

In The
Supreme Court of the United States

—◆—
UNITED STATES OF AMERICA,

Petitioner,

v.

ROBERT J. STEVENS,

Respondent.

—◆—
**On Writ Of Certiorari To The
United States Court Of Appeals
For The Third Circuit**

—◆—
**BRIEF FOR A GROUP OF AMERICAN LAW
PROFESSORS AS *AMICUS CURIAE*
IN SUPPORT OF NEITHER PARTY**

—◆—
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STATEMENT OF INTEREST¹

We are a group of American law professors representing diverse geographical, political, religious, socioeconomic, and philosophical backgrounds, who are employed as full-time, part-time, tenured, or adjunct faculty at law schools across the country.² Notwithstanding our differences, we share two things that prompted us to submit this *amicus curiae* brief: (1) our substantial scholarship and expertise in the field of animal law; and (2) our desire to offer our expertise, for whatever service it may provide, as the Court decides as a matter of first impression whether the prevention of animal cruelty constitutes a compelling governmental interest.

Animal law can be described as “statutory and decisional law in which the nature – legal, social or biological – of nonhuman animals is an important factor.” Sonia S. Waisman, Pamela D. Frasch & Bruce A. Wagman, *Animal Law: Cases and Materials* xxvii (3rd ed. Carolina Academic Press 2006). As professors

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Legal services for this brief were provided by DeWitt Ross & Stevens SC on a *pro bono* basis, with only costs paid by the Center for Animal Law Studies. No other person made a monetary contribution to the preparation or submission of this brief.

² Law professors agreeing to have their names appear on this brief were solicited on the basis of their substantial expertise and scholarship in the area of animal law. University affiliations are included for purposes of identification only and are not intended to represent the views of the universities.

of animal law, we educate future lawyers in the myriad ways the interests of animals may be considered in substantive areas of law, such as: property, torts, constitutional law, criminal law, estate planning, family law, contracts, and federal regulation. These few examples do not comprise the full extent to which animal law intersects with traditional areas of legal study.

To teach animal law, we must have substantive knowledge of wide-ranging topics – educating our students about federal protections provided to certain categories of animals under the Animal Welfare Act in one class, while addressing the proper measure of damages for the death or injury of a beloved companion animal in a state tort case in another class. We are, in essence, municipal lawyers, prosecutors, constitutional lawyers, estate planners, litigators, commercial and transactional attorneys, as well as environmental lawyers.³ Many of us are practitioners who handle animal law cases. All of us are professors educating the next generation of attorneys to recognize and address animal law issues when they arise in any area of practice.

In our classrooms and in our scholarship, we present diverse perspectives on many animal protection issues. Regardless of our specific views on the subject of

³ See, e.g., Joan Schaffner & Julie Fershtman, *Litigating Animal Law Disputes: A Complete Guide for Lawyers* (ABA 2009) for examples of the varied and complex legal issues that arise in animal law cases.

animal protection, we respect our differences and welcome vigorous debate. We recognize the academic study of animal law as germane to efforts to consider the interests of animals in the legal system, where, too often, even trivial human interests justify the infliction of suffering on other living beings. Another common goal is the further development of the field of animal law. We believe that rigorous academic focus supports the work of the bench and bar to seek just outcomes for legal questions.

Thirty years ago, this Court would not have had occasion to read an *amicus curiae* brief from a group of animal law professors because animal law professors largely did not exist. The first animal law course was not taught until 1977 at Seton Hall Law School. Joyce Tischler, *The History of Animal Law, Part I (1972-1987)*, 1 *Stan. J. of Animal L. & Pol'y* 1, 10 (2008). The field of animal law was in its infancy, evolving much like the field of environmental law.⁴

Today, in stark contrast, animal law is recognized by the legal profession as a legitimate and important area of study and scholarship. Animal law is currently taught at no less than 112 law schools

⁴ A historical analysis of the development of animal cruelty legislation in the United States is beyond the scope of this brief. Suffice it to say that animal cruelty legislation – as distinguished from the field of animal law – has been in existence for more than a century. *See, e.g.,* David Favre & Vivien Tsang, *The Development of Anti-Cruelty Laws during the 1800s*, *Detroit College of Law Rev.* 1 (1993).

across the country, including Harvard, Northwestern, Columbia, Cornell, University of Chicago, Stanford, and Georgetown. Animal Legal Defense Fund, *Animal Law Courses*, available at <http://www.aldf.org/article.php?id=445> (last visited June 7, 2009). In June 2008, the American Association of Law Schools approved the establishment of a Section on Animal Law with its goal to “create a forum for legal academics writing and teaching in the diverse area of animal law.” Joan Schaffner, *Letter from the Chair*, Newsletter, Animal L. Sec. of the Am. Ass’n of L. Sch. (Dec. 2008), available at [http://www. animallaw.info/policy/poaals news.htm](http://www.animallaw.info/policy/poaals_news.htm) (last visited June 7, 2009). As professors of animal law, we commonly teach our students from a variety of casebooks authored by experts in the field, some of whom are signatories to this brief.⁵

Animal law is also recognized on a national level by the bar as demonstrated by the fact that at least fifteen states have bar sections or committees devoted to animal law: Arizona, Connecticut, Florida, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, Oregon, Pennsylvania, Texas and Washington. Animal Legal

⁵ David Favre, *Animal Law: Welfare, Interests and Rights* (Aspen Law & Bus. 2008); Sonia S. Waisman, Pamela D. Frasch & Bruce A. Wagman, *Animal Law: Cases and Materials* (3rd ed. Carolina Academic Press 2006); *Animal Rights: Current Debates and New Directions* (Cass R. Sunstein & Martha C. Nussbaum eds., Oxford Univ. Pr. 2005); *Animal Law and the Courts: A Reader* (Taimie L. Bryant, Rebecca J. Huss & David N. Cassuto eds., Thomson West 2008).

