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Letter from the Chair, Kirk Passamonti

On October 1, 2025 Jane Goodall passed away at the age of 91.

Jane dedicated her life to, among other things, observing chimpanzees in the wild. This included the study of social and family structures that exist among wild chimpanzees. Through her studies and teachings on animal behavior, those willing to listen were educated as to the similarities that exist between nonhuman animals and people. Her work has inspired the drafting of sensible, proposed legislation and litigation relating to animals, a movement that is still in its infancy but has received some attention over the last few years. I was not aware until now that Jane was a Board Member of the NonHuman Rights Project, a non-profit organization who are “dedicated solely to securing rights for nonhuman animals” and who a few years ago coincidentally presented a CLE to our Committee called “Habeas Corpus, ‘Happy The Elephant’ and Granting Rights and Legal Personhood to Nonhuman Animals.”

For anyone interested in learning more about Jane and her life’s work, I would suggest exploring the many books she authored throughout her career, as well as the Jane Goodall Institute’s website.

I thought I would share three of Jane’s quotes that caught my attention, clearly based on her life experiences:

“It isn’t only human beings who have personality, who are capable of rational thought [and] emotions like joy and sorrow,”

“When you live in the forest, it’s easy to see that everything’s connected,” and

“Change happens by listening and then starting a dialogue with the people who are doing something you don’t believe is right.”

This issue of Laws and Paws includes the first and second place winners of the Committee on Animals and The Law’s 2025 Annual Student Writing Competition. We again had a record number of submissions this year and I thank all of the law students who took the time to write and submit these time-consuming papers.

Sincerely,

Kirk Passamonti

Chair, Committee on Animals and the Law

2025 LEGISLATION SUBCOMMITTEE REPORT

FINAL STATUS OF ALL BILLS ON WHICH THE COMMITTEE ON ANIMALS AND THE LAW TOOK A POSITION

In the 2025 Legislative Session, the New York State Bar Association's Committee on Animals and the Law (COAL) issued positions on a total of twenty-seven 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 Supported by the Committee on Animals and the Law that were Passed by Both Houses; these bills have Not Yet Been Delivered to the Governor

***S.364 (Gianaris) / A.893 (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 the same protections to renters as has been provided to homeowners, protecting them from arbitrary insurance cancellation. Once signed into law, these provisions will take effect ninety days after enactment and will apply to all policies issued, renewed, modified, altered or amended after the effective date. The COAL supported – COAL Memo in Support #1.

***S.5514 (Hinchey) / A.6556 (Rosenthal)**

Amends the "red flag" law to take into account acts of aggravated cruelty to animals in the determination whether a temporary extreme risk protection order should be granted.

This bill amends section 6342 of the Civil Practice Law and Rules, establishing Extreme Risk Protection Orders, which was enacted to give guidance to a court that is determining whether a person should not purchase or possess, or attempt to purchase or possess a rifle or shotgun. Existing Section 6342 lists a number of criteria that may be considered, most of which are related to violent behavior exhibited toward another person, which are deemed to be "red flags," indicating that the person seeking to purchase or possess a rifle or shotgun should not be permitted to do so because they may use the firearm in a violent manner toward another. Missing from this list of violent tendencies is any prior act of violence toward animals, although violence toward animals is recognized as an indicator that an individual is likely to engage in violence toward

humans. This bill includes an individual's commission of aggravated cruelty toward animals as one of the indicators that an individual should not be permitted to own or possess a rifle or firearm, recognizing that violence toward animals is as important in determining a person's violent tendencies as violence toward another person. The bill will take effect immediately upon being signed by the governor. The COAL supported – COAL Memo in Support #23.

A.1433-A (Hunter) / S.5324 (Bailey)

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(a)(35) to define “pet insurance” and distinguish it from “animal insurance,” and adding a new Section 3463, 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 this bill in 2024 (S.7845 / A.8276) and the 2024 bill was passed by both houses but vetoed by the governor; the 2025 bill was amended to address the reasons cited by Governor Hochul for vetoing the bill last year. The COAL supported – COAL Memo in Support #14.

***A.1672-A (Rosenthal) / S.6822-A (Gianaris)**

Prohibits contracts for the purchase or lease of a dog or cat from an online website from including a provision allowing repossession of the animal.

This bill amends Section 753-e of the General Business Law, Prohibited contracts, to include among the contracts prohibited by this section of law any contract providing for the sale of a dog or cat through an online website that treats the animal that is the subject of the sale as security for payment, and allows the animal to be repossessed by the seller if the purchaser fails to make the payments required by the contract. Section 753-e was added to the General Business Law in 2018, and prohibited retail pet stores from using contracts that would allow for the repossession of the animal if payments were not made by the purchaser. This bill extends the same prohibitions to contracts used in online sales of dogs and cats, which were not included in the original law. The bill will take effect immediately upon signature by the governor. The COAL supported – COAL Letter in Support to the Governor #5.

***A.4997 (Glick) / S.4289 (Hoylman-Sigal)**

Extends DEC's authority to manage horseshoe crabs, and prohibits the taking of horseshoe crabs for commercial or biomedical purposes.

This bill prohibits the taking of horseshoe crabs for commercial or biomedical purposes; the prohibition is intended to address the overharvesting of horseshoe crabs for use as bait and for the

use of their blood in the biomedical industry. The bill provides an exception for the taking of horseshoe crabs for bona fide scientific or educational purposes, as permitted by regulations adopted by NYSDEC. In addition, to address an issue the governor cited when she vetoed this bill in 2024, the bill also restores DEC's authority to regulate all crabs, including horseshoe crabs, and requires DEC to adopt regulations for the management of all crabs, including horseshoe crabs, that are consistent with fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act. Once enacted, this bill will take effect January 1, 2026. The COAL supported – COAL Letter in Support to the Governor #4.

II. Other Bills on which the COAL Took a Position and Issued a Memorandum in Support or Opposition; these bills were Not Passed by the Legislature in 2025

S.197 (Martinez) / A.3050 (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.197 was passed by the Senate in 2025. The COAL supported – COAL Memo in Support #2.

S.250 (Sepulveda) / A.1966 (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 #3.

***S.673 (Martinez) / A.1693 (Rosenthal)**

Establishes a co-sheltering grant program to provide funds to non-profit organizations and municipal shelters to allow homeless individuals and their companion animals to be sheltered together.

This bill amends the Social Services Law to create a new grant program, the “Housing People and Animals Together” grant program, to make it possible for organizations providing shelter to homeless individuals and victims of domestic violence to shelter those individuals and their companion animals together. Grants will be made available to non-profit organizations and municipal shelters. The grants will take into consideration a facility’s need to provide a kennel or other structural alterations to allow animals to be housed safely; the provision of food, supplies and equipment needed by animals in the shelter; the provision of veterinary care to animals housed in the shelter; and training of shelter staff who will be in contact with the animals housed in the shelter. S.673 / A.1693 creates the co-sheltering program that will be implemented through the grants created by this bill, but no funding for the grants is provided in this bill; funding must be separately appropriated for the grant program in the state budget. The COAL supported – COAL Memo in Support #10.

S.703 (Krueger) / A.2019 (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. S.703 was passed by the Senate in 2025. The COAL supported – COAL Memo in Support #4.

S.1182 (Addabbo) / A.667 (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 #5.

S.1362 (Serrano) / A.3046 (Rosenthal)

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

This bill requires nuisance wildlife control operators (NWCs) to include in their reports to the Department of Environmental Conservation (DEC) the incidents when they used lethal, rather than non-lethal methods, to control nuisance wildlife, and reasons for the use of lethal controls. The bill also requires that the DEC's list of NWCs include any enforcement actions taken against NWCs 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 NWCs 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 #6.

S.1784 (Hinchey) / A.5505 (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.1784 was passed by the Senate in 2025. The COAL supported – COAL Memo in Support #11.

S.2296 (Bailey) / A.640 (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 #7.

***S.3158 (Skoufis) / A.1816 (Rosenthal)**

Adds animal fighting to the definition of criminal activity for the purpose of enterprise corruption crimes.

This bill amends Section 460.10 (1)(b) of the Penal Law, defining enterprise corruption crimes, to add any violation of Section 351 of the Agriculture and Markets Law, prohibiting animal fighting, to the definition of enterprise corruption crimes; thereby making any violation of 351 AML subject to the increased penalties that apply to all enterprise corruption crimes. S.3158 was passed by the Senate in 2025. The COAL supported – COAL Memo in Support #21.

***S.3457 (Gianaris) / A.6871 (Bores)**

Establishes the Promoting Ethical Testing Solutions Fund (P.E.T.S. Fund) to provide an incentive for the use of non-animal tests for drugs, chemicals and other products.

This bill amends the Public Health Law by adding a new Section 504-a, Human-relevant research funding for scientific testing on animals. The new PHL section creates a fund (the promoting ethical testing fund) that will provide incentives for the use of human-relevant alternative tests for scientific and medical products that do not use animals. Money will be paid into the fund by laboratories and research institutions located in the state, based on the number of vertebrates used in research, testing or experimentation by the facility. The fund will award grants and loans for human-relevant animal-alternative scientific and medical research in order to promote ethical testing solutions. The bill amends the State Finance Law by adding a new Section 99-ss to provide that the Promoting Ethical Testing Solutions Fund will be held in the joint custody of the state comptroller and the commissioner of taxation and finance, and will be paid out as provided in PHL Section 504-a. The Coal supported – COAL Memo in Support #22.

S.3629-A (Fernandez) / A.5850 (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. This bill was passed by the Senate in 2025. The COAL supported – COAL Memo in Support #17.

S.3658 (Hoylman-Sigal) / A.3180 (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-owned 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. The COAL supported – COAL Memo in Support #8.

S.3970 (Sepulveda) / A.1612 (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 3019 (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 2025. The COAL supported – COAL Memo in Support #9.

S.4952 (Harckham) / A.798 (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 #12.

S.4954 (Harckham) / A.1089 (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 #13.

S.5721 (Skoufis) / A.1835 (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 provides for enforcement of this prohibition by amending 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 #18.

S.6380 (Brisport) / A.165 (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 against 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 # 26.

S.6538 (Sanders) / A.933 (Glick)

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

This bill amends Section 138 of the Public Service 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. The COAL supported – COAL Memo in Support #15.

***S.6621 (Harckham) / A.1685 (Rosenthal)**

Prohibits the breeding and sale of red-eared slider turtles.

This bill amends the Environmental Conservation Law by adding a new Section 11-0541 that prohibits the breeding, sale, trade, purchase, importation and exportation of red-eared slider turtles; exceptions are made for AZA-accredited zoos and aquariums; wildlife sanctuaries; research facilities; veterinarians; humane societies, animal shelters, SPCAs, and animal welfare organizations; universities and state agencies; wildlife rehabilitators; and nature centers. Red-eared slider turtles, viewed as invasive in many countries, will be prevented by the sales prohibition in this bill from outcompeting native species and disrupting biodiversity in the areas where species has proliferated. The COAL supported – COAL Memo in Support #24.

S.6821 (Gianaris) / A.1945 (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 #16.

***S.7218-B (Hinchey) / A.7342-C (Woerner)**

Establishes the New York State Equine Industry Board to advise and make recommendations on the equine industry.

This bill creates an advisory board to make recommendations to state agencies on the plans, policies and programs that affect the equine industry in the state. Membership of the board is defined in the bill, and includes individuals from different groups, industries and organizations that deal with horses. The Equine Industry Board is specifically directed to provide advice and recommendations on equine tourism, equine industry promotion, workforce development, educational and training initiatives, and the humane treatment of horses; other matters for consideration may be identified by the board. The board will submit an annual report on its activities to the governor and the legislature. The COAL OPPOSED – COAL Memo in Opposition #19. Note: After submission of the COAL Memo in Opposition, the Assembly bill was amended, and is now A.7342-D; the amendments to the bill did not change the COAL's opposition to the bill.

S.7330 (Brisport) /A.1645 (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.7421-A (Martinez) / A.8043-A (Simone)**

Prohibits octopus farming for the purpose of human consumption.

This bill prohibits the aquaculture of any species of octopus in the state for the purpose of human consumption. These provisions do not apply to wild caught octopuses or octopuses propagated, cultivated, maintained, reared, or harvested only for research purposes unrelated to commercial production. The COAL supported – COAL Memo in Support #25.

GRIEVING THE LOSS OF A PET

By Jim D. Sarlis

*Pinky and I grew up together. We adopted her when she was a tiny kitten and I was just a teen. She was adorable, affectionate, and loved to sleep on my chest where she would rub her cute little pink nose against mine. I loved her so much. She trained me to be a pet parent. But she couldn't prepare me for the inevitable pain that comes with it. Nothing could.*¹

Anyone who has lost a pet knows just how intense that pain can be. It can be an absolutely crippling and debilitating trauma that seems to have no end. The anguish can be crushing and although it may, over time, lessen, it can still remain devastating. And the suffering, the grief, the loss, may not be understood or acknowledged by others. This can lead to what is known as "disenfranchised grief" — the harsh realization that, not just society at large, but even friends, loved ones, colleagues, and employers fail to comprehend the depth of the bond with our pets, and the devastation their loss inflicts on us. This can lead to isolation. After all, it is hard to share what you're going through with people who don't share the same point of view. Inevitably there will be people who just don't get it and will say "It's just a pet" or "It's not like losing a person" and other things to that effect. But most pet parents view their fur babies and other pets as members of their family, often considering their pets as their children.²

*My baby was my child, my soul mate, my shadow.
I am so lost. I cry every day. The emptiness never ends.
After all this time I still feel the pain like it's the first day...*

There are many layers at play here. Among them:

LIFESPAN DIFFERENCES

*Nobody tells you how quickly pets age.
One day you wake up and suddenly their face is frosted white.
Their eyes, once bright, now hold a milky haze.
You call their name — once, twice — louder than before,
and it hits you: time has been slipping away.*

¹ Pinky was my first pet; this quote is genuinely mine. There are other italicized quotes throughout this article that are paraphrases of posts I have read on pet grief and pet loss websites. I changed any names to preserve privacy, but I feel these quotes are important in that they express the deep emotions involved. They remain the property of their actual authors and websites.

² "81% of those surveyed consider their dogs to be true family members, equal in status to children" . . . Coren, Stanley, Ph.D., F.R.S.C., Do We Treat Dogs The Same Way As Children In Our Modern Families? Psychology Today, May 2, 2011, available at <http://www.psychologytoday.com/blog/caninecorner/201105/do-we-treat-dogs-the-same-way-children-in-our-modern-families>; the 1999 American Animal Hospital Association (AAHA) Pet Owner Survey shows that 84% refer to themselves as their pets' "Mommy" and "Daddy", available at www.peteducation.com/article.cfm?c=22+1275&aid=1265

Sure, if your pet is a tortoise, their typical lifespan ranges from 80 to 150 years. Indeed, the Galapagos tortoises often live even longer, including one named Harriet who lived an estimated 175 years, and the Aldabra giant tortoises have exceeded even that, with one named Jonathan reaching 191 years and Adwaita something like 255 years. Turtles can live 50 to 100 years. This means that your hard-shelled buddies can not only grow old with you, they may very well outlive you.

But most animals have lifespans that are much shorter than the average human lifespan. Dogs, for example, live 10 to 13 years on average. Smaller breeds, like the chihuahua, tend to live a bit longer, perhaps 15 to 18 years. Domestic cats average 13 to 20 years, with the oldest living recorded cat being one named Creme Puff at 38 years. Horses average 25 to 30 years. Pet hamsters and mice typically live around 2 to 3 years, domestic rabbits 8 to 12 years, gerbils 3 to 4 years, ducks 10 or so years, chameleons 5 to 7 years.

The point is that, although our pets can share our lives for quite a while, the chances of the pet dying before you do are very high. And plenty of people can attest to the fact that a typical pet parent can lose several pets during their own lifetime. That's a lot of anguish, loss, and grief.

Cherish every moment you are lucky enough to share with your pet ... because, one day, you'll notice that your baby's steps have slowed to match their years.

THE DEPTH AND BREADTH OF THE LOVE SHARED BETWEEN HUMANS AND PETS

When you've loved a pet until the end, you've known the deepest love... and the deepest pain...

The depth of love and joy that pets bring into our lives is immeasurable.³ They offer unwavering companionship, unconditional love, and a calming presence. Interaction with pets releases hormones that promote relaxation and well-being. In fact, the simple acts of petting them, watching them play, or feeling their presence can significantly reduce stress and anxiety and boost overall mental and physical well-being — picture a doggie resting its head and paw on you, or a kitty curled up in your lap gently purring.⁴

Reading the stories posted by grieving pet parents on pet loss websites makes it obvious that the most common companion animals that people write about are dogs, first, with cats a close second. However, it also makes it obvious that the death of any companion animal causes strong feelings of pain and of loss in people. I've seen posts where people are hesitant, embarrassed, or apologetic as they talk about their

³ "Pet owners are extremely devoted to their animal companions with 80% bragging about their pets to others, 79% allowing their pets to sleep in bed with them, 37% carrying pictures of their pets in their wallets, and 31% taking time off from work to be with their sick pets . . . The number of [households with pets] is staggering [with almost 100 million U.S. households having pets that include dogs, cats, fish, birds, small animals (such as hamsters and rabbits), and reptiles]. The love people have for their pets transcends death, as documented by studies revealing that between 12% and 27% of pet owners include pets in their wills." Beyer, Gerry W., *Pet Animals: What Happens When Their Humans Die?* 40 Santa Clara Law Rev. 617 (2000)(footnotes omitted), available at <http://www.animallaw.info/articles/arus40sanclr617.htm>.

