

2014 STATE LEGISLATIVE REVIEW

By
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I. INTRODUCTION	383
II. ORCAS	384
A. <i>Why Captivity Is a Problem</i>	385
B. <i>SeaWorld's Perspective</i>	386
C. <i>Legislation to Solve the Problem</i>	387
III. IVORY AND RHINO HORN BANS	390
A. <i>New Jersey</i>	394
B. <i>New York</i>	395
IV. AG-GAG BILL PASSAGE	396
A. <i>Arizona</i>	397
B. <i>Idaho</i>	398
C. <i>Indiana</i>	400
D. <i>Tennessee</i>	401
V. BREED-SPECIFIC LEGISLATION	402
A. <i>Maryland</i>	404
B. <i>South Dakota</i>	405
C. <i>Utah</i>	406

I. INTRODUCTION

Several state legislatures addressed animal welfare issues in 2014. A young fifth-grader, motivated by a documentary, inspired her community and state legislature to attempt to pass legislation protecting orcas.¹ Two states decided to blaze a new trail when they determined that the federal government was not going far enough to stop the ivory and rhino horn trade.² The battle between freedom of speech

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¹ See Emily Sawicki, *Malibu Student Helps Bloom Introduce Orca Whale Act*, MALIBU TIMES (Apr. 12, 2014) (available at http://www.malibutimes.com/news/article_862401d6-c122-11e3-87c9-001a4bcf887a.html [<http://perma.cc/H2U5-9X3G>] (accessed Feb. 7, 2015)) (reporting on fifth-grader Kirra Kotler's help in presenting a petition to end orca captivity in California after being inspired by the documentary, *Blackfish*).

² See Michele S. Byers, *New Jersey First to Ban Ivory Trade*, N.J. CONSERVATION FOUND.: STATE WE'RE IN BLOG, <http://njconservation.org/blog/?p=683> [<http://perma.cc/N557-QELX>] (Aug. 28, 2014) (accessed Mar. 15, 2015) (discussing New Jersey legislation that closes a loophole in federal law that allowed ivory to be imported); *Governor Cuomo Signs New Law to Combat Illegal Ivory Trade and Protect Endangered Species*,

and property rights reared its ugly head as several states took on the polemical issue of ‘ag-gag.’³ Lastly, we witnessed breed-specific legislation become illegal in three more states,⁴ with science trumping the availability heuristic.⁵

II. ORCAS

During a year which saw the 113th United States (U.S.) Congress cement its status as one of the least productive Congresses in modern history,⁶ it is a breath of fresh air that a documentary can spur action in the state legislatures. The documentary, a 2013 film titled *Blackfish*, introduced audiences worldwide to the dangers of keeping orca whales in captivity.⁷ It told the story of “Tilikum, a performing killer whale that killed several people while in captivity.”⁸ In telling the story, the creators show the “animal abuse inherent in keeping animals as large and intelligent as orcas in captivity.”⁹

N.Y. ST., <http://www.governor.ny.gov/news/governor-cuomo-signs-new-lawcombat-illegal-ivory-trade-and-protect-endangered-species> [<http://perma.cc/XE74-8LUB/>] (Aug. 12, 2014) (accessed Jan. 7, 2015) [hereinafter *Governor Cuomo Signs New Law*] (discussing New York legislation toughening penalties for those engaging in the illegal ivory trade).

³ See, e.g., *Coalition Files Lawsuit over Controversial “Ag Gag” Law*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/free-speech/aclu-idaho-and-coalition-files-lawsuit-over-controversial-ag-gag-law> [<http://perma.cc/Z4VZ-T9ME/>] (Mar. 17, 2014) (accessed Jan. 7, 2015) (discussing a federal lawsuit alleging that Idaho’s new ‘ag-gag’ statute violates the First Amendment’s freedom of speech guarantee).

⁴ See *infra* Part V (describing the efforts of Maryland, South Dakota, and Utah to end breed-specific legislation).