Defense Fund, *Bar Association Animal Law Sections and Committees*, available at <http://www.aldf.org/article.php?id=277> (last visited June 7, 2009). Additionally, numerous regional bar sections and committees are devoted to animal law, including: Cuyahoga County, Ohio; Los Angeles, San Francisco and San Diego, California; Tulsa, Oklahoma; and the District of Columbia. *Id.* In 2005, the American Bar Association's Tort Trial and Insurance Practice Section created the ABA Animal Law Committee. *See, e.g.,* Margaret Graham Tebo, *Pet Project: New ABA Committee on Animal Law Focuses on Post Katrina Rescue Efforts*, A.B.A. J., Dec. 2005, at 72.

Animal law is the subject of extensive scholarship in academic journals. Numerous journals are devoted exclusively to animal law scholarship, including: *Animal Law* at Lewis & Clark Law School, the *Journal of Animal Law* at Michigan State University College of Law, the *Journal of Animal Law & Ethics* at the University of Pennsylvania Law School, the *Stanford Journal of Animal Law and Policy*, the *Journal of International Policy and Wildlife* affiliated with Stetson University College of Law, and the *Journal of Animal & Environmental Law* at the University of Louisville Louis D. Brandeis School of Law. As part of the series of academic e-journals from the Social Science Research Network, the Syracuse University College of Law is sponsoring a new online journal called *Animal Law*.

Our study and scholarship of animal law shows that common law infrequently addressed animal

protection issues. Thus, the shadow of any jurisprudential doctrine regarding animals resulting from this case is long and potentially impacts the ability to protect animals within the legal system for decades. Therefore, as this Court decides for the very first time whether the prevention of animal cruelty constitutes a compelling governmental interest, we thought it pertinent to offer our unique perspective and guidance to the Court on this limited question, without taking a position either in support of or in opposition to the specific legislation at issue.



SUMMARY OF ARGUMENT

We respectfully submit that this Court should reverse the holding of the United States Court of Appeals for the Third Circuit (“Third Circuit”) – that the prevention of animal cruelty is not a compelling governmental interest – for the following reasons.⁶ *United States v. Stevens*, 533 F.3d 218 (3rd Cir. 2008).

First, and as set forth in Section I below, the Third Circuit erred when it:

⁶ Our silence on the Third Circuit’s ruling on the constitutionality of 18 U.S.C. § 48 is indicative of nothing other than the fact that the focus of this brief is upon that portion of the Third Circuit’s decision which addressed an issue of fundamental importance to animal law and will be precedent in future cases beyond the particular statute at issue.

- Construed this Court’s decision in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) as “suggesting” this Court would not find the prevention of animal cruelty to be a compelling governmental interest; and
- Deemed the absence of any other precedent from this Court on the issue presented as a requirement that “the interest . . . without exception” must relate “to the well-being of human beings, not animals.” 553 F.3d at 227.

The Third Circuit should have treated the question presented as one of first impression, the outcome of which was not controlled by any prior precedent.

Second, and as set forth in Section II below, the Third Circuit erred when it:

- Characterized the governmental interest asserted as solely about “protecting animals”;
- Failed to appreciate the magnitude of human interests implicated by the prevention of animal cruelty; and
- Concluded the interest at stake was not compelling.

For the reasons set forth below, we urge the Court to hold that the prevention of animal cruelty is a compelling governmental interest.



ARGUMENT

I. WHETHER THE PREVENTION OF ANIMAL CRUELTY IS A COMPELLING GOVERNMENTAL INTEREST IS A MATTER OF FIRST IMPRESSION IN THIS COURT.

We begin our analysis by addressing whether this Court has already decided if the prevention of animal cruelty is a compelling governmental interest.

A review of the Court's prior decisions reflects that in its more than 200-year history, the issue of whether prevention of animal cruelty is a compelling governmental interest has been presented on only one prior occasion. In *City of Hialeah, supra*, this Court addressed the constitutionality of a collection of city ordinances banning animal sacrifice and held that those ordinances violated the First Amendment's Free Exercise Clause. According to the Third Circuit, this Court's holding in *City of Hialeah* "suggested that the kind of government interest at issue in § 48 is not compelling." *United States v. Stevens*, 533 F.3d 218, 226 (3rd Cir. 2008). Respectfully, we disagree.

