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Letter from the Chair, Kirk Passamonti

Welcome to the Fall 2026 issue of Laws and Paws. I found the legal issues discussed in this edition's well written and informative articles to be both relevant and concerning.

Have you ever watched an old movie where horses were ridden into battle and would fall amidst the chaos? If so, have you ever wondered how this was done in a time before CGI and AI, and whether or not the animals were harmed in the making of the film? I have. The article entitled "Many Animals Were Harmed: A Need For Animal Protections In Film And Television" explores these issues in the modern context and discusses existing, relevant legislation as well as industry standards, and the lack thereof. The article highlights the common and unfortunate occurrence of animals being harmed and/or dying while filming. I had hoped to discover that those old movie scenes of the horses going into battle and falling were the result of editing tricks and well trained and cared for animals. I was disappointed to learn that this was just wishful thinking.

Pursuant to New York State Education Law 809, "…every elementary school under state control or supported wholly or partly by public money of the state…" is mandated to provide instruction in the humane treatment of animals. The statute also puts forth instructions as to the study and care of live animals and the dissection of animals in schools. "A Mandate With Teeth: Biting Back At The Neglect Of New York's Humane Education Law" discusses the humane education requirement in New York schools. It highlights that although New York is one of only eight states that require humane education, its enforcement mechanism is arguably ineffective.

Lastly, I would encourage anyone with an interest in animal law issues to explore our Committee's past CLE programs, put together by our Education Subcommittee and available on-demand via NYSBA's website (NYSBA.org). Recent CLE programs included Who Let the Dogs Out? Animals in the Workplace and Beyond, New Laws For Animals 2025, NY's Horseshow Crab Harvest Ban, a three-part program on The End-of-Life Journey With our Beloved Animals, Charging Cruelty: Prosecuting Crimes of Animal Abuse and Neglect, Supporting Vulnerable People, and Pets During Housing Crises: Policy and Practice Solutions.

Sincerely,

Kirk Passamonti

2025 Student Writing Competition 3rd Place Finisher:

A MANDATE WITH TEETH: BITING BACK AT THE NEGLECT OF NEW YORK'S HUMANE EDUCATION LAW[1]

BY: MEI BRUNSON OF LEWIS & CLARK LAW SCHOOL

> *[H]umane education is best seen as an arena of untapped potential rather than one of unfulfilled promise.*[2]
>
> *— Bernard Unti and Bill DeRosa*

INTRODUCTION

Humane education is not a new concept, but the current state of the planet makes it more deserving of our attention than ever before. The human-driven climate and biodiversity crises loom over us, already claiming many human and animal lives and promising to take countless more as these twin catastrophes escalate.[3] Meanwhile, economic inequality grows in the United States,[4] access to affordable and food, housing, and healthcare remain unattainable for many,[5] and media companies lull us into echo chambers that fuel increasing polarization across our political and cultural

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[1] *First published in Animal Law, Volume 32, Issue 1 (2025).*

[2] Bernard Unti & Bill DeRosa, *Humane Education: Past, Present, and Future*, *in* THE STATE OF THE ANIMALS II 27, 27–28 (D.J. Salem & A.N. Rowan eds., 2003).

[3] Emma Schwartz, *The Ripple Effects of Climate Change*, PROJECT HOPE (Sept. 18, 2024), https://www.projecthope.org/news-stories/story/the-ripple-effects-of-climate-change/ (last visited Jan. 16, 2025); Phoebe Weston, *Humanity Is on the Verge of 'Shattering Earth's Natural Limits', Say Experts in Biodiversity Warning*, THE GUARDIAN (Oct. 21, 2024), https://www.theguardian.com/environment/2024/oct/21/humanity-earth-natural-limits-biodiversity-warning-cop16-conference-scientists-academics (last visited Jan. 16, 2025).

[4] JULIANA MENASCE HOROWITZ ET AL., PEW RSCH. CTR., *Trends in Income and Wealth Inequality*, *in* MOST AMERICANS SAY THERE IS TOO MUCH ECONOMIC INEQUALITY IN THE U.S., BUT FEWER THAN HALF CALL IT A TOP PRIORITY 21–22 (2020).

[5] Julian Agyeman, *54 Million Americans Don't Have Access to Healthy Food. That's a Design Problem,* FAST CO. (Mar. 13, 2021), https://www.fastcompany.com/90613597/54-4-million-americans-dont-have-access-to-healthy-food-thats-a-design-problem (last visited Apr. 8, 2025); WEST HEALTH-GALLUP, *National Healthcare & Aging Data Dashboard*, https://gallup.westhealth.org/ (last visited Apr. 8, 2025); Claire Thornton, *Homelessness Rates Jumped by Double Digits in 2024 as Americans Battled to Afford Housing*, USA TODAY (Dec. 27, 2024), https://www.usatoday.com/story/news/nation/2024/12/27/how-many-people-are-homeless-us-2024/77020773007/ (last visited Apr. 9, 2025).

landscape.[6] In today's world, animals, humans, and the environment are uniformly treated as resources to be extracted, exploited, and profited from. Ethics and empathy take a back seat to profits, even as unchecked greed hastens us toward our demise. There is an urgent need for creative solutions and a broader paradigm shift to ameliorate these harms caused by our species; providing humane education to the next generation can help inspire both.[7]

While the pedagogy's origins can be traced to a 19th-century interest in instilling a "kindness-to-animals ethic" in students and advancing animal welfare,[8] contemporary humane education advocates adopt a "more holistic approach" that, rather than zeroing in on the plight of animals alone, fosters compassion for animals, humans, and the environment at once. [9] No doubt, our planet requires the immediate institutionalizing of humane education for its denizens.

Today, New York is among eight states that require humane education for its primary or secondary students by law.[10] Despite New York's legal mandate being considered by some to be the "strongest in the nation,"[11] it has been buried by both its designated implementers—school districts—and enforcer—the New York Commissioner of Education ("Commissioner").[12] This Paper advances a legal strategy to address this unsatisfactory state of affairs and exhume New York's powerful humane education law from its prematurely dug grave. It explores a seemingly

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[6] Paul Barrett, *How Tech Platforms Fuel U.S. Political Polarization and What Government Can Do About It*, BROOKINGS (Sept. 27, 2021), https://www.brookings.edu/articles/how-tech-platforms-fuel-u-s-political-polarization-and-what-government-can-do-about-it/ (last visited Apr. 9, 2025).

[7] *See, e.g.,* Audrey C. Rule & Ksneia S. Zhbanova, *Changing Perceptions of Unpopular Animals Through Facts, Poetry, Crafts, and Puppet Plays*, 40 EARLY CHILDHOOD EDUC. J 223, 227–30 (2012); William Ellery Samuels & Nnenna Onuoha-Jackson, *Learning to Care: An In-School Humane Education Program Improves Affective and Cognitive Empathy Among Lower-Elementary Students*, 5 INT'L J. EDUC. RES. OPEN, 2003, at 5–6.

[8] Unti, *supra* note 2, at 27–28.

[9] Lydia S. Antoncic, *A New Era in Humane Education: How Troubling Youth Trends and a Call for Character Education Are Breathing New Life into Efforts to Educator Our Youth about the Value of Life*, 9 ANIMAL L. 183, 210 (2003).

[10] HEART, *State Humane Education Laws*, https://teachheart.org/advocacy/humane-ed-laws/ (last visited Jan. 4, 2025).

[11] Antoncic, *supra* note 9, at 210.

[12] *Id.* at 210–11.

overlooked tool of state administrative law that empowers parents—in addition to advocacy groups working in coordination with parents—to potentially force compliance. At a minimum, the proposed administrative action would raise awareness of the neglected mandate and pressure New York school districts to provide humane education in accordance with law.

Part I traces the history and text of New York's humane education mandate, codified at N.Y. Educ. Law § 809(1), while Part II discusses the law's chronic noncompliance and underenforcement problem. Part III then introduces a state administrative procedure available to remedy this issue and potentially compel enforcement: N.Y. Educ. Law § 310. It describes at length how parents and advocacy groups might leverage § 310 to address district noncompliance. Part IV next weighs the advantages and disadvantages of the proposed action. Finally, before the Paper's Conclusion, Part V briefly envisions what district compliance with the humane education statute might look like. Because the proposed legal strategy places parents at its forefront, the Paper endeavors to break down legal concepts with the layperson in mind.

I. SECTION 809(1): NEW YORK'S HUMANE EDUCATION MANDATE

New York's humane education mandate, which has been on the books since 1917, provides the legal hook for the litigation strategy proposed in this Paper. To help readers understand its significance and utility, Section A provides historical context undergirding the compulsory humane education law, Section B untangles the legal obligations created by the statute from its (poorly written) text, and Section C clarifies the Commissioner's duty to enforce the law.

Historical Context of Humane Education Mandate

Anti-cruelty societies formed in the late 19th century to promote animal welfare. In service of this mission, these organizations began developing humane education literature.[13] Not only did early

[13] Unti, *supra* note 2, at 28–29.

animal protectionists tout humane education as a means to improve the plight of animals in society, but education and so-called moral reformers also promoted it as a "panacea for numerous social ills," ranging from social unrest to crime.[14]

Thus, around the turn of the 20th century, humane education was at the forefront of various advocates' minds,[15] and some began advocating for its instruction to be compulsory in newly established public schools.[16] By 1920, twenty states had adopted humane education requirements.[17] However, most of these laws lacked enforcement measures and failed to specify a minimum amount of instructional time needed to satisfy the requirement.[18] New York was one of the few exceptions, adopting its compulsory humane education law that is the focus of this Paper in 1917.[19] The New York statute has what most others lack: teeth.

Text of Humane Education Mandate

Over a century ago, New York enacted its humane education statute within New York's Education Law ("Education Law"),[20] currently codified as N.Y. Educ. Law § 809(1).[21] Hereinafter, "Mandate" refers to § 809(1). Its core provisions have remained unchanged since its adoption, and read:

> The officer, board or commission authorized or required to prescribe courses of instruction shall cause instruction to be given in every elementary school under state control or supported wholly or partly by public money of the state, in the humane treatment and protection of animals and the importance of the part they play in the economy of nature as well as the necessity of controlling the proliferation of animals which are subsequently abandoned and caused to suffer extreme cruelty. Such instruction shall be for such period of time during each school year as the board of regents may prescribe and may be joined with work in

[14] *Id.*
[15] *Id.* at 29.
[16] *See, e.g.,* WILLIAM J. SHULTZ, THE HUMANE MOVEMENT IN THE UNITED STATES: 1910-1922 135–36 (1924).
[17] Unti, *supra* note 2, at 30.
[18] SHULTZ, *supra* note 16, at 136.
[19] Unti, *supra* note 2, at 30.
[20] NYC BAR ASS'N COMM. ON LEGAL ISSUES PERTAINING TO ANIMALS, REPORT ON A.10344/S.7848 2 (2008).
[21] *Id.* The law was originally codified as N.Y. Educ. Law § 700. *Id.*

> literature, reading, language, nature study or ethnology. Such weekly instruction may be divided into two or more periods. A school district shall not be entitled to participate in the public school money on account of any school or the attendance at any school subject to the provisions of this section, if the instruction required hereby is not given therein.[22]

By its text, the Mandate is a stringent humane education law. Most notably, it:

- Requires state-funded school districts to provide instruction "the humane treatment and protection of animals" in their elementary schools.
- Indicates that humane education must occur, at minimum, on a *weekly* basis.[23]
- Prohibits public money from flowing to noncompliant school districts.

Regrettably, the official responsible for enforcing § 809(1) has failed in their obligation to do so.