⁴ See, generally, articles on the benefits of pet interactions reported at PetPartners.org, including Rider, Tiffany, *Man's Best Friend: Dog Ownership Proven to Reduce Blood Pressure, Other Health Risks*, Long Beach Business Journal; available at <http://lbbusinessjournal.com/long-beachbusiness-journal-newswatch/119-lof-scroller-articles12-05-22/590-mans-best-friend-dog-ownership-proven-to-reduce-blood-pressure-other-health-risks.html>.

horses, bunnies, foxes, hamsters, ferrets, goats, sheep, ducks, parrots, iguanas, mice and even dolphins, primates, lions, and chickens. But people should not feel reluctant to share their feelings in these safe havens where all the participants are pet parents who not only totally get it, they are going through it themselves. A kind, empathetic person who exudes love and caring can bond with almost any kind of animal; and the animal responds to and reciprocates that affection.

However, because of this deep bond, the loss of a pet can be incredibly painful. For many, the grief experienced after losing a pet is not just comparable to, but even more profound than, the grief felt after losing a human loved one. One reason is because the relationship with a pet is often less complicated than human relationships, involving only love, companionship, and interdependence. Pets are dependent on their humans, in the same manner as a human parent and child relationship. Moreover, caring for a pet establishes a sense of order and purpose, especially beneficial for those facing mental health challenges. Pets can also help people be more social, as they can be conversation starters and help us connect with others who share a love for animals.

Pet parents universally agree that one of the strongest and most unique aspects of our bond is that our pets love us unconditionally, without judgment or reservation. They see us at our worst and still wait for us patiently at the door and greet us with unwavering devotion. They become our quiet confidants, our steady companions through life's highs and lows. All that our pets want is our love and attention—we never have to worry if we're good enough, smart enough, rich enough. That's why they can be just as happy, complete, and loyal with a homeless human as one with assets galore. And that's why, when they're gone, they leave quite a vacuum.

MOURNING PREMATURELY (MORE COMMONLY KNOWN AS ANTICIPATORY GRIEF)

I realized that I had become "that lady with the very old dog." I knew Buddy had gotten up there in years... but now this finally hit home: our days together were numbered...

As Rebecca Feinglos MPP, a certified grief support specialist and the founder of Grieve Leave,⁵ explains it, this period—the emotions that you feel about an impending loss before the actual loss occurs—is a type of grief in itself. "Anticipatory grief" occurs when a pet owner begins to grieve before the actual loss of their pet, often as a result of a pet's terminal diagnosis or their steep decline due to their advanced age. Although it may mean feelings of sadness, apprehension, and anxiety about the impending loss, it can also provide an opportunity to prepare emotionally for the inevitable goodbye.

At its mildest, it consists of stress; at its worst, it consists of the fear of impending doom. "What we can do when we feel the heaviness of anticipatory grief when our pet is clearly at the end of their lives is to give ourselves permission to [go ahead and feel it and] let it be hard," Feinglos says. After all, "Grief is hard, and there's no way around that." Plus, it makes every moment, every walk, every cuddle, a special memory that you won't take for granted.

Buddy had seen every accomplishment, heartbreak, change, and growth I had ever experienced; after nearly two decades, I literally didn't know life without him in it.

⁵ See GrieveLeave.com

SAYING GOODBYE TO A BELOVED PET: WHAT ARE THE CONSIDERATIONS?⁶

First of all, let's face it, sometimes you don't have a choice. Pets sometimes die because of an accident. Or due to being attacked by an animal. Or because of the cruelty, neglect, or willful actions of humans.⁷ Animals can also wander off and never be found. New York City even recognizes causes of action where a companion animal is taken away from a tenant because of an eviction.⁸ In these situations, the pain of loss is still there, still intense, and the grief and other emotions still have to be felt and processed.

In other situations, there are choices that have to be made. When the inevitable early signs of aging and declining health begin, it's natural for a pet parent to have many questions. Among the categories are: Continue or stop treatment? Hospice or palliative care? Home or clinical setting? Euthanasia or natural death? Navigating this challenging time can feel overwhelming, filled with difficult decisions and intense emotions. Your vet will be an important source of information and guidance as you consider the challenges ahead.

Quality of Life Considerations

Here are a few specific changes to look for in your pet that could suggest that the time has come to talk to your vet about this chapter in your pet's life, and possibly consider hospice or palliative care:

Changes in Eating and Drinking: Loss of appetite, increasing difficulty eating or drinking, or noticeable and unexplained weight loss.

Changes in Mobility and Activity: You might notice your pet struggling to stand or walk, showing a reluctance to move, experiencing increased weakness, or becoming unsteady on their feet.

Changes in Behavior and Interaction: Look for signs that your pet may be withdrawing from their usual patterns, showing a decreased interest in their favorite things, hiding, changes in their sleep patterns, or showing a reduced desire to interact with you and your other household members. There may also be signs of dementia and other unusual behaviors such as inability to find their way inside the house and in other familiar places, being awake at unusual hours, no longer engaging in their usual habits.

⁶ Whether to put your pet down or let them die at home is a personal decision. Lap of Love Veterinary Hospice & In-Home Euthanasia, Nov 20, 2024; Pet Euthanasia vs. Natural Death — PetHelpful.com; What is Hospice Care for Dogs, Britt, PetGuide.com, May 2025.

⁷ See Animal Welfare statutes in NY's Agriculture and Markets Law, particularly Article 26.

⁸ See NYC Admin. Code, Ch. 8, Sections 17-818 and 17-819: "[A]ny person claiming to be denied possession of their companion animal by a landlord still in possession of such companion animal after the execution of a warrant of eviction or action taken pursuant to any order or judgment granting legal possession shall have a cause of action against such landlord in any court of competent jurisdiction for any or all of the following relief:

1. Compensatory and punitive damages;
2. Injunctive and declaratory relief;
3. An order of seizure pursuant to article 71 of the civil practice law and rules;
4. Attorney's fees and costs."

Uncontrolled Pain or Discomfort: Despite receiving pain medication, your pet may still show obvious signs of discomfort, whimpering, excessive panting, restlessness, or a reluctance to be touched in certain areas.

Loss of Bladder or Bowel Control: Your pet may experience incontinence that is becoming increasingly difficult to manage and is negatively impacting their quality of life.

Difficulty Breathing: Noticeable changes in their breathing, such as persistent coughing or labored breathing, can signal declining health.

Lack of Response to Treatment: When ongoing medical interventions no longer effectively slow the progression of your pet's illness nor improve their quality of life, it may be time to consider a different approach focused on comfort.

Noticing just a few of these signs doesn't automatically mean it is time for hospice or palliative care. Instead, these signs of decreasing quality of life should open the door to an open and honest — albeit difficult — conversation with your veterinarian, who can provide valuable insights into your pet's prognosis and help you assess the situation with realistic expectations.

If you are unsure of your pet's condition, it is best to have a Quality-of-Life Assessment performed by a qualified veterinarian trained to evaluate pets for signs of decline. This can help you understand how your pet is doing and what they may be feeling. Among the factors you will need to consider in order to make the best decision for your family and your pet includes information about the end-stage disease process, symptom and pain management, nutrition, management of incontinence, and mobility issues.

PET HOSPICE & PALLIATIVE CARE

A compassionate pathway to provide our pets with comfort, dignity, and peace in their final days is hospice and palliative care. Both prioritize quality of life when a cure is no longer a realistic possibility.

The main difference between hospice and palliative care lies in the timing. Palliative care can start earlier, while hospice is specifically for the end-of-life stage when treatment is no longer a realistic option. However, both approaches share a similar fundamental goal: prioritizing comfort, maximizing quality of life, and providing emotional support for the pet and their family as they navigate this difficult and important time.

Hospice Care

Hospice care shifts the focus away from treating the underlying illness when a cure is no longer possible. At this point, the central goal is to maximize your pet's comfort and well-being so they can enjoy their remaining time. This involves minimizing pain and suffering, managing distressing symptoms, and providing emotional support to your pet and your family as you navigate this stage. This care and support can be provided primarily in a familiar environment, like your home, rather than a veterinary facility.

Palliative Care

The focus of palliative care is the effective management of symptoms to improve the pet's comfort and overall quality of life at any stage of their illness. In contrast to hospice, palliative care can begin earlier

during a serious illness, often while your pet is still receiving treatments, and a cure is still possible. Palliative care aims to improve the pet's well-being regardless of their prognosis, providing ongoing supportive care throughout a challenging illness, helping to manage discomfort and improve their daily life. With palliative care being an option that does not require the stopping of treatment, there is no reason not to prioritize the pet's comfort throughout the process.

In-Home vs. In-Clinic

One of the most comforting parts of hospice and palliative care is that much of it can happen in the most familiar place to your pet, their own home. This allows your pet to stay in a safe and comfortable space, surrounded by the people they love, avoiding the stress and anxiety of being put into an unfamiliar environment.

Since there is no clear cut answer to the choice between in-home care and clinic-based support, a discussion with your vet team will be the primary way to decide what would work best for your pet.

EUTHANASIA VS. NATURAL DEATH

Deciding whether to choose euthanasia for your pet or to allow them to pass naturally is a huge and often very difficult decision. It is a highly personal choice to be made while weighing a number of factors, including your religious and personal beliefs, your pet's condition and level of pain, and even your pet's personality and level of comfort with veterinarians.

Choosing a natural death

Of course, sometimes a natural death chooses you instead of the other way around. Like when your pet passes away in her sleep, or when she takes her last breath while you are holding her and comforting her when it is clear that the end is near. And, as previously mentioned, sometimes life takes a cruel twist, resulting in the loss of your beloved pet. However, for some people, whether for religious reasons or based on their personal views, a natural death is the goal.

The kind of natural death a pet will experience will depend, in large part, upon the ailments and conditions your pet is dealing with as well as your pet's reactions and mental state during this process.

It goes without saying that choosing to euthanize your pet has many agonizing layers, including trying to decide when it is time, being the one who makes the final decision, dealing with being involved with the process, and all the guilt and the feelings and the relentless questioning of the choices that inevitably come with it. But the goal of euthanasia is to provide a quick, peaceful and painless passing to your beloved friend, in contrast to a true "natural death" which may not be quick nor peaceful nor painless.

Choosing euthanasia

The topic of euthanasia, while incredibly difficult, is an important consideration. All things being equal, one thing many people consider as a deciding factor is that euthanasia allows your pet to "go to sleep and not wake up," whereas Mother Nature doesn't guarantee such a peaceful and controlled outcome.

While many people experience feelings of guilt, failure, inadequacy when they choose euthanasia, choosing this option can also be viewed as the ultimate act of love and compassion for your pet. It is a peaceful and humane option to relieve suffering when your pet's quality of life can no longer be

maintained despite all efforts from you and your vet team. You are freeing them from their pain and discomfort. Depending on what is available in your area, in-home euthanasia may be an option. This would allow your pet to pass away peacefully in their familiar surroundings, surrounded by their loved ones.

PET EUTHANASIA: WHAT ARE THE STEPS AND CONSIDERATIONS?

Cody had gotten old. And very sick. He could no longer see. He had inoperable bladder cancer. He was on a dozen meds that we had to conceal in cheese and snacks to get him to eat them. He was as smiley as always. But you could tell he was tired. He rarely stood up. He slept a lot. Then, finally, he stopped eating, He looked at us with a pleading look. It was time. I knew I had to end his suffering. Even if it killed me inside.

The term “euthanasia” is derived from the Greek and literally means "good death." Its goal is to provide a kind, calm, peaceful, dignified, controlled and painless way for your pet to pass over the Rainbow Bridge to its forever home in Heaven. Ideally, this would happen, at home if at all possible, with the pet feeling safe, comfortable, and loved. Most people also want to be holding their pet in their arms, telling their baby how perfect a companion they have been, their soul mate, how much they love them, surrounded by family and friends, although there are people who cannot bring themselves to be there when their little ones take their last breaths. That is, of course, a personal choice, although some pet parents who choose not to be present when their pets take their last breath later regret not being there, and veterinarians sometimes mention that the pet is looking around for their parent during the process.

Sedation: In order to make sure the pet is calm and relaxed, the veterinarian will sedate him.⁹ (See also Laws & Legislation section, below.) The idea is to ensure that the procedure is as humane and peaceful as possible. It may take a few minutes for the sedative to fully take effect so that the pet is completely relaxed. It should be noted that, at this point, the pet is no longer sure on its feet and may be wobbly and there is the concern that they may fall over. With dogs, cats, and other smaller animals it is best to have them lie down and maybe be wrapped in a blanket and held. It is more of a concern with larger animals such as horses that stay upright during this process and precautions need to be put in place so that they are supported or in a soft or padded area and so they don't injure others if they fall over as the euthanasia medications take effect.

Injection of Euthanasia Solution: Most euthanasia solutions are a combination of a barbiturate anesthetic (pentobarbital) and an anticonvulsant (phenytoin).¹⁰ (See also Laws & Legislation section, below.)

This causes complete muscle relaxation and a quick and painless termination of all nerve transmission to the brain, which leads to cardiac arrest, the moment at which the heart stops beating. The pentobarbital allows pets to quickly become unconscious, which is critical so your pet will have no awareness during the moment of cardiac arrest brought on by the phenytoin. The procedure is specifically designed to be as painless and stress-free as possible for your pet.

⁹ See NY AGM § 374 (3)(a), which is set forth in greater detail below in the Law & Legislation section.

¹⁰ NY AGM § 374 (3)(a), which is set forth in greater detail below in the Law & Legislation section.

This will be the final few minutes you get to share with your companion before saying goodbye, so do not be afraid to take the time you need. Your veterinarian will try to accommodate your wishes.

Usually, within just a few seconds after the solution is injected, a pet will take a slightly deeper breath, then grow weak and finally lapse into what looks like a deep sleep. Some pets may also lose bladder or bowel control in the immediate moments after death, but this is a natural effect of the body's relaxation process, not a conscious or fearful response.

Confirmation of Death: Your veterinarian will listen to your pet's chest to confirm that both breathing and the heartbeat have stopped.¹¹ After the euthanasia procedure is complete, you can ask to spend a few more moments alone with your pet.

Note: In the case of in-clinic euthanasia, it is wise to have a friend or family member come with you to the euthanasia appointment, or arrange for a car service to pick you up, in case you are too upset to safely drive yourself home.

Pet Aftercare Options: Burial or Cremation

There are several options for body care after your pet has passed away, including home burial, burial in a cemetery, private cremation, or communal cremation. If you do not have the option of home burial or simply do not wish to keep your pet's remains after death, pet burial services in most communities will humanely take care of the final disposition for your beloved companion. Pet cremation services are also available. Traditional cremation involves incineration of the remains, which leaves a small amount of ash residue behind. Most pet cremation services offer communal or private cremation. A communal cremation means that the ashes of several pets will be mixed. You won't get your pet's ashes back with this option. If you choose to have your pet privately cremated, your veterinarian can help make these arrangements for you, and the veterinary staff will notify you when your pet's ashes are ready for you to pick up. Your veterinary staff can also make a paw print or nose print as a keepsake of your pet for you. It has become fairly common for pet parents to save a bit of their pet's hair to keep in a locket or special container. There are also places that can create personal keepsakes such as bracelets, rings, and pendants containing a small amount of your pet's fur, or some ashes from your pet's cremains.

We tucked our angel into his forever sleep... in his home... in my arms...

Surrounded by all who loved and adored him...

I said a little prayer to let our heavenly grandmas know he was on his way...

A VET'S POINT OF VIEW

I remember the day you introduced me to your cute little puppy, who kissed my face, offered me his paw, devoured the cookies I offered. And our friendship began... Fast forward many visits later. I fell in love with your dog and, in fact, with your whole family. And, before you know it, here we are, fifteen or so years later... having to say goodbye.

The little one's got ailments that I can't fix anymore. And, of course, arthritis that the meds no longer help.

¹¹ NY AGM § 374 (3)(b), which is set forth in greater detail below in the Law & Legislation section.

I have known you and your pet for a third of my life, and most of my professional career. But now it's time. I am supposed to be professional. Objective. I am the doctor, after all. But my heart is breaking

My staff is there too. And, trust me, they may not show it, but their hearts are breaking for you, too. I have the needle in the pocket of my white coat. The same pocket that was always full of treats. I take a deep breath as I come into the room. Gotta stay strong now.

Our baby is giving me that sweet look he always does, the one that is followed by puppy kisses and a glance at the cookie jar. But he is too weak now. He is ready. You are not. I am not. But we love him too much to let him suffer. He would keep going as long as we asked him to. But we can't ask him to anymore. It's not fair to him. I wish I could find a way for him to live forever. But I don't have those magical powers.

He gives me puppy kisses and I kiss him back. There's not much left in his body that still works ... but that old tail still wags, just enough that I lose my shit on the inside but I try not to cry. Gotta stay strong. So I can do what I have to do.

His body relaxes... you hold him in your arms... you gently tell him that he's a good boy — the best boy in the world — and whisper how much you love him... over and over... and you are sobbing.

