desire.

Nevertheless, some differences between pork and puppy mills are advantageous to the cause of eliminating puppy mills. For one, laws affecting what people eat are much harder to pass. Proposition 12 passed in California, but animal advocates in other states would likely have a more difficult time passing a ballot initiative that affects what people eat, especially when the pork industry is declaring that increased costs will be borne by consumers. In addition, people are almost universally sympathetic to inhumanely treated dogs, certainly more so than they are about inhumanely treated pigs. Furthermore, a dog is a purchase you make once or very few times, so having slightly increased costs to ensure that dogs are being treated well is unlikely to upset many people. Convincing Americans that they should vote for a ballot initiative that increases the price of meat that they buy on a weekly basis by almost 10% is a much more difficult task.⁷⁶

C. *Current State and Local Puppy Mill Laws*

Some states and localities have already passed laws restricting the sale of dogs from puppy mills, but these laws typically target pet stores specifically and where pet stores source their animals from (referred to as sourcing bans).⁷⁷ In 2015, the New York City Council passed a law restricting the sale of animals sourced from certain breeders.⁷⁸ The sourcing ban provided

⁷⁶ *Id.* at 367.

⁷⁷ *See, e.g.*, CAL. HEALTH & SAFETY CODE § 122354.5 (prohibiting pet stores from selling dogs, but allowing them to provide space to display them for adoption from an animal rescue group or public animal control agency or shelter); MD. CODE ANN., BUS. REG. § 19-703 (prohibiting pet stores from selling dogs, but allowing them to collaborate with animal welfare organizations or animal control units to offer space for those entities to showcase dogs for adoption); 225 ILL. COMP. STAT. 605/3.8 (2022) (prohibiting pet stores from selling dogs unless they are obtained from an animal control facility or animal shelter).

⁷⁸ *N.Y. Pet Welfare Ass'n, Inc. v. City of New York*, 850 F.3d 79, 83 (2d Cir. 2017) (citing N.Y.C ADMIN. CODE § 17-1702(a)).

that pet shops⁷⁹ can only obtain dogs and cats from federally-licensed Class A breeders under the AWA “whose federal license has not been suspended in the last five years,” have not been recently cited by the USDA for violating the AWA, and “provide a sworn affidavit that they have never been convicted of violating certain animal protection laws.”⁸⁰ In addition, the law prohibited New York City pet shops from selling animals “knowingly obtained from Class B distributors (who purchase and resell animals)” and from selling animals obtained from breeders who are exempt from the AWA because they have five or fewer breeding females.⁸¹

The Second Circuit Court of Appeals upheld the New York City law, stating that the sourcing ban did not violate the dormant Commerce Clause and was not preempted by the AWA.⁸² In holding that the sourcing ban did not violate the dormant Commerce Clause, the Second Circuit applied traditional *Pike* balancing. This was a pre-*Ross* decision, so the New York City sourcing ban in conjunction with *Ross* is a good sign for animal advocates that this type of legislation will be upheld by courts going forward. While there are differences between sourcing bans and sales bans (as seen by Proposition 12 in *Ross*), after *Ross*, both types of bans will likely be upheld by courts. While sourcing bans in a way lead to a ban on the sale of certain animals, sales bans are a much stronger tool. Sourcing bans typically affect distributors more than breeders, whereas sales bans apply to everyone from the breeder to the distributor (e.g., retail pet stores). While retail pet stores are important to target as they are a major part of the puppy mill pipeline, it is just as important, if not more important, to target the breeders directly for their inhumane breeding processes.

⁷⁹ The law did not apply to animal shelters or animal rescue organizations. *Id.* at 86.

⁸⁰ *Id.* at 85–86.

⁸¹ *Id.* at 86 (citing N.Y.C ADMIN. CODE § 17–1702(b)).

⁸² *Id.* at 87–92.

Restricting the sale of dogs from puppy mills in pet stores is a step in the right direction, but because sourcing ban laws often specifically target pet stores, breeders remain free to sell inhumanely bred dogs themselves directly to consumers. Instead of passing laws restricting sales based on where dogs come from, states should pass laws similar to Proposition 12 which directly ban the sale of dogs based on how they were bred.