Commissioner's Duty to Enforce Humane Education Mandate

Both the Commissioner's enforcement powers under the general Education Law and § 809(1) make clear that the Commissioner has a duty to ensure that the Mandate is observed by all publicly funded districts with elementary schools. The Commissioner is statutorily obligated "to enforce and give effect to the Education Law," which includes § 809(1).[24] The Commissioner can moreover withhold public funding from any district "willfully disobeying" the law.[25] The Mandate builds upon the Commissioner's general enforcement duties by imposing a surprisingly stringent penalty on noncompliant schools. It flatly forbids the Commissioner from allowing public school money to flow to noncompliant schools.[26] Indeed, the Mandate's compulsory penalization of all violations underscores the legislature's strong desire to ensure district compliance with the humane

[22] N.Y. Educ. Law § 809(1).

[23] *Id.*

[24] *Figueroa v. Mkt. Training Inst., Inc.*, 562 N.Y.S.2d 175, 177 (N.Y. App. Div. 2d Dept. 1990); N.Y. Educ. Law § 305, 308.

[25] N.Y. Educ. Law § 306(2).

[26] *Id.* § 809(1).

education law. Unfortunately, legislative intent has yet to be honored by school districts and the Commissioner alike.

II. THE PROBLEM OF MANDATE NONCOMPLIANCE & UNDERENFORCEMENT

In spite of the Mandate's longevity and stringency, it currently carries little force beyond paper. As Section A describes, the reason is two-fold. First, many New York districts repudiate their obligations under the Mandate. Second, the Commissioner has abdicated their responsibility to enforce it. Section B discusses the third-party efforts to promote adherence that, while commendable, have done little more than achieve piecemeal compliance. By exploring the disconnect between the law's theoretical strength and its practical underenforcement, this Part underscores the need for a legal mechanism that compels the Commissioner to confront the noncompliance problem head-on.

Commissioner & School Districts Fail to Adhere to Mandate

While the Mandate "appears stringent on its face," with its clear directive paired with a severe, nondiscretionary penalty for noncompliance,[27] it is seldom observed by school districts and rarely (if ever) enforced by the Commissioner.[28] There are several explanations for this, which boil down to: a lack of awareness among educators and administrators,[29] lack of training and resources,[30] and lack of understanding of the value of humane education and what it truly entails.[31] At bottom, Section 809(1) is "not promoted or enforced."[32]

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[27] *Supra* Part I(C).
[28] Antoncic, *supra* note 9, at 210–11
[29] *Id.* at 210.
[30] *Id.*
[31] Laura Ann Cammisa, President of NYSHA, *President's Message: Humane Education is Important*, 25 N.Y. STATE HUMANE R. (2012), https://www.nyshumane.org/presmsg-humane-education-is-important/.
[32] Laura Ann Cammisa, President of NYSHA, *President's Message: Humane Education is Mandated in New York Elementary Schools*, 27 N.Y. STATE HUMANE R. (2014), https://www.nyshumane.org/presmsg-humane-education-is-mandated-in-new-york-elementary-schools/.

No doubt, both the Commissioner and New York districts have failed to provide adequate support for education administrators and teachers. Despite the decades that have lapsed since the law's passage, the Board of Regents has declined to exercise its statutory discretion to set a minimum period of instruction time for humane education.[33] The Commissioner has failed to inform districts of the Mandate, let alone advise how they might meet its requirements.[34] This has had a cascading effect. At the next tier below, districts have failed to educate elementary school teachers about the Mandate, train teachers on how to satisfy the humane education requirement, or fund humane education programs.[35] As a result, and unbeknownst to them, many districts are in violation of § 809(1). Others may knowingly flout the law with little fear of recrimination, given the Commissioner's historical lack of enforcement.

After all, the Commissioner does not appear to have taken any enforcement actions to ensure § 809(1) compliance.[36] To be fair, one must wonder if the very harshness of the Mandate's penalty explains the Commissioner's reluctance to mount enforcement actions against noncompliant districts. Withholding public funding would not punish noncompliant school districts in isolation; it would instead impose severe collateral impacts on New York public school students, exacerbating inequities within a state education system that currently "discriminates against poor and minority students."[37] Short of cutting funding to noncompliant schools, however,

[33] N.Y. Educ. Law § 809(1). According to Lydia S. Antoncic, the former president and founder of Humane Education Advocates Reaching Teachers (HEART), in 2003, "it appears that no time period of time for weekly instruction was ever set [by the Board of Regents." Antoncic, *supra* note 9, at 201 n. 113. There is no indication that the Board of Regents has since prescribed such period of time.
[34] *Supra* Part II(A).
[35] *Id.*
[36] The writer of a 2003 law review article asserted that no action had been brought against a noncompliant school. Antoncic, *supra* note 9, at 201. The author's research indicate that the Commissioner has not taken any action in the 22 years since that article's publication.
[37] Justin Murphy, *Education Funding in New York Inequitable, Inadequate, Reports Says*, DEMOCRAT & CHRONICLE (Feb. 17, 2020), https://www.democratandchronicle.com/story/news/education/2020/02/17/usccr-new-york-education-funding-inequitable-inadequate-foundation-aid/4737790002/ (last visited Feb. 18, 2025).

the Commissioner could be doing much more to promote compliance—such as by raising awareness among educators about the Mandate's existence.[38]

Third-Party Efforts to Induce Mandate Compliance Cannot Substitute for Commissioner's Enforcement Duties

The failures of both the Commissioner and school districts are depriving New York elementary school students of their statutory right to humane education. Advocacy groups, individual teachers, and legislators have attempted to address the chasm between the Mandate's strict requirements and the commonplace violations.

For instance, legislators have attempted to remedy chronic noncompliance through amending § 809(1).[39] For over a decade, various state bills have been introduced that would, among other things, require the Commissioner to notify districts of the Mandate, authorize the Commissioner to award grants for humane education resources, and mandate two hours of humane education training for teachers.[40] So far, each of these bills has failed in committee.[41]

However, A.798 was introduced in the 2025-2026 General Assembly and is in committee as of June 3, 2025.[42] If passed, A.798 would extend § 809(1)'s mandated humane education instruction to secondary school students and empower the Commissioner to promulgate regulations needed to ensure incorporation of humane education into existing curriculum.[43] It would additionally bring an "added layer of accountability and oversight" by requiring the

[38] In fact, there is evidence that the Commissioner took their enforcement role more seriously in the past. *See* NYC BAR ASS'N COMM. ON LEGAL ISSUES PERTAINING TO ANIMALS, *supra* note 20, at 2; Antoncic, *supra* note 9, at 211.
[39] *See, e.g.,* HEART, *Advocacy*, https://teachheart.org/advocacy/ (last visited Feb. 18, 2025); N.Y. STATE BAR ASS'N COMM. ON ANIMALS L., MEMORANDUM IN SUPPORT OF S.4533 & A.416 (2023); NYC BAR ASS'N COMM. ON LEGAL ISSUES PERTAINING TO ANIMALS, *supra* note 20, at 5.
[40] *See, e.g.*, A.10344, 2007–08 Reg. Sess. (N.Y. 2008); A.5861, 2015–16 Reg. Sess. (N.Y. 2015); A.5642, 2017–18 Reg. Sess. (N.Y. 2017), A.416, 2023–24 (N.Y. 2003).
[41] A.10344, 2007–08 Reg. Sess. (N.Y. 2008); A.5861, 2015–16 Reg. Sess. (N.Y. 2015); A.5642, 2017–18 Reg. Sess. (N.Y. 2017).
[42] A.798, 2025-26 Reg. Sess. (N.Y. 2025).
[43] *Id.*

Commissioner to maintain and publicize school compliance records.[44] Time will tell if this legislative session can finally push these much-needed reforms out of committee and into law.

Apart from supporting legislative reform, advocacy groups and individual teachers have taken it upon themselves to promote adherence to § 809(1). Organizations like Humane Education Advocates Reaching Teachers (HEART), People for the Ethical Treatment of Animals (PETA), and the New York State Bar Association's Committee on Animals and the Law seek to increase compliance by developing free humane education materials for educator use.[45] In addition, some individual educators have taken it upon themselves to meet the legal requirements.[46] Yet uniform compliance with the Mandate is unattainable so long as there remains misplaced reliance on educators to deliver the mandatory instruction on their own initiative. The laudable efforts of legislators, advocacy groups, and educators have prompted *some* improvements in § 809(1) compliance, but they are imperfect and insufficient. Most districts and the Commissioner continue to spurn their legal duty to effectuate the statute.

III. SECTION 310: AN ADMINISTRATIVE VEHICLE TO PROMOTE MANDATE COMPLIANCE & ENFORCEMENT

Considering that over a century has lapsed since its enactment, the widespread neglect of the Mandate by districts and the Commissioner is untenable and risks transforming this powerful statute into "dead letter" law.[47] While similar problems of noncompliance plague other states' humane education laws, [48] New Yorkers who are frustrated by the failure of their children's

[44] *Id.* MEMORANDUM IN SUPPORT OF S.4533 & A.416, *supra* note 39, at 2.
[45] HEART, *Humane Education Teaching Resources*, https://teachheart.org/library/ (last visited Feb. 19, 2025); PETA, *FREE TeachKind Material*, https://www.peta.org/teachkind/lesson-plans-activities/free-materials/ (last visited Feb. 19, 2025); N.Y. STATE BAR ASS'N COMM. ON ANIMALS L., *Humane Education Program,* https://nysba.org/humane-education-program/ (last visited Feb. 19, 2025).
[46] *See, e.g.,* HEART, *Educator Spotlight: Felice Clyne-Davis* (Oct. 29, 2021), https://teachheart.org/2021/11/03/educator-spotlight-felice-clyne-davis/ (last visited Feb. 19, 2025).
[47] Unti, *supra* note 2, at 30.
[48] *Id.*; LILLIAN MAUDE MATHEWSON, HUMANE EDUCATION 39 (1942).

elementary schools to provide humane education can leverage a low-barrier administrative tool to, at the very least, bring awareness to the oft-overlooked mandate: N.Y. Educ. Law § 310.

This Part provides essential guidance for parents and advocacy groups interested in utilizing this legal device to bring force to the Mandate. Section A introduces the statutory basis for the recommended administrative proceeding. Section B provides a blueprint of what a § 310 petition arising from a district's failure to provide the mandated weekly instruction in humane education might look like, delving into both its procedural and substantive requirements. Section C then describes the applicable standard of review, before Section D details the administrative and judicial pathways available to challenge an unfavorable § 310 decision.

Section 310 Appeals to Commissioner

Courtesy of N.Y. Educ. Law § 310, parties may request the Commissioner to enforce compliance against a school district violating the law. The statute permits a party aggrieved "by any [] act pertaining to common schools" to petition the Commissioner.[49] In essence, § 310 offers aggrieved parties an administrative remedy for disputes arising within the state education system—including where a district acts contrary to law through their action or inaction.[50]

In response to § 310 petitions, also referred to as "§ 310 appeals," the Commissioner issues decisions that are publicly available on the NYSED Office of Counsel's website.[51] These determinations hold precedential value for future § 310 proceedings.[52] Moreover, courts cite the Commissioner's § 310 determinations in their opinions, demonstrating that their precedential

[49] N.Y. Educ. Law § 310.
[50] *Appeal of Curry*, N.Y. State Comm'r Educ. Decision No. 16,795 (2015).
[51] OFF. COUNS., N.Y. STATE EDUC. DEPT., *Commissioner's Decisions*, https://www.counsel.nysed.gov/Decisions/dcommissionersdecisions (last visited Mar. 4, 2025).
[52] N.Y. STATE SCHOOL BDS. ASS'N, *When Disputes Arise in School Districts, Who Decides?* (Feb. 15, 2016), https://www.nyssba.org/news/2016/02/15/on-board-online-february-15-2016/when-disputes-arise-in-school-districts-who-decides/ (last visited Mar. 8, 2025).

impact extends past the administrative system into the judiciary.[53]

Wielding § 310 to Complain About District Noncompliance with Mandate

This Section explains how prospective petitioners can file a § 310 appeal challenging a district's failure to comply with the Mandate, providing key information for pursuing such action. It discusses the possible factual scenario undergirding the contemplated petition, the legal effort's overriding objectives, § 310's basic filing requirements, and how standing and timeliness doctrines operate in § 310 proceedings.