We are familiar with this Court's decision in *City of Hialeah* because many of us teach it to our students. While this Court could have decided whether the prevention of animal cruelty constituted a compelling governmental interest in *City of Hialeah*, it did not do so. The appellate record was replete with legislative history making it clear the animal sacrifice ordinances at issue were designed to target religion. City of Hialeah officials had publicly characterized the

Santeria religion as “‘an abomination to the Lord,’ and the worship of ‘demons.’” 508 U.S. at 541. The city attorney had publicly argued the purpose of the ordinances was to demonstrate that “[t]his community will not tolerate religious practices which are abhorrent to its citizens.” *Id.* at 542. This Court unanimously held that only “one conclusion” could be drawn from the record: “[t]he ordinances had as their object the suppression of religion.” *Id.*

A review of the *City of Hialeah* decision contains no substantive discussion or analysis on the issue of whether the sincere goal of preventing animal cruelty is a compelling governmental interest. Rather, the Court appeared to assume the governmental interests at stake were compelling for the sake of its analysis. *Id.* at 538. (“The legitimate governmental interests in protecting the public health *and preventing animal cruelty* could be addressed by restrictions stopping far short of a flat prohibition of all Santeria sacrificial practice”) (emphasis added). The Court then held the ordinances could not survive strict scrutiny. *Id.* at 546. Other scholars have likewise understood the Court’s decision as declining to specifically address whether the sincere goal of preventing animal cruelty would be a compelling governmental interest:

The Justices avoided ruling on the issue of whether members of a religious sect that used animal slaughter in their rituals would be entitled by the free exercise clause to an exemption from a law prohibiting the

slaughter of animals that was a religiously neutral law of general applicability.

Ronald D. Rotunda & John E. Nowak, 6 *Treatise on Constitutional Law* § 21.6(a) (4th ed. 2009); *see also*, e.g., David N. Cassuto, *Animal Sacrifice and the First Amendment: The Case of Lukumi Babalu Aye*, in Bryant, Huss & Cassuto, *supra*, at 50-77.

Justices Blackmun and O'Connor were careful to note in their concurring opinion that the Court's holding did not "necessarily reflect this Court's views of the strength of a State's interest in prohibiting cruelty to animals." 508 U.S. at 580. The majority did not take exception with that statement. Rather, the Court specifically left open the question of whether the "Free Exercise Clause would require a religious exemption from a law that sincerely pursued the goal of protecting animals from cruel treatment." *Id.*

City of Hialeah did not, as the Third Circuit mistakenly stated, "suggest" that the sincere goal of preventing animal cruelty would not be a compelling governmental interest. *City of Hialeah* simply did not decide the issue. Therefore, the question presented here is an entirely novel question of law not previously decided by this Court.

Further, the absence of any decision recognizing a compelling governmental interest related to animal cruelty does not, as the Third Circuit mistakenly contended, demonstrate that to be compelling "the interest . . . without exception" must relate "to the well-being of humans, not animals." 533 F.3d at 227.

The absence of any decisions from this Court finding an interest relating to animals as compelling reflects nothing other than the fact that this Court has not previously ruled on the issue.

We respectfully submit that whether the prevention of animal cruelty is a compelling governmental interest is a matter of first impression and it was error for the Third Circuit to hold otherwise.

II. THE COURT SHOULD RECOGNIZE THE PREVENTION OF ANIMAL CRUELTY AS A COMPELLING GOVERNMENTAL INTEREST.

A. For More Than A Century, American Courts Have Recognized That Preventing Animal Cruelty Ultimately Serves Human Interests.

“It has long been the public policy of this country to avoid unnecessary cruelty to animals.” *Humane Soc’y of Rochester & Monroe County for Prevention of Cruelty to Animals, Inc. v. Lyng*, 633 F. Supp. 480, 486 (W.D. N.Y. 1986). In the tradition of *amici*, we share a common viewpoint. We are a group of law professors who believe that human beings have a moral and ethical duty to animals, independent from any benefit humans may derive from acts of mercy and kindness to our fellow creatures. A review of early American case law, however, reflects that our nation’s public policy in favor of preventing animal

cruelty is also motivated by a self-interested desire to protect human beings.

For example, over a century ago the Supreme Court of Colorado recognized that laws designed to prevent animal cruelty were intended not only to protect animals, but also to conserve public morals:

It is common knowledge that within the past few years, as incident to the progress of civilization, and as the direct outgrowth of that tender solicitude for the brute creation which keeps pace with man's increased knowledge of their life and habits, laws, such as the one under consideration, have been enacted by the various states having the common object of protecting these dumb creatures from ill treatment by man. Their aim is not only to protect these animals, but to conserve the public morals, both of which are undoubtedly the subject of legislation.

Waters v. People, 46 P. 112, 113 (Colo. 1896).

Similarly, the Court of Appeals of the District of Columbia noted over a century ago that preventing animal cruelty was critical to peace, order and general welfare in American communities:

Cruel treatment of helpless animals at once arouses the sympathy and indignation of every person possessed of human instincts, – sympathy for the helpless creature abused, and indignation towards the perpetrator of the act; and in a city, where such treatment would be witnessed by many, legislation like

that in question is in the interest of peace and order and conduces to the morals and general welfare of the community.

Johnson v. District of Columbia, 30 App. D.C. 520, 1908 WL 27791, at *1 (D.C. Mar. 3, 1908).

More than 120 years ago, the Supreme Court of Missouri held that the interest in preventing animal cruelty was so strong that it ought not be questioned:

Laws for the prevention of cruelty to animals may well be regarded as an exercise of such police powers. That good government calls for the condemnation of such acts as are prohibited by the ordinance ought not to be questioned.

