

2013 STATE LEGISLATIVE REVIEW

By
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I. INTRODUCTION

As a result of the federal gridlock,¹ state legislatures were more active in passing legislation throughout 2013. In recent years, undercover investigations of concentrated animal feeding operations have been an effective tool for animal welfare organizations. Across the country, twelve states introduced bills that sought to inhibit these investigations.² A number of states considered, with several enacting, bills to curb the market for shark fins, which continue to be imported into the United States (U.S.) in large numbers despite a federal ban on the practice of finning.³ Numerous states considered changes to their hunting statutes, with California banning the use of lead ammunition⁴ and other states cracking down on the increasingly popular practice of “canned hunting.”⁵ In the agricultural arena, a number of states grap-

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¹ See Angie Ostrowski, Student Author, *2013 Federal Legislative Review*, 20 *Animal L.* 433, 433–34 (2014) (discussing the consequences of the 2013 federal government shutdown).

² *Infra* pt. II.

³ *Infra* pt. III.

⁴ *Infra* pt. IV(A).

⁵ *Infra* pt. IV(B).

pled with legislation to ban the use of gestation crates and tail docking, both common industry practices that have come under fire from welfare groups.⁶ Domestic animals received dozens of new protections in states across the country as well, with many states considering bans on animal ownership for convicted abusers and others adding new criminal offenses for hoarding.⁷

II. WHISTLEBLOWER SUPPRESSION BILLS

In 2013, the agribusiness industry attempted to curtail undercover investigations in factory farms by introducing legislation in Arkansas,⁸ California,⁹ Illinois,¹⁰ Indiana,¹¹ Nebraska,¹² New Hampshire,¹³ New Mexico,¹⁴ North Carolina,¹⁵ Pennsylvania,¹⁶ Ten-

⁶ *Infra* pt. V; see e.g. Mercy For Animals, *Expert Statements on Pig Abuse*, <http://www.mercyforanimals.org/pigabuse/experts.aspx> [<http://perma.cc/9N7W-3L8G>] (accessed Apr. 13, 2014) (providing statements from veterinary experts who describe common pork industry practices such as crating and tail docking as “unnecessary,” “cruel,” and “inhumane”).

⁷ *Infra* pt. VI.

⁸ Ark. Sen. 14, 89th Gen. Assembly, 2013 Reg. Sess. (Feb. 26, 2013) (available at <http://www.arkleg.state.ar.us/assembly/2013/2013R/Bills/SB14.pdf> [<http://perma.cc/Z8UB-TZXV>] (accessed Apr. 13, 2014)).

⁹ Cal. Assembly 343, 2013–2014 Reg. Sess. (Feb. 13, 2013) (available at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB343 [<http://perma.cc/A79K-Q95N>] (accessed Apr. 13, 2014)).

¹⁰ Ill. Sen. 1532, 98th Gen. Assembly, 2013 Reg. Sess. (Feb. 13, 2013) (available at <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1532&GAID=12&DocTypeID=SB&SessionID=85&GA=98> [<http://perma.cc/FWX6-9XQ8>] (accessed Apr. 13, 2014)).

¹¹ Indiana introduced two bills, Sen. 373 and Sen. 391. Ind. Sen. 373, 2013 Sess. (Jan. 8, 2013) (available at <http://www.in.gov/legislative/bills/2013/IN/IN0373.1.html> [<http://perma.cc/U936-BGB3>] (accessed Apr. 13, 2014)); Ind. Sen. 391, 2013 Sess. (Jan. 10, 2013) (available at <http://www.in.gov/legislative/bills/2013/IN/IN0391.1.html> [<http://perma.cc/T7CQ-QVVC>] (accessed Apr. 13, 2014)).

¹² Neb. Legis. 204, 103d Legis., 1st Sess. (Jan. 15, 2013) (available at <http://nebraska.legislature.gov/FloorDocs/103/PDF/Intro/LB204.pdf> [<http://perma.cc/6EFX-VNRH>] (accessed Apr. 13, 2014)).

¹³ N.H. H. 110, 2013 Sess. (Jan. 3, 2013) (available at http://www.gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=54&sy=2014&sortoption=&txtsessionyear=2014&txtbillnumber=hb110 [<http://perma.cc/H2QT-74PD>] (accessed Apr. 13, 2014)).

¹⁴ N.M. Sen. 552, 51st Legis., 1st Sess. (Feb. 14, 2013) (available at <http://www.nmlegis.gov/Sessions/13%20Regular/bills/senate/SB0552.pdf> [<http://perma.cc/H3YX-2DLJ>] (accessed Apr. 13, 2014)).

¹⁵ N.C. Sen. 648, 2013–2014 Sess. (Apr. 2, 2013) (available at <http://www.ncleg.net/Sessions/2013/Bills/Senate/PDF/S648v0.pdf> [<http://perma.cc/97TC-TT32>] (accessed Apr. 13, 2014)).

¹⁶ Pa. H. 683, 2013–2014 Reg. Sess. (Feb. 12, 2013) (available at <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2013&sessInd=0&billBody=H&billTyp=B&billNbr=0683&pn=0770> [<http://perma.cc/W3AF-JUJP>] (accessed Apr. 13, 2014)).

nessee,¹⁷ Vermont,¹⁸ and Wyoming.¹⁹ All fourteen bills failed.²⁰

Although a number of states have considered enacting similar “ag-gag” bills in recent years, more bills were introduced in 2013 than in

¹⁷ Tennessee proposed two bills, H. 1191 and Sen. 1248, which were later consolidated in committee into the unified Sen. 1248 discussed *infra* pt. II(A). Tenn. H. 1191, 108th Gen. Assembly, 2013 Reg. Sess. (Feb. 13, 2013) (available at <http://www.capitol.tn.gov/Bills/108/Bill/HB1191.pdf> [<http://perma.cc/7G43-PNYM>] (accessed Apr. 13, 2014)); Tenn. Sen. 1248, 108th Gen. Assembly, 2013 Reg. Sess. (Feb. 13, 2013) (available at <http://www.capitol.tn.gov/Bills/108/Bill/SB1248.pdf> [<http://perma.cc/F96M-B85K>] (accessed Apr. 13, 2014)).

¹⁸ Vt. Sen. 162, 2013–2014 Legis. Sess. (Mar. 19, 2013) (available at <http://www.leg.state.vt.us/docs/2014/bills/Intro/S-162.pdf> [<http://perma.cc/QDZ6-DHJS>] (accessed Apr. 13, 2014)).

¹⁹ Wyo. H. 126, 62d Legis., 2013 Reg. Sess. (Jan. 10, 2013) (available at <http://legisweb.state.wy.us/2013/Engross/HB0126.pdf> [<http://perma.cc/EZB2-KHW4>] (accessed Apr. 13, 2014)).

²⁰ Arkansas’ bill failed to make it past committee. Ark. St. Legis., *Bill Status History—SB 14*, <http://www.arkleg.state.ar.us/assembly/2013/2013R/Pages/BillInformation.aspx?measureno=SB14> [<http://perma.cc/HUM4-PMWZ>] (May 17, 2013) (accessed Apr. 13, 2014). California’s bill failed to make it past committee. Cal. Gen. Assembly, *AB-343*, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB343&search_keywords= [<http://perma.cc/9NMH-FL9V>] (accessed Apr. 13, 2014). Illinois’ bill failed to make it past committee. Ill. Gen. Assembly, *Bill Status of SB1532*, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1532&GAID=12&DocTypeID=SB&SessionID=85&GA=98> [<http://perma.cc/6W7N-AJP8>] (accessed Apr. 13, 2014). Indiana’s first bill, Sen. 373, passed the House and Senate but was not signed into law. Ind. Gen. Assembly, *Action List: Senate Bill 0373*, <http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2013&request=getActions&doctype=SB&docno=0373> [<http://perma.cc/F684-5WHV>] (accessed Apr. 13, 2014). Indiana’s second bill, Sen. 391, failed to make it past committee. Ind. Gen. Assembly, *Action List: Senate Bill 0391*, <http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2013&request=getActions&doctype=SB&docno=0391> [<http://perma.cc/H962-6THL>] (accessed Apr. 13, 2014). Nebraska’s bill failed to make it past committee. Neb. Legis., *LB204*, http://nebraskalegislature.gov/bills/view_bill.php?DocumentID=17956 [<http://perma.cc/S5UX-4X75>] (accessed Apr. 13, 2014). New Hampshire’s bill failed to make it past committee. N.H. Gen. Ct., *HB110*, http://www.gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=54&sy=2014&sortoption=&txtsessionyear=2014&txtbillnumber=hb110 [<http://perma.cc/H2QT-74PD>] (accessed Apr. 13, 2014). New Mexico’s bill “died.” N.M. Legis., *2013 Regular Session, SB 552*, <http://www.nmlegis.gov/lcs/legislation.aspx?Chamber=S&LegType=B&LegNo=552&year=13> [<http://perma.cc/3DEH-REWM>] (accessed Apr. 13, 2014) (listing Sen. 552’s current location as “died”). North Carolina’s bill failed to make it past committee. N.C. Gen. Assembly, *Senate Bill 648*, <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?BillID=S648&Session=2013> [<http://perma.cc/W8LV-5XB7>] (accessed Apr. 13, 2014). Pennsylvania’s bill failed to make it past committee. Pa. Gen. Assembly, *Bill Information, Regular Session 2013, HB 683*, <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2013&sind=0&body=H&type=B&bn=683> [<http://perma.cc/W5TP-W67C>] (accessed Apr. 13, 2014). Tennessee’s bills were consolidated, passed both houses of the legislature, but were ultimately vetoed by Governor Bill Haslam, as discussed *infra* pt. II(A). Vermont’s bill failed to make it past committee. Vt. Legis. Bill Tracking Sys., *S.162*, <http://www.leg.state.vt.us/database/status/summary.cfm?Bill=S%2E0162&Session=2014> [<http://perma.cc/SX9-GVRZ>] (accessed Apr. 13, 2014). Wyoming’s bill made it to the Senate floor but failed to pass. Wyo. Legis. Serv. Off., *H.B. No. 0126*, <http://legisweb.state.wy.us/2013/Digest/HB0126.htm> [<http://perma.cc/7H8Z-Q4U6>] (accessed Apr. 13, 2014) (listing the last action on H. 126 as “Committee Returned Bill” to Senate on February 26, 2013).

any previous year.²¹ Although whistleblower suppression bills can take many different forms, recent bills have contained at least one—and often all—of three common provisions: mandatory reporting, employment fraud, and bans on filming at agricultural facilities.²² Mandatory reporting provisions require that any person who witnesses or films cruelty to livestock must report the incident and relinquish any evidence to law enforcement officials within a specified period of time.²³ Although mandatory reporting provisions might seem beneficial to a lay observer—or even a legislator—animal welfare groups have alleged that such provisions prevent gathering sufficient evidence to document a pattern of abuse.²⁴ The logical inference is that if no pattern of abuse can be established, it will be exceedingly difficult to convince a state prosecutor—for whom livestock cruelty may be a low priority—to bring charges. Employment fraud provisions generally prohibit obtaining employment at, or access to, agricultural facilities under false pretenses.²⁵ Animal welfare groups have opposed these provisions as well, as their undercover operatives would find their job searches more difficult if they were required to disclose that they were, in fact, agents of animal welfare organizations sent to uncover animal abuse. Provisions that ban filming at an agricultural operation generally prohibit taking photographs, video, or audio recordings without the express permission of the owner or operator.²⁶ Opponents have noted that by imposing blanket bans on any form of documentation at agricultural facilities, these provisions constitute not only a threat to animal welfare, but to worker safety, consumer health, and environmental protection as well.²⁷

Although all fourteen bills were defeated, opponents of this kind of legislation should take particular note of the statements by legislative

²¹ See Laura Hagen, Student Author, *2012 State Legislative Review*, 19 *Animal L.* 497, 509–10 (2013) (noting that ten states considered ag-gag bills in 2012, and that four states considered such bills in 2011).

²² Press Release, Am. Socy. for the Prevention of Cruelty to Animals, *ASPCA, Coalition of Interest Groups Welcome Defeat of All 11 “Ag-Gag”/Anti-Whistleblower Bills in 2013*, <http://www.aspc.org/about-us/press-releases/aspc-coalition-interest-groups-welcome-defeat-all-11-ag-gag> [<http://perma.cc/7KSC-YNHG>] (July 29, 2013) (accessed Apr. 13, 2014).

²³ *Id.*; see e.g. *infra* nn. 31–33 and accompanying text (discussing bills specifying twenty-four-hour and forty-eight-hour periods for mandatory reporting).

²⁴ Humane Socy. of the U.S., *Anti-Whistleblower Bills Hide Factory-Farming Abuses from the Public*, http://www.humanesociety.org/issues/campaigns/factory_farming/factsheets/ag_gag.html#id=album-185&num=content-3312 [<http://perma.cc/D79R-EVYU>] (Jan. 7, 2014) (accessed Apr. 13, 2014).

²⁵ Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 22.

²⁶ *Id.*; Gabe Rottman, Am. Civ. Liberties Union, “Ag-Gag” Not Just about Animal Welfare, <https://www.aclu.org/blog/free-speech/ag-gag-not-just-about-animal-welfare> [<http://perma.cc/K3J9-8AB5>] (May 3, 2013) (accessed Apr. 13, 2014).