D. *Proposed Law or Ballot Initiative*

The law or ballot initiative that animal advocates propose should include broad restrictions on the sale of dogs from inhumane breeders. It should not solely target the sale of animals in pet stores or the sale of animals sourced from puppy mills. Instead, it should be a blunt sales ban as opposed to a sourcing ban and should restrict the sale of dogs bred that are not in compliance with certain conditions, regardless of who is selling them.

These conditions should include minimum crate sizes, adequate food and water requirements, required flooring in cages, regulations regarding how many times and how often mother dogs can give birth, a requirement that dogs have adequate shelter to protect them from extreme weather, requirements that dogs have adequate socialization with humans and other dogs as well as adequate time outdoors, and possibly other requirements as veterinary professionals see fit. All of these conditions should be backed by veterinary science to ensure the strongest possible arguments for animal advocates if these laws are challenged.

The law or ballot initiative should be modeled after Proposition 12, stating that a person “shall not knowingly engage in the sale within the state of any of the following”⁸³ The law or ballot initiative should then list the aforementioned conditions. Additionally, the law or ballot

⁸³ CAL. HEALTH & SAFETY CODE § 25990(b).

initiative does not need to be on the state level. Local laws can have a substantial impact on reducing puppy mills as long as local sales bans are not preempted by state law.

Lastly, any law or ballot initiative aimed at preventing the sale of inhumanely bred dogs should include an enforcement provision. For a law or ballot initiative to actually have an effect, authorities need to be able to inspect the conditions at breeding facilities. The enforcement provision should allow for the relevant authorities to conduct regular unannounced inspections and be able to sanction non-complying breeders.⁸⁴

III. Potential Problems

Although animal advocates would benefit greatly from using the *Ross* precedent to eradicate puppy mills in the United States, it is important to consider and address the potential challenges in effecting change in this manner. Animal advocates should consider the risks of overusing favorable precedent, the proposed Exposing Agricultural Trade Suppression Act (EATS Act), and oversight issues that could impede the efficacy of an enacted law.

A. Overuse of Precedent

A strategic problem constantly faced by animal advocates is how much to use favorable precedent. If they overuse favorable precedent, advocates run the risk of it being overturned when challenged in court. The *Ross* decision creates a particularly high risk of this given the fragmentation of the decision.⁸⁵ Despite the majority in *Ross* upholding Proposition 12, the plurality of just three Justices reasoned that courts should not balance economic and non-economic interests under *Pike*.⁸⁶ As Justice Kavanaugh pointed out, that portion of the opinion is

⁸⁴ See *Puppy Mills FAQ*, HUMANE SOC'Y OF THE U.S., <https://www.humanesociety.org/resources/puppy-mills-faq#anti> (last visited Dec. 12, 2023).

⁸⁵ See *infra* Part I.B.

⁸⁶ See *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 380–83 (2023).

not controlling precedent.⁸⁷ This is problematic because that portion of the opinion is the most impactful portion of the decision for advocates since, as shown by Chief Justice Robert's concurrence in part and dissent in part, courts will typically find that the economic interests of interstate commerce outweigh animal welfare benefits.⁸⁸ Nonetheless, animal advocates still have favorable controlling precedent in the portion of the decision holding that under *Pike*, the pork producers have no dormant Commerce Clause claim because their complaint did not sufficiently allege that Proposition 12 imposed a substantial burden on interstate commerce.⁸⁹ There, the Court held that the substantial harm to interstate commerce was "nothing more than a speculative possibility" and that the facts in the complaint "merely allege[d] harm to some producers' favored 'methods of operation,'" which are not protected by the dormant Commerce Clause.⁹⁰ Because the majority of Justices would continue applying the *Pike* balancing test, it is vital for animal advocates to point to the health risks associated with puppy mills in case a deciding court follows *Pike*.⁹¹

If animal advocates push this ruling and its precedent too far, this issue will likely be reevaluated and could be decided a different way depending on the members of the Supreme Court at the time. Accordingly, advocates must be particular about the issues they choose to raise under this precedent. Puppy mill regulation is a strategic use of this precedent because puppy mills are not as concentrated as the pork industry, so puppy mills will have a more difficult time lobbying against this type of legislation. Additionally, people, especially politicians, are wary of

⁸⁷ *Id.* at 403 (Kavanaugh, J., concurring in part and dissenting in part).