Factual Scenario Giving Rise to § 310 Petition

Before diving into the minutia of § 310, it is worth pausing to examine the circumstances and substantiating evidence giving rise to the proposed § 310 appeal: district inaction, where the district fails to provide elementary school students the mandated weekly instruction in humane education in direct contravention of § 809(1)'s text. In response to a § 310 petition predicated on these facts, the Commissioner could order a noncompliant district to rectify its failure to provide the required instruction.[54] Hereinafter, the Paper employs "Proposed Legal Action" as shorthand for the suggested legal strategy beginning with a § 310 petition based on the foregoing.

Prospective petitioners have several avenues through which to substantiate their § 310 appeal. First, prospective petitioners could request public records on humane education curricula.[55] A district's inability to provide such records would strongly indicate noncompliance with the Mandate. Second, if A.798—or a future bill similarly requiring the Commissioner to maintain and publicize § 809(1) district compliance records—inches out of committee and into law, then parties could also utilize the newly created public database to obtain evidence of noncompliance.[56] Last,

[53] *See, e.g., Shapiro v. McAndrews*, 377 N.Y.S.2d 402, 403–06 (N.Y. Sup. Ct. 1975).
[54] *See, e.g., Appeal of Doyle*, N.Y. State Comm'r Educ. Decision No. 16,429 (2012).
[55] Parties would rely on New York's Freedom of Information Law (FOIL) to do so. N.Y. Pub. Off. Law §§ 84–90.
[56] *See supra* Part II(B).

prospective petitioners could seek affidavits from parents and/or teachers that attest to the targeted district's lacking instruction.[57]

Goals of Proposed Legal Action

It is important to next define the Proposed Legal Action's objectives, as they will serve as guideposts when fleshing out the legal strategy's particulars and measuring its likelihood of success. By embracing an affordable and accessible legal mechanism, the Proposed Legal Action imagines parents—rather than attorneys—leading the charge for change. In a best-case scenario, the Proposed Legal Action's success on the merits would compel the Commissioner to enforce the Mandate at a noncompliant district, thereby creating positive precedent for future enforcement actions and prompting districts to take the law seriously.

While, by statute, the withdrawal of public funds is the automatic consequence for noncompliance,[58] the petitioners *must* refrain from requesting the execution of this drastic penalty and rather *expressly disavow* it in any filings, public statements, and other communications. Other than risking the Proposed Legal Action—and its proponents—to suffer from poor optics and (valid) public backlash, it is worth emphasizing that the goal of the Proposed Legal Action is *not* to deprive New York schools of the public funding sources integral to serving New York's 2.5 million primary and second school students.[59]

Above all, regardless of its formal success, the Proposed Legal Action aims to empower parents to raise awareness among the Commissioner, district administrators, educators, and parents about the Mandate's existence and the current state of widespread noncompliance. Ideally, this would drive a shift toward making compliance the norm, while also compelling the Commissioner

[57] N.Y. Comp. Codes, R. & Regs. tit. 8, § 276.8.
[58] *Supra* Part I(C).
[59] NYSED, *New York State Education at a Glance: 2023-24*, DATA.NYSED.GOV, https://data.nysed.gov (last visited Mar. 8, 2025).

to take a more active role in facilitating this change in line with their legal obligations.[60] Bringing attention to § 809(1) is especially urgent now, as we confront multiple existential crises rooted in our broken relationship with other living beings and the earth.[61]

Complying with § 310's Basic Procedural and Substantive Requirements

Newly armed with an understanding of the general factual scenario and objectives driving the Proposed Legal Action, this Subsection breaks down the basic procedural and substantive components of a § 310 appeal and how petitioners might meet them here. There are several requirements associated with filing § 310 petitions, which can be found in Title 8, Part 275–76 of the Commissioner's regulations.[62] Among other things, appellants must write a petition stating their claim and demand for relief,[63] personally serve the respondent district with the petition and supporting documents,[64] and file the § 310 petition with the NYSED Office of Counsel. There is no cost for filing a § 310 petition,[65] and they may also submit a memorandum of law.[66]

As part of the demanded relief within the context of the Proposed Legal Action, petitioners could request the Commissioner to do the following:

- Order the target district to provide the required weekly humane education instruction within its complained-of elementary school(s).[67]
- Conduct an audit of all elementary educational programs used in the complained-of district to determine whether they comply with the Mandate and direct the district to

[60] *Supra* Part I(C).
[61] *Supra* Introduction.
[62] N.Y. Comp. Codes, R. & Regs. tit. 8, Part 275–76.
[63] *Id.* § 275.10.
[64] *Id*. § 275.8(a).
[65] Until January 2024, the filing fee was $20, as prescribed by since-removed *id.* § 275.9(c).
[66] *Id.* § 276.4(a).
[67] *See Appeal of Doyle*, N.Y. State Comm'r Educ. Decision No. 16,429 (2012).

ensure the Mandate is followed in its elementary schools.[68]

- Review *all* the state's elementary school programs to ensure § 809(1) compliance and direct *all* districts to comply with § 809(1) in their elementary schools.[69]

Working with Parents to Secure § 310 Standing and Ensuring Timeliness

Because parents with children in schools defying § 809(1) readily satisfy § 310 standing requirements—given that they are "directly affected" by a district's failure to provide the mandated humane education instruction—they should file the § 310 appeal.[70] With ample preparation, parents could potentially secure class certification and thereby amplify the appeal's strength and visibility. The bar for class certification set by § 310, while high, is not insurmountable. To be certifiable, the petitioners must specify the number of class members,[71] demonstrate that the class is "so numerous that joinder . . . is impracticable," and show that "all questions of fact and law are common to all members of the class."[72] For ease of reference, the parents bringing the Proposed Legal Action—whether individually or as a class—will hereinafter be referred to as "Parent-Petitioners" as this Paper continues sketching in the strategy's blueprint.

The Commissioner's regulations require that § 310 appeals be initiated "within 30 days from the making of the decision or the performance of the act complained of."[73] However, where a party seeks to complain about ongoing and unlawful *in*action, such that there is no discrete district decision or act triggering the 30-day clock, the ongoing wrong doctrine comes into play.[74]

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[68] *See Appeal of Curry*, Decision No. 16,795.
[69] While petitioners would likely lack standing for this claim for relief, it may be strategically worthwhile to put this suggestion before the Commissioner.
[70] The standing doctrine under § 310 resembles that in the courts. *See, e.g., Appeal of Agostini*, N.Y. State Comm'r Educ. Decision No. 17,286 (2017); *Appeal of Nappi*, N.Y. State Comm'r Educ. Decision No. 17,387 (2018).
[71] *Appeal of Joyce*, N.Y. State Comm'r Educ. Decision No. 17,465 (2018).
[72] N.Y. Comp. Codes, R. & Regs. tit. 8, § 275.2.
[73] *Id.* § 275.16.
[74] *Appeal of Curry*, Decision No. 16,795.

Thus, Parent-Petitioners can initiate a § 310 petition in response to a district's *failure* to provide the required instruction without risking dismissal for untimeliness, since such inaction is "inherently lawful and [] a continuing wrong subject to complaint at any time."[75]

What Happens After Filing § 310 Petition?

This Section shifts focus to the processes following the submission of a § 310 appeal, such that the parties interested in advancing the Proposed Legal Action can gain a better sense of what to expect after filling. It examines the standard governing the Commissioner's review of § 310 petitions and reflects on the difficulty of predicting the result of the contemplated § 310 petition.

Commissioner's Method and Standard of Review for § 310 Petitions

To prevail on their § 310 appeal, the Parent-Petitioners must show the district "violated a legal obligation (e.g., constitutional provision, statute, regulation . . .)."[76] That is, Parent-Petitioners must demonstrate that the complained-of district violated its statutory duty to provide its elementary school students weekly instruction in humane education.

Neither regulations nor the Commissioner's decisions articulate the standard of review applied to § 310 petitions. Based on the author's review of the Commissioner's decisions, it does not appear that the Commission affords deference to either party when reviewing petitions. At least in theory, the Commissioner acts as an impartial decisionmaker in § 310 proceedings. Further, the Commissioner's decision-making process happens behind closed doors[77] and is based on the "documents that are properly submitted as part of the record . . . ."[78]

Given Commissioner's Broad Discretion, Difficult to Predict § 310 Petition's Outcome

[75] *See, e.g., Appeal of Doyle*, Decision No. 16,429; *Appeal of Curry*, Decision No. 16,795.
[76] NYSED, *Frequently Asked Questions Concerning Appeals to the Commissioner of Education*, https://www.counsel.nysed.gov/appeals/faqs (last visited Mar. 26, 2025).
[77] *Id.*
[78] *Id.*

The Commissioner enjoys ranging powers when addressing § 310 petitions,[79] as well as in interpreting and applying the Education Law.[80] Because the Commissioner is charged with enforcing a humane education statute that is relatively vague and imprecise, they possess wide discretion in responding to a § 310 appeal predicated on district § 809(1) noncompliance. Without a specific fact pattern or precedent exactly on point—or an articulated standard of review for § 310 appeals—it is difficult to predict how the Commissioner will respond to a § 310 appeal based on the Proposed Legal Action.[81]

On the one hand, confronting the Commissioner with a district's total dearth of humane education instruction materials would strongly indicate the district's § 809(1) noncompliance and ideally force the Commissioner to address that transgression. On the other hand, the nebulous nature of what humane education is, the lack of statutory or regulatory clarification as to what constitutes compliance, and districts' freedom to integrate its instruction with other subjects, all coupled with the Commissioner's power to interpret and apply the Education Law, may enable the Commissioner to sidestep Parent-Petitioners' grievance and instead set a egregiously low standard for what qualifies as compliance with § 809(1).[82] To maximize the likelihood of success, those interested in bringing the Proposed Legal Action should emphasize in their petition the district's statutory duty to provide *weekly* instruction in humane education—one of the few, but potent, concrete benchmarks provided by the law—and the complained-of district's failure to meet that standard.

Challenging an Unfavorable Commissioner Determination

[79] *See Bd. of Ed. of City of New York v. Allen*, 160 N.E.2d at 65.

[80] *Mugavin v. Nyquist*, 367 N.Y.S.2d 604 (N.Y. App. Div. 3d Dept. 1975), *aff'd*, 355 N.E.2d 296 (N.Y. 1976).

[81] *Supra* Part III(C)(i).

[82] *See supra* Part I(B).

If the Commissioner responds unfavorably to Parent-Petitioners' § 310 appeal—e.g., by dismissing the petition or finding that the school is complying with § 809(1) when it is clearly not—then they should seek review of the Commissioner's decision via one or both of the proceedings described in this Section. Subsection i describes a low-barrier process for seeking administrative review, while Subsection ii delves into a more complex procedure for obtaining judicial review of the Commissioner's § 310 determinations.