²⁷ Rottman, *supra* n. 26 (describing ag-gag bills as threatening “to virtually eliminate undercover investigations into not just animal abuse, but labor practices, food safety and environmental pollution” and calling such measures “flagrant violations of the public’s will and the First Amendment”).

leaders in response to striking down the bills. While many leaders noted concerns with mandatory reporting and employment fraud provisions,²⁸ they frequently expressed implicit disapproval of the actions of animal welfare groups conducting covert investigations, and generally left the door open to bills with similar ends—albeit different means—in the 2014 legislative session.²⁹

A. *Mandatory Reporting in Tennessee*

Of the fourteen states, Tennessee came closest to adopting a mandatory reporting bill, which passed both the House and Senate but was vetoed at the eleventh hour by Governor Bill Haslam.³⁰ As introduced, H. 1191 and Sen. 1248 provided that

[a]ny person who records by photograph or video a violation of [the Tennessee animal cruelty statute] as committed against livestock shall, within twenty-four (24) hours of the photograph's or recording's creation:

- (1) Report such violation to law enforcement authorities; and
- (2) Submit any unedited photographs or video recordings to law enforcement authorities.³¹

Sen. 1248 was later amended, clarifying that it applied only to persons who “intentionally record[] by photograph, digital image, video or similar medium for the purpose of documenting” a violation of the Tennessee animal cruelty statute.³² The amendment also modified the reporting window to forty-eight hours “or by the close of business the next business day, whichever is later” and added a penalty provision of a Class C misdemeanor, “punishable by fine only.”³³

In an email to the Humane Society of the U.S. (HSUS), Representative Andy Holt—the bill’s sponsor in Tennessee’s House of Representatives—described the bill as helping to “protect livestock in Tennessee from suffering months of needless investigation” by “propa-

²⁸ See e.g. Chas Sisk, *Tennessean*, *Gov. Haslam Vetoes “Ag Gag” Measure over Constitutional Issues*, <http://www.tennessean.com/article/20130514/NEWS0201/305140007/Gov-Haslam-vetoes-ag-gag-measure-over-constitutional-issues> [<http://perma.cc/4MN-FDW5>] (May 14, 2013) (accessed Apr. 13, 2014) (noting that Tennessee Governor Bill Haslam vetoed a mandatory reporting bill, in part, over his concern regarding the bill’s constitutionality).

²⁹ *Id.* (indicating that in response to Governor Haslam’s decision to veto Tennessee’s proposed mandatory reporting bill, the bill’s sponsors resolved to craft a “better and more legally enforceable bill” during the following year’s legislative session).

³⁰ *Id.*

³¹ Tenn. H. 1191, 108th Gen. Assembly (Feb. 13, 2013) (as introduced) (available at <http://www.capitol.tn.gov/Bills/108/Bill/HB1191.pdf> [<http://perma.cc/7G43-PNYM>] (accessed Apr. 13, 2014)); Tenn. Sen. 1248, 108th Gen. Assembly (Feb. 13, 2013) (as introduced) (available at <http://www.capitol.tn.gov/Bills/108/Bill/SB1248.pdf> [<http://perma.cc/F96M-B85K>] (accessed Apr. 13, 2014)).

³² Tenn. Sen. Amend. 0378, 108th Gen. Assembly (Apr. 11, 2013) (available at <http://www.capitol.tn.gov/Bills/108/Amend/SA0378.pdf> [<http://perma.cc/RJ37-YS9U>] (accessed Apr. 13, 2014)).

³³ *Id.*

gandist groups of radical animal activists.”³⁴ He went so far as to state that animal welfare organizations use investigatory footage “the same way human-traffickers use 17 year old women.”³⁵ Representative Holt’s commentary went viral, eventually helping Tennessee’s ag-gag bill gain nationwide notoriety and media coverage as it progressed through the legislature.³⁶ Sen. 1248 passed the Tennessee Senate by a resounding majority of 22–9, but passed the Tennessee House of Representatives by a narrower majority of 50–43.³⁷ Following the bill’s bicameral adoption, animal welfare organizations across the nation mobilized their resources to appeal to the Governor’s office for a veto.³⁸ The public responded fiercely, besieging the Governor’s office with over 5,000 phone calls and 16,000 emails.³⁹ In addition to the public outcry, Tennessee’s Office of the Attorney General issued a legal opinion on Sen. 1248, which described the bill as “constitutionally suspect under the First Amendment.”⁴⁰ The opinion identified the bill as an underinclusive means of achieving the government interest (“preventing cruelty to livestock”), a possibly unconstitutional prior restraint, and a

³⁴ Will Potter, Green Is the New Red Blog, *Tennessee Lawmaker Compares Factory Farm Investigations to Rape*, <http://www.greenisthenewred.com/blog/tennessee-ag-gag-compared-to-rape/6935/> [<http://perma.cc/Z4NM-JC8N>] (Apr. 26, 2013) (accessed Apr. 13, 2014).

³⁵ *Id.*

³⁶ See e.g. Eric W. Dolan, Raw Story, *Tennessee Republican Attacks ‘Disgusting’ Humane Society over ‘Tape and Rape’*, <http://www.rawstory.com/rs/2013/04/29/tennessee-republican-attacks-disgusting-humane-society-over-tape-and-rape/> [<http://perma.cc/K4JA-WQ5P>] (Apr. 29, 2013) (accessed Apr. 13, 2014) (reporting on the email exchange between Representative Andy Holt and Kayci McLeod of the Humane Society); Huffington Post, *Carrie Underwood Furious over ‘Ag Gag’; Bill’s Sponsor, Andy Holt, Says She Should ‘Stick to Singing’*, http://www.huffingtonpost.com/2013/04/24/carrie-underwood-ag-gag-bill-tennessee-andy-holt_n_3147048.html [<http://perma.cc/D6EL-KWP9>] (Apr. 24, 2014) (accessed Apr. 13, 2014) (reporting on a public back-and-forth between “country music superstar” Carrie Underwood and Representative Andy Holt resulting in Underwood voicing her opposition to Sen. 1248 on Twitter).

³⁷ Tenn. Gen. Assembly, *Bill Information for SB 1248*, <http://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=SB1248&GA=108> [<http://perma.cc/ENM9-R54D>] (accessed Apr. 13, 2014).

³⁸ See e.g. Humane Socy. of the U.S., YouTube, *HSUS’s 2013 Tennessee Ag-Gag TV Commercial* (posted Apr. 22, 2013) (available at <http://www.youtube.com/watch?v=TLKaE82Ls4A> (accessed Apr. 13, 2014)) (showing video footage of animal abuse obtained during an undercover investigation, discussing how the footage was used to convict the abuser of animal cruelty, claiming that such investigations would be halted by Sen. 1248, and asking citizens to call Governor Haslam and demand a veto); see also Chattanooga, *Mercy for Animals, ASPCA Ask Haslam to Veto Ag-Gag Bill*, <http://www.chattanooga.com/2013/4/19/249366/Mercy-For-Animals-ASPCA-Ask-Haslam.aspx> [<http://perma.cc/DK2T-EUVC>] (Apr. 19, 2013) (accessed Apr. 13, 2014) (discussing letters from the American Society for the Prevention of Cruelty to Animals and Mercy for Animals to Governor Haslam, asking him to veto Sen. 1248).

³⁹ Sisk, *supra* n. 28.

⁴⁰ Tenn. Atty. Gen. Op. 13-39 at 1 (May 9, 2013) (available at <http://www.tn.gov/attorneygeneral/op/2013/op13-39.pdf> [<http://perma.cc/8PJS-SNTA>] (accessed Apr. 13, 2014)).

possibly impermissible burden on newsgathering.⁴¹ The Tennessee Attorney General also noted that the bill could be construed as an unconstitutional violation of the Fifth Amendment freedom from self-incrimination.⁴²

In the wake of this pressure, Governor Haslam vetoed Sen. 1248.⁴³ In a statement accompanying his veto, the Governor cited the Attorney General's findings and noted that the bill implicitly interfered with the state's Shield Law.⁴⁴ He also described statements made by "some district attorneys" that "the act actually makes it more difficult to prosecute animal cruelty cases, which would be an unintended consequence."⁴⁵ Governor Haslam did, however, recognize the concerns of the agriculture industry regarding "large scale attacks on their livelihoods" and express disapproval for individuals who gather such recordings "under false pretenses."⁴⁶ As a result, he urged the legislature to reconsider the issue, leaving the door open for a new bill in 2014.⁴⁷

B. *Mandatory Reporting and Employment Fraud in Other States*

Indiana introduced a mandatory reporting bill, which passed the Senate but was ultimately blocked by House Democrats.⁴⁸ As passed in the Senate, Sen. 373 would have created the crime of unlawful recording of agriculture or industrial operations,⁴⁹ making it an offense for any person to take a photograph or record a video without the property owner's or an authorized representative's written consent.⁵⁰ The bill appeared to target animal welfare organizations, as its prohibition applied only to those who made recordings "with intent to defame or directly or indirectly harm the business relationship between an agricultural operation and its customers."⁵¹ It applied to both agricultural

⁴¹ *Id.*

⁴² *Id.*

⁴³ Sisk, *supra* n. 28.

⁴⁴ TN.gov Newsroom, *Haslam Releases Statement on HB 1191/SB 1248*, <http://news.tn.gov/node/10688> [<http://perma.cc/TT97-A9LR>] (May 13, 2013) (accessed Apr. 13, 2014). Tennessee's Shield Law provides a qualified privilege to news reporters and individuals who gather information for publication or broadcast. Tenn. Code Ann. § 24-1-208 (Lexis 2000).

⁴⁵ TN.gov Newsroom, *supra* n. 44.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Dan Flynn, Food Safety News, *Indiana Lawmakers Went Home This AM without "Ag-Gag"*, <http://www.foodsafetynews.com/2013/04/indiana-lawmakers-went-home-this-morning-without-passing-ag-gag/#.U0YcB8bgVuY> [<http://perma.cc/4R3D-GDWZ>] (Apr. 27, 2013) (accessed Apr. 13, 2014).

⁴⁹ Ind. Sen. 373, 118th Gen. Assembly, 1st Reg. Sess. 1 (Feb. 26, 2013) (available at <http://www.in.gov/legislative/bills/2013/PDF/SB/SB0373.3.pdf> [<http://perma.cc/6CHZ-X4EK>] (accessed Apr. 13, 2014)).

⁵⁰ *Id.* at 2.

⁵¹ *Id.*

and industrial activities, encompassing everything from livestock and horticulture to mining operations.⁵²

Sen. 373 contained a number of exceptions, most notable the mandatory reporting defense. A person being charged under the bill could assert this affirmative defense if a defendant provided a recording to either law enforcement or the relevant regulatory oversight agency within forty-eight hours.⁵³ The bill provided a second affirmative defense for those with “a good faith belief that the person was photographing, recording, or filming evidence of illegal activity.”⁵⁴ However, because Indiana’s animal cruelty statute provides an exemption for “acceptable farm management practices,”⁵⁵ it is unclear what constitutes actionable animal cruelty in an agricultural operation.

As a state with a considerable stake in both agricultural and industrial activities, Indiana legislators and advocacy groups fiercely contested Sen. 373. The executive director of the Hoosier State Press Association argued that the bill would infringe upon investigative journalists’ First Amendment rights, while representatives from the Indiana American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) alleged that the bill could be used to cover up instances of worker abuse.⁵⁶ By the time Sen. 373 was passed along to the Indiana House of Representatives, House Democrats openly referred to the bill as a “gag all” measure, with Speaker Brian Bosma pulling the bill from the calendar and refusing to allow a vote.⁵⁷ Bosma did, however, leave the door open for a future bill with similar goals, noting that “[t]here’s clearly a need for protection from outside influences in regard to the ag industry,” but “[t]he question is the best remedy and one that doesn’t run afoul of the First Amendment.”⁵⁸

North Carolina also considered a sweeping ag-gag bill that contained both mandatory reporting and employment fraud elements. As introduced, the N.C. Commerce Protection Act of 2013, Sen. 648, would have created a new criminal offense of employment fraud for any person who willfully makes false statements, misrepresentations, or fails to disclose information requested by a job application.⁵⁹ However, such fraud would be criminalized only if carried out for the purpose of gaining access to the facility in order to create a sound, image, or video

⁵² *Id.*

⁵³ *Id.* at 3.

⁵⁴ *Id.*

⁵⁵ Ind. Code § 35-46-3-5(5) (2013).

⁵⁶ Ginnye Cubel, Ind. Living Green, *Ag-Gag Forum Reveals Diverse Concerns over SB 373*, <http://www.indianalivinggreen.com/ag-gag-forum-reveals-diverse-concerns-over-sb-373/> [<http://perma.cc/Q8S4-PQR8>] (Apr. 12, 2013) (accessed Apr. 13, 2014).

⁵⁷ Flynn, *supra* n. 48.