City of St. Louis v. Schoenbusch, 8 S.W. 791, 792-93 (Mo. 1888).

Moreover, one reason American courts have historically viewed animal cruelty as abhorrent is because the act of violence, whether to an animal or a human, dulls humanitarian feelings:

It must be held, therefore, that the statute in question was intended to be in the interest of the public morals. It is directed against acts which may be thought to have a tendency to dull humanitarian feelings and to corrupt the morals of those who observe or have knowledge of those act[s].

Commonwealth v. Higgins, 178 N.E. 536, 538 (Mass. 1931); see also *Stephens v. State*, 3 So. 458, 459 (Miss. 1888) (stating that cruelty to animals “manifests a

vicious and degraded nature, and it tends inevitably to cruelty to men”); *People v. O'Rourke*, 369 N.Y.S.2d 335, 341-42 (N.Y. City Crim. Ct. 1975) (affirming a conviction for overdriving an injured horse and noting that “the moral obligation of man toward the domestic animal is well documented in the Bible. ‘A righteous man regardeth the life of his beast’ (Proverbs 12:10).”); *Pennsylvania Co. for Ins. on Lives & Granting of Annuities v. Helvering*, 66 F.2d 284, 287 (D.C. Cir. 1933) (reversing a Board of Tax Appeals holding that a bequest to the American Anti-Vivisection Society of Philadelphia was not exempt for charitable purposes because “[i]t is certainly in the public interests to correct and prevent the reckless or useless dissection of animals, for its unchecked and unrestrained practice inevitably will tend to brutalize and coursen the human race”).⁷

Early philosophers shared the view that preventing animal cruelty serves human interests. Immanuel Kant stated in his essay on *Duties Towards Animals and Spirits*:

Our duties towards animals are merely indirect duties towards humanity. Animal nature has analogies to human nature, and by doing our duties to animals in respect of

⁷ Since 1918, corporations or associations organized for “the prevention of cruelty to children or animals” have been recognized as exempt for tax purposes. Ch. 18, § 231 (6), 40 Stat. 1057, 1076 (1918).

manifestations which correspond to manifestations of humans nature, we indirectly do our duty towards humanity.

Immanuel Kant, *Lectures on Ethics* 239 (Louis Infield ed. & trans., Taylor & Francis 1979) (1975-1981). The philosophical view that how we treat animals ultimately reflects mankind's capacity for kindness continues today, as former speechwriter for President George W. Bush, Matthew Scully, eloquently describes in his book *Dominion: The Power of Man, the Suffering of Animals, and the Call to Mercy*:

Animals are more than ever a test of our character, of mankind's capacity for empathy and for decent, honorable conduct and faithful stewardship. We are called to treat them with kindness, not because they have rights or power or some claim to equality, but in a sense because they don't; because they all stand unequal and powerless before us.

Id. at xi-xii (St. Martin's Press 2002).

Further, early American courts repeatedly noted that the act of animal cruelty debases us as human beings so profoundly that even the mere depiction or viewing of animal cruelty corrupts public morals:

It is urged by the Attorney General that the legislation in question can be sustained under the police power of the state, because it tends to conserve the public morals; that seeing frequently mutilated and disfigured animals sears the conscience and hardens the minds of the people until they become

accustomed to look upon these things as a matter of course. The same thought was expressed by Pope in a few lines. And it is as true in our day as it was in his time that, although we may instinctively hate vice, yet, if we allow ourselves to become familiar with it, we, in turn, become depraved. It was upon this theory that Judge Carpenter sustained the law, and we fully agree with him that **constantly seeing the disfigured and mutilated animals tends to corrupt the public morals.**

Bland v. People, 76 P. 359, 361 (Colo. 1904) (emphasis added); *see also Peck v. Dunn*, 574 P.2d 367, 369 (Utah 1978):

Over the centuries the disposition to look upon such brutalities with favor or approval has gradually lessened, and compassion and concern for man's fellow creatures of the earth has increased to the extent that it is now quite generally thought that **the witnessing of animals fighting, injuring and perhaps killing one another is a cruel and barbarous practice, discordant to man's better instincts and so offensive to his finer sensibilities that it is demeaning to morals.**

(emphasis added; footnote omitted); *see also C.E. Am., Inc. v. Antinori*, 210 So. 2d 443, 446 (Fla. 1968) (affirming a conviction for staging a simulated bull fight for public entertainment because the "exhibition

shocks the sensibilities of any person possessed of humane instincts”).

In standing jurisprudence, American courts have repeatedly recognized that the public interest in viewing animals free from inhumane treatment is so strong that it constitutes a cognizable injury for purposes of standing under Article III, Section II of the United States Constitution. *See, e.g., Animal Legal Defense Fund, Inc. v. Glickman*, 154 F.3d 426, 433 (D.C. Cir. 1998) (in banc) (holding that plaintiff Marc Jurnove had a cognizable interest in “view[ing] animals free from . . . ‘inhumane treatment’”) (quoted source omitted), *cert. denied*, *Nat’l Ass’n for Biomedical Research v. Animal Legal Defense Fund, Inc.*, 526 U.S. 1064 (1999); *Animal Welfare Inst. v. Kreps*, 561 F.2d 1002 (D.C. Cir. 1977) (holding plaintiff organizations had an interest in seeing Cape Fur Seals not subject to inhumane treatment); *Humane Soc’y of U.S. v. Hodel*, 840 F.2d 45, 52 (D.C. Cir. 1988) (holding that Humane Society members had an interest in not viewing animal corpses on wildlife refuges); *Fund for Animals, Inc. v. Lujan*, 962 F.2d 1391, 1396 (9th Cir. 1992) (holding that members had standing due to “psychological injury they suffered from viewing the killing of the bison in Montana”).