⁵ See, e.g., Arin Greenwood, *Maryland Does Right by Pit Bulls, Says They Aren’t Inherently Dangerous*, HUFFINGTON POST, http://www.huffingtonpost.com/2014/04/03/maryland-pit-bull-bill-_n_5086024.html [<http://perma.cc/7K8S-ZKSJ/>] (Apr. 8, 2014) (accessed Jan. 7, 2015) (discussing Maryland’s experience). The availability heuristic refers to human tendencies to extrapolate how often events actually happen from how many known examples of the event spring quickly to mind; here, this often means that dog breeds who receive media attention for biting are thought to actually be more likely to bite, regardless of actual dog bite statistics. See generally Andrew M. Colman, *Availability Heuristic*, A DICTIONARY OF PSYCHOLOGY (3d ed. 2008) (available at <http://www.oxfordreference.com/view/10.1093/acref/9780199534067.001.0001/acref-9780199534067-e-830?rskey=lyzK66&result=1> [<http://perma.cc/N47Q-T7Z2/>] (2014) (accessed Mar. 10, 2015)) (“A cognitive heuristic through which the frequency or probability of an event is judged by the number of instances of it that can readily be brought to mind. It can generate biased or incorrect judgments . . .”).

⁶ Drew Desilver, *In Late Spurt of Activity, Congress Avoids ‘Least Productive’ Title*, PEW RES. CENTER, <http://www.pewresearch.org/fact-tank/2014/12/29/in-late-spurt-of-activity-congress-avoids-least-productive-title/> [<http://perma.cc/C2NX-PYCK/>] (Dec. 29, 2014) (accessed Feb. 10, 2015).

⁷ *Synopsis*, BLACKFISH, <http://blackfishmovie.com/about> [<http://perma.cc/8MPL-E8HE/>] (accessed Feb. 7, 2015).

⁸ *Id.*

⁹ Emily Sawicki, *Pt. Dume Cancels Annual SeaWorld Trip amid Controversy*, MALIBU TIMES (Dec. 18, 2013) (available at http://www.malibutimes.com/news/article_55896ed0-67ae-11e3-9ab0-0019bb2963f4.html [<http://perma.cc/U8Y6-3XFP/>] (accessed Feb. 7, 2015)).

A. *Why Captivity Is a Problem*

A good starting question is “[s]hould some of the most social, intelligent and charismatic animals on the planet be kept in captivity by human beings?”¹⁰ This question has been asked “about close human cousins like chimpanzees and other great apes.”¹¹ It is now being asked about orcas, especially after showing the life of Tilikum in *Blackfish*.

Another question to be asked is whether orca captivity is a bad thing. One perspective is informed by the initial capture of the animal. Ric O’Barry, an animal advocate who formerly captured dolphins, said the following about the capture:

It’s violent, it’s kind of like rape and I’ve captured many, many dolphins. . . . That’s how I started, capturing dolphins for the . . . Aquarium. You chase them down to exhaustion. You separate mothers and babies. You take the young. We take the very best, incidentally. 80% of the captures are young females taken away from their mothers.¹²

After the initial capture the animals are then confined in “a concrete chlorinated box, reducing them to circus clowns and then selling this as educational to the public.”¹³ The size of these enclosures poses further issues. According to Dr. Naomi Rose, a marine mammal scientist, “The largest enclosure for any whale is on the order of one ten-thousandths of one percent the size of a typical home range for these species.”¹⁴ This sort of confinement is a very unnatural state for orcas to exist in, because in the wild orcas travel up to 100 miles per day, and due to the size of the enclosures, are unable to reach these levels of necessary and natural activity in captivity.¹⁵ Similarly, orcas are by their nature a very social species—“possibly the strongest kin-bonded species.”¹⁶ By keeping the orcas in enclosed spaces, capture and captivity not only takes orcas away from their kin, but also impossibly disrupts their ability to travel and fully communicate or socialize.¹⁷

Besides being problematic in and of itself, capturing and confining orcas leads to separate harms both for the whales and those humans who interact with them. Captivity affects orca mortality rates. Accord-

¹⁰ James Gorman, *Smart, Social and Erratic in Captivity*, N.Y. TIMES, <http://www.nytimes.com/2013/07/30/science/smart-social-and-captive.html?pagewanted=all> [<http://perma.cc/5ABW-24MW>] (July 29, 2013) (accessed Feb. 7, 2015).

¹¹ *Id.*

¹² Naomi Rose, Humane Soc’y of the U.S., & Ric O’Barry, *Anti-Captivity Views*, FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/whales/debate/anticap.html> [<http://perma.cc/CY6T-FRUD>] (accessed Feb. 7, 2015).

¹³ *Id.* (quoting Dr. Naomi Rose).

¹⁴ E-Mail from Naomi Rose, Ph.D., Animal Welfare Inst., to author (Jan. 20, 2015, 10:27 PST) (on file with *Animal Law*).