⁵⁸ Brandon Smith, Ind. Pub. Media, ‘Ag-Gag’ Bill Could Be Revived Next Year, <http://indianapublicmedia.org/news/aggag-bill-revived-year-48751/> [<http://perma.cc/6ECW-EQ7X>] (Apr. 30, 2013) (accessed Apr. 13, 2014) (internal quotations omitted).

⁵⁹ N.C. Sen. 648, 2013–2014 Sess. 1 (Apr. 2, 2013) (available at <http://www.ncleg.net/Sessions/2013/Bills/Senate/PDF/S648v0.pdf> [<http://perma.cc/97TC-TT32>] (accessed Apr. 13, 2014)).

recording, or to copy data or other information.⁶⁰ A first offense would be punishable as a misdemeanor, while subsequent offenses could qualify as Class I felonies.⁶¹

In addition to the employment fraud provision, the bill would also have required that any recording made under such false pretenses be “turned over to local law enforcement within 24 hours of recording or procurement.”⁶² Any such recording must be turned over in its raw form, and may not be “spliced, edited, or manipulated in any way prior to its submission,”⁶³ echoing pro-industry arguments that animal welfare groups routinely stage, manipulate, and edit video footage to mislead the public.⁶⁴

Although the measure ultimately failed to pass, it was subject to heated debate between not only agricultural industrialists and animal welfarists, but also among a wider spectrum of lobbyists and interest groups. The North Carolina Chamber of Commerce lobbied heavily for the bill, arguing that the mandatory reporting provision would, in fact, work to prevent future abuses and that the employment fraud provision did not hinder potential whistleblowers.⁶⁵ Other organizations, such as the American Civil Liberties Union of North Carolina and Amnesty International, formed a coalition lobbying in opposition to the bill.⁶⁶ Ultimately, Sen. 648 failed to reach the Senate floor before the end of the legislative session.⁶⁷

Wyoming introduced a whistleblower suppression bill of its own, which would have created the criminal offense of “interference with an agricultural operation.”⁶⁸ Although titled “agricultural,” H. 126 only applied to “private property used for the production of livestock or livestock products,” and did not include other forms of agriculture such as

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Will Potter, Green Is the New Red Blog, *Ag Industry Says Investigators “Just Want to Get That Sweet Cow-Head-Kicking Cash”*, <http://www.greenisthenewred.com/blog/citizen-radio-ag-gag-investigations/6883/> [<http://perma.cc/W7YU-MNBC>] (Apr. 15, 2013) (accessed Apr. 13, 2014).

⁶⁵ Dan Flynn, Food Safety News, *‘Ag-gag’ Battle Moves on to North Carolina*, <http://www.foodsafetynews.com/2013/05/ag-gag-battle-moves-on-to-north-carolina/#.UsiEWxbvxhA> [<http://perma.cc/B9JA-SZPN>] (May 29, 2013) (accessed Apr. 13, 2014).

⁶⁶ Press Release, Am. Socy. for the Prevention of Cruelty to Animals, *Coalition of Interest Groups Announces Opposition to North Carolina’s “Ag-Gag”/Anti-Whistleblower Legislation* (May 29, 2013) (available at <http://www.aspc.org/about-us/press-releases/coalition-interest-groups-announces-opposition-north-carolinas-ag-gaganti> [<http://perma.cc/PE95-H6J5>] (accessed Apr. 13, 2014)).

⁶⁷ N.C. Gen. Assembly, *Senate Bill 648*, <http://www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2013&BillID=S648> [<http://perma.cc/UA35-C7FP>] (accessed Apr. 13, 2014).

⁶⁸ Wyo. H. 126, 62d Legis., 2013 Gen. Sess. 1 (2013) (available at <http://legisweb.state.wy.us/2013/Introduced/HB0126.pdf> [<http://perma.cc/WAZ8-CWLN>] (accessed Apr. 13, 2014)).

horticulture and silviculture.⁶⁹ H. 126 would have criminalized the recording of any image or sound from an agricultural operation without consent of the owner, either “by concealing or placing a recording device on the premises,” “while committing criminal trespass,” or while on the premises under false pretenses.⁷⁰ The prohibition also extended to any employees who either applied for the job with intent to make such recordings or who knew when they applied that the owner of the facility prohibited any recordings.⁷¹ By applying to all of these circumstances, Wyoming’s bill was one of the most sweeping and inclusive measures introduced in the 2013 legislative session.

In addition to creating a new criminal offense, H. 126 also included a mandatory reporting provision that provided immunity from civil liability to anyone who reports suspected livestock cruelty to a law enforcement officer within forty-eight hours.⁷² The mandatory reporting provision did not, however, provide immunity from criminal liability, and a violation of the newly created provisions carried with it a fine of up to \$750 or imprisonment of up to six months.⁷³ Because the boundaries of civil liability with regard to undercover investigations have not been probed in any state, it is unclear whether this provision would provide any meaningful relief or not. Although H. 126 passed the Wyoming House of Representatives by a 33–27 margin, it failed to make it to a vote in the Senate.⁷⁴ Following its demise, one of the bill’s cosponsors disclosed that public outcry was one of the factors that caused the Senate to table the bill for the remainder of the session.⁷⁵

Pennsylvania introduced a bill with language nearly identical to Wyoming’s H. 126.⁷⁶ H. 683 also would have created a new crime of “interfering with agricultural operations” for actions like employment fraud, unconsented filming, and criminal trespass.⁷⁷ Under the Pennsylvania statute, all violations would be charged as felonies.⁷⁸ While the bill received the expected opposition from animal welfare groups, it also caught the attention of anti-fracking activists, who argued that the bill’s broad language could cover industrial activities beyond agri-

⁶⁹ *Id.* at 2.

⁷⁰ *Id.*

⁷¹ *Id.* at 3.

⁷² *Id.* at 5.

⁷³ *Id.* at 3–4.

⁷⁴ Wyo. H. Digest, H. No. 0126 Agriculture Operations, 62d Legis., 2013 Gen. Sess. (available at <http://legisweb.state.wy.us/2013/Digest/HB0126.htm> [<http://perma.cc/7H8Z-Q4U6>] (accessed Apr. 13, 2014)).

⁷⁵ People for the Ethical Treatment of Animals, *Victory: Wyoming Scraps Law to Hide Farmed Animal Abuse (Update)*, <http://www.peta.org/blog/bob-barker-wyoming-bag-ag-gag/> [<http://perma.cc/WPQ9-KNGB>] (Feb. 15, 2013) (accessed Apr. 13, 2014).

⁷⁶ *Compare* Wyo. H. 126, 62d Legis., 2013 Gen. Sess. at 1–5 *with* Pa. H. 683, 2013–2014 Reg. Sess. 1–2 (Feb. 12, 2013) (available at <http://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2013&sessInd=0&billBody=H&billTyp=B&billNbr=0683&pn=0770> [<http://perma.cc/A9ZN-53RG>] (accessed Apr. 13, 2014)) (showing similar language).

⁷⁷ Pa. H. 683, 2013–2014 Reg. Sess. at 1–2.

⁷⁸ *Id.* at 2.

culture and lead to a slippery slope of corporate industrial control.⁷⁹ The bill was referred to the House Judiciary Committee on February 12, 2013, and no further actions were taken.⁸⁰

Following the trend of other large dairy-producing states, Vermont introduced an agriculture employment fraud bill in March 2013.⁸¹ Sen. 162 would have created the criminal offense of “agricultural facility fraud” for any person who “knowingly obtains access to an agricultural facility by false pretenses” or “makes a knowingly false statement or representation as part of an application to be employed at an agricultural facility,” but only if done “with the intent to commit an act that the person knows is not authorized by the facility’s owner.”⁸² Violations would be punishable by an administrative fine of up to \$1,000.⁸³ The bill was referred to the Senate Committee on Agriculture, but failed to gain traction during the 2013 session.⁸⁴ However, the bill could see a revival in the 2014 session.⁸⁵

New Mexico followed suit, with Senator Cliff Pirtle introducing the Livestock Operation Interference Act, Sen. 552.⁸⁶ The bill would have created the crime of livestock operation interference, which could be committed by “leaving a recording device on the livestock operation” without the owner’s consent, obtaining access to a facility under false pretenses, applying for employment at a facility with the intent to record, making any recording if the practice is known to be prohibited by the owner, or making a recording while committing criminal trespass.⁸⁷ The bill failed to break out of the Senate Conservation Committee,⁸⁸ where it was subject to heated debate, with one senator noting

⁷⁹ John Upton, Grist, *Pennsylvania’s Ag-Gag Law Could Protect Frackers*, <http://grist.org/news/pennsylvanias-ag-gag-law-would-also-protect-frackers/> [http://perma.cc/636K-PS7R] (May 13, 2013) (accessed Apr. 13, 2014).

⁸⁰ Pa. H. 683, 2013–2014 Reg. Sess. at 1.

⁸¹ Vt. Sen. 162, 2013–2014 Legis. Sess. (Mar. 19, 2013) (available at <http://www.leg.state.vt.us/docs/2014/bills/Intro/S-162.pdf> [http://perma.cc/QDZ6-DHJS] (accessed Apr. 13, 2014)).

⁸² *Id.* at 2–3.

⁸³ *Id.* at 3.

⁸⁴ Vt. St. Legis., *The Vermont Legislative Bill Tracking System, Current Status of a Specific Bill or Resolution, 2013–2014 Legislative Session, S.162*, <http://www.leg.state.vt.us/database/status/summary.cfm?Bill=S.0162&Session=2014> [http://perma.cc/YAH-7CSY] (accessed Apr. 13, 2014).

⁸⁵ Vt. Humane Fedn., *Vermont Animal Legislation Recap, 2013 Session*, http://www.vermonthumane.org/legislation_details.php?IID=19 [http://perma.cc/9J9N-MK4D] (accessed Apr. 13, 2014).

⁸⁶ N.M. S. 552, 51st Legis., 1st Sess. (Feb. 14, 2013) (available at <http://www.nmlegis.gov/Sessions/13%20Regular/bills/senate/SB0552.pdf> [http://perma.cc/H3YX-2DLJ] (accessed Apr. 13, 2014)).

⁸⁷ *Id.*

⁸⁸ See N.M. Legis., 2013 Reg. Sess., *SB 552: Livestock Operation Interference Act*, <http://www.nmlegis.gov/lcs/legislation.aspx?chamber=S&legtype=B&legno=552&year=13> [http://perma.cc/3DEH-REWM] (accessed Apr. 13, 2014) (noting current location as “died”).

that “every part of animal husbandry is animal cruelty if you look at it the right way.”⁸⁹

Nebraska put forward a mandatory reporting and employment fraud bill in the 2013 legislative session as well. Like many others, Legis. 204 would have created a new criminal offense for damaging or interfering with operations at an animal facility.⁹⁰ The bill would have created a mandatory duty on behalf of any person who observes an incident of suspected cruelty to report the incident within twenty-four hours to the agency responsible for investigating animal abuse.⁹¹ Although the bill explicitly stated that the agency had no duty to investigate any reports, it imposed a misdemeanor penalty on any failures to report.⁹² The bill also spelled out the requirements for a report, which include not only all original video or photo documentation, but also any copies thereof.⁹³

In addition to its mandatory reporting provision, Legis. 204 would have imposed one of the most detailed employment fraud provisions seen in the 2013 session. Section 3 of the bill enumerated its prohibitions, which proscribe any person from making a false statement or representation on an application for employment at any animal facility, but only if combined with intent to damage or interfere with the facility’s operations.⁹⁴ However, the proscription also stated that a violation is only committed if, in conjunction with a false statement and intent to interfere, the person either successfully causes economic damage to the facility, places others in reasonable fear of death or serious bodily injury, or conspires to do either.⁹⁵ Should the applicant’s actions result in economic damage exceeding \$10,000 or put any person in fear of death or serious bodily injury, the applicant may be charged with a felony.⁹⁶ The inclusion of a “fear of . . . death . . . or serious bodily injury” provision mirrors the language of the Federal Animal Enterprise Terrorism Act,⁹⁷ suggesting that the Nebraska Legislature may not be proposing these bills as a means to protect animals, as many states have alleged, but to stifle the voices of mainstream animal welfare groups so frequently maligned as terrorist

⁸⁹ Animal Protec. Voters, *Highlights for Animals in the 51st New Mexico Legislature*, http://www.apvnm.org/news_updates/2013/session_wrapup.php [<http://perma.cc/SM34-PENH>] (Mar. 27, 2013) (accessed Apr. 13, 2014).

⁹⁰ Neb. Legis. 204, 103d Legis., 1st Sess. (Jan. 15, 2013) (available at <http://nebraskalegislature.gov/FloorDocs/103/PDF/Intro/LB204.pdf> [<http://perma.cc/6EFX-VNRH>] (accessed Apr. 13, 2014)).

⁹¹ *Id.* at 2.

⁹² *Id.* at 3.

⁹³ *Id.*

⁹⁴ *Id.* at 4.

⁹⁵ *Id.*

⁹⁶ Neb. Legis. 204, 103rd Legis., 1st Sess. at 5.