Nonetheless, the Third Circuit dismissed the governmental interest in preventing animal cruelty based upon the mistaken view that it was only about “protecting an animal.” 533 F.3d at 227-28. In so doing, the Third Circuit failed to appreciate the

magnitude of human interests at stake and erroneously concluded that the state's interest in preventing animal cruelty was not compelling because it benefitted only animals, not humans. As demonstrated above, however, American courts have historically regarded animal cruelty prevention as a necessary means to advance human interests. Thus, if the Third Circuit's conclusion is correct that there must be a nexus between the governmental interest and human beings, that standard is met.

B. Scientific Research And Study Confirms That Animal Cruelty Implicates Human Interests.

While courts have long understood that the prevention of animal cruelty benefits humans, scientific research now confirms the existence of a link between animal abuse and violence to humans. As demonstrated below, the scientific proof of a link between animal abuse and violence to humans is accepted by a wide-range of professionals, including: law enforcement, prosecutors, psychologists, lawyers, legislators, domestic abuse advocates, social workers, and veterinarians.

The first well-documented study of the link between animal cruelty and violence to humans was published in the American Journal of Psychiatry in 1966. In a study of the eighty-four prison inmates studied, 75% of those charged with violent crimes had early records of cruelty to animals. Daniel Hellman &

Nathan Blackman, *Enuresis, Firesetting and Cruelty to Animals: A Triad Predictive of Adult Crime*, 122 *Am. J. Psychiatry* 1431-35 (1966), in *Cruelty to Animals and Interpersonal Violence: Readings in Research and Applications* 262 (Randall Lockwood & Frank R. Ascione eds., 1998).

Since the 1970s, the Federal Bureau of Investigation (“FBI”) has used animal cruelty as one of the factors to predict future violent behavior. Randall Lockwood & Ann Church, *Deadly Serious: An FBI Perspective on Animal Cruelty*, in Lockwood & Ascione, *supra*, at 242. Supervisory Special Agent Alan Brantley of the FBI’s Investigative Support Unit explained in an interview with Dr. Randall Lockwood why the FBI uses animal cruelty as a predictor:

Something we believe is prominently displayed in the histories of people who are habitually violent is animal abuse . . . You can look at cruelty to animals and cruelty to humans as a continuum.

Id.

More than twenty years ago, studies also confirmed a link between child abuse and animal abuse. In 1983, a New Jersey study found that in homes where children were abused, in 88% of those homes with pets, the pets were also abused. Elizabeth DeViney, Jeffrey Dickert & Randall Lockwood, *The Care of Pets within Child Abusing Families*, 4 *Int’l J. for Study of Animal Problems* 321-329, in Lockwood & Ascione, *supra*, at 311. Research also confirms that

children who witness animal abuse may themselves imitate the violence they have witnessed against their pets. In the same 1983 study in New Jersey, researchers found that in 37% of the homes in which pet abuse was reported, children were reported to be abusive to animals. *Id.* at 312.

Other studies likewise confirm a link between children observing acts of animal cruelty and participating in acts of animal cruelty. One recent study utilized a sample of 169 college students enrolled in a psychology course to examine the relationship between observing acts of animal cruelty and participating in acts of animal cruelty. Bill C. Henry, *The Relationship Between Animal Cruelty, Delinquency, and Attitudes Toward the Treatment of Animals*, 12 Soc'y & Animals J. of Human-Animal Stud. (2004), available at <http://www.psyeta.org/sd/sa12.3/henry.shtml> (last visited June 7, 2009). The study found that 26% of those who had observed an act of animal cruelty in childhood reported also participating in acts of animal cruelty, as compared to only 10% of those who reported never observing an act of animal cruelty. *Id.* The findings were more pronounced where more than one act of animal abuse had been observed, with 36% of those who had observed more than one act of cruelty in childhood reporting also participating in acts of animal cruelty. *Id.* Based on these findings, the study ultimately concluded that the “results suggest that observation of animal cruelty is more critical than participation in

animal cruelty for the development of concern toward animals . . . ” *Id.*

Studies regarding the consequences of children observing animal abuse are particularly noteworthy due to the surprising extent to which children are spectators and participants in dogfighting. Professionals on the front lines against dogfighting report that “you now have 8-, 9-, 10-year-olds conducting their own dog fights. Or being spectators at the fights people are holding.” Comments of Sergeant Steve Brownstein, Chicago’s Animal Abuse Control Team, *quoted* in William Hageman, *A Child, A Pup, A Blood Sport; Spring Brings Rise in Dogfights Staged By Kids for Fun*, Chi. Trib., May 11, 2004; *see also, e.g.*, Jamey Medlin, *Pitbull Bans and the Human Factors Affecting Canine Behavior*, 56 DePaul L. Rev. 1285, 1301 (2007) (“Perhaps most disturbing is the fact that children are often present at dogfighting matches, raising concerns about desensitizing children to violence and animal cruelty.”) (quoted source omitted). Thus, dog fights expose children to organized and systematic animal abuse, with far reaching consequences.