Another family has lost one of its most cherished members. I put my stethoscope to his heart to make sure it has stopped but he is held so tight to your chest that maybe that is your heart I hear pounding. Or maybe it's mine. I try so hard not to turn into a blubbing mess as I confirm that he has crossed the Rainbow Bridge.

You stay with our baby, as I leave the room to give you some alone time with him. The door closes behind me and, I don't know if you hear it, but I am now sobbing too. Our baby is gone... he will surely be missed... and now you have to face what I know will be one of the hardest parts of any of our lives: Entering your home when he is no longer there to greet you.

Please know that I understand how you feel. As you leave the clinic I just wish with every fiber of my being that you never had to face pain like this. And please know that I am so grateful I was able to be a small part of the journey.¹²

GUILT

*What more could I have done? What did I miss? Why didn't I realize sooner?
What if? ... What if? ... What if? ...*

¹² Paraphrased from this source: How your vet sees euthanasia, Kristin Andrews DVM, Fox Hollow Animal Hospital, foxhollowvet.com, Jan 26, 2023.

Guilt is a common and painful emotion experienced by many people after the loss of a pet. This guilt might stem from thinking you could have done more to help your pet, or from feeling that you didn't spend as much time with them as you should have, or from feeling that you waited too long to face the fact that the end was near and letting your pet go would be the right thing to do. It may even be from allowing yourself to have a moment of fun or joy or laughter while the pain of their passing is still fresh.

Pet parents often second-guess their decisions regarding pet care and treatment, leading to feelings of guilt and self-blame. Moreover, as previously mentioned, those who choose to give their pet what they hope to be a painless peaceful death by euthanasia are most likely to struggle with feelings of guilt post-loss.

The deep emotional bond shared with a pet can intensify guilt, as individuals may feel they could have done more to prevent their pet's suffering or prolong their life. They may even feel a profound sense of responsibility and blame themselves for being unable to prevent their pet's death.

And, even if circumstances made it unavoidable, not being present during the pet's final moments, or not saying goodbye, can trigger guilt and feelings of inadequacy.

Understanding that guilt is a natural part of the grieving process can help individuals come to terms with their emotions and begin the healing process.

Did I make the right decision? Did I wait too long to let him go? Or was it too soon?

Was he in pain? Was he scared?

I hope he didn't think he was no longer loved ... or that we abandoned him...

GRIEF: THE VARIOUS STAGES

Experiencing a range of emotions after the loss of a pet is completely normal. After all, the depth of grief reflects the depth of love shared, and healing always takes time, patience, and self-compassion.

Grieving a pet is a complex and deeply personal experience, and it's important to understand that everyone experiences it differently. There is no right or wrong way to grieve, and giving yourself time and space to process your emotions in your own unique way is a crucial part of healing.

It was the Swiss-American psychiatrist Kübler-Ross who originally developed the 5 classic stages to describe the process patients with terminal illness go through as they come to terms with their own deaths. It was later applied to other situations of grieving as well. The stages include:

1. **Denial:** In this stage, individuals believe the precipitating event is somehow mistaken, and may cling to a false, preferable version of reality. Some may also isolate themselves, avoiding others who may have accepted what is happening. Thus, initially there might be disbelief or denial of the pet's passing, with some struggling to accept the reality of the loss. Pet parents may find themselves calling for their pet or subconsciously expecting them to appear at some point.
2. **Anger:** When the individual recognizes that denial cannot continue, they become frustrated. Feelings of anger may arise, possibly directed at themselves, others, the circumstances surrounding the pet's death, or even the pet for leaving. This is a natural response to the pain of loss. Some may lash out

at loved ones, medical staff, and others. Kübler-Ross emphasized the need for people to do their best to let those who are in this stage feel their feelings and try not to take the anger personally.

3. **Bargaining:** It is common to imagine "what if" scenarios or bargain with higher powers in an attempt to reverse the loss. Examples include the terminally ill person who "negotiates with God" in an attempt to bargain for more time to live in exchange for a reformed lifestyle.

4. **Depression:** During this stage, the individual despairs from the recognition of the calamity. Deep sadness, loneliness, hopelessness, and a sense of emptiness are prevalent in this stage as the reality of the pet's absence sets in. In this state, the individual may become silent, refuse visitors and spend much of the time mournful and sullen.

5. **Acceptance:** Eventually, individuals begin to accept the loss and gradually find ways to move forward. This does not mean forgetting the pet, but rather finding a way to cherish their memory while continuing with life.

Kübler-Ross and her successors also identified additional stages of emotional response beyond the five widely recognized stages of grief. She also acknowledged other emotional responses including guilt, anxiety, numbness, and withdrawing emotional investment from other objects or relationships.

The more recent version is:

1. **Shock and Denial** - This initial stage is a natural defense mechanism, where the reality of the loss is difficult to accept.
2. **Pain and Guilt** - As the initial shock wears off, intense feelings of pain, sadness, and guilt may surface.
3. **Anger and Bargaining** - The anger can be directed at oneself, others, or even the pet or a higher power. Bargaining involves trying to negotiate with a higher power or trying to make deals in an effort to change the situation.
4. **Depression, Reflection, and Loneliness** - This stage is marked by feelings of profound sadness, withdrawal, and hopelessness.
5. **Adjustment to Life (also called "Upward Turn")** - A gradual shift towards a more stable and peaceful state, where the intensity of negative emotions begins to diminish.
6. **Your New Normal (also called "Reconstruction")** - Individuals begin to integrate the loss into their lives and build a new sense of normalcy.
7. **Acceptance and Hope** - The final stage involves coming to terms with the loss, accepting it as a part of life, and beginning to experience a sense of hope for the future. While it is at this stage that many people can once again conceive of getting another pet, in situations where unforeseen life events bring a new pet into a person's life, that can shorten the painful stages and introduce or speed up the "hope" stage.

Apart from understanding these emotions, it's also important to remember that the grieving process is not linear, it is fluid, and moving back and forth between stages is quite normal. These feelings are normal, and seeking support from friends, family, or support groups can be incredibly beneficial.

People must also remember that their grief is valid, and taking time to process it is a crucial step toward healing. (See also Law & Legislation discussion, below, the issue being the ability to take off from work and other activities to be able to go through the grieving, recovery, and healing process.)

Common Physical Symptoms

Physical symptoms of grief are also common. They can vary from person to person, but some common symptoms include: Fatigue, Headaches, Nausea, Loss of appetite, Difficulty sleeping, Muscle tension and pain, Chest pain, Shortness of breath. Physical symptoms of grief after pet loss can be mild or severe and can last anything from days to months or even longer after the loss of a beloved companion.

The physical symptoms of grief are a normal response to the emotional stress of losing a pet. Your body responds by releasing stress hormones like cortisol and adrenaline, which can cause physical changes such as increased heart rate, muscle tension, and changes in the digestive system. Besides the release of stress hormones, the physical symptoms of grief can also be caused by the disruption of daily routine and sleep patterns. After the loss of a pet, people may find it difficult to eat, sleep, or exercise as they normally would, which can contribute to physical symptoms of grief.

***** When to Seek Professional Help *****

While physical symptoms of grief are common and considered normal for a period, if they become severe or persistent, it may indicate the need for professional help.

If you are experiencing chest pain, shortness of breath, or other severe physical symptoms, you should seek medical attention immediately.

In addition to medical help, you may also benefit from talking to a mental health professional about your grief. A therapist can help you work through your emotions and develop coping strategies to manage your physical symptoms of grief.

DON'T FORGET TO TAKE CARE OF YOURSELF

Healing After the Loss of a Pet

While your pet's pain and suffering may be over, this isn't the end of your emotional journey. It's important to acknowledge the depth of the pain and grief you are feeling over your loss. Always keep in mind that whatever you are feeling is valid, and it's okay to grieve deeply for the best friend who has touched your life so significantly.

As you work through this difficult time, don't hesitate to reach out to your support system, including friends and family who understand your bond with your pet. You may also find comfort in connecting with support groups or consider grief counseling.

Self-care

Self-care differs for each person, and developing habits and rituals that help you feel better on a day to day basis is important during this difficult time. Therefore, consider allowing yourself the time to grieve, feel your emotions, and practice some healthy self-compassion and kindness when dealing with them.

Here are some key self-care strategies that can help someone process through their grief experience.¹³

Let yourself grieve: Allow yourself to grieve in your own way, on your own timetable. The stages are not a rigid linear order but a flow. Those experiencing grief can feel angry that life hasn't slowed down for the rest of the world. Give yourself time to feel, experience, and let the emotions you are feeling release along your journey through grief. (See also Law & Legislation discussion, below, the key being the ability to take time off to do so.)

Remember all the positive memories you have of your beloved pet:

Focusing on the affection and good times you shared is a positive and mentally uplifting way to honor your pet's life and memory. Take time to reflect either through writing, storytelling, or whatever form of expression brings you comfort. This allows your mind and body to move away from the pain of loss to the more positive experience of remembering your time spent together with your pet. (Of course, make sure you don't end up using this method as a way to avoid experiencing pain, because we must experience both as part of the healing process.)

Continue to meet your basic needs: Don't forget to take care of your physical health by eating well, exercising, and getting enough sleep. One of the most frequent complaints in the immediate phase of grief, or acute phase, is the complete loss of appetite. Sleep is also commonly very disturbed as our mind can be rapidly attempting to process through the experience. Try, as best you can, to continue your usual eating, sleeping, resting, exercising, and other daily routines.

Embrace relaxation techniques: Consider practicing relaxation techniques such as meditation, deep breathing exercises, yoga, mindful eating and exercising, to promote feelings of calm and serenity.

Maintain routines with your human family and surviving pets as best you can:

Animals thrive on routines and structure. Remember, while you're grieving, your kids and other household members, and your surviving pets are also experiencing the loss of their companion. Be mindful of what your kids and human family are going through, and accommodate their grieving process. Dogs experience grief and can search for their pack member. Cats may hide or spend more time alone, changing behavior while they grieve the loss of their mate. Try to maintain walking routines and feeding schedules as not to disrupt their process or your own. Routines allow us a sense of structure and familiarity, although the first few times can be painful, these immediate triggers can reduce over time.

Celebrate the memory and love of your pet:

¹³ 7 Self-Care Essentials While Grieving the Death of a Pet, Adam Clark LCSW, AASW, Psychology Today, Feb. 13, 2017, available at <https://www.psychologytoday.com/us/blog/animal-attachment/201702/7-self-care-essentialswhile-grieving-the-death-of-a-pet?msocid=35fd2cd4a5d96a261c1d3c67a1d96834>

Memorializing your beloved pet can be a good way of reaching some form of closure. Some people choose to write a letter, some have funerals and services, some people create mementos including items made with the pet's hair, ashes, collars and paw prints. Others find a favorite space from their pet's life and spend some time there.

Seek support: Don't hesitate to seek support from understanding friends or relatives, or from support groups, or seek professional help. Online groups geared toward pets and their loss offer a group of like minded sympathetic people who understand what you're going through and can offer advice and support.

Journaling: Writing in a journal can be a comforting way to express emotions and recall memories.

Read grief books: Grief books can provide valuable insights and support during difficult times, especially when coping with the loss of a beloved pet. These books offer perspectives, coping mechanisms, and stories that resonate with your own experience of grief. Reading about others' journeys through grief can offer comfort, validation, and new ways to process your emotions.

Volunteer at an Animal Shelter: Volunteering at an animal shelter can be a deeply rewarding way to honor your beloved pet's memory while also helping other animals in need. Spending time caring for and interacting with shelter animals can provide a sense of comfort, fulfillment, and purpose during your healing process.

Donate in your pet's name: Making a donation to an animal charity or shelter in your pet's name is a way to give back and support other animals in need.

Join Grief Support Groups: These groups, often consisting of individuals who have been or are currently going through the same thing as you, can offer a safe space to share your feelings and receive insights, validation, and empathy from those who understand the depth of your grief.

Start a Social Media Page in Your Pet's Name: Starting a social media page dedicated to your departed pet can be a heartfelt way to honor their memory, share moments of joy, and express your feelings in a creative and lasting manner. This doesn't necessarily have to be a public profile but even a private space will serve as a digital tribute where you can post photos, memories, messages, and reflections dedicated to your beloved companion and the impact they had on your life.

THE CURRENT STATUS OF RELEVANT LAW & THE NEED FOR MORE LEGISLATION

Among the few relevant laws in New York law are those found in Article 26 of the Agriculture and Markets Law.

Article 26 — Animals — AGM § 374 lays out the specifics of Euthanasia and provides:

3. a. "[E]uthanasia of animals ... shall be accomplished solely by means of injection of sodium pentobarbital or sodium pentobarbital solution administered by a certified euthanasia technician, a licensed veterinarian or a licensed veterinary technician. Euthanasia by intracardiac injection of sodium pentobarbital or sodium pentobarbital solution shall be performed only upon animals that are heavily sedated, anesthetized, or comatose. However, only a licensed veterinarian may perform euthanasia by intracardiac injection of sodium pentobarbital or sodium pentobarbital solution upon animals that are not heavily sedated, anesthetized or comatose and only when such licensed veterinarian determines that such intracardiac injection is the most humane option available. "

AGM § 374 further provides: "[3]b. No animal shall be left unattended between the time that the euthanasia procedure begins and the time when death is confirmed. The body of a euthanized animal shall not be disposed of in any manner until death is confirmed by a licensed veterinarian, a certified euthanasia technician or a licensed veterinary technician. Violations of this paragraph shall be punishable by a civil penalty of not more than five hundred dollars. The department of health shall promulgate regulations deemed necessary for implementation of the provisions of this subdivision, including regulations governing the training and certification of certified euthanasia technicians.

4. a. Any method of euthanasia other than that provided for in subdivision three of this section is prohibited except that euthanasia of an animal by gunshot is permissible as an emergency measure for an animal that is posing an imminent threat of serious physical injury to a person or to another animal as provided in section one hundred twenty-one-a of this chapter and where the use of a humane method of euthanasia prescribed in this section is rendered impossible or where a severely injured animal is suffering and cannot otherwise be aided."

One more section that addresses these issues is 4. b. which states: "Within ninety days of the effective date of this subdivision, any chamber used to induce hypoxia by means of a lethal gas shall be dismantled, rendered inoperable and beyond repair, and removed from the premises. Violations of this paragraph shall be punishable by a civil penalty of not more than five hundred dollars"

Sadly, a search for laws supporting permitted and paid leave from employment to care for a sick pet (i.e., a form of "sick leave") or to grieve a pet's passing away (i.e., a form of "bereavement leave") did not turn up any such laws in New York nor in any states, except as set forth below. Significantly, the Family and Medical Leave Act ("FMLA")¹⁴ and its state counterparts do not provide for employees to take paid time off to care for ill or dying pets nor to grieve their loss.

There is a sick leave ordinance in Emeryville, California, that allows local employees to take time off to care for certain categories of animals. It provides at Section 5-37.0 - "Paid Sick Leave" - that:

"An Employee may use Paid Sick Leave not only when he or she is ill or injured or for the purpose of the Employee's receiving medical care, treatment, or diagnosis... but also to aid or care for a family member of Employee.... An Employee may use Paid Sick Leave to aid or care for a guide dog, signal dog, or service dog."¹⁵

¹⁴ 29 U.S.C. 2601 et seq, which provides for 12 weeks of unpaid leave for an employee to care for his own ailments or those of family members but does not include any reference to pets or companion animals.

¹⁵ See Labor Employment Report, Sick Leave for Your Dog? Fiona W. Ong, March 23, 2017.

In New York, there are two bills currently pending:

On October 23, 2024, the New York City Council introduced a bill that would amend the New York City Earned Safe and Sick Time Act (ESSTA) to add pets and service animals to the category of who an employee can take their statutory sick leave to care for. The bill would add "care of a covered animal that needs medical diagnosis, care or treatment of a physical illness, injury or health condition or that needs preventive care" as a permitted reason to take paid sick leave, and defines "covered animal" as both companion animals and service animals.¹⁶

Similarly, on January 8, 2025, the New York State Assembly introduced a bill that would allow an employee to take paid sick leave to care "for the diagnosis, care, or treatment of a physical illness, injury or health condition of, or need for medical diagnosis of, or preventive care for, such employee's covered animal." It continues by defining as follows: "Covered animal: shall mean an employee's animal that is a service animal or an animal kept primarily for companionship."¹⁷

While there may be private employers who include pets in their own sick leave or bereavement employee benefits packages, it would certainly be important, humane, and progressive for the bills currently pending in New York City and New York State to become law. These would offer legal protections to employees, recognize the importance of pets as family members, and serve as examples for other jurisdictions to follow.

CONCLUSION

Our animal friends bring us joy, give us comfort, and enrich our lives with unconditional love. When they pass away, the void they leave behind is immense, and the pain can feel overwhelming. It is important to remember that grieving a pet is a complex and deeply personal experience, and that everyone experiences it in their own way. These emotions, while labelled as stages, are not necessarily experienced in a set order and can vary greatly in intensity and duration from person to person and from time to time. It is important to be compassionate with oneself, to seek support as needed, and to honor the pet's memory so that healing, comfort, and closure can take place.

It is also important to devote sufficient time and proper attention to this process. It is hard enough to get through this process without being pressed for time, preoccupied and distracted. Which is why the enactment of relevant laws like the bills pending in New York City and New York State can be so important. Let's hope our federal, state, and local legislatures— as well as private employers — realize this and put these protections in place.