⁹⁷ See 18 U.S.C. § 43(a)(2)(B) (2012) (providing that anyone who, as an element to the offense, “intentionally places a person in reasonable fear of the death of, or serious bodily injury to that person,” shall be punished under the statute).

organizations by agriculture industry lobbyists.⁹⁸ Following introduction, Legis. 204 was referred to Nebraska's Judiciary Committee, where it sat for the remainder of the 2013 session.⁹⁹ In January of 2014, the bill was renewed for the 2014 session.¹⁰⁰

New Hampshire introduced a mandatory reporting bill, H. 110, in January 2013, which spent the majority of 2013 in the House Committee on the Environment and Agriculture.¹⁰¹ A relatively short statute, H. 110 simply required that any person who witnesses cruelty towards livestock to report the incident to law enforcement within twenty-four hours and to surrender any recordings of such abuse.¹⁰² The Committee eventually amended the bill to include a forty-eight-hour reporting window, and to apply to poultry as well.¹⁰³ The bill's sponsor, Representative Bob Haefner, described the bill as an effort to ensure that "farmers here in New Hampshire are not accused of cruelty in the court of public opinion" by forcing such accusations to move through the criminal justice system.¹⁰⁴ The bill was recently renewed for the 2014 legislative session.¹⁰⁵

⁹⁸ See Anjali Sareen, Huffington Post Blog, *Animal Rights and the Erosion of the First Amendment: AETA, Ag-Gag and Why You Should Care*, http://www.huffingtonpost.com/anjali-sareen/animal-rights-and-the-ero_b_5008021.html [http://perma.cc/3BYN-TMX7] (Mar. 21, 2014) (accessed Apr. 13, 2014) ("The [Animal Enterprise Terrorism Act] decision, along with the passage of the most recent ag-gag bill, is part of a larger trend of the erosion of citizens' rights . . ."). Also like the Federal Animal Enterprise Terrorism Act (AETA), Legis. 204 contained a "savings clause" which provided that nothing in the bill shall be construed to infringe on any protected First Amendment rights. 18 U.S.C. § 43(e); Neb. Legis. 204, 103rd Legis., 1st Sess. at 3. Similar language was used as a basis for upholding the constitutionality of the AETA in response to a facial challenge in March 2013. *Blum v. Holder*, 930 F. Supp. 2d 326, 336–37 (D. Mass. 2013) ("Indeed, the rules of construction explicitly confirm the plain meaning of the offense: it does not prohibit 'peaceful picketing' and 'other peaceful demonstration.'").

⁹⁹ Neb. Legis., *LB204—Change and Provide Criminal Sanctions Regarding Animals and Animal Facilities*, http://nebraskalegislature.gov/bills/view_bill.php?DocumentID=17956 [http://perma.cc/S5UX-4X75] (accessed Apr. 13, 2014).

¹⁰⁰ *Id.*

¹⁰¹ N.H. H. 110, 2013 Reg. Sess. (Jan. 3, 2013) (available at <http://www.gencourt.state.nh.us/legislation/2014/HB0110.pdf> [http://perma.cc/PD78-A5VR] (accessed Apr. 13, 2014)); N.H. Gen. Ct., *Docket of HB110*, http://gencourt.state.nh.us/bill_status/Bill_docket.aspx?lsr=54&sy=2014&sortoption=&txtsessionyear=2014&txtbillnumber=hb110 [http://perma.cc/J8KN-YYAU] (accessed Apr. 13, 2014).

¹⁰² N.H. H. 110, 2013 Reg. Sess.

¹⁰³ N.H. H. Amend. 110, 2013 Reg. Sess. (Sept. 5, 2013) (available at <http://www.gencourt.state.nh.us/legislation/amendments/2013-2209H.html> [http://perma.cc/F4T6-2J2Q] (accessed Apr. 13, 2014)).

¹⁰⁴ Ben Leubsdorf, Concord Monitor, *N.H. House Endorses Animal-Cruelty Legislation Blasted by Opponents as "Ag-gag" Bill*, <http://www.concordmonitor.com/home/8429711-95/nh-house-panel-endorses-animal-cruelty-legislation-blasted-by-opponents-as-ag-gag-bill> [http://perma.cc/Y23Q-SNAG] (Sept. 10, 2013) (accessed Apr. 13, 2014).

¹⁰⁵ N.H. Gen. Ct., *supra* n. 101.

C. *The Future of Ag-Gag*

In what may be a harbinger of things to come, Missouri introduced an anti-drone bill in the 2013 session that made multiple explicit references to farms and agricultural operations.¹⁰⁶ H. 46, known as the “Preserving Freedom from Unwarranted Surveillance Act,” was couched in terms of prohibiting law enforcement from violating traditional warrant requirements by using unmanned aircraft.¹⁰⁷ However, its prohibition on the use of drones for the purpose of surveillance or information gathering covered not only law enforcement agencies, but also private individuals and entities.¹⁰⁸ Under the bill, all such parties would be prohibited from using an unmanned aircraft to survey “any individual, property owned by an individual, farm, or agricultural industry.”¹⁰⁹ As one of only two prohibitions in an incredibly short bill, the inclusion of agricultural operations was not merely one amongst dozens of catchall provisions buried deep within a lengthy statute, but a clear and explicit protection of these operations from prying eyes. While it could be argued that agricultural operations are simply another form of private property that warrant protection, the language of the bill has led at least some commentators to suggest that this is the next wave of ag-gag,¹¹⁰ particularly with animal welfare groups announcing plans to incorporate unmanned aircraft into their existing programs.¹¹¹

In related news, 2013 also saw the filing of the first challenge to an existing ag-gag law.¹¹² In July, the Animal Legal Defense Fund, People for the Ethical Treatment of Animals, and a host of individuals and journalists filed a lawsuit challenging the constitutionality of Utah’s 2012 statute.¹¹³ The plaintiffs’ complaint alleges that the stat-

¹⁰⁶ Mo. H. 46, 97th Gen. Assembly, 1st Reg. Sess. (Jan. 9, 2013) (available at <http://house.mo.gov/billtracking/bills131/billpdf/perf/HB0046P.pdf> [<http://perma.cc/Q6NR-9B4P>] (accessed Apr. 13, 2014)).

¹⁰⁷ *Id.* at 2.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See Deron Lee, Colum. Journalism Rev., “Ag-gag” Reflex, http://www.cjr.org/united_states_project/state_legislatures_are_pushing_ag-gag_bills_and_news_associations_are_fighting_back.php?page=all [<http://perma.cc/DD6T-KZRG>] (Aug. 6, 2013) (accessed Apr. 13, 2014) (discussing the bill’s implications for journalists and animal welfare groups and noting that the bill’s sponsor, Representative Casey Guernsey, also sponsored Missouri’s ag-gag bill).

¹¹¹ See e.g. Alisa Mullins, People for the Ethical Treatment of Animals (PETA), *PETA’s Game of Drones*, <http://www.peta.org/blog/petas-game-drones/> [<http://perma.cc/8PJP-NMJD>] (Apr. 8, 2013) (accessed Apr. 13, 2014) (discussing PETA’s plan to acquire unmanned aircraft in order to monitor hunters’ compliance with game laws).

¹¹² Stephen Wells, Animal Leg. Def. Fund, *Landmark “Ag Gag” Lawsuit Fights Threat to Freedom of Speech*, <http://aldf.org/blog/landmark-ag-gag-lawsuit-fights-threat-to-freedom-of-speech/> [<http://perma.cc/QH74-SZPV>] (July 21, 2013) (accessed Apr. 13, 2014).

¹¹³ Utah Code § 76-6-112 (2012); Compl., *Animal Leg. Def. Fund v. Herbert*, <http://www.law.du.edu/documents/news/Ag-Gag-Complaint.pdf> [<http://perma.cc/WJS6-BBCF>] (D. Utah July 22, 2013) (No. 2:2013cv00679) (accessed Apr. 13, 2014).

ute is impermissibly overbroad under the First Amendment, that it constitutes unlawful content and viewpoint-based discrimination, that the Federal False Claims Act preempts it, and that it violates Equal Protection under the Fourteenth Amendment.¹¹⁴ In addition, The Reporters Committee for Freedom of the Press, along with sixteen other interested parties, has filed an amicus brief in support of the plaintiffs, arguing that the Utah statute is an unlawful infringement on news-gathering.¹¹⁵ The disposition of this case will undoubtedly inform future efforts by animal welfare groups and other interested parties in their continuing fight against whistleblower suppression.

III. SHARK FIN BANS

Bans on the sale and possession of shark fins were a popular topic in the 2013 legislative session, with many states considering and adopting such prohibitions. The practice of shark finning involves removing the fin of a caught shark and disposing of the carcass at sea.¹¹⁶ While the federal government outlawed the practice in 2011, the federal law did not prohibit the sale or possession of imported fins.¹¹⁷ A 2012 report by the National Marine Fisheries Service identified Los Angeles, San Francisco, and New York as ports where fins were imported in 2011.¹¹⁸ The report states that in 2011, over 58 metric tons of fins were imported into the U.S.—almost twice the tonnage imported in 2010 and nearly three times the tonnage imported in 2009.¹¹⁹ Although these numbers are dwarfed by the import statistics of Asian countries such as China, Hong Kong, and Singapore,¹²⁰ they nonetheless represent thousands of sharks killed for their fins alone, which are primarily used to make shark fin soup, a traditional Chinese delicacy.¹²¹

Animal and environmental advocates have staunchly opposed the practice of finning, noting that as the ocean's top predator, sharks are a keystone species in maintaining the delicate balance of oceanic eco-

¹¹⁴ *Id.* at ¶¶ 113–152.

¹¹⁵ Amicus Curiae Br. of the Rptrs. Comm. for Freedom of the Press, *Animal Leg. Def. Fund v. Herbert*, http://www.rcfp.org/sites/default/files/RCFP_Amicus_ALDF.pdf [<http://perma.cc/Y8ZK-SECW>] (D. Utah Dec. 10, 2013) (No. 2:2013cv00679) (accessed Apr. 13, 2014).

¹¹⁶ Natl. Marine Fisheries Serv., *2012 Shark Finning Report to Congress* 1 (available at http://www.nmfs.noaa.gov/sfa/domes_fish/ReportsToCongress/SharkFinningReport12.pdf [<http://perma.cc/VV7C-VSGX>] (accessed Apr. 13, 2014)).

¹¹⁷ Shark Conservation Act of 2010, Pub. L. No. 111-348, §103, 124 Stat. 3668, 3670 (2011) (amending 16 U.S.C. § 1857(1)(P)).

¹¹⁸ Natl. Marine Fisheries Serv., *supra* n. 116, at 28.

¹¹⁹ *Id.* at 30.

¹²⁰ *Id.* at 32 (listing 2009 import tonnage for numerous countries, including 731 metric tons in China, 9,358 metric tons in Hong Kong, and 226 metric tons in Singapore).

¹²¹ *Id.* at 1.

systems.¹²² Without sharks, lower predator species in oceanic ecosystems tend to spiral out of control, decimating herbivores, which in turn allows microalgae to wipe out entire coral reefs—ultimately leading to ecosystem collapse.¹²³ Extrapolating this point even further, advocates have shown that coral reef ecosystems are inextricably linked to the oceanic phytoplankton populations responsible for processing oxygen and mitigating a large percentage of deleterious carbon emissions.¹²⁴ With global shark populations declining between 80% and 90% in recent years,¹²⁵ the need to protect sharks is imperative.

As one of the major points of import for shark fins, New York made considerable headway by passing a bill that banned the possession, sale, trade, or distribution of shark fins.¹²⁶ The bill amended New York's previous ban on the practice of finning¹²⁷ to include a provision stating that “no person shall possess, sell, offer for sale, trade or distribute a shark fin,” defining “shark fin” as “the raw, dried, or otherwise processed detached fin including the tail.”¹²⁸ The bill did contain exceptions for fins taken from either a spiny dogfish or a smooth dogfish, provided a licensed commercial fisherman catches them lawfully, and for fins taken for scientific or educational purposes.¹²⁹

A similar ban introduced in Texas became the focus of considerable cross-aisle enmity, with Democrats and animal welfare groups squaring off against Republicans who characterized the bill as an infringement on common fishing practices.¹³⁰ The House Committee on Culture, Recreation & Tourism recognized the concern expressed by the bill's proponents that overfishing will have a detrimental effect on

¹²² See e.g. Paula Walker, *Oceans in the Balance: As the Sharks Go, So Go We*, 17 *Animal L.* 97, 99–103 (2010) (discussing the practice of shark finning and explaining the importance of sharks to ocean ecosystems).

¹²³ *Id.*

¹²⁴ *Id.* at 101–03.

¹²⁵ *Id.* at 107.

¹²⁶ N.Y. Assembly 1769B, 2013–2014 Reg. Sess. (Jan. 9, 2013) (available at http://assembly.state.ny.us/leg/?default_fld=&bn=A01769&term=&Summary=Y&Actions=Y&Votes=Y&Text=Y [<http://perma.cc/U8HK-KBUS>] (accessed Apr. 13, 2014)).

¹²⁷ *Id.* (amending N.Y. Env'tl. Conserv. Law § 13-0338).

¹²⁸ N.Y. Assembly 1769B, 2013–2014 Reg. Sess.