Section 310 Administrative Review: Requesting Commissioner to Reopen Unfavorable Decision

If the Commissioner responds unfavorably to Parent-Petitioners' § 310 appeal, they may request the Commissioner to reopen the decision within 30 days.[83] The Commissioner retains sole discretion over whether to grant the application for reopening, and will not acquiesce unless petitioners can either establish the decision resulted from the Commissioner's misunderstanding of the facts or was issued before "new and material evidence" came to light.[84] If neither of those circumstances apply or the Commissioner appears disinterested in enforcing the Mandate, Parent-Petitioners should directly proceed with an Article 78 proceeding to conserve resources.[85]

Article 78 Judicial Review: Requesting Courts to Intervene in Unfavorable Decision

An Article 78 special judicial proceeding is a second—albeit more complicated and costly—way that Parent-Petitioners can seek review of an unfavorable Commissioner determination. An Article 78 proceeding allows those aggrieved by administrative action to seek judicial intervention. Parties may bring an Article 78 proceeding in the courts whether an agency determination "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion"—i.e., in the nature of mandamus to review—or whether an agency or

[83] N.Y. Comp. Codes, R. & Regs, tit. 8, § 276.8.
[84] *Id.*
[85] *Bd. of Educ., Commack Union Free Sch. Dist. v. Ambach*, 517 N.E.2d 509, 512 n.2 (N.Y. 1987).

officer "failed to perform a duty enjoined upon it by law"—i.e., in the nature of mandamus to compel.[86]

Here, within four months of receiving the final § 310 determination,[87] Parent-Petitioners could request the court in an Article 78 proceeding to annul the Commissioner's determination (mandamus to review relief) and/or order that the Commissioner enforce the Mandate at the noncompliant district (mandamus to compel relief).[88] At this stage, the outcome of such an Article 78 proceeding remains uncertain. It depends heavily on the facts, the evidence of § 809(1) noncompliance, and the substance of the Commissioner's § 310 decision. Still, the author hopes the following discussion of the two applicable standards of review will help Parent-Petitioners assess and strengthen any potential Article 78 challenge.

Article 78 Proceedings in Nature of Mandamus to Review

When evaluating whether a § 310 determination should be set aside, courts employ the deferential arbitrary and capricious standard.[89] Specifically, they interrogate "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion . . . . ."[90]

Courts defer to an agency's reasonable interpretation of the legislation it implements.[91] The Commissioner's interpretation of the Educational Law carries significant weight in this regard,[92] for courts must generally "defer to [the] Commissioner's construction of an ambiguous or unclear

[86] N.Y. C.P.L.R. 7803.
[87] N.Y. C.P.L.R. 217(1).
[88] This would be identical to the relief sought by parents in *Weber*, 174 N.Y.S.3d at 804. Parent-Petitioners would easily satisfy Article 78 standing. 6 N.Y. Jur. 2d Article 78 § 231. *See, e.g., Weber*, 174 N.Y.S.3d at 804. They would additionally satisfy Article 78's finality and exhaustion requirements. *See, e.g., id*. at 812.
[89] *Application of O'Brien*, 160 N.Y.S.2d 754, 758 (N.Y. App. Div. 3d Dept. 1957).
[90] N.Y. C.L.P.R. 7803(3).
[91] *Weber*, 174 N.Y.S.3d at 809.
[92] *Mugavin v. Nyquist*, 367 N.Y.S.2d at 607; *Shapiro*, 377 N.Y.S.2d at 405.

provision of the Education Law."[93] This forgiving standard of review explains why court reversals of the Commissioner's determinations are rare,[94] though not unheard of.[95]

Parent-Petitioners will thus face an uphill battle when seeking judicial annulment of an unfavorable § 310 decision. Given the lack of clarity in the Education Law as to what exactly would satisfy the Mandate, a reviewing court is likely to defer to the Commissioner's evaluation of whether the complained-of district is complying with § 809(1). If the Commissioner establishes a low threshold for what satisfies the Mandate in their § 310 determination, the court may very well acquiesce to that decision, considering it within the realm of "professional judgment and discretion of those responsible for the administration of the public schools."[96] Of course, a court will annul a Commissioner's determination if it is irrational or unlawful.[97]

Article 78 Proceedings in Nature of Mandamus to Compel

If the Commissioner refused to enforce the Mandate at the noncompliant district in the prior § 310 proceeding, Parent-Petitioners could request the court to compel the Commissioner to do so *in addition to* seeking the § 310 decision's annulment. Mandamus to compel is considered "an extraordinary remedy that lies only to compel the performance of acts [by a public officer or body] which are mandatory, not discretionary, and only when there is a clear legal right to the relief sought."[98] In addressing requests for mandamus to compel relief, courts "may not . . . assume the exercise of educational policy vested by constitution and statute in school administrative

[93] *Bd. of Educ. of Lawrence Union Free Sch. Dist. No. 15 v. McColgan*, 846 N.Y.S.2d 889, 892 (N.Y. Sup. Ct. 2007).
[94] N.Y. STATE SCHOOL BDS. ASS'N, *When Disputes Arise in School Districts, Who Decides?* (Feb. 15, 2016), https://www.nyssba.org/news/2016/02/15/on-board-online-february-15-2016/when-disputes-arise-in-school-districts-who-decides/ (last visited Mar. 8, 2025).
[95] *See, e.g., Weber*, 174 N.Y.S.3d at 808.
[96] *James v. Bd. of Ed. of City of New York*, 366 N.E.2d 1291, 1299 (N.Y. 1977).
[97] N.Y. C.P.L.R. 7803.
[98] *Weber*, 174 N.Y.S.3d at 810–11.

agencies."[99] Parent-Petitioners should therefore construct any sought-after order to compel in broad terms that do not infringe upon the Commissioner's discretionary authority over administering the education system. That is, they must only request that the court order the Commissioner to fulfill their nondiscretionary duty to enforce § 809(1) at the noncompliant district, but not *how* to do so.

IV. WEIGHING THE PROPOSED LEGAL ACTION'S ADVANTAGES AND DISADVANTAGES

To help prospective Parent-Petitioners decide whether pursuing the Proposed Legal Action is worthwhile, this Part balances two of its key advantages against two of its disadvantages.

Advantages

One of the Proposed Legal Strategy's greatest strengths is that it capitalizes on a low-barrier, low-risk legal mechanism with the potential to drive substantial change.

Low Cost and Low Barrier

First, the Proposed Legal Strategy centers the § 310 appeals process such that laypersons, specifically parents, can be the drivers of legal change in their children's state educational system without expending significant resources or assuming great financial risk. Section 310 does not impose filing fees, authorize the Commissioner to award attorney's fees, or involve resource-intensive discovery or motions practice.[100]

No doubt, litigation costs will grow if Parent-Petitioners later seek Article 78 judicial review. While unlikely that a reviewing court could award attorney's fees,[101] Article 78 does

[99] *Bennett v. City Sch. Dist. of New Rochelle*, 497 N.Y.S.2d 72, 80 (N.Y. App. Div. 2d Dept. 1985).

[100] *Appeal of Roberts*, N.Y. State Comm'r Educ. Decision No. 14,395 (2000).

[101] *Dechbery v. Cassano*, 69 N.Y.S.3d 22 (N.Y. App. Div. 1st Dept. 2018).

charge filing fees and allow for discovery at the court's discretion.[102] If prospective litigants are worried about investing greater time and resources, they can forgo judicial review of any unfavorable § 310 determination. Ideally, advocacy groups sharing an interest in enforcing the Mandate——particularly those with attorneys among their ranks—could help shoulder any litigation expenses and provide legal guidance to the extent desired by Parent-Petitioners.

Low Risk with Potential for High Reward

In addition, the Proposed Legal Action is a low-risk method to achieve its overarching goal of bringing § 809(1) to the fore. In a best-case scenario, victory on the merits would raise awareness about the Mandate *and* set important precedent for future administrative and judicial actions aimed at addressing noncompliance in other districts. That is, the Commissioner's response could incite a radical shift to districts providing weekly, substantive instruction in humane education that inspires students to be kinder to animals, humans, and the planet.

Moreover, even a loss on the merits could produce a net benefit. To put it bluntly, given the pervasive trend against § 809(1) compliance and enforcement,[103] it is very unlikely such a loss could in any way *worsen* the current, abysmal state of affairs. Rather, a loss on the merits would simply formally maintain the status quo while still drawing attention to this neglected educational mandate and hopefully inspire shifts down the line.

In fact, a loss could still motivate the Commissioner to remedy widespread § 809(1) compliance if Parent-Petitioners present the issue compellingly enough in their § 310 appeal. In *Appeal of Curry*, the Commissioner dismissed a § 310 petition arising from a district's failure to provide mandatory arts instruction on procedural grounds yet still instigated remedial action,[104]

[102] *Filing Fees*, https://ww2.nycourts.gov/forms/filingfees.shtml (last visited Mar. 26, 2025); *Price v. New York City Bd. of Educ.*, 837 N.Y.S.2d 507, 514 (N.Y. Sup. Ct. 2007).
[103] *Supra* Part II(A).
[104] *Id.*

directing NYSED to provide "guidance and technical assistance" to the complained-of district to ensure its adherence to minimum educational standards.[105] Similarly, the Commissioner could independently take any number of administrative actions to promote § 809(1) awareness and compliance irrespective of the § 310 appeal's formal success.

Disadvantages

The Proposed Legal Action is not without its drawbacks. Chiefly, the Proposed Legal Action carries the risk of stoking hostilities with other stakeholders, and its formal success largely depends on how the Commissioner exercises their wide discretion.

Risk of Adversarial Relationships

As with most litigation efforts, the Proposed Legal Action risks engendering controversy. In fact, Lydia Antoncic, the founder and former president of perhaps the most prominent humane education nonprofit (HEART), advised *against* leveraging litigation to promote Mandate compliance in her 2003 law review article.[106] Antonic was concerned, in part, with the risk of creating an "adversarial relationship with the educational community."[107] She believed Mandate compliance should instead be effected by the "activism and dedication of concerned parents, teachers, and community leaders."[108] Clearly, Antoncic's dream has not borne out in the 20+ years since her article's publication.[109] Litigation remains an untested and promising avenue to raise awareness about the Mandate and drive the long-overdue shift to widespread compliance.

Nevertheless, prospective Parent-Petitioners should advance the Proposed Legal Strategy in ways that defuse opposition and build broader support among stakeholders—e.g., other parents,

[105] *Id.*
[106] Antoncic, *supra* note 9, at 211 n.209.
[107] *Id.*
[108] *Id.* at 211.
[109] *Supra* Part II(A).

educators, educational administrators, and organizations that have spent decades building collaborative relationships with districts to increase § 809(1) compliance.[110] For example, prospective Parent-Petitioners might attempt to build district-wide support for the Proposed Legal Action among parents and educators prior to filing their § 310 petition. In addition, they might consult with advocacy groups before instigating any legal proceedings.