⁸⁸ *Id.* at 394–403 (Roberts, C.J., concurring in part and dissenting in part).

⁸⁹ *Id.* at 383–87.

⁹⁰ *Id.* at 386–87 (quoting *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 127 (1978)).

⁹¹ *See Ross*, 598 U.S. 356.

going against an almost universally supported issue like humanely bred puppies. Eliminating puppy mills is thus a smart, strategic use of the *Ross* precedent.

The other issue with overuse of this precedent is that it can be used in the same manner by other advocacy groups for other purposes. This can be dangerous because the same types of laws or ballot initiatives can be used against animal advocates by industries with substantial money and ability to lobby—like the pork, chicken, and fur industries. The fear of this precedent reaching other issues outside of the animal welfare sphere was likely why President Biden’s Administration refused to support animal advocates in this fight and instead backed the pork industry.⁹² The Department of Justice filed an amicus brief arguing that under *Pike*, Proposition 12 does not advance a legitimate local interest.⁹³ The Biden Administration was likely concerned that if this type of morals-based legislation were upheld, states could pass anti-abortion laws restricting the sale of contraceptives or abortion pills.

B. *The EATS Act*

Although passing state laws is currently an effective way for animal advocates to advance their positions concerning puppy mills and other animal welfare issues, the proposed EATS Act threatens this. In response to state animal welfare laws affecting the farming industry, senators from major pork-producing states introduced the EATS Act, a federal law that would preempt states from passing laws regarding the production and distribution of agricultural products.⁹⁴

While the EATS Act was proposed to invalidate Proposition 12 and similar state laws, its broad language stands to affect much more than just agriculture. The EATS Act says “[t]he government of a State or a unit of local government within a State shall not impose a standard or

⁹² See Brief for the United States as Amicus Curiae supporting Petitioners, *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (No. 21-468), 2022 WL 2288169.

⁹³ See *id.*

⁹⁴ Miranda Groh, *The Confines of Federalism and Animal Welfare*, 29 ANIMAL L. 167, 190–91 (2023).

condition on the preharvest production of any agricultural products sold or offered for sale in interstate commerce . . .” if the production occurs in another state and “the standard or condition is in addition to the standards and conditions applicable to the production pursuant to” federal law and “the laws of the State and unit of local government in which the production occurs.”⁹⁵

The bill refers to “agricultural products” as defined in 7 U.S.C. § 1626, which states:

[T]he term “agricultural products” includes agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and *any and all products raised or produced on farms* and any processed or manufactured product thereof. . . .⁹⁶

By encompassing “any and all products raised or produced on farms,” the bill may include dogs bred on farms. Since the bill does not define “farms,” the bill creates extremely broad restrictions on what states can do while also creating massive uncertainty about what practices and products fall within the bill’s purview.⁹⁷ Not only could the bill jeopardize state laws aimed at protecting dogs in puppy mills, but it could also jeopardize state laws that “promote food and food packaging safety, protect rural communities, and preserve [the] environment.”⁹⁸

The EATS Act also demonstrates that when animal advocates work tirelessly to advance their positions at the state level, the lobbying power of big industries can always attempt to stifle these actions by passing federal laws preempting state action. While the dog breeding industry is not as concentrated or as well organized as the pork industry, if animal advocates continue to

⁹⁵ *Legislative Analysis of S.2019/H.R.4417: The Ending Agricultural Suppression Trade Act*, HARVARD ANIMAL LAW & POL’Y PROGRAM, July 2023, at 13.

⁹⁶ 7 U.S.C. § 1626 (emphasis added).

⁹⁷ See HARVARD ANIMAL LAW & POL’Y PROGRAM, *supra* note 95, at 18.