¹⁵ *Whales and Dolphins in Captivity—Facts and Information*, WHALE AND DOLPHIN CONSERVATION, <http://us.whales.org/wdc-in-action/captivity> [<http://perma.cc/WN97-7GWQ>] (accessed June 15, 2015).

¹⁶ *Id.*

¹⁷ *Id.*

ing to Dr. Rose, “[T]he mortality rate in captivity for killer whales is three times higher and . . . [it] doesn’t sound like a lot when you say 2%, 6%, but that’s 3 times higher.”¹⁸ Captivity also makes orcas uniquely dangerous to humans. While orca attacks on humans in the wild are so rare as to be unheard of,¹⁹ since 1967 there have been over one hundred incidents involving captive cetaceans and humans, with the most severe ending in death.²⁰

B. SeaWorld’s Perspective

The release of *Blackfish* has put pressure on SeaWorld’s business model.²¹ A brief web search of “SeaWorld financial outlook” brings back several clever article titles that aim to explain the backlash from the movie.²² Most of the articles tell a similar story about SeaWorld’s financial decline, such as one that reads, “SeaWorld has seen a decline in attendance, a lawsuit from shareholders, a 60 percent plunge in stock, and on Thursday, its CEO Jim Atchison resigned.”²³ However, SeaWorld is not going down without a fight.

¹⁸ Rose & O’Barry, *supra* note 12.

¹⁹ See Elizabeth Landau, *Biologists: Killer Whales ‘Neurotic’ in Captivity*, CNN, <http://edition.cnn.com/2010/US/02/25/whales.seaworld.death/index.html> [<http://perma.cc/N3F8-SUMP>] (Feb. 26, 2010) (accessed Mar. 26, 2015) (quoting whale biologist Kim Parsons, “In the wild, killer whales have never been known to attack a human. . . .”); see also David Kirby, *Did a Wild Orca Really Attack a Diver in New Zealand?*, TAKEPART, <http://www.takepart.com/article/2014/02/24/did-wild-orca-really-just-attack-diver-new-zealand> [<http://perma.cc/N5RC-SWF4>] (Feb. 24, 2014) (accessed Mar. 26, 2015) (investigating an incident in which a wild orca grabbed a catch bag tethered to a diver, who was dragged underwater before managing to get loose from the tether, attributing the incident to the orca playing with the bag, perhaps not realizing or caring that a human was attached to the bag, or becoming frightened by the attached tether and human, and concluding, “[t]he truth is, orcas simply do not attack people in the ocean . . . a mammal-eating transient orca bit the leg of a Northern California surfer in 1972, then immediately let go. It’s possible the animal mistook the surfer’s wet suit for some kind of odd seal but was not interested in human flesh. The victim, who required 100 stitches, is the only known human to be injured by a wild orca.”).

²⁰ *Orca Captivity: Entertainment at What Cost?*, WHALE AND DOLPHIN CONSERVATION, <https://uk.whales.org/sites/default/files/orcas-in-captivity-infographic.pdf> [<http://perma.cc/73VZ-TZB9>] (accessed June 15, 2015).

²¹ See Kevin Roose, *SeaWorld: Remember When We Said That Blackfish Movie Didn’t Hurt Us? Well, Never Mind.*, N.Y. MAG. (Aug. 13, 2014) (available at <http://nymag.com/daily/intelligencer/2014/08/seaworld-admits-allegations-of-cruelty-have-hurt.html> [<http://perma.cc/YRZ4-SGKW>] (accessed Mar. 25, 2015)) (“In today’s press release, SeaWorld admitted for the first time that *Blackfish* may be hurting attendance. . . .”).

²² GOOGLE, <https://www.google.com> (search for “SeaWorld financial outlook”) (accessed Mar. 25, 2015); see, e.g., Bradley Seth McNew, *With Shares Down 30% This Year, Is SeaWorld’s Stock Sunk?*, THE MOTLEY FOOL, <http://www.fool.com/investing/general/2014/09/22/with-shares-down-30-this-year-is-seaworlds-stock-s.aspx> [<http://perma.cc/2Q4P-Y4XN>] (Sept. 22, 2014) (accessed Mar. 25, 2015) (result of Google search for “SeaWorld financial outlook”) (describing *Blackfish* as “[o]ne of SeaWorld’s biggest struggles,” connecting the film directly to Standard & Poor downgrading SeaWorld’s credit rating, which in turn “sparked an immediate additional stock decline”).