¹⁶ New York City Council Int 1089-2024, Date Oct. 23, 2024, Sponsor: Shaun Abreu.

¹⁷ New York State Assembly Bill 2025-A791, Date Jan. 8, 2025, Sponsor: De Los Santos

***** When to Seek Professional Help *****

Again: While the mental, emotional, and physical symptoms of grief are common and considered normal for a period, if they become severe or persistent, it may indicate the need for professional help.

If you are having difficulty with feelings of depression, anxiety, sadness, hopelessness, feeling overwhelmed, or feeling that you can't go on, or you are experiencing chest pain, shortness of breath, or other severe physical symptoms, or even if you are not sure what exactly you're feeling, you should seek medical and psychological attention immediately.

Acknowledgement:

I take this opportunity to thank my fellow members of the NYSBA Committee on Animals and the Law for their helpful input, and dedicate this article to our beloved lost companion animals, including: Cody, Forest, Lilo, Midnight, Monty, Opi, Oreo, P.K., Peanut the Squirrel, Pinky, Raleigh, Roger, and all the other babies that have crossed the Rainbow Bridge – we know they are comfortable and together now, and we look forward to being reunited with them one bright and glorious day.....

NYSBA Committee on Animals and the Law
Member Spotlight: Adam Lepzelter, Esq.

Interview by Breanna C. Kromer, Esq.

Tell us a little bit about your background...

I grew up in northeast Queens, New York City; attended SUNY Albany where I received my Baccalaureate Degree in Criminal Justice and also a Master's Degree in the same as part of their combined program. I attended Hofstra Law School where I was involved in the Moot Court Team and the Public Justice Foundation. Prior to working where I am now, at a personal injury firm in Syosset handling plaintiffs-side lawsuits, I was an educator at several local colleges teaching various courses of law including criminal law and procedure, constitutional law, juvenile justice, and paralegal studies.

What made you decide to become an attorney?

I was told at a young age that I had a penchant for arguing and the law provides a great way to do that and help people at the same time. As a high school student, participating in the New York State High School Mock Trial Competitions stoked the fire too – not to mention growing up watching shows like *Law & Order* (the original) and movies like *...And Justice for All* and *My Cousin Vinny*. I continue volunteering to judge competitions and find it very rewarding. I encourage others to do the same.

Take us through your legal career since graduating law school...

Out of law school, graduating in the great recession, it was difficult finding work. I did a lot of freelance legal work and then eventually found a job teaching at a local two-year college. From there, I taught at several places focusing on criminal law and paralegal studies but also teaching courses in Animal Law. One of the great things about animals, as a legal subject, is that students are introduced to all areas of the law – wills/trusts (pet trusts), criminal law (laws against animal cruelty and dog fighting), constitutional law (standing and due process), contract law (selling/adopting animals), disability law (guide dogs) ...the list goes on. Since teaching, I have worked at a Plaintiff-side personal injury firm on Long Island.

What does your current law practice consist of?

We handle Plaintiff-side personal injury, spanning across the five boroughs of New York City and both long island counties. While the vast majority of our clients were injured in automobile accidents, we also represent those who have been injured by animals, including being bitten by dogs or being harmed by an exotic animal.

What sparked your interest in animal law?

My love of dogs and my sense of rage when animals are abused or mistreated. When I was in college, I did a research paper on the Americans with Disabilities Act and became fascinated with how each state has so many different definitions and requirements for guide dogs and where people with disabilities are able to bring and use their service dogs. Today, I get a lot of calls from friends and relatives regarding companion animals and where they *must* be allowed and where they *can* be allowed – especially in airplanes (recently there was a case regarding a peacock on a flight – a peacock!).

Is there a particular area of animal law that you feel most passionate about?

I am particularly interested in animal cruelty laws, specifically bans on dog fighting, and seeing these laws strengthened. Another area, which is growing exponentially, is pet trusts.

Tell us about your involvement in NYSBA COAL...

I have been involved in COAL for the past several years, recently serving on several committees including Publications (serving as Co-Chair this past year), Student Writing, and on the special projects sub-committee where I helped draft several sections including an update on laws relating to service dogs, including crimes against service dogs. As part of the Publications Committee, I helped draft *Laws & Paws* and have contributed word searches and articles to the past several issues. I also drafted the updated LEGALease Pamphlet for our committee, of which I am very proud. I have currently been elevated to the Executive Committee where I will begin serving as Secretary to COAL for the coming year.

What pets do you currently have?

I have one dog, Briscoe (named after Jerry Orbach's character from *Law & Order*, Det. Lenny Briscoe), who is going to be 8 this year. He was adopted from Northshore Animal League in Nassau County when he was a puppy (he was a rescue originally from Georgia). He is a wonderfully affectionate mutt, mostly redbone coonhound and whippet. He enjoys chasing squirrels, squeak toys, running in the park, and barking at the television when the New York Mets or New York Rangers are on (especially in recent seasons).

What do you enjoy doing for fun?

I am an avid golfer and bowler; I enjoy watching movies and playing boardgames (especially Clue).

Tell us one "fun fact" about you...

I have attended a home game at 19 MLB ballparks and have visited 36 U.S. states!

2025 Student Writing Competition 1st Place Finisher:

**Right to Rescue:
When Saving a Life Breaks the Law**

By: Destiny Ford of Florida A&M College of Law

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Introduction

A dog scratches at a car window in distress – locked in, trapped, and quickly overheating. On a cool day in Florida, a parked car can reach boiling temperatures of over 100° Fahrenheit in just twenty-five minutes.¹⁸ Horrified onlookers stand by, caught between compassion and self-preservation. They know that if they do not act quickly, this dog will die; but if they break a window, they may be sued. This is a problem that Florida addressed in 2016, with its passage of Florida Statute 768.139, recognizing the right to rescue vulnerable persons or domestic animals from a motor vehicle.¹⁹ This statute grants any person immunity from civil liability for any damage caused to a motor vehicle when the person forcibly enters the motor vehicle to rescue a domestic animal believed to be in imminent danger of suffering harm.²⁰ In this situation, the value of life outweighs the cost of a broken window, but that may not be the case for other common situations where a companion animal may be in imminent danger of suffering harm, particularly at the hands of an abusive or neglectful owner.

What happens when it is not a dog scratching at a locked car window, but a cat screaming in pain as it is being beaten? A person could be arrested or sued for pulling a cat from the grip of an abusive owner. The law protects one life, but not the other. The issue with existing law is that it is too limited, leaving a gap wide enough for animal abuse to continue while onlookers have no choice but to stand by and watch or intervene and risk prosecution.

This essay argues that Florida's limited right to rescue should be expanded to apply to all public situations where a companion animal is in imminent danger of suffering harm, so that any person

¹⁸ Heat, Autos, and Safety, Nat'l Weather Serv. (Nov. 18, 2024, 10:29 AM), <https://www.weather.gov/lx/excessiveheat-automobiles#:~:text=To%20prevent%20serious%20heat%20related,outside%20temperature%20is%20only%2073F!&text=%20Drink%20plenty%20of%20water%20and,if%20you're%20not%20thirsty.>

¹⁹ Fla. Stat. § 768.139 (2016).

²⁰ § 768.139.

who is acting in good faith and rescues the companion animal will not incur civil or criminal liability. Part one of this essay will establish that such an expansion is necessary because of the public's interest in protecting companion animals. Part two will examine the strengths and weaknesses of the current laws governing the protection of companion animals. Finally, part three will discuss the practicability of expanding the right to rescue and detail the procedure that such an expansion should follow.

1. Why the Right to Rescue is Necessary

Companion animals are suffering. An estimated ten million animals in the United States die by abuse every year.²¹ The exact number is likely much higher because animal abuse is widely unreported.²² In the United States, a companion animal is abused every sixty seconds.²³ This is a nationwide problem, and it is one that American citizens care deeply about.

Over 82 million homes in America have companion animals²⁴, compared to only thirty-five million homes which have human children.²⁵ Over half of United States homes own companion animals.²⁶ The majority of people in these homes consider their companion animals to be “family,” with many comparing pets to children.²⁷ Studies show that mothers exhibit the same brain waves when looking at a photo of their pet dog as when they are looking at a photo of their human child.²⁸

²¹ Animal Abuse Statistics 2024, Total Vet (Dec. 6, 2024, 8:55 PM), <https://total.vet/animal-abuse-statistics/>

²² Id.

²³ Id.

²⁴ 2024 APPA Nat'l Pet Owners Survey Stats, APPA (Nov. 18, 2024, 11:40 AM), <https://americanpetproducts.org/industry-trends-and-stats>

²⁵ Jeff Kunerth, Pets Are Not People, UCF Today (Nov. 19, 2024, 2:44 PM), <https://www.ucf.edu/news/pets-are-not-people-even-if-we-pretend-they-are/>

²⁶ Animal Abuse Statistics 2024, Total Vet (Dec. 6, 2024, 8:55 PM), <https://total.vet/animal-abuse-statistics/>

²⁷ 85% of dog owners consider their pooch their child, New York Post (Nov. 18, 2024, 1:15 PM), <https://nypost.com/2024/08/19/lifestyle/85-of-dog-owners-consider-their-pooch-their-child-new-survey-says/#>

²⁸ Patterns of Brain Activation when Mothers View Their Own Child and Dog, Plos One (Dec. 6, 2024, 9:49 PM), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0107205>

The American people further demonstrate their care for companion animals with how they spend their money: the pet industry is a billion-dollar industry, with Americans spending hundreds of dollars a month on their furry family members.²⁹ Over ninety percent of pet owners say that they would make personal sacrifices for their pets,³⁰ including going into debt,³¹ breaking up with their significant other,³² getting a different job,³³ or even moving to a different home.³⁴ Forty percent of dog owners say that, given the choice, they would save the life of their dog over a stranger from their hometown.³⁵ Because the American people feel so strongly about their own companion animals, it is not surprising that they are upset by the law's inadequate attempts to protect companion animals.

Nearly half of Americans think animal cruelty laws are not strict enough,³⁶ and one-third of Americans believe animals should be given the same rights as people.³⁷ Although the law has made great strides in protecting companion animals, the public is dissatisfied with the law's often archaic perspective and slow-moving progress.

2. Existing Law Has Laid a Foundation for the Right to Rescue, but It is Not Enough

²⁹ Animal Abuse Statistics 2024, Total Vet (Dec. 6, 2024, 8:55 PM), <https://total.vet/animal-abuse-statistics/>

³⁰ 20 million pets in the US experience poverty with their families, The Humane Society of the U.S. (Dec. 6, 2024, 9:53 PM), <https://www.humanesociety.org/news/20-million-pets-us-experience-poverty-their-families#:~:text=Furthermore%2C%209%20in%2010%20Americans,available%20for%20pets%20in%20need.>

³¹ Id.

³² Id.

³³ Id.

³⁴ Id.

³⁵ Harold Herzog, Would You Save a Puppy or a Child From a Burning Building?, bepress (Dec. 6, 2024, 10:00 PM), <https://works.bepress.com/harold-herzog/55/>

³⁶ Animal Cruelty Laws, YouGov (Nov. 19, 2024, 3:10 PM), <https://today.yougov.com/society/articles/42665-pets-yougov-poll-may-6-10-2022>

³⁷ Rebecca Riffkin, In U.S., More Say Animals Should Have Same Rights as People, Gallup (Nov. 19, 2024, 3:28 PM), <https://news.gallup.com/poll/183275/say-animals-rights-people.aspx>

Despite the cultural shift in how Americans think of companion animals, some courts have refused to deviate from the obsolete classification of companion animals as “personal property.”³⁸ This classification fails to distinguish a beloved family pet from a fungible piece of jewelry.

All fifty states punish the intentional killing of a cat or dog as a felony.³⁹ No similar penalty exists for a person who chooses to smash their own watch. Not a single state allows any person to break a car window to rescue an overheating phone, yet thirty-one states have passed laws similar to Florida’s Statute 768.139, shielding persons who break into motor vehicles from civil and/or criminal liability when it is for the purpose of rescuing an animal.⁴⁰ These laws already recognize the right to rescue in a limited capacity, but still fail to adequately protect companion animals.

A. The Right to Rescue in Other States

Some states have already dismissed the notion that companion animals are no different than property. In Travis v. Murray, the New York Supreme Court said, “Labeling a dog 'property' fails to describe the value human beings place upon the companionship that they enjoy with a dog. A companion dog is not a fungible item, equivalent to other items of personal property.”⁴¹ The Court acknowledged that companion animals are considered an “actual member of the family,” often “vying for importance alongside children.”⁴² In Corso v. Crawford Dog & Cat Hospital, Inc., the Court went so far as to say that calling a companion animal a “piece of personal property and no more is a repudiation of our humaneness.”⁴³ In addition to repudiating the classification of companion animals as “property,” courts in other states have also clearly established the public’s

³⁸ Brinkley v. Cty. of Flagler, 769 So. 2d 468, 471 (Fla. Dist. Ct. App. 2000).

³⁹ Companion Animals, Animal Legal Defense Fund (Nov. 18, 2:02 PM), https://aldf.org/focus_area/companion-animals/#:~:text=There%20are%20felony%20provisions%20in,killing%20a%20dog%20or%20cat.

⁴⁰ Rebecca F. Wisch, Is it illegal to leave your dog in a parked car?, Animal Legal & Historical Center (Nov. 19, 2024, 10:28 AM), <https://www.animallaw.info/topic/table-state-laws-protect-animals-left-parked-vehicles>

⁴¹ Travis v. Murray, 42 Misc. 3d 447, 454 (N.Y. 2013).

⁴² Id. at 451.

⁴³ Corso v. Crawford Dog & Cat Hospital, Inc., 97 Misc. 2d 530, 531 (N.Y. Civ. Ct. 1979).

interest in protecting companion animals by requiring mandatory reporting of animal abuse, applying the emergency exception to the warrant requirement to situations where companion animals are in danger, and establishing a right to rescue.

a. Some states require mandatory reporting of suspected animal abuse.

The District of Columbia requires any law enforcement officer or child or protective services employee “who knows of or has reasonable cause to suspect an animal has been the victim of cruelty, abandonment, or neglect, or observes an animal at the home of a person reasonably suspected of child, adult, or animal abuse,” to file a report within two days, or six hours if the animal is in immediate danger.⁴⁴ Upon receiving said report, “any agency charged with the enforcement of animal cruelty laws shall make reasonable attempts to verify the welfare of the animal.”⁴⁵ Tennessee requires “any state, county or municipal employee of a child or adult protective services agency” to report known or reasonably suspected animal abuse within two days.⁴⁶ Twenty-two states require veterinarians to report suspected animal abuse.⁴⁷ These laws mirror many mandatory reporting laws for child abuse⁴⁸ and show how companion animals can be classified similar to human children, as a vulnerable class in need of protection.

b. Some states have applied the emergency exception to the warrant requirement to protect companion animals from harm.

The Fourth Amendment requires law enforcement to obtain a warrant before searching or seizing any person’s private property.⁴⁹ However, the emergency exception allows for warrantless search or

⁴⁴ D.C. Code § 22-1002.1 (2008).

⁴⁵ § 22-1002.1.

⁴⁶ Tenn. Code Ann. § 38-1-402.

⁴⁷ Map of Veterinary Reporting Laws for Animal Cruelty, Animal Legal & Historical Center (Nov. 18, 2024, 5:16 PM), <https://www.animallaw.info/content/map-veterinary-reporting-laws-animal-cruelty>

⁴⁸ Mandatory Reporting Laws by State 2024, World Population Review (Nov. 18, 2024, 7:35 PM), <https://worldpopulationreview.com/state-rankings/mandatory-reporting-laws-by-state>

⁴⁹ U.S. Const. amend. IV, § 1.

seizure if the executing officer has “an objectively reasonable belief, based on articulable facts, that a warrantless entry is necessary to either render immediate aid to persons, or to assist persons who have suffered, or who are imminently threatened with suffering, serious physical injury or harm.”⁵⁰ Historically, this exception has been applied to situations where officers acted in the interest of protecting human life, however, some courts have started to apply this exception to cases where an officer has entered private property and seized a companion animal for the purpose of saving the animal from imminent danger or harm.

In Commonwealth v. Duncan, a law enforcement officer responded to a call from the defendant’s neighbor stating that there were two deceased dogs and one living but emaciated dog on the defendant’s property.⁵¹ Upon arrival, the officer observed the condition of the dogs and subsequently removed the padlock on the gate, entered the defendant’s yard without a warrant, and took custody of all three dogs.⁵² During trial, the defendant motioned to suppress evidence obtained at the scene of the crime, claiming that her Fourth Amendment rights were violated by the warrantless entry and seizure.⁵³ The Supreme Court of Massachusetts stated that because courts “have recognized a public interest in the preservation of life in general and in the prevention of cruelty to animals in particular,”⁵⁴ the emergency exception would allow an officer “to enter a home without a warrant when they have an objectively reasonable basis to believe that there may be [an animal] inside who is injured or in imminent danger of physical harm.”⁵⁵ In stating that the defendant’s Fourth Amendment rights were not violated, the Court emphasized that in the context of Massachusetts’s

⁵⁰ State v. Fessenden, 258 Ore. App. 639, 640 (2013).