⁹⁸ *Oppose: The EATS Act Would Undermine State Farmed Animal Protection Laws*, ANIMAL LEGAL DEF. FUND (July 17, 2023), <https://aldf.org/project/oppose-the-eats-act-would-undermine-state-farmed-animal-protection-laws/>.

make progress at the state or local levels, there will always be a threat of federal legislation preempting these efforts.

C. *Oversight Issues*

While the AWA provides minimum standards of care for dogs, animal advocates have attempted to address the USDA's lack of adequate enforcement of AWA standards.⁹⁹ Despite the USDA overseeing over 12,000 breeding facilities and conducting over 9,000 inspections in 2019, the USDA only opened seventeen new enforcement cases and issued just two warnings that year.¹⁰⁰ This is not because facilities are in compliance with AWA standards, it is because when an inspector finds a violation, the USDA takes no action against the breeder.¹⁰¹

This begs the question: how can passing new laws providing for the humane treatment of dogs make a difference if no one is overseeing their implementation? The answer is that when states pass stricter laws than the AWA, state agencies can typically enforce those laws. So, despite standards not being enforced at the federal level, states and localities can police breeders under stricter state regimes. It is important to note that some local authorities are prevented from going to puppy mills unless they receive a credible threat from a person who has personally witnessed inhumane treatment.¹⁰² Puppy mill breeders typically do not allow customers onto their property, which makes it difficult for law enforcement to intervene.¹⁰³ This is why any sales ban legislation or ballot initiative must include language allowing authorities to conduct regular unannounced inspections of all breeders.¹⁰⁴

⁹⁹ See *USDA Enforcement of Animal Welfare Act Continues to Plummet*, AM. SOC'Y FOR PREVENTION OF CRUELTY TO ANIMALS (May 11, 2020), <https://www.aspc.org/news/usda-enforcement-animal-welfare-act-continues-plummet>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Puppy Mills FAQ*, *supra* note 84.

¹⁰³ *Id.*

¹⁰⁴ *See id.*

CONCLUSION

National Pork Producers v. Ross was a landmark win for animal advocates. The framework of the case can and should be used to advance animal advocates' position in eradicating puppy mills and inhumane dog breeding practices. While this task is not without complications, using *Ross* to enact state and local sales bans targeting puppy mills is a strategic use of this precedent that can significantly improve the lives of dogs throughout the United States. As long as animals remain unable to fight for themselves, humans must fight for them.

Laws & Paws Word Search, by Adam N. Lepzelter, Esq.

Instructions:

Each of the words in the word bank below can be found in the puzzle horizontally, vertically, diagonally, or backwards. Circle the letters of each of the words below when found. When all the words have been found, the remaining non-circled letters will reveal a special message.

L	A	W	S	A	N	D	P	A	W	S	N	C
O	E	S	S	E	X	B	R	O	D	Y	L	O
F	C	G	J	U	S	T	I	C	E	E	A	U
D	A	N	A	B	L	A	C	K	B	E	A	R
E	G	L	A	L	E	P	K	P	R	L	R	T
L	R	E	C	C	G	I	L	A	O	E	Q	O
E	I	D	T	O	I	E	Y	Y	O	C	U	F
G	C	O	O	U	S	R	H	G	M	T	E	A
A	U	E	N	G	L	I	O	U	E	I	E	P
T	L	S	C	O	A	N	G	V	E	O	N	P
E	T	R	S	A	T	T	S	I	O	N	S	E
S	U	H	A	M	I	L	T	O	N	S	N	A
L	R	I	K	D	O	M	E	S	T	I	C	L
E	E	L	K	Y	N	Y	S	B	A	O	U	S
C	A	T	S	R	B	I	R	D	S	P	E	T

WORDS:

- | | | | | |
|---------------|------------------|----------|------------|---------|
| LAWS AND PAWS | COURT OF APPEALS | QUEENS | BLACK BEAR | NYSBA |
| LEGISLATION | CLE | ESSEX | BIRDS | FALCO |
| LEGAL | BROOME | DOMESTIC | HAMILTON | DOG |
| PRICKLYHOGS | DELEGATES | ELK | CATS | JUSTICE |
| AGRICULTURE | ELECTIONS | | | |

Quote:

“ _____ ”

Adapted from Chrisotpher Morely