²³ Barbara Herman, *Can SeaWorld Recover From ‘Blackfish’ Backlash? McDonald’s Response to ‘Super Size Me’ Could Be Instructive*, INT’L BUS. TIMES, <http://www.ibtimes>

SeaWorld objects to the way the documentary portrayed its business. Since the film, it has dedicated an entire webpage to the issue, titled “Blackfish: The Truth About the Movie.”²⁴ On the webpage, SeaWorld offers the following conclusion:

All of the falsehoods and misleading techniques in *Blackfish* are employed in the service of the film’s obvious bias, one that is best revealed near the end of *Blackfish* by a neuroscientist with no known expertise in killer whales. She claims that all killer whales in captivity are “emotionally destroyed,” and “ticking time bombs.” These are not the words of science, and indeed, there is not a shred of scientific support for them. Rather, they are the words of animal rights activists whose agenda the film’s many falsehoods were designed to advance. They reveal “Blackfish” not as an objective documentary, but as propaganda.²⁵

The website covers science, research, and multiple interviews portraying a different picture from the one presented by the documentary. The fight appears far from over, especially now that legislation has been proffered to address the issues presented.

C. Legislation to Solve the Problem

The depiction of Tilikum’s story in *Blackfish* propelled Assembly Member Richard Bloom of Santa Monica, CA to propose The Orca Welfare and Safety Act (AB 2140) to prevent the tragic events in *Blackfish* from happening again.²⁶ One of the bill’s supporters was a fifth-grader by the name of Kirra Kotler, who described her reaction to the movie as “like seeing [yourself] get pulled away from your family, and I felt a little sad. I cried at one part of the movie, and I just wish that that did not happen.”²⁷ Ms. Kotler decided to take action and after the film, she “persuaded students and the principal at her school to cancel an overnight trip to SeaWorld San Diego, a trip the school has done for a decade.”²⁸ Ms. Kotler would later join Assembly Member Bloom in introducing AB 2140 to the state legislature on February 20, 2014.²⁹

.com/can-seaworld-recover-blackfish-backlash-mcdonalds-response-super-size-me-could-be-1751189 [http://perma.cc/W9SE-3TFR] (Dec. 15, 2014) (accessed Feb. 7, 2015).

²⁴ *Blackfish: The Truth About the Movie*, SEAWORLD, <http://seaworld.com/truth/truth-about-blackfish/> [http://perma.cc/U46C-GRER] (accessed Feb. 7, 2015).

²⁵ *Id.*

²⁶ James A. Foley, *California Orca Welfare Bill Would Stop Shows at SeaWorld*, NATURE WORLD NEWS, <http://www.natureworldnews.com/articles/6279/20140307/california-orca-welfare-bill-would-stop-killer-whale-shows-at-seaworld.htm> [http://perma.cc/7H PY-QW33] (Mar. 7, 2014) (accessed Feb. 7, 2015).

²⁷ Greg Allen, *Months After ‘Blackfish’ Release, Controversy over SeaWorld Grows*, NPR, <http://www.npr.org/2014/01/15/262767226/months-after-blackfish-release-controversy-for-seaworld-grows> [http://perma.cc/DYM4-N95S] (Jan. 15, 2014) (accessed Feb. 7, 2015).

²⁸ *Id.*

²⁹ Sawicki, *supra* note 1.

The language of the bill adds to Section 4502 of the Fish and Game Code, relating to marine mammals.³⁰ The bill reads:

- (a) It is unlawful for any person to do any of the following:
- (1) Hold in captivity, or use, a wild-caught or captive-bred orca for performance or entertainment purposes.
 - (2) Capture in state waters, or import from another state, any orca intended to be used for performance or entertainment purposes.
 - (3) Breed or impregnate an orca in captivity.
 - (4) Export, collect, or import from another state the semen, other gametes, or embryos of an orca held in captivity for the purpose of artificial insemination.³¹

For orcas who were already being held for performance or entertainment, the bill requires they be “rehabilitated and returned to the wild where possible. . . .”³² While the bill would not prohibit holding of orcas “for rehabilitation after a rescue or stranding, or for research purposes,” such orcas would similarly need to be “returned to the wild whenever possible. . . .”³³ For those orcas—whether originally held in service of entertainment, research, or rehabilitation—who cannot be returned to the wild, the bill requires they be “held in a sea pen that is open to the public and not used for performance or entertainment purposes.”³⁴