¹²⁹ *Id.*

¹³⁰ See Teresa Gubbins, CultureMap Dallas, *Texas Shark Fin Ban Gets Blocked Unexpectedly by Republican Senators*, <http://dallas.culturemap.com/news/city-life/05-24-13-texas-shark-fin-ban-blocked-senate/> [<http://perma.cc/5E5P-NVEZ>] (May 24, 2013) (accessed Apr. 13, 2014) (discussing approval of the bill by animal welfare organizations); Karen B. Harper, Dallas Morning News, Trail Blazers Blog, *Shark Fin Bill Dies on Senate Floor*, <http://trailblazersblog.dallasnews.com/2013/05/shark-fin-bill-dies-on-senate-floor.html/> [<http://perma.cc/R92V-XWPZ>] (May 20, 2013) (accessed Apr. 13, 2014) (discussing the democratic proponent's justification for pushing the bill and death of the bill after a republican senator spoke out against it); Jeanette Moll, Tex. Pub. Policy Found., Effective Justice Blog, *Protect Fishermen and Freedom by Rejecting HB 852*, <https://www.texaspolicy.com/center/effective-justice/blog/protect-fishermen-and-freedom-rejecting-hb-852> [<http://perma.cc/JGV5-WPUZ>] (Apr. 30, 2013) (accessed Apr. 13, 2014) (claiming the bill would “criminalize common practices of Texas fishermen”).

the ocean's ecosystems.¹³¹ The Committee also acknowledged animal welfare groups' arguments that common finning practices result in considerable detriment to shark populations, and that the bill would serve as a complement to the federal ban in order to dry up the market for shark fins.¹³² The bill's sponsor, Representative Eddie Lucio, further recognized that although a federal ban prohibits the practice in U.S. waters, the high market price of fins creates considerable incentives for fishermen to break the law, particularly due to difficulty in enforcing the federal ban.¹³³

The Texas ban was heavily opposed by both Republican senators and conservative organizations, which characterized the bill as an overextension of the criminal law.¹³⁴ Opponents claimed the bill was duplicative of the existing federal ban, misused the criminal code for environmental purposes, and constituted an overbroad means of stamping out a relatively insignificant problem.¹³⁵ Despite the bill's passage in the House of Representatives, it was stalled on the Senate floor by a contingent of Republicans, led by Senator Troy Fraser, who argued that if sharks are legally caught, the state has no business regulating which parts fishermen may sell.¹³⁶ These opponents were successful in preventing a vote on the bill.¹³⁷

In Pennsylvania, two state senators reintroduced a shark fin ban that had failed to pass in the previous legislative session.¹³⁸ Sen. 1578 was introduced by Senator Daylin Leach and received considerable support from Senator Rich Alloway, chairman of the Senate's Game and Fisheries Committee.¹³⁹ An avid outdoorsman, Senator Alloway characterized the practice of finning as "go[ing] against everything a sportsman stands for."¹⁴⁰ In a press release announcing the bill's in-

¹³¹ Tex. H. Culture, Recreation & Tourism Comm., Rpt. 83R 16756, *Bill Analysis, C.S.H.B. 852* (2013) (substituted version) (available at <http://www.legis.state.tx.us/tlodocs/83R/analysis/html/HB00852H.HTM> [<http://perma.cc/4NRD-QVZU>] (accessed Apr. 13, 2014)).

¹³² *Id.*

¹³³ Harper, *supra* n. 130.

¹³⁴ Gubbins, *supra* n. 130; Moll, *supra* n. 130.

¹³⁵ Moll, *supra* n. 130; see H. Resource Org., Tex. H.R., *Bill Analysis, HB 852* (May 3, 2013) (available at <http://www.hro.house.state.tx.us/pdf/ba83r/hb0852.pdf> [<http://perma.cc/FPL2-VHSR>] (accessed Apr. 13, 2014)) ("CSHB 852 is addressing a problem that does not occur in Texas waters, and shark finning is outlawed by federal law.").

¹³⁶ Harper, *supra* n. 130.

¹³⁷ *Id.*

¹³⁸ See Press Release, Humane Socy. of the U.S., *The HSUS Urges Pennsylvania Lawmakers to Protect Sharks from the Fin Trade* (Aug. 17, 2012) (available at http://www.humanesociety.org/news/press_releases/2012/08/pennsylvania_shark_financing_081712.html#Uxq0MFpNZPI [<http://perma.cc/PV4V-K6PD>] (accessed Apr. 13, 2014)) (discussing the 2012 bill that proposed prohibiting the sale of shark fins); Jan Murphy, PennLive.com, *Senators' Bill Would Make Shark Fin Trade Illegal in Pennsylvania*, http://www.pennlive.com/midstate/index.ssf/2013/09/legislation_offered_to_make_sh.html [<http://perma.cc/9M5X-BRQB>] (Sept. 18, 2013) (accessed Apr. 13, 2014) (discussing the recently proposed bill).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

roduction, Senator Leach reminded constituents that “this is a dangerous and barbaric practice, and banning the sale or possession of shark fins in Pennsylvania is the best way we can protect ocean ecosystems.”¹⁴¹

The Pennsylvania bill, Sen. 340, prohibited the possession, sale, offering for sale, trade, or distribution of raw, dried, or processed fin or tail of any shark.¹⁴² Unlike similar bills, the Pennsylvania ban did not include an exception for when the entire shark is possessed,¹⁴³ an oversight possibly attributable to the lack of coastal landmass that would result in live catches within the state. Despite a strong showing of support from the twelve senators who signed onto the bill’s introduction,¹⁴⁴ the bill languished in the Appropriations Committee and failed to reach the Senate floor.¹⁴⁵

Delaware resoundingly enacted a ban on the sale and possession of shark fins, with H. 41 passing 41–0 in the House of Representatives and 19–0 in the Senate.¹⁴⁶ Like several other states, Delaware’s bill acts as a sweeping ban on the possession, sale, trade, or distribution of shark fin (excluding, as many others do, the smooth and spiny dogfish).¹⁴⁷ Similar to many other bans, the Delaware ban provides exemptions for possessions by licensed commercial fishermen, provided they do not sell the fin within Delaware, and for individual licenses,

¹⁴¹ Press Release, Off. of Sen. Daylin Leach, *Shark Advocacy Groups Announce Support for Shark Finning Bill* (Sept. 17, 2013) (available at <http://www.senatorleach.com/shark-advocacy-groups-announce-support-for-shark-finning-bill> [<http://perma.cc/FUS7-LZRC>] (accessed Apr. 13, 2014)).

¹⁴² Pa. Sen. 340, 2013–2014 Reg. Sess. (Feb. 12, 2013) (as amended) (available at <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2013&sessInd=0&billBody=S&billTyp=B&billNbr=0340&pn=0432> [<http://perma.cc/N692-P7D8>] (accessed Apr. 13, 2014)).

¹⁴³ *Id.*

¹⁴⁴ Pa. Gen. Assembly, *Bill Information—History, Senate Bill 340; Regular Session 2013–2014*, http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2013&sind=0&body=S&type=B&bn=340 [<http://perma.cc/G32R-LHQA>] (accessed Apr. 13, 2014).

¹⁴⁵ *Id.*

¹⁴⁶ Del. H. 41, 147th Gen. Assembly (Mar. 13, 2013) (codified at Del. Code tit. 7, § 928A) (available at <http://legis.delaware.gov/LIS/LIS147.nsf/vwLegislation/HB+41?Opendocument> [<http://perma.cc/Z9TR-ANWM>] (accessed Apr. 13, 2014)).

¹⁴⁷ *Id.* Although there is no legislative history explaining why legislators chose to exclude the smooth and spiny dogfish, a report from the National Oceanic and Atmospheric Administration indicates that while their populations declined considerably in previous decades due to overfishing, spiny dogfish populations have rebounded in recent years and are now considered sustainable. Natl. Oceanic & Atmospheric Admin., *FishWatch: Atlantic Spiny Dogfish*, http://www.fishwatch.gov/seafood_profiles/species/dogfish/species_pages/atl_spiny_dogfish.htm [<http://perma.cc/TXJ2-DRUS>] (accessed Apr. 13, 2014). However, one author has implied that the trend of excluding smooth dogfish may be a perpetuation of its inexplicable exclusion from the U.S. Shark Conservation Act of 2010. Merry Camhi, Wildlife Conserv. Socy., *News Watch—National Geographic News Blog, Smooth Dogfish Are Sharks, Too*, <http://newswatch.nationalgeographic.com/2013/07/09/smooth-dogfish-are-sharks-too> [<http://perma.cc/537M-77U2>] (July 9, 2013) (accessed Apr. 13, 2014).

provided they use the fin only for personal use.¹⁴⁸ While Delaware is not renowned for having a high demand for shark fin consumption, advocacy organizations saw the measure as an influential move, using it as a springboard to pressure New York into passing a ban.¹⁴⁹

Significant media attention focused on California's 2011 ban¹⁵⁰—which went into effect in 2013—as it posed an ethical dilemma between conservation efforts and infringement on traditional cultural values in areas such as San Francisco's Chinatown.¹⁵¹ In August, the Ninth Circuit Court of Appeals affirmed a federal district court's denial of a preliminary injunction on California's ban, holding that the Chinatown Neighborhood Association had “failed to show a likelihood of success” in their equal protection challenge to the law.¹⁵² In a brief memorandum opinion, the Ninth Circuit found that California's ban is facially neutral and plaintiffs had failed to present persuasive evidence of intentional discrimination.¹⁵³ Although the Ninth Circuit refused plaintiffs' request for a preliminary injunction, there is little doubt that the bans in California and other states will continue to stir controversy as they go into effect.

Ultimately, however, these state efforts to enact shark fin bans may be preempted by federal law. In May 2013, the National Marine Fisheries Service (NMFS) proposed a new rule that would expressly preempt almost all state fin bans.¹⁵⁴ Claiming their sovereign authority over all fish within the U.S.'s exclusive economic zone—as granted

¹⁴⁸ Del. H. 41, 147th Gen. Assembly.

¹⁴⁹ See e.g. Oceana, *The Beacon: Oceana's Blog, Victory! Delaware Becomes Seventh State in U.S. to Ban Shark Fin Trade!*, <http://oceana.org/en/blog/2013/05/victory-delaware-becomes-seventh-state-in-us-to-ban-shark-fin-trade> [<http://perma.cc/F4UU-V2WR>] (May 16, 2013) (accessed Apr. 13, 2014) (discussing Delaware Governor Jack Markell signing the shark fin ban into law and urging New York Governor Andrew Cuomo to follow suit).

¹⁵⁰ Cal. Fish & Game Code Ann. § 2021 (West 2013); see e.g. Juliet Eilperin, Wash. Post, *California Adopts Shark Fin Ban*, http://www.washingtonpost.com/national/health-science/california-adopts-shark-fin-ban/2011/09/06/gIQACgsD9J_story.html [<http://perma.cc/9NZG-G2LZ>] (Sept. 7, 2011) (accessed Apr. 13, 2014) (discussing California's shark fin ban); Emanuella Grinberg, CNN, *Shark Fin Soup Faces Extinction in California*, <http://www.cnn.com/2011/US/09/04/california.shark.fin.ban> [<http://perma.cc/TNG6-4EMR>] (Sept. 4, 2011) (accessed Apr. 13, 2014) (showing national coverage of California's shark fin ban).

¹⁵¹ See e.g. Heather Ishimaru, ABC 7 News, *Chinatown Assn. Vows to Fight Shark Fin Ban*, <http://abclocal.go.com/kgo/story?section=news/politics&id=8896705> [<http://perma.cc/SM6V-2ZTU>] (Nov. 23, 2012) (accessed Apr. 13, 2014) (covering the Chinatown Neighborhood Association's outrage over the ban); CBS S.F., *Court Refuses to Block California's Ban on Shark Fin Soup*, <http://sanfrancisco.cbslocal.com/2013/08/27/court-refuses-to-block-californias-ban-on-shark-fin-soup> [<http://perma.cc/3N6N-EWVM>] (Aug. 27, 2013) (accessed Apr. 13, 2014) (discussing the Ninth Circuit Court of Appeals' denial of a preliminary injunction to an association of Chinese restaurants that challenged the ban as discriminatory).

¹⁵² *Chinatown Neighborhood Assn. v. Brown*, 539 Fed. Appx. 761, 762 (9th Cir. 2013).

¹⁵³ *Id.*

¹⁵⁴ 78 Fed. Reg. 25685, 25685 (May 2, 2013).

under the Magnuson–Stevens Act¹⁵⁵—NMFS has asserted their executive authority over all fishery management practices.¹⁵⁶ According to the proposed rule, “state prohibitions on possession, landing, transfer, or sale of sharks or shark fins” will hinder uniform federal efforts to regulate the practice of shark finning.¹⁵⁷ As a result, it would preempt any state bans found to be inconsistent with the Shark Conservation Act of 2010, the Magnuson–Stevens Act, or related regulations for fear that state bans will “unduly interfere with the conservation and management of federal fisheries.”¹⁵⁸

IV. HUNTING REFORM

Across the nation in 2013, numerous states considered bills to reform hunting practices and regulations in an effort to improve animal welfare. California implemented a sweeping ban on the use of lead ammunition, while other states grappled with the practice of “canned hunting.”