⁵¹ Commw. v. Duncan, 467 Mass. 746, 747 (2014).

⁵² Id. at 748.

⁵³ Id. at 749.

⁵⁴ Id.

⁵⁵ Id. at 753.

anti-cruelty laws which seek to prosecute crimes against companion animals, not allowing police to proactively prevent injury to companion animals would be unreasonable.⁵⁶

Similarly, Texas courts have applied the emergency exception to protect companion animals where the State shows “(1) that the deputy had probable cause to believe the animal was being cruelly treated, and (2) that obtaining a warrant was impracticable because the deputy reasonably believed there was an immediate need to act to preserve a life.”⁵⁷ Courts in Texas have established that “if it was apparent that the animals were not being properly cared for in possible violation of the law,” it is reasonable for officers to enter the property and seize the animal.⁵⁸ In State v. Fessenden, Oregon’s Court of Appeals, relying on Oregon’s anti-cruelty statutes, established that the emergency exception may be used to protect animals because there is a “strong legislative and societal interest” in protecting animals from serious injury or harm,⁵⁹ “even when they are being killed in an otherwise lawful manner.”⁶⁰ A United States District Court has held that “animal control officers do not violate the Fourth Amendment when they enter property and remove animals that have been lawfully observed and appear to be in danger.”⁶¹

Although this exception has only been applied to law enforcement and animal control officers, these cases have clearly established that the public has a strong interest in protecting companion animals from harm, especially when that harm is inflicted by humans. Expanding Florida’s right to rescue to apply to situations where a companion animal is in public and in imminent danger of suffering harm would not implicate the Fourth Amendment because there is no reasonable

⁵⁶ Id. at 752.

⁵⁷ Pine v. State, 889 S.W.2d 625, 631 (Tex. App. 1994).

⁵⁸ McCall v. State, 540 S.W.2d 717, 721 (Tex. Crim. App. 1976).

⁵⁹ Fessenden at 646.

⁶⁰ Id. at 648.

⁶¹ Mills v. Rodabaugh, No. 08-14291, 2009 U.S. Dist. LEXIS 119424, at *2 (E.D. Mich. 2009).

expectation of privacy for “what a person knowingly exposes to the public.”⁶² However, establishing that protecting a companion animal justifies warrantless seizure does create the precedent that seizing a companion animal is legally justified so long as a reasonable person would determine that seizure is necessary to protect the companion animal. In addition to applying the emergency exception to protect companion animals, some states have also already expanded the right to rescue.

c. Ohio and California have expanded the right to rescue.

California expanded the right to rescue to apply to any companion animal impounded without sufficient food and water.⁶³ California’s Penal Code 597e states that if a companion animal is impounded “without necessary food and water for more than 12 consecutive hours, it is lawful for any person, from time to time, as may be deemed necessary, to enter into and upon any animal shelter in which the animal is confined, and supply it with necessary food and water so long as it remains so confined.”⁶⁴ Although this statute does not grant the right to seize the companion animal, it does expand the right to rescue to apply to shelter animals, further cementing the public’s ability to provide life-saving care to companion animals. In addition, certain cities in California have published resolutions supporting activists who were criminally charged for rescuing farmed animals, citing the public’s deep care for animals, and encouraging prosecutors to use resources to prosecute crimes against animals, rather than to prosecute non-violent animal activists.⁶⁵

⁶² McCall at 720.

⁶³ Cal. Penal Code § 597e (West 2019).

⁶⁴ § 597e

⁶⁵ Resolution No. 261-20 (2020).

The most expansive example of the right to rescue was established by Ohio’s Code Section 1717.13, which grants any person the right to take possession of any animal when it is necessary to protect the animal from neglect.⁶⁶ This statute gives any person the right to enter any place where an animal is impounded or confined for more than fifteen successive hours without “necessary food, water, or proper attention” to provide said food, water, or attention, and if “necessary or convenient, he may remove such animal.”⁶⁷ For the purposes of this statute, Ohio defines “animal” as including “every living dumb creature,”⁶⁸ which would encompass companion animals. Florida should follow the precedent set by Ohio and expand its right to rescue to apply to all public situations where a companion animal is in imminent danger of suffering harm.

B. Florida Law Governing Companion Animals

Existing Florida law has recognized that companion animals are living creatures who are capable of suffering and the public’s interest in preventing that suffering. Florida has enacted anti-cruelty laws and cross-reporting laws to protect companion animals from abuse. Florida has also applied the emergency exception to the warrant requirement to protect animals. In addition, Florida has enacted “Good Samaritan” laws which encourage bystanders to provide support during emergency situations.

Despite Florida’s existing law governing the protection of companion animals, there is not sufficient protection for companion animals in Florida. Florida law provides any person the right to rescue a companion animal from a hot car, but the right to rescue does not apply to any other situation where a companion animal is suffering harm. This boundary is arbitrarily drawn and fails to adequately protect companion animals from harm.

a. Florida’s existing law has established the necessity of protecting companion animals.

⁶⁶ Ohio Rev. Code Ann. § 1717.13 (West 1953).

⁶⁷ § 1717.13

⁶⁸ Ohio Rev. Code Ann. § 1717.01 (West 2021).

Florida has recognized that companion animals are living beings capable of suffering.⁶⁹ Florida has defined “animal” as including “every living dumb creature.”⁷⁰ Florida’s Supreme Court has established that preventing harm to animals is a legitimate government purpose for passing legislation.⁷¹ Florida Statute 828.12 states that any person who “unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner” commits animal cruelty⁷² and can be charged “with a separate offense for each animal such cruelty was committed upon.”⁷³ This statute recognizes each animal as a separate victim of abuse.

Florida Statute 828.13 prohibits any person from confining any animal without proper food, water, or air, or leaving any animal to die.⁷⁴ Florida Statute 828.073 grants any law enforcement or animal control officer the right to remove any neglected or mistreated animal from its present custody.⁷⁵ In Brinkley v. Cnty. Of Flagler, the Court found that a warrantless entry and seizure of 402 dogs and puppies was constitutional because the “distress of the animals was apparent to the deputy and the investigator, and any reasonable person would also have concluded that an urgent and immediate need for protective action was warranted.”⁷⁶ Therefore, Florida has granted police and animal control officers the right to seize any animal for the purpose of rescuing the animal from abuse or neglect.

⁶⁹ Houk v. State, 316 So. 3d 788, 790 (Fla. Dist. Ct. App. 2021).

⁷⁰ Fla. Stat. § 828.02 (1901).

⁷¹ Gardner v. Johnson, 451 So. 2d 477, 478 (Fla. 1984).

⁷² Fla. Stat. § 828.12 (2018).

⁷³ § 828.12.

⁷⁴ Fla. Stat. § 828.13 (1889).

⁷⁵ Fla. Stat. § 828.073 (2015).

⁷⁶ Brinkley at 472.

Florida Statute 39.208 requires “any person who is required to investigate child abuse, abandonment, or neglect” who “knows or has reasonable cause to suspect that animal cruelty . . . has occurred at the same address” to file a report within 72 hours.⁷⁷ Florida Statute 741.30 allows companion animals to be included in domestic violence protective orders.⁷⁸ Both of these statutes classify companion animals similarly to children and allow proactive measures to be taken to protect both classes from potential abuse.

Florida’s strongest precedent for the right to rescue is Florida Statute 768.139, which grants civil immunity to any person who forcibly enters a motor vehicle to remove a companion animal from the motor vehicle.⁷⁹ In order for the statute to apply, the person must have a good faith and reasonable belief that the companion animal is in imminent danger of suffering harm and that forcibly entering the motor vehicle is necessary to remove the companion animal.⁸⁰ The person must also notify law enforcement and remain with the animal until law enforcement arrives.⁸¹ This statute recognizes the right to rescue in the limited circumstance of a companion animal being trapped in a car, but requires the rescuer to act reasonably. This requirement aligns with Florida’s “Good Samaritan” law.

Florida Statute 768.13 grants civil immunity to any person “who gratuitously and in good faith renders emergency care or treatment” in any emergency situation.⁸² The statute also specifically extends civil immunity to any person who “gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency on or adjacent to a roadway.”⁸³ Similarly

⁷⁷ Fla. Stat. § 39.208 (2021).

⁷⁸ Fla. Stat. § 741.30 (2024).

⁷⁹ Fla. Stat. § 768.139 (2016).

⁸⁰ § 768.139.

⁸¹ § 768.139.

⁸² Fla. Stat. § 768.13 (2011).

⁸³ § 768.13.

to Florida Statute 768.139, a person is only granted immunity under Florida Statute 768.13 if the person acts reasonably under the circumstances.⁸⁴

Although Florida law has established that protecting companion animals is a necessary and a legitimate government purpose and enacted laws intended to protect companion animals, the existing law is not comprehensive enough to adequately accomplish that purpose.

b. Existing Florida law is not comprehensive enough to adequately protect companion animals from potential abuse.

Florida's law granting civil immunity to any person who rescues a companion animal from a motor vehicle or who provides emergency care to a companion animal is intended to encourage private citizens to act quickly and reasonably in emergency situations in order to reduce potential suffering of companion animals.⁸⁵ However, these statutes only grant a person with civil immunity, leaving any person who acts in the interest of protecting companion animals vulnerable to criminal prosecution.⁸⁶ The failure to provide criminal immunity to these persons prevents the statutes from practically accomplishing their intended purpose of encouraging persons to act to prevent potential harm to companion animals. A reasonable person may not act to protect a companion animal if he knows that he may be arrested or criminally prosecuted for his acts.

Florida's right to rescue does not currently provide any person with the right to rescue a companion animal in most situations where a companion animal may be in imminent danger of suffering harm. Granting any person the right to rescue a companion animal in situations where the companion animal is trapped in a motor vehicle, but not in any other situation is arbitrary and does not align with existing Florida law. By applying the emergency exception to protect companion

⁸⁴ § 768.13.

⁸⁵ § 768.13.

⁸⁶ § 768.13.

animals, Florida law has clearly established that the suffering of companion animals is a matter of public concern, and the warrantless seizure of companion animals is justified when done to prevent further suffering. To rectify these inconsistencies and better protect companion animals from harm, Florida should expand the right to rescue to apply to all public situations and to grant civil and criminal immunity to any person who rescues any companion animal who is in imminent danger of suffering harm.

3. Practicality and Procedure

To be practicable, Florida's expansion of its right to rescue should encourage private citizens to act reasonably in order to protect companion animals by providing civil and criminal immunity. Because the expansion of the right to rescue has the potential to cause conflict, the statute should be written so as to avoid any conflicts with citizens' constitutional rights. Applying the right to rescue only to situations occurring in the public will avoid any Fourth Amendment conflicts and following the precedent set by Florida Statute 768.139 will avoid any infringement of an owner's procedural due process. The best way to codify Florida's expanded right to rescue is to include it in Florida Statutes Chapter 828 because that is where Florida has codified its laws governing the protection of animals.

A. Florida's right to rescue should provide civil and criminal immunity to any person who acts reasonably to protect companion animals.

Florida's right to rescue should be written with the intent to encourage private citizens to act reasonably and quickly in emergency situations in order to protect companion animals. To practically accomplish its purpose, the statute which expands the right to rescue should follow the precedent set by Florida Statute 768.139 and Florida Statute 768.13 by requiring any person acting within the

statute to act reasonably and have a good faith basis for seizing the companion animal.⁸⁷ This requirement will deter persons from acting maliciously or negligently when attempting to rescue a companion animal. If a person attempts to use the statute as a justification where the person has maliciously targeted the owner of a well-taken care of companion animal, the statute should not apply. Similarly, if a person attempts to use the statute as a justification where the person has negligently or recklessly disregarded the health or safety of another person or companion animal, the statute should not apply.

The statute should follow the precedent set by California's Penal Code § 597.7 and extend civil and criminal immunity⁸⁸ to any person acting within the statute. If the statute extends only civil immunity but not criminal immunity, a reasonable person may not act for fear of prosecution. If the statute extends criminal immunity but not civil immunity, a reasonable person may not act for fear of being sued. The most practical way to ensure that private citizens act in order to protect companion animals is to extend civil and criminal immunity to any person acting within the statute.

B. Florida's right to rescue should avoid conflicting with the constitutional rights or procedural due process owed to companion animal owners.

To avoid conflicting with the constitutional rights of animal owners, Florida's right to rescue should only apply to situations where a companion animal is in imminent danger of suffering harm while in public. American citizens have a Fourth Amendment right to be free from unreasonable seizures,⁸⁹ but that right does not extend to "what a person knowingly exposes to the public."⁹⁰ By granting the right to rescue in situations occurring in public but not those which occur in private, the

⁸⁷ § 768.139.

⁸⁸ Cal. Penal Code § 597.7 (West 2019).

⁸⁹ U.S. Const. amend. IV, § 1.

⁹⁰ McCall at 720.

statute will avoid conflicting with the Fourth Amendment right of companion animal owners to be free from unreasonable seizures.⁹¹

Florida Statute 768.139 requires a person to notify law enforcement before forcibly entering a motor vehicle to rescue a companion animal⁹² and wait with the companion animal “in a safe location until law enforcement or other first responder arrives.”⁹³ To avoid unnecessary conflict between private citizens, the statute expanding Florida’s right to rescue should follow the precedent set by Florida Statute 768.139 by requiring any person acting within the statute to notify law enforcement or animal control as soon as he is in a safe location with the companion animal so that the proper authorities can take custody of the companion animal. Requiring the rescuer to notify law enforcement as soon as reasonably possible limits the risk of confrontation between private citizens and ensures the statute is enforced by the proper authorities.

The Due Process Clause of the Constitution forbids arbitrary deprivation of property.⁹⁴ To comply with the Constitution, the owner of a companion animal must be given notice of any charge against him and a meaningful hearing in front of an impartial decisionmaker before being deprived of his property interest in his companion animal.⁹⁵ To avoid arbitrarily depriving the owner of his property interest, the statute should follow the precedent set by Florida Statute 828.073 which sets forth certain requirements that must be met before a law enforcement officer can deprive an owner of the property interest in his companion animal.⁹⁶ This statute requires notice to be served to the companion animal’s owner and a hearing to be held within thirty days to determine whether the owner is fit to

⁹¹ U.S. Const. amend. IV, § 1.

⁹² § 768.139.

⁹³ § 768.139.

⁹⁴ U.S. Const. amend. XIV, § 1.

⁹⁵ Dep’t of Highway Safety & Motor Vehicles v. Hofer, 5 So. 3d 766, 771 (Fla. Dist. Ct. App. 2009).

⁹⁶ Fla. Stat. § 828.073 (2015).

have custody of the animal.⁹⁷ The statute to expand Florida's right to rescue should follow this precedent by requiring animal control to take temporary custody of the seized companion animal until the owner of the companion animal can be given notice and a meaningful hearing to determine whether he is fit to retain custody of the companion animal. If the owner of the companion animal is determined to be fit to retain custody of the companion animal, the companion animal must be returned to him. If the owner of the companion animal is determined to be unfit to retain custody of the companion animal, animal control should retain custody until it so chooses to transfer custody of the companion animal to the appropriate humane society or shelter. Following this precedent will ensure that the statute expanding Florida's right to rescue does not arbitrarily deprive any owner of a companion animal of his property interest in violation of the Constitution's Due Process Clause.

C. Florida's right to rescue should be codified in Florida Statutes Chapter 828.

Florida has codified laws governing animals in the Florida Statutes Chapter 828.⁹⁸ This chapter includes provisions concerning animals found in distress,⁹⁹ cruelty to animals,¹⁰⁰ and sexual abuse against animals.¹⁰¹ Chapter 828 also codifies Florida's procedures and delegation of power for enforcement of laws governing animals.¹⁰² Because expanding Florida's right to rescue will delegate the power to seize companion animals who are in imminent danger of suffering harm to private

⁹⁷ § 828.073.

⁹⁸ Fla. Stat. § 828.

⁹⁹ Fla. Stat. § 828.073.

¹⁰⁰ Fla. Stat. § 828.12.

¹⁰¹ Fla. Stat. § 828.126.

¹⁰² Fla. Stat. § 828.27.

citizens, the statute should be codified in Chapter 828 alongside the other anti-cruelty and enforcement statutes.

Florida's "Good Samaritan" law and the right to rescue a companion animal from a motor vehicle are located in Florida Statutes Chapter 768.¹⁰³ Chapter 768 is intended to govern negligence issues.¹⁰⁴ If Florida expands the right to rescue to apply to any public situation where a companion animal is in imminent danger of suffering harm, the right to rescue will apply to situations outside the scope of negligence. Therefore, Chapter 828, not Chapter 768, is the proper place to codify Florida's expanded right to rescue.

Conclusion

Millions of American citizens own and love companion animals, yet under current law, must stand by helplessly while abuse against companion animals occurs. To rectify the inconsistencies between Florida law and the public's interest in protecting companion animals, Florida should expand its right to rescue to grant civil and criminal immunity to any person who, while in public, observes a companion animal who is in imminent danger of suffering harm and therefore seizes the companion animal to protect the companion animal.

The expansion of Florida's right to rescue should follow the precedent set by trailblazing states such as California and Ohio which have expanded the right to rescue to grant civil and criminal immunity to any person who provides necessary food, water, or attention to a neglected companion animal. Florida's expansion of the right to rescue would align with existing Florida law that recognizes companion animals as a vulnerable class of living creatures which the public has a significant interest in protecting.