Commissioner's Expansive Discretion: A Double-Edged Sword

One of the Proposed Legal Action's primary weaknesses is the impossibility of assessing its strength or predicting its outcome on the merits.[111] One explanation, of course, is the current lack of concrete, on-the-ground facts against which to evaluate its strength. Another, more enduring reason is the Commissioner's broad discretion to resolve matters arising under the Education Law and interpret the Mandate.[112] So long as the Commissioner's interpretation of § 809(1) is reasonable, it will be entitled to judicial deference during a later Article 78 proceeding.[113]

While the Mandate requires that instruction in humane education be provided on a weekly basis, what instruction precisely constitutes "humane education" remains ambiguous.[114] This presents a ripe opportunity for the Commissioner to exercise their authority to interpret districts' obligations under § 809(1) when disposing of the Proposed Legal Action. The Commissioner could just as easily establish robust humane education standards as they could set the bar painfully low in terms of what instruction complies with the Mandate. If upheld in court, the latter would absolve districts of any meaningful obligation to provide humane education to their elementary school

[110] *See supra* Part II(B).
[111] *See supra* Part III(C)(ii), (D).
[112] *Supra* Part III(C)(ii).
[113] *Supra* Part III(A).
[114] *Supra* Part I(B).

students.[115] Nevertheless, as noted above, one of the Proposed Legal Action's *advantages* is its low risk of *worsening* the present circumstances, regardless of its legal outcome. The mere act of Parent-Petitioners bringing the Proposed Legal Action achieves its principal goal of empowering parents to raise awareness about the Mandate.[116]

V. WHAT COULD DISTRICT COMPLIANCE WITH THE MANDATE LOOK LIKE?

This Paper has so far addressed district *non*compliance with § 809(1); this Section instead imagines what Mandate-*compliant* humane education could look like in practice. Section 809(1) avoids prescribing a one-size-fits-all approach, allowing instruction to be tailored to students' needs, educators' strengths, and schools' resources. While its nebulousness has often led to neglect, this flexibility is also its power—enabling educators to craft meaningful, diverse curricula that emboldens students to advocate for a more just and compassionate future.

While there are infinite ways to provide instruction in accord with the Mandate, this Paper posits that weekly lessons must meet two basic requirements. First, to effectively promote the humane treatment and protection of animals, instructors must also educate students about interrelated human and environmental rights issues. This perspective aligns with the holistic approach embraced by contemporary humane education leaders.[117] Indeed, the protection of animals is deeply interconnected with the protection of human dignity and the health of our planet. By cultivating students' compassion toward other humans and the environment, educators nurture the capacity for greater compassion toward animals (and vice versa).[118]

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[115] This significant risk of bringing a § 310 petition prior to an Article 78 proceeding is exemplified by *Nyboe v. Allen* 181 N.Y.S.2d 132, 134 (N.Y. App. Div. 3d Dept. 1958).
[116] *Supra* Part IV(A)(ii).
[117] *Supra* Introduction.
[118] R. Arbour et al., *Teaching Kindness: The Promise of Humane Education*, 17 SOC'Y & ANIMALS 136, 138–39, 146 (2009).

Second, encouraging the humane treatment and protection of animals requires that instructors prepare students to become what the Institute for Humane Education terms "solutionaries:" those who "identif[y] inhumane, unjust, and unsustainable societal systems and then develop[] solutions to transform them so that they do the most good and least harm for people, animals, and the environment."[119] Cultivating the ability to identify and reform systems that currently harm animals is integral to effectively promoting their humane treatment.

CONCLUSION

For far too long, the very entities entrusted with implementing and enforcing New York's compulsory humane education law have acted—or, rather, failed to act—in ways that risk burying it as dead letter law. Most school districts do not provide weekly instruction in humane education to their elementary pupils, yet the Commissioner continues to look the other way.

This Paper presents a pathway to resurrect New York's remarkable humane education law from its untimely burial. This Paper provides the Proposed Legal Action's basic blueprint that any interested party can adjust or modify to suit their needs and the specific facts at hand, with the aim of making the involved legal processes as navigable as possible. By leveraging a remarkably accessible tool of state administrative law, the Proposed Legal Action empowers parents to advocate for change on behalf of their children, raise much-needed awareness of the Mandate, and promote compliance thereof.

Resuscitation of the Mandate is long overdue. Indeed, the need to cultivate empathy that reaches both within and beyond our species' boundary is "even more pressing today" than at the time of the law's enactment in 1919.[120] Humane education can counteract the myriad forces—

[119] INST. HUMANE EDUC., *What Is a Solutionary?*, https://humaneeducation.org/what-is-a-solutionary/ (last visited Apr. 6, 2025).
[120] NYC BAR ASS'N COMM. ON LEGAL ISSUES PERTAINING TO ANIMALS, *supra* note 20, at 2.

cultural, economic, technological, and political—that are actively dulling our ability to extend compassion and care to animals, other humans, and the environment. As our capacity for empathy wanes and our ability to confront unjust systems goes undeveloped, the systemic harms and existential crises that we have wrought upon other animals and our own species continue to intensify. By effectuating legislative command and providing humane education instruction to children, we rekindle hope that the next generation will possess both the motivation and tools to move us towards a "more sustainable, just, and peaceful world."[121] While the law alone cannot bring about the critical, fundamental shifts in perspective and behavior that humane education seeks to promote, it can, at the very least, help the next generation access humane education's power and promise.

[121] INST. HUMANE EDUC., *What is Humane Education?*, https://humaneeducation.org/what-is-humane-education/ (last visited Jan. 4, 2025).

2025 Student Writing Competition 4th Place Finisher:

MANY ANIMALS WERE HARMED: A NEED FOR ANIMAL PROTECTIONS IN FILM AND TELEVISION

BY: RACHEL MCDONALD OF SETON HALL UNIVERSITY SCHOOL OF LAW

Introduction

Tim Burton's 2005 film *Charlie and the Chocolate Factory* features a memorable scene in which dozens of squirrels perched on tiny stools inspect nuts in the nut-sorting department of Willy Wonka's chocolate factory.[1] What many do not realize is that forty of those squirrels were real – rescued from local shelters and borrowed from private homes in England – and trained for nineteen weeks by animal handlers to perform that single scene.[2] Although Burton initially wanted one hundred live squirrels, the trainers quickly discovered that each squirrel had their own personality and talents – some refused to pick up nuts, while others wouldn't let them go – making the process far more complex than expected.[3] While most movie viewers likely enjoyed the scene's visual charm, few considered the remarkable effort behind it.

Animals have been used in film dating as far back as 1877, taking on roles as heroes, villains, loyal companions, and symbolic props to reinforce themes.[4] Yet even with almost 150 years of history, the lack of on-set animal protections has repeatedly led to injury, neglect, and death of animals – often without any consequence. Although some laws and guidelines indirectly address animal welfare in film and television, there are no federal or state laws that directly regulate or protect animals used in filmed media.

The entertainment industry needs federal and state laws that limit the use of animals in film and television to reduce instances of injury, neglect, and death of animals. Violations of these laws by production studios should result in hefty fines and suspension of licenses required to permit animal use in future projects.

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[1] Susan King, *Tim Burton gets squirrelly in 'Charlie'*, LA Times, July 10, 2005, https://www.latimes.com/archives/la-xpm-2005-jul-10-ca-page310-story.html.
[2] *Id.*
[3] *Id.*
[4] *Our History*, Humane Hollywood, (2024), https://humanehollywood.org/about-us/our-history/.

This paper will explore the use of animals in film and television, and how both the legal system and entertainment industry have failed to protect animal actors from abuse. First, it will outline the history of animals in film and television, highlighting instances of abuse that resulted in injury, neglect, and death of animal actors. Next, it will analyze current federal and state laws, as well as industry standards intended to protect animals, while addressing their shortcomings. Finally, it will provide recommendations for policymakers and the entertainment industry to prioritize the health and safety of animal actors by implementing the necessary protections in film and television projects that use animals on set.

History and Background

Animals have been used in film since photographer Eadweard Muybridge first captured sequential images of a galloping horse.[5] Although his experiment was intended to prove that all four hooves leave the ground during a gallop, it helped spark the use of animals in entertainment.[6] In 1877 and 1878, Muybridge continued exploring animal locomotion using multiple cameras to capture stop-motion sequences.[7] The French invention of the motion picture projector in 1894 soon followed, ushering in a new entertainment medium in America.[8] By 1903, movie theatres were opening across the country, including a chain in the Midwest launched by the Warner brothers.[9]

Animals quickly became central to film and television, captivating audiences through their charm and relatability. They became stars in their own right, connecting with viewers who already adored animals and loved seeing them on screen.

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[5] Haleema Shah, *How a 19th-Century Photographer Made the First 'GIF' of a Galloping Horse* Smithsonian Magazine, December 13, 2018, https://www.smithsonianmag.com/smithsonian-institution/how-19th-century-photographer-first-gif-galloping-horse-180970990/.
[6] *Id.*
[7] *Id.*
[8] Humane Hollywood, *supra* n. 4.
[9] *Id.*

In 1905, the first film hero dog appeared in *Rescued by Rover*, a British silent film.[10] Director Cecil Hepworth cast his own family dog, a collie named Blair, as Rover.[11] The short film followed Rover as he rescued a baby and won the hearts of audiences. The film was so popular that it had to be re-filmed three times because the original negatives wore out from excessive printing.[12]

In 1924, a German Shepherd bred for the Imperial German Army made his Hollywood debut in *Where the North Begins.*[13] Rin Tin Tin, rescued by a U.S. soldier during World War I, earned the nickname "The Dog that Saved Hollywood" after the film's success helped pull Warner Bros. out of bankruptcy in the 1920s.[14] He went on to star in twenty-eight films over ten years, leaving behind his legacy through his descendants – Rin Tin Tin Jr. and Rin Tin Tin III – the latter appearing in the 1947 film *The Return of Rin Tin Tin.*[15]

But not all animal actors were rewarded with the stardom and admiration enjoyed by Rover and Rin Tin Tin. In the 1921 film *Adventures of Tarzan,* a lion met a tragic end after sacrificing his life to the craft. During a fight scene, the untrained lion attacked Elmo Lincoln – who played Tarzan – after Lincoln provoked him by pulling his tail.[16] In response, Lincoln repeatedly stabbed the lion to death. Shockingly, the footage was left in the final cut of the film.[17]

Similarly, in the 1925 silent film *Ben-Hur*, at least 100 horses were reportedly killed during the filming of the infamous chariot race.[18] Though the scene lasted only ten minutes in the final two-

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[10] Susan King, *Classic Hollywood: Saluting Hollywood's dog stars*, Los Angeles Times, June 4, 2012, https://www.latimes.com/entertainment/la-xpm-2012-jun-04-la-et-classic-hollywood-20120604-story.html#:~:text=Movies%20were%20in%20their%20infancy,reshot%20twice%20because%20the%20negatives.
[11] *Id.*
[12] *Id.*
[13] Seth Abramovitch, *Hollywood Flashback: Rin Tin Tin Saved Warner Bros. From Bankruptcy in 1923*, The Hollywood Reporter, January 10, 2019, https://www.hollywoodreporter.com/movies/movie-news/rin-tin-tin-saved-warner-bros-bankruptcy-1923-1174469/.
[14] *Id.*
[15] *Id.*
[16] *Adventures of Tarzan: Trivia*, IMDb, https://www.imdb.com/title/tt0011908/trivia/.
[17] *Id.*
[18] *8 troubling tales of animal abuse on film shoots*, The Week, https://theweek.com/articles/470272/8-troubling-tales-animal-abuse-film-shoots.

and-a-half-hour film, the scale and intensity of the stampede came at an enormous cost – one vastly underrepresented on screen.[19]

As animal actors became more common in film, concerns about their welfare grew. In response to allegations of cruelty, the American Humane Association ("AHA") formed a committee to investigate and advocate on the animals, presenting a report at its 1925 annual meeting.[20] When movies began incorporating color and sound in the 1930s, the Motion Picture Producers and Distributors Association ("MPPDA") introduced the "Code of Production," which included provisions for the humane treatment of animals on set.[21]

Despite these measures, filmmakers often prioritized audience entertainment over animal welfare. Recognizing the appeal of animals in film, they continued to use them – particularly horses – in dangerous action scenes to attract viewers. While animatronics[22] debuted in the 1933 film *King Kong*, live horses remained a staple in western and action films, frequently placed in harm's way for dramatic effect.[23]

Those familiar with behind-the-scenes realities knew the cost of this "movie magic." High-profile actors began speaking out, including Errol Flynn, who criticized the treatment of horses during the 1935 production of *Charge of the Light Brigade*.[24] By 1937, the AHA concluded that humane directives were being ignored and pushed for an oversight program in California, home to major film studios.