A. California’s Lead Ammunition Ban

California became the first state in the country to ban the use of lead ammunition for hunting when it enacted the Ridley–Tree Condor Conservation Act.¹⁵⁹ While existing law prohibits, in some circumstances, the use of lead ammunition when hunting “big game” and coyote,¹⁶⁰ the new law allows only the use of certified non-lead ammunition for hunting of “all wildlife,” which includes “game mammals, game birds, nongame birds, and nongame mammals.”¹⁶¹

The bill’s factual findings expounded considerably on the purpose of the Act, noting decades of research confirming the danger lead poses to both humans and wildlife.¹⁶² Legislators found that discharged lead ammunition “is often consumed by other animals and passed along the food chain.”¹⁶³ Further, spent ammunition accumulating in the environment can poison grazing agricultural animals and adversely mingle with crops, native flora, and natural waterways.¹⁶⁴

¹⁵⁵ *Id.*; Magnuson–Stevens Fishery Conservation and Management Act of 1976, 16 U.S.C. §§ 1801–1884 (2012).

¹⁵⁶ 78 Fed. Reg. at 25686.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 25686–87.

¹⁵⁹ Cal. Fish & Game Code Ann. § 3004.5 (West 2013); Press Release, Humane Socy. of the U.S., *California Gov. Jerry Brown Signs Historic Legislation Requiring the Use of Non-Lead Hunting Ammunition* (Oct. 11, 2013) (available at http://www.humanesociety.org/news/press_releases/2013/10/brown-passes-lead-ammo-bill.html [<http://perma.cc/D4TY-QG86>] (accessed Apr. 13, 2014)).

¹⁶⁰ Cal. Assembly 711, 2013–2014 Reg. Sess. 1 (Oct. 11, 2013) (available at http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0701-0750/ab_711_bill_20131011_chaptered.pdf [<http://perma.cc/8G8F-PGHK>] (accessed Apr. 13, 2014)).

¹⁶¹ Cal. Fish & Game Code Ann. at § 3004.5(b).

¹⁶² Cal. Assembly 711, 2013–2014 Reg. Sess. at 2.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

Interestingly, the Act contains an exemption provision. If the Director of the California Department of Fish and Wildlife finds during a specific hunting season that a particular caliber of non-lead ammunition is “not commercially available from any manufacturer because of federal prohibitions relating to armor-piercing ammunition,” the Director may temporarily suspend the lead ammunition ban in areas outside the range of the California condor.¹⁶⁵ As a result, the Act presupposes the necessity of the detrimental behavior and allows it to continue if the statute proves impracticable—so long as it does not interfere with the recovery of the Condor, which came dangerously close to extinction due in part to consuming lead ammunition in discarded carrion.¹⁶⁶

B. Canned Hunts

Several states also examined the practice of captive hunting, commonly known as “canned hunting.” A popular pastime, canned hunting involves large fenced-in ranches that raise wildlife for hunting within closed areas, ensuring successful hunts.¹⁶⁷ Animal advocates have long opposed the practice, decrying the fact that the animals are often raised to have no fear of humans and therefore march eagerly towards their doom.¹⁶⁸ With around 1,000 canned hunt facilities operating within the U.S., animal welfare organizations, such as the Humane Society of the U.S., have spent considerable efforts to halt the practice.¹⁶⁹ Even fellow hunters have denounced the practice, arguing that canned hunts deprive the animals of a fair chance to flee and thus are unsportsmanlike.¹⁷⁰

Illinois was among the first states in 2013 to introduce legislation aimed at reforming the practice. Representative Kelly Burke introduced H. 3118, which sought to ban the opening of new captive hunting facilities in the state.¹⁷¹ The bill would have prohibited using a

¹⁶⁵ Cal. Fish & Game Code Ann. at § 3004.5(j).

¹⁶⁶ John R. Platt, Sci. Am., *Extinction Countdown Blog, Fight to Protect California Condors from Lead Ammunition Moves to Arizona*, <http://blogs.scientificamerican.com/extinction-countdown/2009/11/20/fight-to-protect-california-condors-from-lead-ammunition-moves-to-arizona/> [http://perma.cc/SNS6-4GV7] (Nov. 20, 2009) (accessed Apr. 13, 2014).

¹⁶⁷ See generally Laura J. Ireland, *Canning Canned Hunts: Using State and Federal Legislation to Eliminate the Unethical Practice of Canned “Hunting”*, 8 *Animal L.* 223, 225–27 (2002) (describing canned hunts).

¹⁶⁸ *Id.* at 224.

¹⁶⁹ Judy Keen, USA Today, “Captive Hunts” Stir Controversy, *Legislation*, http://usatoday30.usatoday.com/news/nation/environment/2011-08-31-captive-hunting-humane-society_n.htm [http://perma.cc/YT32-Y6LN] (Sept. 13, 2011) (accessed Apr. 13, 2014).

¹⁷⁰ See e.g. Craig Dougherty, Outdoor Life, Big Buck Zone Blog, *Defining Fair Chase behind a High Fence*, <http://www.outdoorlife.com/blogs/big-buck-zone/2011/10/hunting-high-fences-unsportsmanlike-conduct-or-sign-times> [http://perma.cc/Z4TL-5JWY] (Oct. 7, 2011) (accessed Apr. 13, 2014) (discussing the notion of “fair chase” in different hunting scenarios).

¹⁷¹ Press Release, Humane Socy. of the U.S., *Legislation Introduced to Crack Down on Captive Hunting* (Feb. 27, 2013) (available at <http://www.humaneociety.org/news/>

“firearm, bow and arrow, or any other weapon” to take “any animal that is tied, staked out, caged, or otherwise intentionally confined in an enclosure, regardless of the enclosure’s size”¹⁷² H. 3118 contained exemptions for existing facilities, takes of furbearing mammals, and the slaughter of captive animals held under a game breeder’s permit, taken by the owner or his agent for the purpose of human consumption.¹⁷³

Representative Brandon Phelps opposed the bill, arguing that the most common form of captive hunts—those on deer—are no different than cattle raised for slaughter.¹⁷⁴ In a statement to the press, Representative Phelps elaborated on his opposition: “[A]t the end of the day the Humane Society is totally against hunting, period. I just think this is a way for them to get their foot in the door.”¹⁷⁵ He continued, “If they try to go after this, is bird hunting what they’re going after next?”¹⁷⁶ At the end of the legislative session, H. 3118 failed to make it out of committee.¹⁷⁷

In Indiana, a bill to amend the state’s captive hunting practices passed in different forms in the House and Senate, but was not signed into law.¹⁷⁸ As introduced, Sen. 487 merely required out-of-state residents who wished to hunt on shooting preserves¹⁷⁹ to pay a fee equal

press_releases/2013/02/hb3118-ill-captive-hunting-022713.html [http://perma.cc/XF59-L8HD] (accessed Apr. 13, 2014)).

¹⁷² Ill. H. 3118, 98th Gen. Assembly, 2013–2014 Sess. (Feb. 26, 2013) (available at <http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=85&GA=98&DocTypeId=HB&DocNum=3118&GAID=12&LegID=&SpecSess=&Session=> [http://perma.cc/78ZM-L3EF] (accessed Apr. 13, 2014)).

¹⁷³ *Id.*

¹⁷⁴ Claudia Johnson, “*Captive Hunting*” Bill under Consideration, http://www.wjbc.com/common/page.php?feed=21&pt=%27Captive+hunting%27+bill+under+consideration&id=36013&is_corp=0 [http://perma.cc/6QQ9-B8PU] (Mar. 4, 2013) (accessed Apr. 13, 2014).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Ill. Gen. Assembly, *Bill Status of HB3118, 98th General Assembly*, <http://www.ilga.gov/legislation/billstatus.asp?DocNum=3118&GAID=12&GA=98&DocTypeID=HB&LegID=74973&SessionID=85> [http://perma.cc/V5ET-NCYY] (accessed Apr. 13, 2014).

¹⁷⁸ Ind. Sen. 0487, 118th Gen. Assembly, 1st Reg. Sess. (Jan. 14, 2013) (as introduced) (available at <http://www.in.gov/legislative/bills/2013/IN/IN0487.1.html> [http://perma.cc/PEC9-WYKS] (accessed Apr. 13, 2014)).

¹⁷⁹ Shooting preserves in Indiana are defined as contiguous fenced tracts of land between 100 and 640 acres in size, on which a licensed owner may propagate and offer as game, pheasants, quail, marked mallard ducks, chukar partridges, other species of game birds, or other species of exotic animals—provided they are captive reared. Ind. Code §§ 14-22-31-1, 14-22-31-6, 14-22-31-7 (2014) (available at <http://www.in.gov/legislative/ic/code/title14/ar22/ch31.pdf> [http://perma.cc/6Z8R-WKC9] (accessed Apr. 13, 2014)). Although it is directed to determine which other species of exotic animals may be bred and hunted, the Indiana Department of Natural Resources has not promulgated any such regulations—thus leading senators to force their hand through Sen. 487’s amendments. Ind. Code § 14-22-31-7.

to the price of a residential hunting license.¹⁸⁰ By the time it left the Senate Committee on Agriculture and Natural Resources, the bill sported two sprawling amendments that would have usurped the Indiana Department of Natural Resources' authority by promulgating shooting preserve regulations that allowed for cervidae hunting preserves.¹⁸¹ In April 2013, a joint House–Senate Conference Committee undertook a review of the bill, but failed to produce a report or recommendation.¹⁸²

The Pennsylvania legislature took steps both forward and backward with regard to canned hunting. Sen. 510, introduced by Senator Patrick Browne, would have prohibited the captive hunting of certain fowl.¹⁸³ Conversely, Sen. 644, introduced by Senator Joseph Scarnati, retooled the state's existing prohibition on captive swine hunts, rescinding the Pennsylvania Game Commission's authority over such hunts and allowing new facilities to open.¹⁸⁴

Although Sen. 510 failed to reach the Senate floor, it represented an important step in the fight against canned hunting by seeking to include birds, rather than just mammals, in the state's existing ban.¹⁸⁵ As written, the bill prohibited any person from willfully organizing, operating, or conducting a “trap shoot or block shoot in which live animals or fowl are used as targets.”¹⁸⁶ The bill defined “trap shoot” or “block shoot” as

[a]n event during which participants shoot or attempt to shoot targets that are:

- (1) launched or otherwise immediately presented to the shooter with electronic or mechanical assistance from a fixed location or locations within a predefined shooting field; or

¹⁸⁰ Ind. Sen. 487, 118th Gen. Assembly, 1st Reg. Sess. § 7 (Apr. 8, 2013) (engrossed bill) (available at <http://www.in.gov/legislative/bills/2013/PDF/ES/ES0487.2.pdf> [<http://perma.cc/B48A-WMJG>] (accessed Apr. 13, 2014)).

¹⁸¹ *Id.* at § 9 (Apr. 8, 2013).

¹⁸² Ind. Gen. Assembly, *Action List: Senate Bill 0487*, <http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2013&request=getActions&doctype=SB&docno=0487> [<http://perma.cc/3EFM-JG7Z>] (accessed Apr. 13, 2014).

¹⁸³ Pa. Sen. 510, 2013–2014 Reg. Sess. (Feb. 14, 2013) (available at <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2013&sessInd=0&billBody=S&billTyp=B&billNbr=0510&pn=0474> [<http://perma.cc/H6GB-L7GQ>] (accessed Apr. 13, 2014)).

¹⁸⁴ Pa. Sen. 644, 2013–2014 Reg. Sess. (June 5, 2013) (as amended) (available at <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2013&sessInd=0&billBody=S&billTyp=B&billNbr=0644&pn=1173> [<http://perma.cc/L4TX-UJTB>] (accessed Apr. 13, 2014)); Press Release, Humane Socy. of the U.S., *Pennsylvania Legislature Criticized for Advancing Bill Supporting Captive Pig Hunts* (June 18, 2013) (available at http://www.humanesociety.org/news/press_releases/2013/06/pennsylvania-leg-passes-measure-to-support-captive-wild-pig-hunts-061813.html [<http://perma.cc/E9NR-R4UE>] (accessed Apr. 13, 2014)).

¹⁸⁵ Pa. Sen. 510, 2013–2014 Reg. Sess.

¹⁸⁶ *Id.* at § 1.

(2) affixed to a rope, chain or other tethering device when presented to the shooter.¹⁸⁷

On the other side of the pendulum, Sen. 644 passed both houses and was signed into law by Governor Tom Corbett.¹⁸⁸ The bill created a new subchapter of the Pennsylvania Agriculture Code that provides for the existence of swine hunting preserves.¹⁸⁹ It orders the Department of Agriculture to promulgate regulations to govern such preserves, and expressly commands that the Pennsylvania Game Commission shall have no authority over the newly created swine hunting preserves.¹⁹⁰ In addition, the bill amends the Pennsylvania Game and Wildlife Code's definition of "wild animals" by adding that it no longer includes "a species or variation of swine, pig or boar, held in captivity."¹⁹¹ As a result, canned swine hunts in Pennsylvania have not only been legally endorsed, but reclassified as an agricultural activity rather than a hunting activity.