The link between animal cruelty and domestic violence is also well-documented. A 1995 survey of seventy-two women seeking refuge in domestic violence shelters in Wisconsin found that 86% of the women had pets and in 80% of those cases the batterer had abused the pets. *See* Phil Arkow, *The Relationships Between Animal Abuse and Other Forms of Family Violence*, 12 Fam. Violence & Sexual

Assault Bull. 29, 31 (1996). In an abusive household, animal abuse is often used as a tool of domination and control over the human members of the family in ways sometimes beyond imagination. For example, a 1984 study by Lenore Walker found that 41% of the battered women she interviewed had been forced by their partners to engage in sex acts with their pets. Michelle Lerner, *From Safety to Healing: Representing Battered Women with Companion Animals*, 4 Domestic Violence Rep. 17, 18 (Dec./Jan. 1999) (citation omitted).

Research has also confirmed that animal abuse is a particularly effective way for batterers to control their victims. Three separate studies have documented that from 18% to 40% of victims seeking shelter at a crisis center reported that concern for the welfare of their pet prevented them from seeking shelter sooner, in some cases for more than two months. See Frank R. Ascione, *Safe Haven for Pets: Guidelines for Programs Sheltering Pets for Women Who Are Battered* 1 (2000). The statistics do not account for the countless number of victims who did not leave due to concern for the welfare of their pet.

Less than ten years ago, no state had a law that included companion animals within protective orders in domestic violence cases. Dianna J. Gentry, *Including Companion Animals in Protective Orders: Curtailing the Reach of Domestic Violence*, 13 Yale J.L. & Feminism 97 (2001). In the past three years, because of the research showing the link between animal abuse and domestic violence, eleven states have

passed legislation that allows judges to include companion animals in protective orders in domestic violence cases. *See* California (Cal. Fam. Code Ann. § 6320(b)), Colorado (Colo. Rev. Stat. Ann. §§ 18-6-803.5(a) and (a.5)(I)), Connecticut (Conn. Gen. Stat. Ann. §§ 46b-15, 46b-38c, 54-1k), Illinois (725 Ill. Comp. Stat. § 112A-14(b)(12.5)), Louisiana (Senate Bill 264, Act. No. 411, signed into law 6/21/2008), Maine (2006 Me. Laws ch. 510), Nevada (Nev. Rev. Stat. Ann. §§ 30.030(1) and (2)), New York (2006 N.Y. Laws ch. 253), Tennessee (Tenn. Code Ann. §§ 35-3-601 and 36-3-606(a)), and Vermont (2006 Vt. Act 193).

Studies also confirm a link between animal cruelty by a perpetrator in childhood and future violent acts toward humans. A 1985 study compared men incarcerated for violent crimes with a control group of non-incarcerated non-violent men. That study found that 25% percent of the incarcerated men reported engaging in “substantial cruelty” to animals in childhood. A. William Ritter, Jr., *The Cycle of Violence Often Begins with Violence Toward Animals*, 30 Prosecutor, Jan./Feb. 1996, 31, 31. None of the men in the control group reported a prior history of animal abuse. *Id.* Studies similarly confirm that animal abusers are five times more likely to commit violent crimes, such as assault, robbery or rape; four times more likely to commit property crimes; and three times more likely to be arrested for drug related offenses. Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws To Prevent Violence Against Humans*, 6 Animal L. 1, 13-14 (2000).

Since 1987, the American Psychiatric Association has included cruelty to animals in the diagnostic criteria for Conduct Disorder. Angela Campbell, *The Admissibility of Evidence of Animal Abuse in Criminal Trials for Child and Domestic Abuse*, 43 B.C. L. Rev. 463, 468 (2002). The *Diagnostic and Statistical Manual of Mental Disorders* (“DSM-IV-TR”) lists one of the diagnostic criteria for Conduct Disorder as when the person “has been physically cruel to animals.” Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders 98-99* (4th ed. text rev. 2000). *Id.* at 98-99. The DSM-IV-TR then describes the “essential feature” of “Conduct Disorder” as “a repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms or rules are violated.” *Id.* at 93. The associated descriptive features of Conduct Disorder are, in part, as follows:

Associated descriptive features and mental disorders. Individuals with Conduct Disorder may have little empathy and little concern for the feelings, wishes, and well-being of others. Especially in ambiguous situations, aggressive individuals with this disorder frequently misperceive the intentions of others as more hostile and threatening than is the case and respond with aggression that they then feel is reasonable and justified. They may be callous and lack appropriate feelings of guilt or remorse.

Id. at 95-96.

Due to studies such as these, many prosecutors now advocate allocating time and resources to animal cruelty prosecutions as a means to ultimately protect human beings. In a 1996 article, Denver's District Attorney, A. William Ritter, Jr., urged prosecution of animal cruelty due to the link:

Society has traditionally compartmentalized acts of violence – separating definitions of child abuse from domestic violence or street violence or cruelty to animals. Evidence is mounting that violent acts are not separate and distinct, but part of a cycle. The forces and influences that foster violence toward humans and animals spring from the same roots. Over the last two decades, scientists, psychologists and criminologists have been documenting this relationship.