¹⁰³ Fla. Stat. § 768.

¹⁰⁴ § 768.

To ensure the statute that expands Florida's right to rescue is practical and accomplishes the purpose of protecting companion animals, the statute should comport with constitutional requirements by providing any owner of a companion animal with proper procedural due process. So long as Florida's right to rescue follows precedent and constitutional guidelines, the statute will further accomplish the public purpose of protecting companion animals from harm.

2025 Student Writing Competition 2nd Place Finisher:

Does the Endangered Species Act Protect Species' Habitat, Too? Employing Canons of Statutory Interpretation Towards a Broad Definition of Habitat

BY: Jonah Bluh of Pepperdine Caruso School of Law

Part 1

A. Introduction:

In 1973, Congress passed the ESA with the goal of “provid[ing] a means whereby the ecosystems upon the which endangered species and threatened species depend may be conserved.”¹⁰⁵ The ESA was a significant step towards addressing the public outcry for preserving endangered species and their ecosystems.¹⁰⁶ Because of the consensus national concern, the ESA gained bipartisan support and was heralded for its early wins—including contributing to the conversation of American staples like the Bald Eagle and the Grizzly Bear.¹⁰⁷ However, since its passing, the ESA has been subject to controversy and courtroom battles, generally pitting the economic interests of land developers against conservationists and their interests in protecting threatened species and their habitats.¹⁰⁸

¹⁰⁵ 16. U.S.C. § 1531(b) (1994).

¹⁰⁶ James Salzman, *Evolution and Application of Critical Habitat Under the Endangered Species Act*, 14 Harv. Env't L. Rev. 311, 313 (1990).

¹⁰⁷ *Id.* See also, Michael J. Bean, *Historical Background of the Endangered Species Act*, Endangered Species Act: Law, Policy, and Perspectives 11, 17 (Donald C. Baur & Ya-Wei Li, 3d ed., 2021) (enumerating some of those species). In 1995, Secretary of the Interior Bruce Babbitt claimed, “make no mistake about it, the Endangered Species Act is as American as apple pie. It has preserved our rich and diverse natural heritage. It has ensured that the next generation of Americans can inherit a land as beautiful as the land we so love.” *Id.*

¹⁰⁸ See, e.g., *Natural Res. Def. Council v. United States Dep't of the Interior*, 113 F.3d 1121, 1123 (9th Cir. 1997); *Conservation Council for Haw. v. Babbitt*, 2 F. Supp. 2d 1280, 1283 (D. Haw. 1998); *N. Spotted Owl v. Lujan*, 758 F. Supp. 621, 624-26 (W.D. Wash. 1991).

Habitat is an essential requirement of all living organisms, and protecting these habitats is vital to prevent extinction and promote recovery.¹⁰⁹ Therefore, critical habitat designations are one of the most important protections in the ESA. The most recent and impactful decision regarding the ability of federal agencies to protect species' habitats arose in *Weyerhaeuser Co. v. U.S. Fish & Wildlife Service*.¹¹⁰ Although the Supreme Court's unanimous ruling was a narrow one, it created a significant limitation on the Fish and Wildlife Service's ("FWS") ability and discretion to designate certain unoccupied areas as protectable "critical habitat."¹¹¹ Even after the *Weyerhaeuser* decision, many questions remain because the Supreme Court never defined what "habitat" actually means, and a district court never answered this question as the case settled on remand.¹¹² This remains a salient question that must be answered by giving "habitat" a broad and malleable definition to comport with the legislative intent and scientific understanding of the word as applied in the ESA.¹¹³ This is especially important given how rapidly habitats can change or vanish in our current climate-changing world.¹¹⁴

Part II of this Article will outline the creation of the ESA to address environmental concerns and its primary amendment interpreting the "critical habitat" provision. Part III will address the *Weyerhaeuser* decision, including its procedural history and an analysis of the Court's reasoning. This section will also dissect the 2019, 2020, and 2024 rules implemented by the FWS in response to *Weyerhaeuser*. Part IV will discuss, under tools of statutory interpretation, the shortcomings of the

¹⁰⁹ *Habitat*, National Geographic (last updated Oct., 19, 2023), <https://education.nationalgeographic.org/resource/habitat/>.

¹¹⁰ *Weyerhaeuser Co. v. United States Fish & Wildlife Service*, 586 U.S. 9 (2018).

¹¹¹ Kennedy Fichtel, *The Key Deer is Headed for Extinction: How Repealing a Trump-Era Federal Rule Defining "Habitat" Could Allow Assisted Migration to Save Species Threatened by Climate Change*, 34 St. T. L. Rev. 109, 111 (2022).

¹¹² See David Miller, *Settlement Eliminates 1,500 Acres of Designated Dusky Gopher Frog Critical Habitat*, Endangered Species L. & Pol'y (May 18, 2019), <https://www.endangeredspecieslawandpolicy.com/settlement-eliminates-1500-acres-of-designated-dusky-gopher-frog-critical-habitat>.

¹¹³ See 16 U.S.C. § 1531(B) (1973).

¹¹⁴ See Cawdrey, *supra* note 2.

Court's decision and why recent definitions fail to promote the legislative intent of the ESA and ignore a scientific understanding of the word "habitat." Lastly, part V will pose an original definition of "habitat" that both comports with a legislative and scientific understanding of the word and aims to better address the concerning rate of species extinction due to climate change.

Part II

A. The ESA and its Procedures:

Congress passed the ESA in 1973 to preserve ecosystems and protect endangered species from extinction.¹¹⁵ The ESA stands for the idea that each endangered species has "aesthetic, ecological, educational, historical, recreational, and scientific value" that deserves protection.¹¹⁶ It also explicitly states that conservation requires using "all methods and procedures" to protect a species, including the acquisition and protection of habitat.¹¹⁷

Under the ESA, the FWS promulgates rules and designations for terrestrial and freshwater species, and the National Marine Fisheries Service (NMFS) does the same for certain marine species.¹¹⁸ The Secretary of the Interior is then responsible for listing species as endangered or threatened, often doing so by consulting with either Service.¹¹⁹ As federal agencies, Congress has authorized the FWS and NMFS ("the Services") to add detail to laws through additional rules or regulations.¹²⁰

¹¹⁵ 16 U.S.C. § 1531(b) (2018).

¹¹⁶ 16 U.S.C. § 1531(a)(3).

¹¹⁷ 16 U.S.C. § 1532(3).

¹¹⁸ M. Lynne Corn & Alexandra M. Wyatt, Cong. Rsch. Serv., *The Endangered Species Act: A Primer*, 1-2 (2016).

¹¹⁹ *Id.* at 8.

¹²⁰ *Laws and Regulations*, U.S. Fish & Wildlife Service (last visited Nov. 14, 2014), <https://www.fws.gov/laws#:~:text=Implementing%20Laws&text=Congress%20has%20authorized%20the%20Fish,which%20we%20make%20needed%20changes>.

B. Critical Habitat Designations:

Recognizing the importance of habitat protection in protecting endangered species, Congress designed the ESA to address methods directed at the species and their ecosystems.¹²¹ However, the 1973 Act did not define critical habitat.¹²² The only mention of critical habitat was found in Section 7 of the original ESA, which mandated that all actions “authorized, funded, or carried out by [federal agencies]” not “result in the destruction or modification of habitat of such species which is determined by the Secretary . . . to be critical.”¹²³ Although not defined by the Act, habitat received a germane limitation from Congress.¹²⁴ Only habitats found to be “critical” by the Secretary’s determination would be protected.¹²⁵ As a species’ habitat can encompass more areas than what is considered “critical,” Congress intended to limit the amount of habitat to be preserved.¹²⁶

The ESA’s critical habitat provisions may be the most important provision for species protection. Congress understood that “[t]he loss of habitat for many species is universally cited as the major cause for the extinction of species worldwide.”¹²⁷ Further, Congress expressly stated that “if the protection of endangered and threatened species depends in large measure on the preservation of the

¹²¹ 16 U.S.C. §1531(b). Conversation is defined as “the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.” *Id.*; §1532(3).

¹²² *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 213 n.9 (1978). In a footnote, Chief Justice Burger stated that the ESA did not define “critical habitat.” *Id.* However, the Secretary of the Interior had administratively construed the term as: “any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include but are not limited to: physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air.” *Id.* (citing 43 Fed.Reg. 874 (1978) (to be codified as 50 CFR §402.02)).

¹²³ Endangered Species Act § 7.

¹²⁴ 16 U.S.C. §§ 1533, 1536, 1538 (2018); Isabella Kendrick, *Critical Habitat Designations Under the Endangered Species Act in an Area of Climate Crisis*, 121 Colum. L. Rev. 81, 87 (2021).

¹²⁵ *Id.*

¹²⁶ Darin, *supra* note 21, at 212.

¹²⁷ H.R. Rep. No. 95-1625, at 5 (1978), reprinted in 1978 U.S.C.C.A.N. 9453, 9455.

species' habitat, *then the ultimate effectiveness of the [ESA] will depend on the designation of critical habitat.*"¹²⁸

C. Regulations on Habitat

The original 1973 ESA prevented federal agencies from taking actions that would modify the habitats of species that the Secretary determined to be "critical."¹²⁹ However, the Act provided no mechanisms for designating or differentiating "critical habitats" from non-critical ones.¹³⁰ Congress first amended the ESA in 1978 to close this gap in response to the Supreme Court's first interpretation of "critical habitat" in *Tennessee Valley Authority v. Hill*.¹³¹

In *Hill*, the Court enjoined the construction of the Tellico Dam because the snail darter, an endangered fish living on a small portion of the Little Tennessee River, would have been "completely inundated by the reservoir created as a consequence of the Tellico Dam's completion."¹³² The Court came down very hard on the side of species conservation in its first decision regarding the ESA.¹³³ When the decision was published, the Tellico Dam had already cost over \$110 million in construction and was about 75% completed.¹³⁴ In its decision, the *Hill* Court emphasized the strength of the ESA, noting that "[t]he plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, *whatever the cost. This is reflected not only in the stated policies of the Act, but in literally every section of the statute.*"¹³⁵ The *Hill* decision sparked ire among prominent

¹²⁸ H.R. REP. No. 94-887, at 3 (1976) (emphasis added).

¹²⁹ Kalyani Robbins, *Recovery of an Endangered Provision: Untangling and Reviving Critical Habitat Under the Endangered Species Act*, 58 Buff. L. Rev. 1095, 1103-04 (2010).

¹³⁰ *Id.*

¹³¹ *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978).

¹³² *Id.* at 153.

¹³³ *Id.* at 192.

¹³⁴ *Id.* at 197, 213 n.6.

¹³⁵ *Id.* at 184 (emphasis added).

land developers, resulting in calls to amend the ESA by clarifying the critical habitat designation process.¹³⁶ Congress obliged.¹³⁷

As amended post-*Hill*, the ESA restricted the designation of a “critical habitat” in multiple ways. First, the amendments added a statutory imposition on the Secretary to conduct a cost-benefit analysis before designating any critical habitat.¹³⁸ Second, the 1978 amendments created two categories of critical habitat: occupied and unoccupied.¹³⁹ Occupied critical habitat is defined as: “[T]he specific areas within the geographical area occupied by the species ... on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection.”¹⁴⁰ Unoccupied critical habitats does not require the presence of any physical or biological features (PCEs) but is still defined as “specific areas outside the geographical area occupied by the species at the time it is listed . . . [that] *are essential for the conservation of the species.*”¹⁴¹

Part III

A. *Weyerhaeuser*

The most recent and impactful decision on the designation of critical habitats came in 2018 when the Supreme Court decided *Weyerhaeuser Co. v. United States Fish & Wildlife Service*.¹⁴² In *Weyerhaeuser*, the plaintiffs owned land in an area the FWS marked as “unoccupied critical habitat” for the endangered dusky gopher frog.¹⁴³ The FWS designated 1,544 acres, dubbed “Unit 1,” as

¹³⁶ James Salzman, *supra* note 3, at 313.

¹³⁷ *Id.*

¹³⁸ *Id.* at 339.

¹³⁹ 16 U.S.C. § 1532(5)(A).

¹⁴⁰ *Id.*

¹⁴¹ 16 U.S.C. § 1532(5)(A)(emphasis added).

¹⁴² *Weyerhaeuser Co. v. United States Fish & Wildlife Service*, 586 U.S. 9 (2018).

¹⁴³ *Id.* at 16.

unoccupied critical habitat for the endangered frog because the site contained five ephemeral ponds, which the FWS called “essential to the conservation” for the frog because only these ponds were used as breeding grounds.¹⁴⁴ However, the dusky gopher frog requires open-canopy forests to survive, and much of the area designated by the FWS was in a closed-canopy forest plantation.¹⁴⁵ The FWS still designated this site as unoccupied critical habitat because it found that this area met the statutory definition of “essential” due to the then-existing four zones where the frog lived, which had essential elements to ensure survival, could all be wiped out in one natural disaster due to their close proximity.¹⁴⁶

Weyerhaeuser, the landowners, then sued the FWS, claiming that the area could not be designated as “critical habitat” because it was not a current “habitat” for the dusky gopher frog.¹⁴⁷ The Fifth Circuit affirmed the FWS’s designation, rejecting the petitioner’s argument that the definition of critical habitat contains a habitability requirement.¹⁴⁸ The Supreme Court granted review and certified two issues, one germane to the future of critical habitat designations: “whether ‘critical habitat’ under the ESA must also be habitat” for the given endangered species.¹⁴⁹

The Court addressed this question by interpreting the use of the term “critical habitat” in the statute.¹⁵⁰ Using a textualist approach, the Court noted that “[s]tatutory language cannot be construed in a vacuum” and looked at the surrounding context.¹⁵¹ The Court inquired into Section

¹⁴⁴ *Id.* (“But the Service found that the site retained five ephemeral ponds ‘of remarkable quality,’ and determined that an open-canopy forest could be restored on the surrounding uplands “with reasonable effort.”)

¹⁴⁵ *Id.* at 18.

¹⁴⁶ *Id.* at 16. Additionally, the FWS explained that the area called “Unit 1” qualified as unoccupied critical habitat under the ESA because it could be converted into an open-canopy forest with no more than a “reasonable effort,” its distance from other existing populations, and the existence of these high-quality breeding ponds. *Id.*

¹⁴⁷ *Id.* at 18. The developers contended that Unit 1 could not be critical habitat for the frog because survival would require replacing the closed-canopy forest encircling the ponds with an open-canopy pine forest. *Id.*

¹⁴⁸ *Markle Interests, L.L.C. v. U.S. Fish & Wildlife Serv.*, 827 F.3d 452, 468 (5th Cir. 2016), *vacated & remanded sub nom.*

¹⁴⁹ *Weyerhaeuser*, 586 U.S. at 19.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 20.

1553(a)(3)(A)(i), which states that the Secretary must designate any habitat of the species that is considered a “critical habitat.”¹⁵² Looking at the plain meaning of the word habitat, the Court concluded that:

Only the “habitat” of the endangered species is eligible for designation as critical habitat. Even if an area otherwise meets the statutory definition of unoccupied critical habitat because the Secretary finds the area essential for the conservation of the species, Section 4(a)(3)(A)(i) does not authorize the Secretary to designate the area as *critical* habitat unless it is also *habitat* for the species.¹⁵³

The Court noted that the Fifth Circuit erroneously determined there is no habitability requirement in the text of the ESA. Thus, the Fifth Circuit had no reason to interpret what “habitat” for a species actually consists of. However, the Supreme Court did not say that “habitat” must have a habitability requirement; it merely rejected the Fifth Circuit interpretation. The Supreme Court remanded the case to decipher the meaning of “habitat” in the context of determining “critical habitat.”¹⁵⁴ However, the case settled, and “habitat” was never defined.¹⁵⁵

In its narrow holding, the Supreme Court ruled that to garner the protection of the ESA, areas designated as “critical habitat” must be “habitat,” but what does that mean? By not providing a definition, the Supreme Court ducked the chance to resolve a major ambiguity and important issue regarding endangered species in an age of climate change and mass extinction.¹⁵⁶ The Petitioner, Weyerhaeuser, argued that habitat imputes a habitability requirement—meaning that any area designated as either form of critical habitat must be habitable by the given species right now, even if they don’t currently live there—no reasonable modifications may take place for the endangered species to survive in that location.¹⁵⁷

¹⁵² *Id.*

¹⁵³ *Id.* (emphasis added).

¹⁵⁴ *Id.* at 21.

¹⁵⁵ See Miller, *supra* note 13.

¹⁵⁶ Wilson, *supra* note 74, at 765 (2020).

¹⁵⁷ Weyerhaeuser, 586 U.S. at 18.

Alternatively, the FWS agreed with the Fifth Circuit interpretation and argued that habitat can include areas where the species might not or could not currently inhabit, but either used to live or might migrate to with reasonable modifications given some of the important ecological features of that area.¹⁵⁸ The FWS argued that habitats need no habitability requirement; habitats can be places deemed “essential” because the endangered species may need to move there in the future for their survival or recovery.¹⁵⁹ The question of a habitability requirement can only be answered by broadly defining “habitat.”