V. ANIMAL HUSBANDRY REFORM

Beyond the flurry of whistleblower suppression legislation detailed in Part II, the agricultural arena saw considerable action in the form of proposed bans on gestation crates and tail docking, both common industry practices that have come under fire in recent years from animal welfare groups.

A. Bans on Gestation Crates

New Jersey was the scene of a high-profile national debate, with a gestation crate ban passed by the legislature but vetoed by Governor Chris Christie.¹⁹² As passed by the legislature, Sen. 1921 would have created a new animal cruelty offense for "cruel confinement of a gestating sow."¹⁹³ This new offense would have applied to any person who directly or indirectly "crates, confines, or tethers a gestating sow kept on the farm in a manner that prevents the animal from being able to turn around freely, lie down, stand up, or fully extend its limbs . . ."¹⁹⁴ Sen. 1921 went on to firmly establish liability for any violations on the owner or operator of the farm, stating that "[n]o contractor, consultant

¹⁸⁷ *Id.*

¹⁸⁸ 2013 Pa. Laws 25 (available at <http://www.legis.state.pa.us/cfdocs/legis/li/ucons/Check.cfm?yr=2013&sessInd=0&act=25> [<http://perma.cc/56LQ-NV8C>] (accessed Apr. 13, 2014)).

¹⁸⁹ *Id.* at § 1.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at § 2.

¹⁹² N.J. St. Legis., *Bills 2012-2013*, <http://www.njleg.state.nj.us/>; under "Bill Search" select legislative session "2012-2013," search for bill number "s1921" (accessed Apr. 13, 2014).

¹⁹³ N.J. Sen. 1921, 215th Legis. 2-3 (Mar. 14, 2013) (first reprint) (available at http://www.njleg.state.nj.us/2012/Bills/S2000/1921_R1.pdf [<http://perma.cc/CPG6-5VSP>] (accessed Apr. 13, 2014)).

¹⁹⁴ *Id.*

or employee of the owner or operator o[f] the farm shall be guilty of the offense of cruel confinement of a gestating sow if the person is acting under the directions or instructions of the owner or operator of the farm.”¹⁹⁵

The bill’s extensive definition section went so far as to define “fully extend its limbs” as “to lift, stretch, or otherwise move the legs or tail of an animal by the animal, to the fullest extent possible for the animal, without impediment and touching the side or wall of a crate.”¹⁹⁶ The bill also defines “turn around freely” as “to be able to turn in a complete circle without any impediment, including a tether, and without touching the side or wall of a crate.”¹⁹⁷ In one sense, Sen. 1921 could be considered revolutionary in that the criminal offense created by the statute is defined by reference to the animal’s ability to move about freely. To that end, it echoed Brambell’s Five Freedoms in a manner not normally articulated by American livestock welfare laws.¹⁹⁸

In his veto statement, Governor Christie recognized the split science and public interest behind gestation crates, but noted that their use is endorsed by both the American Veterinary Medical Association and the American Association of Swine Veterinarians.¹⁹⁹ The governor went on to discuss how New Jersey has traditionally delegated authority over agricultural practices to the state Board of Agriculture and the Department of Agriculture, and how usurping their authority through the legislative process would undermine the goal of administrative governance—namely, the public commenting process—by which such controversial topics may be amicably examined and consensus among interested parties achieved.²⁰⁰ In closing, he stated that “[t]he proper balancing of the humane treatment of gestating pigs with the interests of farmers whose livelihood depends on their ability to properly manage their livestock best rests with the State’s farming experts—the State Board and the Department [of Agriculture].”²⁰¹

Vermont considered a gestation crate ban as well. H. 438 proposed a new section of the state’s humane slaughter laws that would prohibit confinement of a sow during gestation.²⁰² As introduced, the bill mir-

¹⁹⁵ *Id.* at 3.

¹⁹⁶ *Id.* at 2.

¹⁹⁷ *Id.*

¹⁹⁸ Farm Animal Welfare Council, *Five Freedoms*, <http://www.fawc.org.uk/freedoms.htm> [<http://perma.cc/G4AP-RNEF>] (accessed Apr. 13, 2014). The Brambell Report was a 1965 study conducted in the United Kingdom, which concluded that livestock should be free to “stand up, lie down, turn around, groom themselves and stretch their limbs.” *Id.*

¹⁹⁹ Ltr. from Chris Christie, N.J. Gov., to N.J. Senate, *Senate Bill No. 1921 (First Reprint)* 1–2 (June 27, 2013) (available at http://www.njleg.state.nj.us/2012/Bills/S2000/1921_V1.pdf [<http://perma.cc/34CV-CBLQ>] (accessed Apr. 13, 2014)).

²⁰⁰ *Id.* at 1.

²⁰¹ *Id.* at 2.

²⁰² Vt. H. 438, 2013–2014 Legis. Sess. 3 (Mar. 1, 2013) (available at <http://www.leg.state.vt.us/docs/2014/bills/Intro/H-438.pdf> [<http://perma.cc/YXF4-B9G7>] (accessed Apr.

rored New Jersey's prohibition, including express definitions of "fully extending the animal's limbs" and "turning around freely."²⁰³ Similarly, it contained a number of exceptions, including those for transportation, veterinary examination, slaughter, and during the week prior to the sow's projected "date of giving birth."²⁰⁴ Following its first reading, the bill was referred to the House Committee on Agriculture and Forest Products, but no further action has been taken.²⁰⁵ Committee records indicate that the bill was only discussed once, receiving testimony from the bill's sponsor, Representative Tony Klein, and a lobbyist from the Green Mountain Dairy Farmers Cooperative Federation.²⁰⁶ In response to this inaction, the Vermont Humane Federation expressed considerable dismay, noting that both an overwhelming public majority and the Vermont Livestock Animal Care Standards Advisory Council had supported the bill.²⁰⁷

B. Bans on Tail Docking

Colorado, a sizeable agriculture state, considered a contentious tail-docking ban that was ultimately postponed following a heated committee debate.²⁰⁸ As introduced, H. 13-1231 would have prohibited any person from cutting or removing any portion of a dairy cow's tail unless a licensed veterinarian performs the operation for therapeutic purposes, using appropriate instruments in hygienic conditions, including anesthesia.²⁰⁹ In addition, the bill explicitly stated that tail

13, 2014)); Vt. St. Legis., *The Vermont Legislative Bill Tracking System, H. 438*, <http://www.leg.state.vt.us/database/status/summary.cfm?Bill=H%2E0438&Session=2014> [<http://perma.cc/T9M7-JJTT>] (accessed Apr. 13, 2014).

²⁰³ Compare Vt. H. 438, 2013–2014 Legis. Sess. at 3 with N.J. Sen. 1921, 215th Legis. at 2 (showing that both bills define "fully extend its limbs" and "turn around freely" and contain similar prohibition language).

²⁰⁴ Vt. H. 438, 2013–2014 Legis. Sess. at 3–4.

²⁰⁵ Vt. St. Legis., *The Vermont Legislative Bill Tracking System, Current Status of a Specific Bill or Resolution, 2013–2014 Legislative Session, Bill H. 438*, <http://www.leg.state.vt.us/database/status/summary.cfm?Bill=H%2E0438&Session=2014> [<http://perma.cc/D8Z2-9E7D>] (accessed Apr. 13, 2014).

²⁰⁶ Vt. St. Legis., *The Vermont Legislative Bill Tracking System, Legislative History: Meeting Details, 2013–2014 Legislative Session, House Committee on Agriculture and Forest Products, 04/02/2013*, <http://www.leg.state.vt.us/database/leghist/details.cfm?Session=2014&MeetingID=12844> [<http://perma.cc/4BXX-XZGJ>] (accessed Apr. 13, 2014).

²⁰⁷ Vt. Humane Fedn., *Vermont Animal Legislation Recap, 2013 Session*, http://www.vermonthumane.org/legislation_details.php?IID=19 [<http://perma.cc/9J9N-MK4D>] (accessed Apr. 13, 2014).

²⁰⁸ Marianne Goodland, Journal-Advocate, *House Committee Postpones Vote on Tail-Docking Bill after Heated Testimony*, http://www.journal-advocate.com/ci_22749751/house-committee-postpones-vote-tail-docking-bill-after [<http://perma.cc/CN3V-R3RP>] (Mar. 9, 2013) (accessed Apr. 13, 2014).

²⁰⁹ Colo. H. 13-1231, 69th Gen. Assembly, 1st Reg. Sess. (Feb. 13, 2013) (available at http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont3/06464741AC3B878787257AEE00584087?Open&file=1231_01.pdf [<http://perma.cc/UNJ9-L2DN>] (accessed Apr. 13, 2014)).

docking performed as part of an existing scheme of animal husbandry was not exempt from its prohibition.²¹⁰

The bill's sponsor, Representative Steve Lebsock, described the bill as an animal welfare measure designed to ban the routine tail docking of dairy cattle.²¹¹ When testifying to the House Committee on Health, Insurance, and Environment, Representative Lebsock intimately described the brutal practice of tail banding, whereby tight elastic bands placed around the dairy cattle's tail cause the tail to fall off after weeks of loss of blood flow.²¹² Representative Lebsock beseeched the committee with a pro-livestock argument, repeatedly implying a theoretical duty on behalf of the state to protect dairy cattle from what he characterized as a painful and unnecessary process.²¹³ In support of his legislation, Representative Lebsock cited Colorado's 2008 ban on veal and gestation crates, which passed both the House and a unanimous Senate.²¹⁴ Under cross-examination by pro-agriculture legislators, Representative Lebsock also cited California's 2009 ban on tail docking for its effects on the dairy industry.²¹⁵ Although H. 13-1231 passed through committee by a narrow 6–5 vote, it was tabled upon introduction to the Colorado House of Representatives.²¹⁶ One of the bill's sponsors chose to postpone the bill until the next legislative session.²¹⁷

The state of Washington also considered a tail docking bill, which contained far greater prohibitions.²¹⁸ H. 1787 would have not only prohibited the practice of tail docking, but also the importation into the state of any docked cow, or any use of a previously docked cow within the state.²¹⁹ The bill provided only a single narrow exception—for tails docked for the purpose of saving the animal's life or other veterinary purpose—and only then if performed by a licensed veterinarian using anesthesia and proper surgical techniques.²²⁰ Although the bill did not generate significant support among legislators, it was reintroduced

²¹⁰ *Id.*

²¹¹ Steve Lebsock, Remarks, *HB 13-1231* at 18:15 to 21:10 (H. Comm. on Health, Insurance, & Env. Mar. 7, 2013) (audio available at http://coloradoga.granicus.com/MediaPlayer.php?clip_id=3215&entrytime=1095 (accessed Apr. 13, 2014)).

²¹² *Id.* at 22:15.

²¹³ *Id.* at 25:00.

²¹⁴ *Id.* at 32:30.

²¹⁵ *Id.* at 36:00.

²¹⁶ Colo. Gen. Assembly, *Votes for HB13-1231*, http://www.leg.state.co.us/CLICS/CLICS2013A/csl.nsf/fsbillcont3/06464741AC3B878787257AEE00584087?Open&file=1231_01.pdf [<http://perma.cc/TZD8-BKB5>] (accessed Apr. 13, 2014).

²¹⁷ Denver Post, *Cow Tail Protection Defeated for Year in Colorado*, http://www.denverpost.com/politics/ci_22873714/cow-tail-protection-defeated-year-colorado [<http://perma.cc/GQ29-C3WR>] (Mar. 26, 2013) (accessed Apr. 13, 2014).

²¹⁸ Wash. H. 1787, 63d Legis., 2013 Reg. Sess. (Feb. 8, 2013) (available at <http://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Bills/House%20Bills/1787.pdf> [<http://perma.cc/KF8N-ZLNL>] (accessed Apr. 13, 2014)).

²¹⁹ *Id.*

²²⁰ *Id.*

and retained three times, indicating that it may return in the 2014 session.²²¹

VI. ANIMAL CRUELTY REFORM

The 2013 legislative session saw a number of pro-animal reforms trending in state legislatures with regard to increased penalties for persons convicted of animal cruelty. Although generally limited to companion animals, the bills indicated strong legislative support for animal welfare and a recognition of more modern welfare concerns—particularly domestic violence concerns and hoarding.

A. *Post-Conviction Ownership Bans*

One of the leading trends in state animal cruelty reform in the 2013 legislative session was the imposition of mandatory bans on the ownership of animals for those convicted of animal cruelty. Such bans, designed to hinder the opportunity for repeat offenses, generally suffered from many of the same issues that plague existing animal cruelty statutes, including limiting the scope of animals covered to pets or domestic animals and exempting common practices such as tail docking and ear cropping.²²² However, despite their limits, these bills indicate strong support for companion animals in numerous jurisdictions and provide a strong foundation on which to build.

In addition to the state's already stiff animal cruelty laws, Hawaii passed a mandatory post-conviction ban of five years for anyone convicted of first degree cruelty to animals.²²³ Under existing law, first degree cruelty to animals results in a felony charge for one who intentionally mutilates, tortures, or poisons pets or horses, or kills another's pet without permission.²²⁴ By applying only to pets and horses, and

²²¹ Wash. St. Legis., *HB 1787—2013–2014*, <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1787&year=2013#documents> [<http://perma.cc/5A9N-T899>] (accessed Apr. 13, 2014).