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[19] Classic Hollywood Movies, *Ben-Hur Chariot Race (1925) | Complete Chariot Race*, YouTube, December 17, 2023, https://www.youtube.com/watch?v=0EV9hwCq_Y4.
[20] Humane Hollywood, *supra* n. 4.
[21] *Id.*
[22] *See Production Notes: Animatronics*, Nevada Film Office, (2019) (describing animatronics as the technology of animated electronics used to create lifelike animals, humans, robots, and monsters that can move and produce sound through the use of mechanical, computer, and electrical engineering principles and 3D modeling and sculpting).
[23] Humane Hollywood, *supra* n. 4.
[24] *Id.*

A major call for change occurred in 1939 when director Henry King sent a stunt rider and horse over a seventy-foot cliff and into a raging river for the film *Jesse James*. The horse, wearing movie blinkers with eyes painted on them, was unable to see and had no idea he was running off a cliff.[25] While the stunt rider survived, the horse did not. The AHA led a massive protest against the film and opened a Western Regional Office in Hollywood to more vocally advocate for animal actors.[26]

In 1940, following an agreement with the MPPDA, filmmakers were required to consult with the AHA on any film using animals to allow AHA representatives to supervise all animal action on set.[27] The impact of these 1940 reforms will be addressed later in this paper.

In addition to animal activist groups, audiences have long advocated for the welfare of animal actors. Even before social media, fans of films and television shows featuring animals grew emotionally invested in their on-screen characters and held studios to high standards regarding their care and treatment.

One of the most iconic animal actors was Pal,[28] the collie who played Lassie in 1943's *Lassie Come Home*, and six additional MGM films, and two television pilots before retiring.[29] Initially abandoned by his first family for being "untrainable," Pal was adopted by a dog trainer who recognized his potential and trained him for stardom.[30]

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[25] *Id.*
[26] Brian Cronin, *Movie Legends Revealed | How a Horse Falling Off a Cliff Led to 'No Animals Were Harmed'*, Comic Book Resources, July 2, 2014, https://www.cbr.com/movie-legends-revealed-how-a-horse-falling-off-a-cliff-led-to-no-animals-were-harmed/.
[27] *Id.*
[28] The animal actor, Pal, was a male dog. However, the character he played, Lassie, was female. For the purposes of this paper, I refer to him as a male since we are discussing his well-being in reality.
[29] Stacy Conradt, *Whatever Happened to Lassie (and 8 Other Showbiz Dogs)?*, Mental Floss, August 6, 2024, https://www.mentalfloss.com/article/28886/whatever-happened-lassie-and-8-other-showbiz-dogs.
[30] Kate Kelly, *The Dog That Played Lassie*, America Comes Alive!, https://americacomesalive.com/the-dog-who-played-lassie/.

Audiences viewed Lassie as more than just a character – they deeply cared about the dog behind the role. Fans frequently wrote to the studio whenever Lassie appeared injured or distressed, such as in scenes showing bleeding paws.[31] To ease concerns, the Society for the Prevention of Cruelty to Animals, which was present on set, would respond to these letters, explaining how the scenes were filmed and assuring fans that Lassie was unharmed.[32]

Not all animals have been as famous as Lassie, nor have many had such extensive careers. However, every animal actor deserves equal advocacy for their wellbeing on set, and it should not be the audience's responsibility to ensure they receive proper care and treatment.[33]

Existing Federal Legislation

There are no federal laws that directly address the use, care, and treatment of animals in film and television, but several laws provide indirect, general protections.

The Animal Welfare Act

The Animal Welfare Act ("AWA") was the first federal law in the U.S. to regulate the treatment of animals in research.[34] When it was signed into law in 1966, it was known as the Laboratory Animal Welfare Act and established minimum standards of care and housing for dogs, cats, primates, rabbits, hamsters, and guinea pigs kept by animal dealers and laboratories.[35] It also

[31] *Id.*
[32] *Id.*
[33] This paper will explore more recent films that have been criticized for their treatment of animals in later sections, such as the 2012 film *Life of Pi*, the 2012 film *The Hobbit: An Unexpected Journey*, and the 2017 film *A Dog's Purpose*.
[34] 7 U.S.C. § 2131.
[35] *Animal Welfare Act,* Animal Welfare Institute, https://awionline.org/legislation/animal-welfare-act.

required identification of dogs and cats to prevent theft and mandated licensing for dealers and registration for laboratories.[36]

Over the years, the AWA has been amended numerous times. Since 2008, its scope has expanded to cover animal carriers, handlers, dealers, breeders, and exhibitors, in addition to research laboratories.[37] The law now sets minimum care standards for housing, handling, sanitation, food, water, veterinary care, and protection from extreme weather.[38] It applies to most warm-blooded animals, with the notable exceptions of birds, and rats and mice bred for research.[39]

The AWA is applicable to film and television productions through its reference to "exhibitors." The law was enacted "to ensure that animals intended…for exhibition purposes…are provided humane care and treatment…"[40] Exhibitors must follow specific standards for humane care, and AWA authorizes the Secretary of Agriculture of the United States to impose civil and criminal penalties and revoke permits for violations.[41]

The AWA defines exhibitors as:

> Any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affect commerce, or will affect commerce, to the public for compensation, as determined by the Secretary, and such terms include carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary.[42]

A key issue with the applicability of the AWA in the entertainment industry is that filmmakers and production studios are not typically the ones required to register as licensed exhibitors. Instead, private individuals or companies that rent animals to studios hold the licenses and are the ones

[36] *Id.*
[37] 7 U.S.C. § 2131.
[38] *Id.*
[39] Animal Welfare Institute, *supra* n. 35.
[40] 7 U.S.C. § 2132.
[41] 7 U.S.C. § 2131.
[42] *Id.*

monitored under the AWA. These exhibitors are often unaware of how the animals are treated on set and may not be informed about the specific scenes in which the animals will appear.

For example, the 1980 slasher film *Friday the 13th* features a scene in which a snake frightens campers before being killed with a machete.[43] The final cut shows the snake writhing and dying – a scene long speculated to be real.[44] In 2023, it was confirmed that the snake was in fact killed on camera.

While the handler's exact role remains unclear, several crew members recalled that he was visibly distraught, had to be restrained, was heard crying off-camera, and was "inconsolable".[45] In this case, the handler – not the filmmakers or production studio – was the licensed party under the AWA. Therefore, those who actually made the decision to kill the snake would not have been held accountable under the Act.

Similarly, the production of the 2012 film *The Hobbit: An Unexpected Journey* led to the deaths of at least twenty-seven animals – including sheep, goats, and horses – due to poor on-set care.[46] Multiple animal handlers raised concerns during the filming about the dangerous conditions, such as sinkholes, cliffs, and broken fences, which they referred to as "death traps."[47] Despite repeated warnings, the production company dismissed their concerns, prompting many handlers to quit the film.[48]

From *Jesse James* to *Friday the 13th* and *The Hobbit*, it is clear that directors and producers often make decisions without consulting animal handlers, rendering the AWA ineffective in many cases. While the AWA does not protect cold-blooded animals like the snake killed in *Friday the 13th*,

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[43] Shawn S. Lealos, *Friday The 13th Controversy: Did They Kill A Real Snake?*, Screen Rant, September 13, 2023, https://screenrant.com/friday-the-13th-movie-controversy-real-snake-death/.
[44] *Id.*
[45] *Id.*
[46] *The Hobbit: handlers claim deaths of animals could have been prevented*, The Guardian, November 19, 2012, https://www.theguardian.com/world/2012/nov/20/the-hobbit-animal-deaths-farm.
[47] *Id.*
[48] *Id.*

the core issue remains: production studios and filmmakers often dictate animal care on set but are not required to register under the AWA. Unless production studios own or transport the animals, a rarity in the industry, they are not subjected to the AWA, regardless of their direct involvement in how animals are treated.

The Endangered Species Act

The Endangered Species Act ("ESA"), enacted in 1973, was designed to protect animals from extinction. It requires the Secretary of the Interior to identify species that are endangered or threatened.[49] An endangered species is one that is in danger of extinction throughout all or a significant portion of its range, while a threatened species is one likely to become endangered in the foreseeable future.[50] The Department of Interior and the Department of Commerce administer the ESA for most endangered animals, including marine mammals.[51]

The ESA makes it unlawful to take or possess any endangered species within the United States.[52] The term "take" means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct."[53] Courts interpret "take" very liberally; for example, construction of a residential project was ruled a violation for harassing a local bald eagle population.[54]

Under this law, production studios are generally prohibited from using endangered animals – such as orangutans or sea lions – in film or television projects.[55] While the ESA indirectly protects

[49] 16 U.S.C. § 1533(a)(1).
[50] 16 U.S.C. § 1532.
[51] *Id.*
[52] 16 U.S.C. § 1538.
[53] 16 U.S.C. § 1532(19).
[54] *Strahan v. Coxe*, 939 F.Supp. 963 (D. Mass. 1996); *Center for Biological Diversity v. Marina Point Development Associates*, 434 F.Supp.2d 789 (C. D. Cal. 2006
[55] *Species Directory*, World Wildlife Fund, https://www.worldwildlife.org/species/directory?direction=desc&sort=extinction_status.

such animals from exploitation by the entertainment industry, it does not specifically address their care and treatment on set.

One exception exists: filmmakers may apply for an Enhancement of Survival Permit from the Secretary of the Interior. This permit allows the use of endangered or threatened specific for scientific purposes or for efforts that promote the propagation or survival of the species, including activities related to reintroduced experimental populations.[56]

Accordingly, Enhancement of Survival Permits allow filmmakers to use endangered or threatened species in projects aimed at promoting the species' survival. These projects are typically documentaries that raise awareness about environmental concerns. However, documentaries are not subject to the same monitoring requirements for animal care and treatment as other film and television productions – a gap that raises additional concerns, which will be discussed later in this paper.

Existing State Legislation

There are no state laws that directly protect animals used in film and television, but general anti-cruelty statutes and laws prohibiting depictions of animal cruelty may apply indirectly. While all states have relevant laws, this paper will focus on those with the highest volume of film and television production.