B. Aftermath of *Weyerhaeuser*

Before 2016, the FWS followed a “rigid step-wise approach” that only allowed for the designation of unoccupied critical habitat after first designating all occupied critical habitat. However, during the Obama administration in 2016, the FWS, with a democratic appointee serving as agency president, promulgated a rule that removed the requirement for the Services to consider all occupied habitats before unoccupied habitats, allowing for more efficient designations of critical habitat.¹⁶⁰

After the *Weyerhaeuser* decision and notably under the Trump administration, the FWS published two rules attempting to regulate and define “habitat” under the ESA.¹⁶¹ In August 2019, the FWS published a final rule changing the implementation of critical habitat back to how it operated before 2016.¹⁶² Although the 2019 rule left the term habitat undefined, it imposed a new requirement for the designation of unoccupied critical habitat that: “the Secretary must determine that there is

¹⁵⁸ *Id.* at 20 (“The Center for Biological Diversity contends that the statutory definition of critical habitat is complete in itself and does not require any independent inquiry into the meaning of the term “habitat,” which the statute leaves undefined.”).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *See generally*, Regulations for Listing Species and Designating Critical Habitat, 84 Fed. Reg. 45,020 (Aug. 27, 2019).

¹⁶² *Id.* at 021 (emphasis added).

a *reasonable certainty* both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.”¹⁶³ The FWS explained that a “reasonable certainty” does not require the Secretary to be absolutely certain about its designations, but the standard requires a “high degree of certainty,” seriously narrowing the FWS’s ability to designate unoccupied critical habitat.¹⁶⁴ This rule returned to the two-step approach used before 2016, only allowing for designations of unoccupied critical habitat where occupied critical habitat “would be inadequate to ensure the conversation of the species.”¹⁶⁵

For example, had the FWS tried to designate an unoccupied critical habitat for the dusky gopher frog after this 2019 Final Rule, they likely could not because there was an adequate occupied critical habitat area—where the frog currently lived.¹⁶⁶ Further, there was no “reasonable certainty” that Unit 1 would ensure species survival given that the forest contained closed-canopy and not open-canopy trees that the frog needs to survive, thus not meeting the rigorous burden of the “reasonable certainty” standard.¹⁶⁷ Essentially, this “reasonable certainty” requirement implicitly imposed a habitability requirement into the definition of habitat. Had a hurricane wiped out the sole area where the frog currently lived, the species would have gone extinct forever, entirely obfuscating the “plain intent” of the ESA.¹⁶⁸

¹⁶³ Nate McCabe, *Defining “Habitat” Post-Weyerhaeuser: Critical Habitat Regulations Under the Endangered Species Act Must Promote Species Recovery*, 71 Am. U. L. Rev. 2465, 2480 (2022).

¹⁶⁴ *Id.*

¹⁶⁵ Kendrick, *supra* note 36, at 103.

¹⁶⁶ *See generally*, Regulations for Listing Species and Designating Critical Habitat, 84 Fed. Reg. 45,020 (Aug. 27, 2019).

¹⁶⁷ *Id.*

¹⁶⁸ *See Tennessee Valley Authority v. Hill*, 437 U.S. 153, 184 (1978).

On December 16, 2020, the Services issued a Final Rule that both cemented a definition of habitat and further curbed the ability of the FWS to designate unoccupied critical habitat.¹⁶⁹ The 2020 Final Rule, which another law review article called a “midnight regulation,”¹⁷⁰ because it was implemented just as Trump was leaving office, settled on the following language: “For the purposes of designating critical habitat only, habitat is the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species.”¹⁷¹ This created an extremely narrow definition of the word “habitat,” requiring a presently-existing “habitability” requirement for the FWS to designate either form of critical habitat.¹⁷²

In April of this 2024, the FWS published another Final Rule abrogating the definition and requirements of the 2019 and 2020 Final Rules.¹⁷³ This 2024 Final Rule could also be characterized as a “midnight rule” as it was promulgated just months before democratic president Biden left office.¹⁷⁴ In explaining their reasoning for the new rule, the FWS explained, “we do not agree that the inflexible approach established in the 2019 regulations regarding unoccupied critical habitat.”¹⁷⁵ Although some commenters on the new rule expressed concerns about the legislative history,¹⁷⁶ the FWS disagreed that “Congress intended critical habitat designations to be limited to only the areas

¹⁶⁹ Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, 85 Fed. Reg. 81,411 (Dec. 16, 2020) (to be codified at 50 C.F.R. § 424.02).

¹⁷⁰ Kendrick, *supra* note 36, at 106.

¹⁷¹ Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, 85 Fed. Reg. 81, 411 (Dec. 16, 2020) (to be codified at 50 C.F.R. § 424.02).

¹⁷² Jason C. Rylander, Megan Evansen, Jennifer R.B. Miller, & Jacob Malcom, *Defining Habitat to Promote Conversation Under the ESA*, 50 Env'tl. L. Rep. (ELI) 10531, 10532 (2020).

¹⁷³ Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, 85 Fed. Reg. 67 (April 5, 2024) (to be codified at 50 CFR Part 424).

¹⁷⁴ See Kendrick, *supra* note 36, at 106.

¹⁷⁵ Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, 85 Fed. Reg. 67 (April 5, 2024) (to be codified at 50 CFR Part 424).

¹⁷⁶ *Id.* See, e.g., S. Rep. No. 95-874, p. 10 (May 15, 1978)).

needed for a species' survival.”¹⁷⁷ If this were the proper interpretation, unoccupied critical habitat would become almost totally superfluous and pragmatically ineffective.¹⁷⁸

The plain language of the ESA proves that the 2020 interpretation of habitat is wrong because the definition of “critical habitat” refers specifically to “conservation” and not “survival.”¹⁷⁹ In defining the term “conservation” in Section 3 of the ESA, Congress explicitly stated that word refers to “all actions needed to bring the species to the point at which protections provided under the ESA are no longer necessary.”¹⁸⁰ Previous case law before *Weyerhaeuser* has also consistently supported the view that “critical habitat” is habitat necessary for both survival and recovery of the listed species.¹⁸¹ If the DOI or FWS was to follow the 2020 definition of “habitat,” it would be unable to designate any areas for species' recovery—only survival.¹⁸²

Additionally, the FWS explained,

“[W]e do not agree that importing a portion of the statutory definition for ‘occupied’ critical habitat (*i.e.*, requiring presence of physical or biological features essential to the conservation of the species) into the requirements for determining what areas qualify as ‘unoccupied’ critical habitat is the appropriate way to resolve the question of whether an area is habitat for a species.”¹⁸³

Although Congress, through its own statutory text, and the Supreme Court's interpretation in *Weyerhaeuser* consistently direct that an area must be habitat for the species before it can be

¹⁷⁷ Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, 85 Fed. Reg. 67 (April 5, 2024) (to be codified at 50 CFR Part 424).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.* See also *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1070 (9th Cir. 2004) (“Clearly, then, the purpose of establishing ‘critical habitat’ is for the government to carve out territory that is not only necessary for the species' survival but also essential for the species' recovery.”).

¹⁸² Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, 85 Fed. Reg. 67 (April 5, 2024) (to be codified at 50 CFR Part 424).

¹⁸³ *Id.*

designated as critical habitat under the ESA,¹⁸⁴ neither this particular case history nor the statutory definition of “critical habitat” affirmatively established requirements or guidance as to the meaning of the word “habitat.”¹⁸⁵

Lastly, the 2024 Final Rule rejected the 2020 definition of “habitat” because it didn’t fit within the overall structure of the ESA.¹⁸⁶ Although not an explicit definition, the 2024 Rule did offer a pseudo-definition of the word habitat: “neither Congress nor the *Weyerhaeuser* ruling established any prohibition on designating areas as critical habitat if those areas may require some reasonable restoration to become accessible, habitable, or capable of supporting the species.”¹⁸⁷

This rule limited the FWS’s ability to designate areas “that are wholly unsuitable for the given listed species or that require extreme intervention or modification to support the species,” which tracks under the plain meaning of “critical.” However, it is not required or consistent with the purposes of the ESA to disqualify an area as “habitat” just because it requires some reasonable alteration or restoration—whether through natural processes or reasonable human intervention.¹⁸⁸ Thus, this 2024 Rule removed any habitability requirement from the definition of habitat.

Part IV

A. Statutory and Pragmatic Problems with a Narrow Definition of Habitat

¹⁸⁴ *Id.* See 16 U.S.C. 1533(a)(3)(A)(i), which states that “[t]he Secretary shall “. . . designate *any habitat of such species* which is then considered to be critical habitat” (emphasis added); *Weyerhaeuser Co. v. U.S. FWS*, 139 S. Ct. 361, 372 (2018).

¹⁸⁵ Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, 85 Fed. Reg. 67 (April 5, 2024) (to be codified at 50 CFR Part 424).

¹⁸⁶ *Id.* (“Furthermore, we find it most appropriate and consistent with the conservation purposes of the ESA to consider areas as habitat if they fit within any reasonable biological understanding of “habitat” as established by the best available scientific data for a particular species.”).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

By avoiding the question of what constitutes habitat, the Supreme Court created a more significant issue interpreting the ESA and the FSW's designation of "critical habitat" going forward.¹⁸⁹ Limiting "unoccupied critical habitat" only to areas where a species could inhabit without any modifications would severely limit the amount of land available for designation, especially in an age of mass global warming.¹⁹⁰ While the Supreme Court did hold that critical habitat is a subset of habitat that is "essential to the conservation of the species," the Fifth Circuit was also correct in ruling that nowhere in the ESA is there a "habitability" requirement on unoccupied land before it can be designated as critical habitat.¹⁹¹ Importantly, the Supreme Court's and the Fifth Circuit rulings are not mutually exclusive.¹⁹² Had the Court applied canons of statutory interpretation, perhaps it would have landed on a broader definition of "habitat" given both the communicative and semantic intent of the word and a normative justification backed by legislative intent and modern public policy.

B. Plain Meaning:

Courts interpreting statutes typically start with the foundation that "words used in a statute are to be given their ordinary meaning in the absence of persuasive reasons to the contrary."¹⁹³ As Justice Scalia and many textualists might advocate, to determine the plain meaning of a word, look it up in a dictionary.¹⁹⁴ In the *Weyerhaeuser* case, the petitioners used *Webster's Dictionary* to define habitat as "the place where a plant or animal species naturally lives and grows" or "the kind of site or region

¹⁸⁹ See Generally, McCabe, *supra* note 101, Fichtell, *supra* note 12, Wilson, *supra* note 74, Jeffrey S. Knighton Jr., *Critical Decisions: The Challenge of Defining Critical Habitat Under the Endangered Species Act*, 9 LSU J. Energy L. & Resources 563, 584 (2021), Rylander, et. al, *supra* note 110, J. B. Ruhl, *Climate Change and the Endangered Species Act: Building Bridges to a No-Analog Future*, 88 B.U. L. Rev. 1 (2008), Kendrick, *supra* note 36.

¹⁹⁰ J.B. Ruhl, *What is Habitat?*, 34-SUM Nat. Resources & Env't 52, 53 (2019).

¹⁹¹ *Id.*

¹⁹² *Id.* Take the example in *Weyerhaeuser*. It is possible that Unit 1 could be described as "essential to the conservation" of the dusky gopher frog because of the existence of ephemeral ponds and its proximity to the current frog population. It can also be true at the same time that Unit 1 need not currently be "habitable," given its lack of closed-canopy trees which the frog requires. Rylander, et. al, *supra* note 120, at 10537.

¹⁹³ *Burns v. Alcala*, 420 U.S. 575, 581-82 (1975).

¹⁹⁴ Ruhl, *supra* note 128, at 54.

with respect to physical features . . . naturally or normally preferred by a biological species.”¹⁹⁵ Using this dictionary definition, if a species cannot *currently* live on a site, then it does not “naturally” or “normally” live there, and that area cannot be habitat.¹⁹⁶

However, such a formalistic reading of the word ignores what it means for a thing to be “natural” or “normal.”¹⁹⁷ For example, “natural,” as defined in *Webster’s*, can mean: “not cultivated” or “closely resembling an original: true to nature.”¹⁹⁸ Under this reading, an unoccupied habitat can be one without significant human disturbance.¹⁹⁹ Take the *Weyerhaeuser* case, for example: when defining habitat in this way, what “naturally” lives and grows on Unit 1 are not the closed-canopy pines that the landowners imported when developing the land, but the open-canopy pine forests that were originally there and that the FWS found could provide “food, shelter and protection” for the frog with “reasonable efforts” into restoration.²⁰⁰ Under an ordinary meaning of the word habitat, there is no clear answer that such a “habitability” requirement exists.²⁰¹ Afterall, the frog, naturally—and normally—lived there until 1965, when development forced the species to relocate.²⁰²

C. Terms of Art:

Some statutory terms have no meaning in our everyday parlance; they are used only by experts in a particular field.²⁰³ Unless Congress indicates otherwise, courts generally read such terms following their technical meanings.²⁰⁴ However, matters get fuzzy when a word commonly means

¹⁹⁵ Brief of Petitioners at 23, *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S. Ct. 361, 48 ELR 20196 (2018) (No. 17-71) (citing “Habitat,” Webster’s Third New International Dictionary (1976)).

¹⁹⁶ Rylander, et. al, *supra* note 129, at 10535.

¹⁹⁷ *Id.*

¹⁹⁸ “Natural,” Webster’s Third New International Dictionary (1976).

¹⁹⁹ *Id.*

²⁰⁰ 77 Fed. Reg. at 35131.

²⁰¹ Rylander, et. al, *supra* note 129, at 10535.

²⁰² *Id.*

²⁰³ Caleb Nelson, *Nelson’s Statutory Interpretation*, 115 (2nd ed. 2023).

²⁰⁴ *See Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 372 (1986) (referring to “the rule of construction that technical terms of art should be interpreted by reference to the trade or industry to which they apply”).

one thing in ordinary parlance and something more specialized in a technical field.²⁰⁵ When this happens, interpreters must decide whether to treat the word as a technical term of art or to give it the meaning a layman would proscribe.²⁰⁶ Context clues often point in one direction or another. Importantly, if the statute does implicate the relevant technical fields, the surrounding context may guide interpreters to adopt that technical interpretation.²⁰⁷ The ESA clearly provides context that implicates the “best scientific data available” when designating critical habitat.²⁰⁸

Given the fact that the Secretary must use the best data available to determine what area constitutes “critical habitat,” it logically follows that the Secretary should use that same methodology, consulting the best scientific data, when defining the individual word “habitat” and what it means.²⁰⁹ Like the Supreme Court’s reasoning in the *Weyerhaeuser*, habitat is a subsidiary component of the larger term “critical habitat.”²¹⁰ Critical habitat is a term of art determined using the “best scientific data available.”²¹¹ Likewise, habitat is also a term of art that should be defined using the “best scientific data available.”²¹² So, let’s look to science.

Looking to a scientific understanding of the word habitat leads to many results. The National Academy of Sciences, in its impactful report, *Science and the Endangered Species Act*, defined habitat as “the physical and biological setting in which organisms live and in which the other

²⁰⁵ Nelson, *supra* note 141, at 115.

²⁰⁶ *Id.*

²⁰⁷ Cf. *Utah v. Evans*, 536 U.S. 452, 467 (2002) (interpreting a statute that referred to “the statistical method known as ‘sampling,’ ” and concluding that “the words ‘known as’ and the quotation marks that surround ‘sampling’ ” both suggest that Congress was using “sampling” as a term of art).

²⁰⁸ See 16 U.S.C. § 1533(a) (“The Secretary will make a final designation of critical habitat on the basis of the best scientific data available, after taking into consideration the probable economic, national security, and other relevant impacts of making such a designation.”).

²⁰⁹ See Kendrick, *supra* note 36, at 108-09 (“The ESA requires that the Services base their designations of critical habitat on the “best scientific data available.” It follows that the Services’ definition of “habitat” should comport with current scientific understandings of the term.”).

²¹⁰ *Weyerhaeuser Co. v. U.S. FWS*, 139 S. Ct. 361, 372 (2018) (“Only the ‘habitat’ of the endangered species is eligible for designation as critical habitat.”).

²¹¹ *Id.*

²¹² *Id.*

components of the environment are encountered.”²¹³ Although scientists generally agree that habitat loss of habitat will lead to species extinction, that’s where the consistency ends.²¹⁴

A broader look at the scientific understanding of the word shows how fluid the concept of habitat can be. For example, a report by Vanbianchi et al. notes that “‘unoccupied’ habitat are not synonymous with ‘non-habitat,’” as the Court seems to imply, and that “unoccupied habitat” is an appropriate term when identifying threatened, endangered, or rare species who might use such unoccupied areas given the opportunity.²¹⁵ Other scientists have argued that habitats used for conservation can include a multitude of spaces and areas, including areas of lower quality in times of necessity.²¹⁶

Most importantly, habitat is dynamic.²¹⁷ What once might be considered habitat “essential for a species” may dissolve over time, and areas that originally were not essential for a species may develop the “features” or PCEs necessary to be considered “critical” or “essential.”²¹⁸ Climate change only exacerbates this issue. These eventual changes will require the Services to designate unoccupied critical habitats more often, and because scientists all agree that habitats are constantly

²¹³ National Research Council, Science and the Endangered Species Act 72 (1995).

²¹⁴ David Anthony Kirk et al., *Our Use, Misuse, and Abandonment of a Concept: Whither Habitat?*, 8 Ecology & Evolution 4197, 4198 (2018) (calling the term a “Panchreston problem,” which means “an explanation or theory used in such a variety of ways as to become meaningless”).