²²² See e.g. N.M. Stat. Ann. § 30-18-1 (West 2013) (prohibiting tormenting, injuring, or negligently mistreating animals, but providing an exemption for “the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices”); 18 Pa. Consol. Stat. Ann. § 5511 (West 2013) (prohibiting tail docking of any dogs over five days old, but providing an exemption for the practice if conducted by a licensed veterinarian); Wash. Rev. Code Ann. § 16.52.095 (West 2013) (generally prohibiting cropping more than one-half of the ear of any domestic animal, but providing an exemption if cutting off more than one-half of the ear is a common animal husbandry practice); People for the Ethical Treatment of Animals, *Ear-Cropping and Tail-Docking*, <http://www.peta.org/issues/cruel-practices/ear-cropping-tail-docking/> [<http://perma.cc/WGD5-NY63>] (accessed Apr. 13, 2014) (describing ear cropping and tail docking as “painful, unnecessary procedures”).

²²³ 2013 Haw. Sess. Laws 209 (amending Haw. Rev. Stat. § 711-1108.5) (available at http://www.capitol.hawaii.gov/session2013/bills/GM1312_.pdf [<http://perma.cc/XK3G-EL2X>] (accessed Apr. 13, 2014)).

²²⁴ Haw. Rev. Stat. § 711-1108.5(1) (West 2013).

containing exceptions for “customarily practiced” cropping and docking, the law applies only to a relatively narrow set of animals and circumstances.²²⁵ Nonetheless, the legislature felt the post-conviction ban was necessary, finding “that persons who are cruel to one animal may commit cruel acts to other animals and, as such, it is necessary to ensure that persons convicted of cruelty to animals are restricted from owning and possessing additional animals for a period of time.”²²⁶

Hawaii’s Office of the Public Defender argued vigorously against the bill in committee, citing both a separation of powers argument and the belief that a mandatory post-conviction ban could divide households between convicted defendants and pets, thus sowing further domestic discord.²²⁷ Notwithstanding the Public Defender’s arguments, the Hawaii legislature passed Sen. 9, and Governor Neil Abercrombie signed the bill into law, adding that such reforms “will rightfully hold those who abuse pets accountable for their actions.”²²⁸

In Maine, a post-conviction ownership ban passed both the House and Senate but was vetoed by Governor Paul LePage.²²⁹ The bill, Sen. 283, would have required judges to impose a five-year ownership ban on persons convicted of a Class D animal cruelty charge, and a fifteen-year ownership ban on persons convicted of a Class C animal cruelty charge.²³⁰ A violation of the ban would result in a subsequent criminal charge.²³¹ In an effort to encourage behavioral reform, the bill also included a provision allowing those subject to a ban to appeal for an exemption one year after a Class D conviction, or five years after a Class C conviction.²³² To qualify for such an exemption, the convicted persons would be required to show that they no longer present a danger to animals, can properly care for animals, and have completed any court-ordered counseling.²³³

State animal welfare groups lobbied heavily in support of Sen. 283, with Maine Friends of Animals characterizing it as a step toward

²²⁵ *Id.* at § 711-1108.5(2).

²²⁶ 2013 Haw. Sess. Laws 209.

²²⁷ Haw. Sen. Comm. on Jud. & Lab., Rpt. 497, *RE: S.B. No. 9*, 2013 Reg. Sess. 1 (available at http://www.capitol.hawaii.gov/session2013/CommReports/SB9_SD1_SSCR497_.htm [<http://perma.cc/X46U-BQMB>] (accessed Apr. 13, 2014)).

²²⁸ Off. of Gov. Neil Abercrombie, *Governor Signs Measures for Animal Protection*, <http://governor.hawaii.gov/blog/governor-signs-measures-for-animal-protection/> [<http://perma.cc/S5X4-F7R7>] (Jun. 26, 2013) (accessed Apr. 13, 2014).

²²⁹ Ltr. from Paul R. LePage, Me. Gov., to 126th Legis. of the St. of Me., *LD 703 Veto* (July 8, 2013) (available at <http://www.maine.gov/tools/whatsnew/attach.php?id=559391&an=1> [<http://perma.cc/4SNG-7CDN>] (accessed Apr. 13, 2014)) [hereinafter LePage, *LD 703 Veto*].

²³⁰ Me. Sen. 283, 126th Legis., 1st Reg. Sess. 1 (2013) (as amended) (available at http://www.mainelegislature.org/legis/bills/bills_126th/billtexts/SP025202.asp [<http://perma.cc/V6DD-5FUB>] (accessed Apr. 13, 2014)).

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

stemming the tide of recidivism.²³⁴ Additionally, while current Maine law allows judges to impose a post-conviction ban punishable by a contempt of court charge, the new law would require the imposition of a ban and punish violations with an additional criminal charge, thus providing more meaningful enforcement.²³⁵

Governor LePage disagreed with this logic and vetoed the bill, citing legislative overreach and separation of powers arguments.²³⁶ In his veto statement, the governor noted that the bill “takes away discretion from the third branch of government.”²³⁷ He went on to state that “[o]ur judicial system is equipped to handle these cases and order the appropriate punishment. We do not need a law to address the problem[,]” before abruptly concluding that “[w]e have courts for a reason—let them handle these matters.”²³⁸ Governor LePage’s statement demonstrates the tension between the need to deter animal cruelty and the political fear of over-legislating to the point of frivolity.

B. Hoarding, Neglect, and Seizure

While the practice of animal hoarding is not a recent phenomenon,²³⁹ significant public attention and advocacy has focused on it over the past few years.²⁴⁰ This has led several states to enact legislation specifically targeted at hoarding, rather than simply allowing prosecutors to proceed under the state’s usual animal cruelty statutes.

In Oregon, a high-profile hoarding case in the town of Brooks led advocates and legislators to successfully pass legislation amending the Oregon Criminal Statutes to target hoarding and neglect. In early January, police and Oregon Humane Society (OHS) officials removed 149 dogs from a warehouse owned by a self-described dog rescue group.²⁴¹

²³⁴ See Me. Sen. Comm. on Crim. Just. & Pub. Safety, *Hearing on LD 703*, 126th Legis., 1st Reg. Sess. 2 (Mar. 29, 2013) (testimony of Robert Fisk, Jr., president and director of Maine Friends of Animals) (available at <http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=5421> [<http://perma.cc/W64R-FQHY>] (accessed Apr. 13, 2014)) (“The bill provides a strong deterrent while providing extra assurance that these people will not have easy access to abuse more animals.”).

²³⁵ *Id.*

²³⁶ LePage, *LD 703 Veto*, *supra* n. 229.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ Lisa Avery, *From Helping to Hoarding to Hurting: When the Acts of “Good Samaritans” Become Felony Animal Cruelty*, 39 Val. U. L. Rev. 815, 835 (2005).

²⁴⁰ See e.g. *Confessions: Animal Hoarding*, TV Series (Animal Planet 2010–present) (a reality television show covering the condition of animal hoarding); Hoarding of Animals Research Consortium, <http://vet.tufts.edu/hoarding/> [<http://perma.cc/TQK9-QWJE>] (accessed Apr. 13, 2014) (“We have assembled the resources on this site to increase awareness about a complex disorder which has until recently not received serious attention by medical, mental health, and public health professionals.”); Humane Socy. of the U.S., <http://www.humanesociety.org>; search keywords “animal hoarding” [<http://perma.cc/N692-YWEF>] (accessed Apr. 13, 2014) (listing animal hoarding investigations conducted in recent years).

²⁴¹ Kimberly Wilson, Oregonian, *‘Rescued’ Dogs Found in Brooks Warehouse in Awful Shape*, http://www.oregonlive.com/pacific-northwest-news/index.ssf/2013/01/rescued_

OHS officials described the scene as “one of the biggest neglect cases in its history,” with many of the dogs suffering from eye infections, open sores, emaciation, and strict confinement.²⁴² While the majority of the dogs were rehabilitated and adopted out by local shelters,²⁴³ the incident spurred sufficient outrage to push for an update to the Oregon animal cruelty statutes to include added penalties for such egregious neglect.²⁴⁴

Sen. 6, commonly referred to as the Omnibus Animal Bill,²⁴⁵ provided a significant overhaul of the state’s existing cruelty statutes.²⁴⁶ It opened with a sweeping legislative finding that “[a]nimals are sentient beings capable of experiencing pain, stress and fear” and “should be cared for in ways that minimize pain, stress, fear and suffering.”²⁴⁷ While first degree animal neglect was classified as a Class A misdemeanor under the existing law, Sen. 6 added a new section upgrading first degree neglect to a Class C felony for those with a previous neglect conviction, neglect that is committed in the presence of a minor, and for any “criminal episode involving 10 or more animals.”²⁴⁸ The bill also upgraded the sentencing guidelines for hoarding cases, specifying that offenses involving eleven to forty animals shall be a category 6 crime, and offenses involving over forty animals shall be a category 7 crime.²⁴⁹

The Omnibus Animal Bill also introduced new regulations for animal rescue groups designed to halt the unlicensed operation of groups like the Brooks organization. Under the law, all animal rescue entities are now required to maintain extensive records for each animal, and to comply with local licensing requirements.²⁵⁰ Rescue licenses must be renewed annually with the city or county agency responsible for dog licensing and control, and the agency may not renew the license of any rescue entity not in compliance with the statute’s

dogs_found_in_brooks_w.html [http://perma.cc/VT3X-79BQ] (Jan. 15, 2013) (accessed Apr. 13, 2014).

²⁴² *Id.*

²⁴³ Or. Humane Socy., *Rescued Marion County Dogs Are Looking for Homes*, http://www.oregonhumane.org/news/stories/Marion_County_Adoptions_Begin.asp#.UsdTsbvbxhA [http://perma.cc/9374-JCBB] (Feb. 13, 2013) (accessed Apr. 13, 2014).

²⁴⁴ Or. Sen. Jud. Comm., *Hearing on SB 6*, 2013 Reg. Sess. (Mar. 25, 2013) (written testimony of Sharon Harmon, executive director, Oregon Humane Society) (available at <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/20462> [http://perma.cc/UT7S-2AFK] (accessed Apr. 13, 2014)).

²⁴⁵ Or. Humane Socy., *2013 Oregon Legislative Session*, <http://www.oregonhumane.org/advocacy/legislation.asp#sb6> [http://perma.cc/8KND-VMAS] (accessed Apr. 13, 2014).

²⁴⁶ 2013 Or. Laws ch. 719.

²⁴⁷ *Id.* at § 1.

²⁴⁸ *Id.* at § 5.

²⁴⁹ *Id.* at § 4; Or. Crim. Just. Commn., *The Oregon Sentencing Guidelines Grid* (available at <http://www.oregon.gov/CJC/docs/GuidelinesGrid.pdf> [http://perma.cc/49F6-VJR2] (accessed Apr. 13, 2014)).

²⁵⁰ 2013 Or. Laws ch. 719 at § 10.

mandates.²⁵¹ In addition, the bill grants significant inspection and enforcement powers to the licensing agency, allowing the agency to issue money penalties, revoke licenses, and impound a rescue's animals if noncompliance is found.²⁵² Lastly, the bill sets up a complaint process by which citizens may notify the licensing agency that a shelter is operating without, or in violation of, a license.²⁵³ The licensing agency is required to respond to all complaints with an on-site investigation, and to enforce the bill's provisions if a violation is found.²⁵⁴

New Jersey took a leap forward in its animal cruelty statutes as well, adopting Patrick's Law to specifically address cases of neglect and bodily injury.²⁵⁵ The bill amended the state's existing animal cruelty code by striking a generalized prohibition on the deprivation of necessary sustenance and replacing it with an entirely new subsection devoted to "necessary care."²⁵⁶ The bill defines "necessary care" as "care sufficient to preserve the health and well-being of an animal," including but not limited to food and water sufficient for the animal's needs, as well as access to appropriate shelter and veterinary care.²⁵⁷ The bill creates two new offenses based on this definition: failure to provide necessary care to an animal, and causing bodily injury due to failure to provide necessary care to an animal.²⁵⁸ Steeper penalties are also available if the failure to provide necessary care results in "serious bodily injury,"²⁵⁹ defined as "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ."²⁶⁰ Although Governor Chris Christie failed to comment when signing the bill into law, bill sponsor Senator Tom Kean applauded the legislature's endorsement.²⁶¹ Kean has noted that the bill will impose tough penalties on "deplorable, inexcusable abuse" and other "sickening actions against innocent animals."²⁶²

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.* at § 11.

²⁵⁴ *Id.*

²⁵⁵ 2013 N.J. Laws ch. 88.

²⁵⁶ *Id.* at 1.

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 1–2.

²⁵⁹ *Id.* at 2.

²⁶⁰ *Id.* at 1.

²⁶¹ Off. of Sen. Tom Kean, *Kean's "Patrick's Law" Signed by Christie*, <http://www.senatenj.com/index.php/tomkean/keans-patricks-law-signed-by-christie/15079> [http://perma.cc/GV4L-H4B5] (Aug. 7, 2013) (accessed Apr. 13, 2014).

²⁶² *Id.*