General Anti-Cruelty Laws

Beginning with California, home to the largest film industry, state law prohibits maliciously killing, maiming, torturing, or wounding a living animal, with penalties including imprisonment and/or a fine of up to $20,000.[57] Additional fines, up to $25,000, can be imposed for violating

[56] 50 C.F.R. § 17.3.
[57] Cal Pen Code § 597.

regulations related to the importation and handling of animals, especially when such violations result in infestations or infections.[58] It is also a crime to deprive animals of necessary sustenance, drink, or shelter, and courts may grant injunctive relief to enforce the protections.[59]

Turning to other key states, in Washington, it is a class C felony to intentionally inflict substantial pain on an animal, meaning film producers could not legally use methods like electric prods to force animal performances.[60] Moreover, Georgia defines aggravated animal cruelty to include maliciously causing death or physical harm, torturing, poisoning, or failing to provide adequate care.[61] Convictions carry felony charges, with penalties of one-to-five years in prison and fines up to $15,000.[62]

In New Jersey, cruelty consists of overdriving, overloading, abusing, or needlessly killing an animal, and establishes penalties for overworking, tormenting, or failing to provide necessary care, as well as causing serious bodily injury or death.[63] Similarly, New York criminalizes overworking, torturing, cruelly beating, or unjustifiably injuring or killing animals.[64] Depriving animals of necessary sustenance is also a crime[65]

Finally, in Texas, cruelty laws apply both to livestock and non-livestock animals. For non-livestock animals, cruelty includes torture, abandonment, and inflicting bodily injury.[66]

Overall, while every state has laws criminalizing the neglect or abuse of animals, violations on film sets often go unnoticed or unpunished until they surface years later. Although these laws offer

[58] 3 CRR § 796.9.
[59] *Direct Action Everywhere Sf Bay Area v. Diestel Turk. Ranch*, 2020 Cal. Super. LEXIS 13206.
[60] WA ST 16.52.205.
[61] O.C.G.A. § 16-12-4.
[62] O.C.G.A. § 16-12-4.
[63] NJ Stat. § 4.22-26.
[64] NY CLS § 353.
[65] *Id.*
[66] Tex. Penal Code § 42.092.

some protections from the most egregious harm – such as intentional killing, maiming, or starvation – they do not specifically address the unique risks faced by animal actors on set.

State Laws Preventing Depictions of Animal Cruelty

In addition to general anti-cruelty laws, some states have laws that criminalize filming animal cruelty. While these laws do not generally protect animals' care and treatment on set, they do apply to any filmed and distributed scenes showing cruelty, such as beating or killing animals.

Consequently, California law specifically mentions animal actors, stating:

> The exhibition of any motion picture, if any intentional killing of, or cruelty to, a human being or an animal is shown in the motion picture and such intentional killing of, or cruelty to, a human being or an animal actually occurred in the production of the motion picture for the purpose of such production, is a nuisance, which shall be enjoined, abated, and prevented.[67]
>
> Killing and cruelty mean conduct which both (1) results in the death or the infliction of any physical injury or wound, including, but not limited to, any temporary or permanent physical harm resulting from the administration of any drug or chemical, and (2) is patently offensive to the average person, apply contemporary statewide community standards.[68]

California law defines "animals" as any amphibian, bird, mammal, or reptile, excluding fish and insects.[69] It also defines "motion picture" as any film, regardless of length or content, exhibited in theaters to paying customers or on television under paid advertising sponsorship.[70]

Illinois has a similar law, stating that "no person may knowingly create, sell, market, offer to market or sell, or possess a depiction of animal cruelty."[71] Additionally, it prohibits placing such depictions in commerce for commercial gain or entertainment, defining "depiction of animal" as "any visual or auditory depiction, including any photography, motion-picture film, video recording,

[67] Cal. Civ. Code § 3505.
[68] *Id.*
[69] Cal. Civ. Code § 3504.
[70] *Id.*
[71] 510 ILCS 70/3.03-1.

electronic image, or sound recording."[72] Likewise, Maine also prohibits such conduct with their law stating that:

> A person, including an owner or the owner's agent, is guilty of unlawful production of motion pictures if that person knowingly or intentionally prepares, manufactures, makes or participates in the preparation, manufacture or making of any motion picture film or videotape production involving cruelty to animals during the course of preparation, manufacture, making or exhibition of the motion picture film or videotape production.[73]

These state laws should be sufficient to hold filmmakers accountable for scenes like those in *Jesse James*, *Friday the 13th*, and *The Adventures of Tarzan*. As previously discussed, each of these films included a scene in which an animal was killed – whether intentionally or not – and that footage was edited into the final cut. This alone constitutes a depiction of animal cruelty, regardless of how the animal was treated on set prior to the scene. While the act of killing the animal was itself deeply unethical, including the footage in the final version and distributing it to audiences should never have been permitted.

Industry Standards

The American Humane Association

Due to the lack of specific federal and state standards for the care and treatment of animal actors, the film industry has historically relied on self-regulation. As discussed earlier, the AHA demanded reform after a horse was sent over a cliff to its death during the filming of *Jesse James* in 1939.[74] Following public protests, the AHA reached an agreement with the MPPDA requiring filmmakers to consult with the AHA on any film involving animals and to allow the organization on set to supervise all animal action.[75]

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[72] *Id.*
[73] 17 M.R.S.A. § 1013.
[74] Susan McCarthy, *Hollywood's long history of animal cruelty*, Salon, April 2, 2012, https://www.salon.com/2012/04/02/hollywoods_long_history_of_animal_cruelty/.
[75] *Id.*

This agreement led to the creation of the American Humane Hollywood, which is the "First to Serve in the protection of our beloved animal actors since 1940" and remains the only industry-sanctioned body overseeing animal safety on film sets.[76] Certified Animal Safety Representatives are tasked with ensuring adherence to AHA guidelines, advising on safety concerns, documenting animal care and activity, and serving as objective, professional witnesses to the treatment of animal actors.[77]

To effectively monitor animal safety on film and television sets, the AHA requires production teams to provide specific information throughout the production process. These requirements include:

- A copy of the script (early in pre-production) and any edits relating to animal action.[78]
- The names of the animal handlers and veterinarian as soon as they are selected.[79]
- The location or types of film sets and environmental conditions to be encountered, as soon as they are determined.[80]
- The call sheets, crew lists and script changes in a timely manner during filming to allow analysis of the animal action and appropriate assignment of American Humane Personnel.[81]

The AHA also outlines several fundamental principles for the safe use of animals in filmed media, including:

- Animals are not props! The AHA guidelines apply to all animals used in the production, including animals used as background or off-camera to attract the attention of another animal being filmed.[82]
- No animal will be killed or injured for the sake of a film production.[83]

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[76] *"No Animals Were Harmed" a program of American Humane*, Humane Hollywood, https://humanehollywood.org/.
[77] *About Us,* Humane Hollywood, https://humanehollywood.org/about-us/.
[78] *Guidelines*, Humane Hollywood, https://humanehollywood.org/production-guidelines/.
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*

- The AHA will not allow any animal to be treated inhumanely to elicit a performance.[84]
- Although permitted for necessary veterinary care, general anesthesia and sedation are high-risk procedures and are prohibited for the sole purpose of filmmaking.[85]

After monitoring animals in filmed media, the AHA holds the exclusive right to award its "No Animals Were Harmed" end-credit certification to productions that meet its rigorous standard of care for animal actors.[86] This certification is intended to assure audiences that, regardless of what appears on screen, no animals were harmed during production.[87]

However, the AHA faces limitations in enforcing these standards. There are not enough AHA representatives to be physically present for every scene involving animals or to monitor their treatment between takes.[88] As a result, representatives must often rely on the assurances of producers and animal handlers to determine whether a production has met the required standards.[89]

Another concern is the AHA's perceived conflict of interest. The organization has been criticized for overlooking instances of animal mistreatment, allegedly due to financial motivations to protect the studios it monitors.[90] Perhaps the most troubling aspect of the system is that AHA's film monitoring efforts are funded by the very industry it is meant to regulate.[91] Since the early 1980s, major studios have financed the AHA's film unit.[92] Although this funding structure was modified in 1993 – when studios began depositing money into a fund jointly overseen by producers and the

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[84] *Id.*
[85] *Id.*
[86] Hollywood Humane, *supra* n. 76.
[87] Lloyd Farley, *The Horrific True Story Behind the 'No Animals Were Harmed' Disclaimer*, Collider, May 23, 2023, https://collider.com/no-animals-were-harmed-disclaimer-american-humane-history/.
[88] Hollywood Humane, *supra* n. 76.
[89] *Id.*
[90] Ralph Frammolino, *Questions Raised About Group That Watches Out for Animals in Movies*, Los Angeles Times, February 9, 2001, https://www.latimes.com/archives/la-xpm-2001-feb-09-mn-23161-story.html.
[91] *Id.*
[92] *Id.*

Screen Actors Guild ("SAG")[93] – the AHA has still received well over a million dollars annually, raising ongoing concerns about its independence and effectiveness.[94]

Despite the AHA's stated purpose, concerning actions have continued. For example, in 1999, the AHA accepted money from Disney to cover travel and hotel expenses in London for an AHA Certified Animal Safety Representative to monitor the filming of *102 Dalmatians.*[95] Anticipating scrutiny due to the film's extensive use of dogs, Disney paid the costs to ensure AHA oversight.[96] The film received the AHA endorsement and a favorable rating, but the organization initially failed to disclose that Disney had footed the bill.[97]

Soon after, the AHA accepted payment from Warner Bros. to send a representative to the *Harry Potter* set. The AHA justified this by claiming it lacked the funds to cover monitoring for long-term international productions.[98] Since then, the AHA has continued to assert that accepting direct funding from production studios does not create a conflict of interest, even when those studios are the subjects of AHA evaluation.[99]

When examining films that receive the "No Animals Were Harmed" tagline, questions arise regarding what the AHA considers acceptable treatment. For example, the AHA awarded this endorsement to New Line Cinema's *Simpatico*, despite the on-set deaths of an aging bay quarter horse that ruptured a ligament and collapsed during filming at the Los Alamitos racetrack.[100]

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[93] *See Mission Statement*, SAG AFTRA, (2024), (describing SAG as a union created to protect media artists by organizing all work done under their jurisdictions; negotiating the best wages, working conditions, and health and pension benefits; preserving and expanding members' work opportunities; vigorously enforcing contracts; and protecting members against unauthorized use of their work).
[94] Frammolino, *supra* n. 90.
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.*

Similarly, the 2012 HBO horse-racing series *Luck* was canceled after only a few episodes when three horses died during the show's production.[101] The cancellation was prompted not by AHA intervention, but by public outcry, negative press, and low rating.[102] In fact, the AHA's own Certified Animal Safety Representative, Barbara Casey – assigned to monitor the show – was terminated after she exposed the abuse on set.[103] Casey later alleged that the AHA knowingly granted its endorsement to productions that failed to meet animal welfare standards.[104]

While the AHA claims to exist for the protection of animal actors, its actions – such as accepting money from studios and dismissing employees who report abuse – cast serious doubt on its credibility and effectiveness. It is difficult to reconcile the organization's stated mission with its apparent willingness to overlook mistreatment in favor of maintaining studio relationships.