²¹⁵ Carmen Vanbianchi et al., *Navigating Fragmented Landscapes: Canada Lynx Brave Poor Quality Habitats While Traveling*, 8 Ecology & Evolution 11293 (2018).

²¹⁶ *Id.*

²¹⁷ Brief of Amici Curiae Scientists in Support of Respondents, *supra* note 179, at 8. See Joshua J. Lawler, David D. Ackerly, Christine M. Albano, Mark G. Anderson, Solomon Z. Dobrowski, Jacquelyn L. Gill et al., *The Theory Behind, and the Challenges of, Conserving Nature's Stage in a Time of Rapid Change*, 29 Conservation Biology 618, 623 (2015) (explaining that a species' habitat depends on abiotic factors, and that as climate change creates more change in landscapes, species' habitats will change at an increasing pace).

²¹⁸ See Brief for Intervenor-Respondents, *supra* note 169, at 5 (arguing that the ESA's definition of unoccupied critical habitat is an implied concession that “merely protecting the curtailed or degraded areas an endangered species currently occupies will, for many species, preclude recovery”).

in flux, construing habitat to conform with the scientific understanding will allow for a more dynamic and effective understanding of the word.²¹⁹

D. In Pari Materia:

When multiple statutes address the same subject or seem to share a common purpose, litigants will often ask courts to read both statutes in light of the other.²²⁰ These statutes are said to be *in pari materia*, which means “on the same subject.” Judges employing this canon mean that the statutes are sufficiently closely related and should be interpreted in tandem with each other. Although case law does not clarify precisely what it takes for two statutes to be “related,” sometimes statutes will be read *in pari materia* if they address the same subject or share similar language.²²¹

An important aspect of the doctrine of *in pari materia* is that it employs the statutory canon titled the presumption of consistent usage. This canon tells judges that without other contextual clues, courts should presume that each word used in a statute has the same meaning throughout that whole statute. The reasoning of *in pari materia* extends this idea to all statutes that a court might deem *in pari materia*. Thus, if two statutes that are *in pari materia* both use a certain word or phrase similarly, courts can apply a rebuttable presumption that the legislature was using the word or phrase the same way in both statutes.²²² “If there are any special clues that shed light on what the word or phrase

²¹⁹ See Olivia Bensinger, *Endangered Species Act to the Rescue? Climate Change Mitigation and Adaptation Under the ESA*, N.Y.U. Envtl. L.J. (Mar. 29, 2017), *See Also* Brief of Amici Curiae Scientists in Support of Respondents, at 361 (arguing that habitat should be considered applying five factors: “(1) habitat should be viewed at a landscape scale, (2) a habitat's quality can vary by location and over time, (3) habitat can be unoccupied, (4) habitats may be restored, and (5) a species' habitat may be currently unknown”).

²²⁰ Nelson, *supra* note 141, at 653.

²²¹ *Id.*

²²² *Id.*

means in one of the statutes, or if judicial precedents have ascribed a particular meaning to the word or phrase as used in that one statute, courts might extend those clues or precedents to the other statute too.”²²³

Although the Supreme Court has suggested that this presumption “makes the most sense when the statutes were enacted by the same legislative body at the same time,”²²⁴ there is at least some normative argument for imputing a meaning into an older statute from a newer one.²²⁵ If there is a statutory indeterminacy, all else equal, giving the same word the same meaning in both statutes can be a solution, and it might also increase the predictability of judicial decisions and provide better notice for people reading similar statutes.²²⁶

Applying this canon, Congress has also used the term habitat in other federal conservation statutes to mean something other than areas having a “habitability” requirement.²²⁷ The Marine Turtle Conservation Act (MTCA) of 2004, for example, describes “habitat” to mean “*any* marine turtle, freshwater turtle, or tortoise habitat (*including a nesting habitat*).”²²⁸ Important to this statutory definition of habitat is that it includes places where a turtle currently lives and accounts for “nesting habitat[s,]” places where a turtle or tortoise might migrate later during nesting season.²²⁹ Additionally, the Coast Barrier Resources Act (CBRA) of 1999 describes habitat as areas that “are essential [for] spawning, nursery, nesting, and feeding.”²³⁰ Clearly, these are not just areas that are

²²³ *Id.*

²²⁴ *Erlenbaugh v. United States*, 409 U.S. 239, 243–44 (1972).

²²⁵ Nelson, *supra* note 141, at 656.

²²⁶ *Id.* Sometimes, when Statute #1 is ambiguous, some judicial opinions support resolving such end-state indeterminacy by using later statutes. *United States v. Freeman*, 44 U.S. (3 How.) 556 (1845). In *Freeman*, Justice Wayne explained: “[I]f it can be gathered from a subsequent statute *in pari materia*, what meaning the [later] legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning and will govern the construction of the first statute.” *Id.* at 564–65 (dictum). Justice Scalia quoted this passage favorably to support the conclusion that “the meaning of [a statutory provision enacted in 1967] . . . sheds light upon the meaning of [a statutory provision enacted in 1941].” *Branch v. Smith*, 538 U.S. 254, 281 (2003) (plurality opinion of Scalia, J.).

²²⁷ See, e.g., 16 U.S.C. § 1537(a)(e)(2)(B); 16 U.S.C. § 3501(a)(1)(B).

²²⁸ 16 U.S.C. § 1537(a)(e)(2)(B) (emphasis added).

²²⁹ *Id.*

²³⁰ 16 U.S.C. § 3501(a)(1)(B).

currently habitable.²³¹ This is another example of a congressional definition of habitat with no habitability requirement.²³²

Suppose the Court were to read these three statutes to be *in pari materia* with one another, although the ESA is twenty-five years older than either latter statute. In that case, these definitions of “habitat” still provide a normative justification for solving this indeterminacy in language—even if the newer Congresses who wrote the MTCA and CBRA were not thinking about resolving the ambiguity in the ESA.²³³ If there are no other canons of interpretation to help solve this end-stage ambiguity, perhaps we can assume Congress, at any time, meant that the same word means the same thing across all statutes because this increases predictability in judicial interpretation.²³⁴

E. Legislative Intent

The statutory evolution of the ESA supports a broad definition of habitat. The ESA was the third effort by Congress to create a law protecting endangered species, and it was written in a way that granted the Services greater flexibility in doing so.²³⁵ The congressional record admits that “habitats have been cut in size, polluted, or otherwise altered so that they are unsuitable.”²³⁶ One of the bill’s key supporters, Representative Sullivan, stated that “the ultimate effectiveness of the [ESA] will depend on the designation of critical habitat.”²³⁷ In 1978, when Congress sought to define the two different types of critical habitat, Congress directly rejected a requirement that unoccupied critical habitat be an area that is “periodically inhabited by the species” or one where “the species can be

²³¹ *Id.*

²³² *See* 16 U.S.C. § 1537(a)(e)(2)(B); 16 U.S.C. § 3501(a)(1)(B).

²³³ Nelson, *supra* note 141, at 656-57.

²³⁴ *Id.*

²³⁵ H.R. Rep. No. 93-412 (1973), reprinted in 1 Cong. Research Serv., A Legislative History of the Endangered Species Act of 1973, (1982).

²³⁶ *Id.* at 358.

²³⁷ *Id.* at 497.

expected to expand naturally.”²³⁸ The original creators of the statute itself and subsequent Congresses recognized that habitat is more than a habitability requirement.²³⁹ If Congress didn’t intend this flexibility, distinguishing between occupied and unoccupied critical habitat would be unnecessary.²⁴⁰ Congress could easily have just defined critical habitat as the areas that contain PCES and where the species physically occupy, the fact that they did not displays a desire to grant the Services discretion in designating other “essential” areas.²⁴¹

The legislative history and intent of the ESA also support a broad definition of habitat. The Supreme Court has found that “the plain intent of Congress in enacting [the ESA] was to halt and reverse the trend towards species extinction, whatever the cost.”²⁴² Additionally, Congress designed the ESA to serve two goals: species survival and species recovery.²⁴³ Critical habitat designations specifically aim to promote both goals, not just species survival.²⁴⁴ The legislative history of this statute clearly indicates that Congress intended the ESA’s critical habitat framework to be more flexible than just areas where the species lives or could currently live.²⁴⁵ Congress clearly evinced an intent to promote species recovery.²⁴⁶ Logically, then, it must follow that when a species is listed

²³⁸ *Id.* at 879, 1065.

²³⁹ *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 213 n.9 (1978). Even the original definition of habitat went beyond mere habitability. *Id.* In 1978, The Secretary of the Interior had administratively construed the term as: “any air, land, or water area. . . . The constituent elements of critical habitat include but are not limited to: physical structures and topography, biota, climate, *human activity*, and the quality and chemical content of land, water, and air. Critical habitat . . . *may include additional areas for reasonable population expansion.*” *Id.* (citing 43 Fed.Reg. 874 (1978) (to be codified as 50 CFR §402.02)(emphasis added)).

²⁴⁰ See Brief for Intervenor-Respondents, *supra* note 169, at 5 (noting that the ESA’s definition of unoccupied critical habitat is an implied concession that “merely protecting the curtailed or degraded areas an endangered species currently occupies will, for many species, preclude recovery”).

²⁴¹ *Id.*

²⁴² *Tennessee Valley Authority v. Hill*, 437 U.S. 153.

²⁴³ *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1069 (9th Cir. 2004) (“[A] direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival *and* recovery of a listed species.”).

²⁴⁴ See, e.g., *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1069 (9th Cir. 2004) (explaining that the ESA’s critical habitat provisions promote the specific goals of species “conservation” and survival); *Sierra Club v. U.S. Fish & Wildlife Serv.*, 245 F.3d 434, 438 (5th Cir. 2001) (“[T]he objective of the ESA is to enable listed species not merely to survive, but to recover”).

²⁴⁵ H.R. Rep. No. 95-1625, at 17 (1978).

²⁴⁶ McCabe, *supra* note 101, at 2495.

as endangered, its population is diminishing because of the *current places* it lives—it cannot recover unless something changes in the current habitat the species occupies.²⁴⁷

Thus, to promote the ESA’s “recovery” goal, habitat must be defined as areas that are not currently habitable but may become habitable with reasonable modification.²⁴⁸ Without this broader definition of the word, the legislative goal of species recovery would completely dissolve. As Justice Kagan noted at oral argument:

“We know that habitat doesn't mean just where a species lives. I mean, that's . . . the common understanding of the word “habitat,” but this statute clearly goes beyond that, and we know because it says . . . there are also habitats that are outside the geographical area occupied by the species. . . . [A]ll over the place you get these references to the fact that habitat isn't just sort of there and perfect always, that habitat requires things to be done to it . . . [S]o all through the statute there's this idea that . . . there is habitat that needs to be maintained, improved, and so forth in order to fulfill the function of preserving a species.”²⁴⁹

Clearly, a recovery-based notion of habitat cannot exclude areas that are currently unlivable but would be suitable for a species through some reasonable modifications. Given the world’s rapid global warming, some endangered species may not have adequate habitable areas available to survive or recover, and restoration may be the sole option to prevent their extinction.²⁵⁰

Part V

A. What’s The Solution?

Although the FWS recently promulgated new rules about both the definition and designation of critical habitats, this may quickly change again, given the recent presidential election.²⁵¹ The only

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ Oral Argument at 9:12, *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S. Ct. 361 (2018) (No. 17-71), <https://www.oyez.org/cases/2018/17-71> [<https://perma.cc/J6CM-NZ9T>].

²⁵⁰ Knighton, *supra* note 127, at 585-86.

²⁵¹ *Donald Trump Wins US Election in Historic Comeback*, BBC News, (Nov. 5, 2024), <https://www.bbc.com/news/live/czxrnw5qrprt>.

thing certainly known is that an area must be habitat before being designated as “critical habitat.”²⁵² Because of the 2024 Rule, there is no habitability requirement, but as shown in the last eight years, the definition of habitat is left to the political winds and legislative incentives.²⁵³ Given the changes in policy between each administration, leaving habitat with an uncodified definition makes critical habitat designations more of a political choice than a scientific one.²⁵⁴ Thus, the Supreme Court must take a case and use its statutory tools to resolve this ambiguous term, or Congress must codify a definition of the word. Under either option, guided by the principles of statutory interpretation and legislative intent, habitat should be given a broad definition:²⁵⁵

*The physical or biological areas where the species naturally occurs, formerly occurred within a historic range, or has the reasonable potential to occur with reasonable restorations or modifications to become accessible or habitable and has one or more essential features to support the life functions of the given species. This definition excludes areas wholly unsuitable for the given listed species or that require extreme intervention or modification to support the species.*²⁵⁶

This definition comports with the scientific understanding of the word by placing importance on the physical and biological areas that support a species’ life functions while supplying the requisite breadth and flexibility that both scientists and the original legislative intent call for.²⁵⁷ Thus, habitat is not confined to only areas where the species could currently live but includes unoccupied areas

²⁵² Weyerhaeuser

²⁵³ Compare Regulations for Listing Species and Designating Critical Habitat, 84 Fed. Reg. 45,020 (Aug. 27, 2019) (2019 rule), Endangered and Threatened Wildlife and Plants; with Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, 85 Fed. Reg. 67 (April 5, 2024) (to be codified at 50 CFR Part 424).

²⁵⁴ McCabe, *supra* note 110, at 2499.

²⁵⁵ See generally Brief of Amici Curiae Scientists in Support of Respondents.

²⁵⁶ See Rylander, et. al., *supra* note 120, at 10536 (discussing areas outside where a species currently lives), Wilson, *supra* note 74, at 768 (“[A] definition that encompasses the places a species currently lives, the places within a species historic range, and the places likely to support a species in the near future is a good start.”).

²⁵⁷ See *Alaska Oil & Gas Ass’n. v. Pritzker*, 840 F.3d 671, 677 (9th Cir. 2016) (discussing flexibility in polar bear designations); *Bear Valley Mut. Water Co. v. Jewell*, 790 F.3d 977, 981 (9th Cir. 2014) (rejecting argument that Congress imposed a habitability requirement via the ESA’s statutory language).

that might require reasonable modification. This definition also curbs agency overreach by limiting such unoccupied areas to those that must support a species' life functions and must do so with no more than reasonable modifications. Like the 2024 Rule, the second sentence limits these areas by excluding ones that are wholly unsuitable or that require extreme modification.²⁵⁸

Although this definition is rather broad, the judiciary will act check on overly expansive designations. Even when allowing for breadth and flexibility, this definition still requires habitat to consist of areas that are “essential” for the conservation of the species, which still must be proved by employing the “best scientific data available” standard.²⁵⁹ Additionally, litigants can give their best arguments as to why such a designation has a *reasonable* potential to be habitat with *reasonable* modifications, and the court will have the ultimate say.²⁶⁰

Most importantly, this definition would help the Services account for the ever-changing nature of a species' habitat, which are extremely susceptible to degradation due to mass global warming and climate change.²⁶¹ As an area may slowly lose or gain resources, the biotic and abiotic settings necessary to support a life process may change. Using this definition gives the needed malleability to proactively make new designations based on the species.²⁶² Codifying a definition along these lines would provide clarity for courts, agencies, and litigants by creating a consistent jurisprudence.²⁶³

²⁵⁸ Oral Argument Transcript at 29, *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S. Ct. 361, 48 ELR 20196 (2018) (No. 17-71), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2018/17-71_4f15.pdf. In oral argument, Chief Justice Roberts expressed concern asking the FWS whether you could simply move the frogs to ephemeral ponds in Alaska, build a greenhouse around them, and call it critical habitat. *Id.* This rule alleviates that concern. *Id.*

²⁵⁹ 16 U.S.C. § 1533(a).

²⁶⁰ *Chickasaw Nation v. United States*, 534 U.S. 84, 94, (2001).

²⁶¹ See Cong. Rsch. Serv., *The Endangered Species Act and Climate Change: Selected Legal Issues* 10 (2019).

²⁶² Knighton, *supra* note 127, at 593.

²⁶³ *Id.* (“Statutorizing the definition will provide clarity to the courts and litigants by eliminating the quandary of having to hash out the definition of habitat in a manner consistent with critical habitat jurisprudence.”).

B. Conclusion:

Employing tools of statutory interpretation, this broader definition of habitat is context-specific but establishes guidelines, allowing for flexibility at the joints. I would encourage the Supreme Court to use a similar strategy when this case inevitably arises again. Let's hope they get it right for the sake of ecosystems worldwide.

LAWS & PAWS WORD SEARCH FALL 2025

By: Adam Lepzelter, Esq.

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

Clue: *What we must do as concerned citizens (and what the animals below have in common)*

Answer: _____!

WORD LIST

AFRICAN WILD DOGS	AMUR LEOPARD	ANIMALS
BLACK RHINO	BLACK SPIDER MONKEY	BLUE WHALE
BLUEFIN TUNA	BONOBOS	CHEETAH
CHIMPANZEE	COAL	ENDANGERED
GALAPAGOS PENGUIN	GREEN TURTLE	MONARCH BUTTERFLY
MOUNTAIN GORILLA	NYSBA	ORANGUTAN
RED PANDA	SAOLA	SEA TURTLE
SEI WHALES	SUMATRAN ELEPHANT	TIGER
VAQUITA	WHITE SHARK	