Ritter, *supra*, at 31. Thus, prevention of violence and cruelty of all kinds should be our goal.

In a 2004 publication of the National District Attorneys Association, it was argued that due to the “alarming connection between family violence and animal abuse . . . law enforcement, domestic violence and child protection professionals” must be made “aware of animal abuse occurring within homes . . .” Allie Phillips, *The Dynamics Between Animal Abuse, Domestic Violence and Child Abuse: How Pets Can Help Abused Children*, 38 Prosecutor, Sept./Oct. 2004, 22, 22-23. The author, a senior attorney in the American Prosecutors Research Institute's National Center for Prosecution of Child Abuse in Alexandria,

Virginia, and the National Child Protection Training Center in Winona, Minnesota, argued that awareness of animal abuse prevents child abuse because:

- Animal abuse indicates serious anti-social behavior (whether child or adult offender);
- Animal abuse is a relatively common occurrence in the lives of many children;
- Children who witness animal abuse may suffer developmentally;
- Animal abuse is related to interpersonal and family violence;
- The well-being of companion animals is at risk in violent homes; and
- If animal violence is reduced, this could help achieve a less violent society for children and adults.

Id. at 23 (citing C. P. Flynn, *Why Family Professionals Can No Longer Ignore Violence Toward Animals*, 49 Fam. Rel. 87-95 (2000)).

In Butler County, Ohio, the District Attorney's office recently announced the formation of a "Domestic Crimes Unit" which assigns domestic abuse and animal abuse to a single prosecutor. Sheila McLaughlin, *Animal, Domestic Abuse Linked: Prosecutor Says New Policy May Help Prevent Violence*, Cincinnati Enquirer, June 11, 2008. The District Attorney's Office created the program with the goal of early detection of violent crimes, stating:

If you stop animal cruelty in its tracks, you very well may be minimizing future domestic violence . . . They are both crimes involving violence on those who are less able to protect themselves. Any time you can break a cycle of violence, that's a good thing.

Id.

Law enforcement has likewise recognized the link between animal abuse and violence to humans. The International Association of Chiefs of Police urges law enforcement to take animal cruelty reports seriously because violence against animals provides an early opportunity to prevent future violent crimes:

Recent research has demonstrated that people who commit acts of cruelty against animals are also likely to be involved in family violence and other serious criminal behavior. Complaints of animal cruelty should be taken seriously as they often provide an opportunity for early identification with violent perpetrators.

Int'l Ass'n of Chiefs of Police, Inc., *Training Key*, reprinted in *Creating Safer Communities For Older Adults and Companion Animals* at 79 (Humane Soc'y of U.S. & Wis. Dep't of Health & Fam. Servs. 2003) (2000).

Likewise, legislatures across the country increasingly recognize the importance of preventing animal cruelty. Perhaps the best evidence of this recognition is the overwhelming number of animal

cruelty felony-level laws passed within the last fifteen years. In 1993, only seven states had felony-level animal cruelty statutes. Stephan K. Otto, *State Animal Protection Laws – The Next Generation*, 11 Animal L. 131, 132 (2005). By 2005, forty-one states and the District of Columbia had passed felony-level animal abuse laws – a significant increase since 1993. *Id.* As of the time of filing this brief, only four states did not have felony-level animal abuse statutes.

In 1999, the New York General Assembly acknowledged when passing an aggravated animal cruelty law that “[t]he connection between animal abusers and violence towards humans shows that virtually every serial killer had a history of abusing animals before turning their attention to people.” N.Y. Assembly Memo in Support of L. 1999, Ch. 118 at 1585, cited in *People v. Garcia*, 777 N.Y.S.2d 846, 849 (N.Y. Sup. Ct. 2004); *see also* 106 Cong. Rec. H10270 (1999) (statement of California Representative Elton Gallegly in support of Section 48 noting that, “[m]any studies have found that people who commit violent acts on animals will later commit violent acts on people.”). Numerous serial killers have been shown to have a prior history in childhood of torturing and killing animals. *See, e.g.*, Charlotte A. LaCroix, *Another Weapon For Combating Family Violence: Prevention of Animal Abuse*, 4 Animal L. 1, 8 (1998). An illustrative sample of the history of animal abuse of some of the most well-known murderers as reproduced in its entirety from *Animal Law: Cases and Materials* at 528 demonstrates the

pattern of serial killers abusing animals before they progressed to killing humans:

Name	Crime Against Humans	Crime Against Animals
Ted Bundy	Mass murderer	Spoke of a grandfather who regularly tortured animals in his childhood
Patrick Sherril	Murdered 14 co-workers and then killed himself	Stole pets, tied them up, then allowed his own dog to mutilate them
Albert DeSalvo	Mass murderer, the "Boston Strangler"	Shot arrows into boxes of trapped cats and dogs
David Berkowitz	13 murders/ attempted murders, "Son of Sam"	Shot the neighbor's Labrador Retriever
Brenda Spencer	Fired 40 shots into a crowd of children, killing two, wounding nine	Set tails of cats and dogs on fire
Jeffrey Dahmer	Mass murderer	Killed neighborhood pets, impaled dogs' heads on sticks