There have also been instances where Certified Animal Safety Representatives failed to fulfill their duties on set. During the filming of 2012's *Life of Pi*, the AHA representative assigned to the production became romantically involved with a high-ranking production executive.[105] After an incident in which the tiger actor nearly drowned in a water tank, the representative attempted to conceal the event to protect the studio.[106] In an internal email, she wrote, "last week we almost f-ing killed King [the tiger] in the water tank…damn near drowned…don't mention it to anyone, especially the office [AHA]…I have downplayed the f-out of it."[107] Despite this, the film received – and still retains – the "No Animals Were Harmed" certification.[108]

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[101] Bruce A. Wagman, Animal Law: Cases and Materials, (6th ed. 2019).
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] Gary Baum, *Animals Were Harmed*, The Hollywood Reporter, Nov. 25, 2013, https://www.hollywoodreporter.com/news/general-news/animals-were-harmed-hollywood-reporter-investigation-on-set-injury-death-cover-ups-659556/.
[106] *Id.*
[107] *Id.*
[108] *Id.*

A similar controversy surrounded the 2017 film *A Dog's Purpose*. Public backlash and calls for boycott erupted after a viral video showed a German Shepherd actor being forced into a pool simulating a river with rushing water. In the footage, the dog is visibly distressed, clinging to a handler who was attempting to drop him in the pool.[109] In the second clip, the dog is seen struggling to stay afloat before crew members rush to rescue him.[110] Following the video's release, the AHA launched a third-party investigation and later claimed the videos were edited to misrepresent the incident, asserting the clips were filmed at different times.[111]

The AHA stated that one representative and five safety personnel, including animal handlers and scuba divers, were on set to oversee the dog's safety.[112] After the near-downing, the dog was reported removed from the pool, examined by a veterinarian, and placed in a warming tent.[113] The AHA claimed the dog showed no signs of distress and even appeared willing to return to the water, though the representative declined to film further scenes with the dog that day out of caution.[114]

Whether the two videos were recorded during the same incident is ultimately beside the point. If they were separate instances as alleged by the AHA, it is even more troubling that the dog appeared terrified on more than one occasion on set. Additionally, a producer claimed, "the dog was NEVER forced into the water" and called the footage "highly misleading" despite clear visual evidence of the handler attempted to lower the struggling dog into the pool.[115] Regardless of these concerning events,

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[109] Anita Busch, *'A Dog's Purpose' Producer "Horrified" Seeing Video Of Dog Almost Drowning On Set; PETA Calls for Boycott Of Film*, Deadline, January 18, 2017, https://deadline.com/2017/01/a-dogs-purpose-peta-boycott-drowning-dog-1201889236/.
[110] *Id.*
[111] Robert Ganzert, *American Humane Weighs in on 'A Dog's Purpose' (Guest Column)*, Variety, January 25, 2017, https://variety.com/2017/film/news/a-dogs-purpose-video-american-humane-response-robin-ganzert-1201969941/.
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*

the film still received the "No Animals Were Harmed" approval, raising serious questions about the credibility and consistency of the AHA's certification process.[116]

Given these ongoing issues, it may be surprising that the AHA still holds exclusive authority to monitor movie, television, commercial, and music productions – a role granted by its 1980 contract with SAG and producers.[117] As a result, all domestically filmed SAG productions must provide the AHA with unlimited on-set access whenever animals are used.[118] While the AHA has shown inconsistencies in fulfilling its protective role, its guidelines do represent a step in the right direction.

However, a major limitation is that the AHA is not required to monitor non-SAG productions.[119] This means that documentaries, reality TV shows, independent non-SAG films, and international productions are not subject to AHA oversight – severely limiting the organization's reach and effectiveness.[120]

Recommendations

There are far too many examples of films in which animal actors have suffered due to inadequate protections. The existing precautions have consistently fallen short, and evidence suggests they will continue to do so without meaningful change. To truly protect animal actors, film producers must face tangible consequences that impact their business. Indirect federal and state laws have proven insufficient, and continued reliance on the AHA alone is no longer viable. While the need for clearer guidelines is not a new idea, this paper will propose specific, actionable measures to address the issues outlined.

Changes to Federal Law

[116] *Id.*
[117] Humane Hollywood, *supra* n. 76.
[118] *Id.*
[119] *Id.*
[120] *Id.*

The AWA requires animal carriers, handlers, dealers, breeders, and exhibitors to hold licenses for their work with animals.[121] Similarly, federal law should require production studios to obtain a license if they have used or intend to use, animal actors. This license would hold producers accountable for the care and treatment of animals on set and address current gaps in the AWA's applicability. While animal handlers would still need individual licenses, this requirement would ensure that producers – who ultimately make key decisions – are held liable for harmful practices, as seen in *Jesse James*, *Friday the 13th*, and *The Hobbit: An Unexpected Journey*.

Additionally, studios should be required to register any project involving animal actors in a federal monitoring system. This registration would enable oversight by the AHA and identify which state laws apply, based on the production company's domicile and filming locations.

To address past conflicts of interest stemming from direct studio payments to the AHA, a standardized registration fee should be implemented. This fee – based on filming duration, location, and the number and type of animals – would be paid into a federally regulated fund. The funds would then be allocated to the AHA to support the assignment of a Certified Animal Safety Representative for reach registered production.

Because the AWA is governed by federal law, Congress would need to amend the statute to require producers to obtain licenses when working with animal actors. While the amendment process may take time, the AWA is already an established federal law, and there is a clear need for greater animal protection in the entertainment industry. Congress has also amended the AWA multiple times in the past, demonstrating a willingness to adapt the law as needed.

These federally mandated requirements would streamline efforts to protect animals in film and television, create a uniform system across the industry, and ensure that all production studios are held to consistent standards – both in monitoring and financial responsibility.

[121] Animal Welfare Institute, *supra* n. 35.

Changes to State Law

State animal anti-cruelty laws have proven inadequate in protecting animal actors. While these laws may indirectly offer some protections, stronger state-level legislation is needed to proactively deter harmful conduct and ensure animal safety from the outset.

Currently, film producers often take a reactive – rather than preventative – approach to animal care on set. Enacting state laws that directly regulate how animals may be used in filmed media would compel studios to reconsider how they incorporate animals into their productions. Since all states already have general animal welfare laws, this would be a logical and necessary extension to close the existing regulatory gap.

This paper proposes that states adopt law explicitly limiting the use of live animals in film. For example, any scene known to pose significant risk should be prohibited, with studios required to use alternatives such as computer-generated imagery ("CGI").[122] While states should retain flexibility in drafting legislation, they must address well-documented high-risk scenarios, including fight sequences, scenes filmed near cliffs, strenuous physical activity without sufficient breaks, and scenes involving open or simulated bodies of water

Violations of such laws – regardless of whether the animal is injured or killed – should carry meaningful consequences. These would include substantial fines and suspension of the studio's license to use animals in future projects. Fines should exceed the cost of using CGI or other alternatives to discourage studios from violating the law. In cases where a prohibited scene results in an animal's injury or death, a complete ban on the film or show's release should be enforced. This potential loss of millions in revenue would serve as the strongest deterrent.

Ultimately, the only way to ensure the protection of animal actors is for state laws to impose penalties so severe that compliance becomes the clear, necessary course of action.

[122] Computer-generated imagery will be addressed later in this paper.

Industry Adjustments to Incorporate Technological Advancements

Technological advancements have enabled filmmakers to achieve cinematic success through innovative techniques. Computer-generated imagery, a subcategory of visual effects, allows creators to build entire characters from scratch, replace actors in dangerous stunts, and simulate complex elements like explosions.[123] The range of CGI's capabilities is vast – from the subtle addition of snow in a scene in the 2011 movie, *The Girl With the Dragon Tattoo,* to the fully immersive digital environments in the 2019 television series, *The Mandalorian*.[124]

The film industry first witnessed the full potential of CGI in 1993's *Jurassic Park*, which featured hyper-realistic, computer-generated dinosaurs[125] While animatronics were used for close-up or stationary shots, all action sequences involving dinosaurs relied on CGI.[126] *Jurassic Park* demonstrates how CGI can effectively replace animal actors in high-risk scenes – especially when real animals are not even an option – yet the end result is incredibly convincing.

Since then, many filmmakers have embraced CGI to bring stories to life. Disney's 2019 live-action remake of *The Lion King* was created entirely using CGI, with the exception of one real shot filmed in Africa.[127] According to the director, he included the single real image to see if audiences would notice – which they largely did not.[128] Similarly, the 2016 remake of *The Jungle Book* used CGI to create all animal characters, relying only on wildlife footage as a reference to replicate natural movement.[129]

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[123] Matthew Nerber, *What is CGI? An Actor's Guide*, Backstage, March 26, 2024, https://www.backstage.com/magazine/article/an-actors-guide-to-cgi-74659/.
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] Jeremiah Rodriguez, *'The Lion King' CGI-remake only had one real, live-action shot*, CTV News, July 29, 2019, https://www.ctvnews.ca/entertainment/the-lion-king-cgi-remake-only-had-one-real-live-action-shot-1.4528145#:~:text=Text:,real%20shot%20in%20%23TheLionKing.%E2%80%9D.
[128] *Id.*
[129] Luke Y. Thompson, *Jon Favreau Says 'The Jungle Book' Will Be His 'Avatar.' Reveals New Images*, Forbes, February 25, 2016, https://www.forbes.com/sites/lukethompson/2016/02/22/jon-favreau-says-the-jungle-book-will-be-his-avatar-reveals-new-images/#5b419b30685d.

However, many productions still fail to rely on CGI when it could prevent harm to animals. For instance, Disney's 2003 film *Pirates of the Caribbean: The Curse of the Black Pearl* used real ocean explosions for several scenes, resulting in the death of marine life that washed ashore for days after filming.[130]

Given how prevalent and advanced CGI has become, transitioning to greater use of it to avoid injuring or killing animals should be seamless. As discussed earlier, *A Dog's Purpose* used CGI to depict a German Shepherd rescuing a drowning girl.[131] Yet, during filming, the dog nearly drowned. The scene was shot in a pool surrounded by a blue screen, and CGI later transformed it into a Chicago river.[132] Since the technology convincingly recreated the setting, it raises the question: why was the dog ever put in danger in the first place if the scene was going to utilize CGI anyway?

Time and time again, action scenes involving animals – especially fight sequences, stunts near cliffs, or water scenes in natural or simulated environments – pose serious risks and too often end in harm. While my recommendations do not call for the complete removal of animals from film and television, there is no justification for using them in scenes that are historically known to result in injury and death.

Conclusion

For 35 years, from 1951 and 1986, award ceremonies were held to honor outstanding animal actors, where animal performers received the PATSY (Picture Animal Top Star of the Year) award.[133] Viewers tuned in to celebrate these stars, and notable figures such as Ronald Reagan and Betty White hosted the event over the years.[134]

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[130] Clint Davis, *10 popular movies that faced claims of animal abuse*, NBC 26, January 20, 2017, https://www.nbc26.com/news/national/10-popular-movies-that-faced-claims-of-animal-abuse.
[131] Busch, *supra* n. 109.
[132] *Id.*
[133] Jessie Guy-Ryan, *The Glorious 30-Year Star-Studded Past of the Oscars for Animals*, Atlas Obscura, February 27, 2016, https://www.atlasobscura.com/articles/the-glorious-30year-starstudded-past-of-the-oscars-for-animals.
[134] *Id.*

It is astounding that, while animals have appeared in filmed media for nearly 150 years – and were honored at award ceremonies for thirty-five of them – there has never been a federal or state law specifically enacted to protect them in this industry. The history of on-set animal abuse and neglect stretches from the earliest days of cinema to today. We can no longer turn a blind eye to the realities animal actors face while being used for our entertainment.

The entertainment industry needs both federal and state laws that limit the use of animals in film and television to prevent injury, neglect, and death. Production studies need to be held accountable through proper monitoring and penalties. If studios cannot take the necessary precautions to ensure animal safety, they should be prohibited from using animal actors altogether.

LAWS & PAWS WORD SEARCH FALL 2026

By: Adam Lepzelter, Esq.

Instructions:

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

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

Clue: "*This nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased, and not impaired, in value."* (The author of this quote is the answer)

Answer: _____

WORD BANK

NEW	YORK	STATE	PARK
ADIRONDACK	ALLEGANY	BEAR MOUNTAIN	BEAVER ISLAND
BELMONT LAKE	BROOKHAVEN	CANANDAIGUA	CATSKILL
CHENANGO	COLD SPRING HARBOR	FDR	GALOP ISLAND
HARRIMAN	HUDSON RIVER	MONTAUK POINT	NIAGARA FALLS
OAK ORCHARD	ROCKEFELLER	SARATOGA SPA	TACONIC