Edmund Emil Kemper III	Murdered mother and seven other women	Abused dogs and cats
Carol Edmund Cole	Mass murderer (35 people)	Admitted his first violent act was strangling a puppy
James Huberty	Killed 21 people at a fast food restaurant	Shot the neighbor's dog
Luke Woodham	Killed two classmates and his mother	Tortured and killed his dog "Sparkle"

Animal cruelty is also associated with other crimes against humans. This association is aptly illustrated in a 1997 study comparing arrest records for crimes other than animal abuse during a ten year window before and after a conviction for intentional animal abuse in a figure reproduced in its entirety from a publication sponsored by the United States Department of Justice – Office of Justice Programs:

Figure 3

Incidence of Crime among 153 Prosecuted Animal Abusers and a Matched Community Control Group (Luke et al., 1997)		
Incidence of Crimes in Criminal Record 10 years Pre/Post Animal Cruelty Arrest		
CRIME	ANIMAL ABUSERS	CONTROLS
Violent Crime	38%	7%
Property Crime	44%	11%
Drug Crime	37%	11%
Disorder Crime	37%	12%
Any of the Above	70%	22%

Randall J. Lockwood, *Animal Cruelty Prosecution: Opportunities for Early Response To Crime and Interpersonal Violence* 11 (Am. Prosecutors Research Inst., July 2006).

Due to the overwhelming evidence of the link between animal abuse, violence to humans, and other crimes, numerous states, including Oregon, Minnesota, Colorado, Georgia, Idaho, Illinois, Rhode Island, Maine, New York, and Arizona have laws requiring veterinarians to report animal abuse. *See* Or. Rev. Stat. §§ 686.445, 686.465; Minn. Stat. § 346.37; Colo. Rev. Stat. § 12-64-121; Ga. Code Ann. § 4-11-17; Idaho Code Ann. § 25-3514A; 510 Ill. Comp.

Stat. 70/3.07; R.I. Gen. Laws § 4-1-37; 7 Maine Rev. Stat. Ann. § 4018 & 17 Maine Rev. Stat. Ann. § 1023; N.Y. Educ. Law § 6714; Ariz. Rev. Stat. Ann. § 32-2239. Further, the field of forensic veterinary science has recently developed to assist animal cruelty prosecutions with necessary evidence and expert testimony. *See, e.g.,* Melinda D. Merck, DVM, *Veterinary Forensics: Animal Cruelty Investigations* (Blackwell Publ'g 2007). Veterinarians, like other professionals, recognize the need to take animal cruelty seriously as a means of protecting humans from violent crimes. Bonnie L. Yoffe-Sharpe & Lynn M. Loar, *The Veterinarian's Responsibility to Recognize and Report Animal Abuse*, 234 J. Am. Veterinary Med. Ass'n 732, 733 (Mar. 15, 2009) ("animal abuse and neglect do not occur in a vacuum but are part of a pattern of dangerous and antisocial behavior jeopardizing people, animals, and inanimate property.").

While all animal abusers do not become pathological killers, the link between animal cruelty and human violence has been well-documented and is generally accepted across a wide range of professions, as demonstrated above. These professions all accept the link between animal abuse and violence to humans, and uniformly agree that while not a panacea to stop crimes against humans, the prevention of animal cruelty is an early opportunity to stop the cycle of violence. It is also clear that merely viewing violence to animals may result in harm to the psychological development of the person

viewing the violence, and this may lead to more violence to both humans and animals. The governmental interest in stopping violence, and the viewing of violence, is no less compelling merely because the object of abuse is an animal and not a human being.

The Third Circuit, however, failed to appreciate this well-documented connection between violence to animals and violence to humans, instead characterizing the governmental interest in preventing animal cruelty as being about “protecting animals.” 533 F.3d 218.⁸ By viewing animal cruelty prevention in this narrow way, the Third Circuit mistakenly concluded that although prevention of animal cruelty was “an exceedingly worthy goal”, it simply “does not implicate interests of the same magnitude as protecting children from physical and psychological harm.” *Id.* The Third Circuit failed to recognize that this is exactly one of the many human interests implicated by the prevention of animal cruelty. By characterizing the interest at stake as purely an animal interest, the Third Circuit erred and concluded that the governmental interest could not be compelling. Preventing animal cruelty is not merely “an exceedingly worthy goal,” it is a well-established

⁸ The United States advised the Third Circuit that when considering Section 48, the House Judiciary Committee had referenced a body of research suggesting that violent acts committed by humans may be the result of a long pattern of perpetrating abuse, which “often began with the torture and killing of animals.” See Brief for United States filed on April 6, 2006, at 31, *citing* H.R. Rep. 106-397 (“Committee Report”) at 4.

national public policy that government pursues to protect the interests of human beings.



CONCLUSION

The development of our field of study has been accompanied by an exponential growth in animal protection legislation and uniform awareness amongst professionals that acts of animal cruelty must be treated seriously. Scientific research and study over the past thirty years has simply confirmed what courts long ago implicitly understood: when we, as a society, tolerate acts of violence, whether to animals or humans, we ultimately condone and facilitate violence to humans. The development of animal law presents society with the opportunity to foster continued national discussion, research, analysis, and debate regarding the interests of animals in the legal system, which inures to the benefit of animals and humans. We are privileged to be a part of that debate before this Court. We respectfully urge the Court to hold that preventing animal cruelty is a compelling governmental interest

and to reverse that portion of the Third Circuit's decision that held to the contrary.

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