The bill was referred to the Standing Committee on Water, Parks and Wildlife on March 28, 2014.³⁵ On April 8, the committee voted to retain the measure and refer the subject matter “to the proper committee for study.”³⁶ When the measure was presented to Assembly Member Anthony Rendon, Chair of the Assembly Water, Parks and Wildlife Committee, it “contained 1.2 million signatures from supporters all over California.”³⁷ Assembly Member Rendon suggested the bill be sent “to ‘interim study’—a process to allow committee members to obtain more information on the science associated with orcas and captivity.”³⁸ However, he “made it clear that he supports passage of the bill

³⁰ A.B. 2140 § 1(a), 2013–2014 Assemb., Reg. Sess. (Cal. 2014) (available at http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2101-2150/ab_2140_bill_2014_0328_amended_asm_v98.html [<http://perma.cc/CL88-526C>] (accessed Feb. 13, 2015)).

³¹ *Id.*

³² *Id.* § 1(c)(2).

³³ *Id.* § 1(c)(1).

³⁴ *Id.* § 1(c).

³⁵ *Complete Bill History: A.B. No. 2140*, OFFICIAL CAL. LEGIS. INFO., http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2101-2150/ab_2140_bill_20140409_history.html [<http://perma.cc/9GV9-UAEZ>] (accessed Feb. 10, 2015) (outlining the history of the 2014 bill relating to “Marine Mammals: Protection of Orcas”).

³⁶ *Id.*

³⁷ Sawicki, *supra* note 1.

³⁸ *Orca Anti-Captivity Legislation*, ANIMAL WELFARE INST., <https://awionline.org/content/orca-anti-captivity-legislation> [<http://perma.cc/M7BQ-DT4J>] (accessed Feb. 10, 2015).

and recommended a 'yes' vote to Assembly members on moral and ethical grounds alone."³⁹

Part of the reason for the interim study was disagreement about the reasoning behind the legislation. In a statement released in response to AB 2140, SeaWorld argued:

The premise behind this proposed legislation is severely flawed on multiple levels. It assumes there is something wrong with the current approach to keeping killer whales in human care. Nothing could be further from the truth. SeaWorld has long been recognized as one of the most distinguished and respected zoological organizations in the world. Our trainers, animal care specialists and veterinarians are the real animal advocates.⁴⁰

Beyond SeaWorld's full-throated defense of keeping orcas in captivity, the issue of sea pens emerged as a challenge to the bill's passage. A sea pen is an "in-water enclosure . . . anchored to the sea floor, and attached to the shore."⁴¹ AB 2140 envisions sea pens as a way to address the housing needs of orcas who cannot be returned to the wild.⁴² However,

[s]everal of the Assembly members who might otherwise have supported the bill [think] that the sea pen provision needs further specification to instill confidence in the Assembly that the bill can credibly and practically be implemented, while delineating clear channels of accountability and responsibility for the welfare of these orcas in transition.⁴³

SeaWorld lobbyist, Scott Wetch, opposed the bill and expressed concerns about:

the lack of clarity in the bill and its failure to outline details regarding the sea pen provisions, suggesting that the vague language about timeframes for retirement and who is responsible for leading these efforts sets SeaWorld up for failure and a barrage of lawsuits if the bill's provisions are not met.⁴⁴

Unfortunately, the bill did not pass committee before the end of the 2014 session. Therefore, according to Article 4 of the California Constitution, the bill is dead.⁴⁵

³⁹ Courtney Vail, *California State Assembly Seeks More Time to Review Orca Welfare and Safety Act*, WDC BLOG, <http://us.whales.org/blog/2014/04/california-state-assembly-seeks-more-time-to-review-orca-welfare-and-safety-act> [<http://perma.cc/T69K-LSQR>] (Apr. 8, 2014, 11:09 PM) (accessed Feb. 10, 2015).

⁴⁰ Shawn M. Griffiths, *CA Legislative Committee Sends SeaWorld Bill to 'Interim Study'*, IVN, <http://ivn.us/2014/04/08/seaworld-future-trial-california-committee-decide> [<http://perma.cc/PS2M-PCPP>] (Apr. 8, 2014) (accessed Feb. 10, 2015).

⁴¹ A.B. 2140 § 1(d)(4), 2013–2014 Assemb., Reg. Sess. (Cal. 2014) (available at http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2101-2150/ab_2140_bill_20140328_amended_asm_v98.html [<http://perma.cc/4VDM-DUJG>] (accessed Feb. 13, 2015)).

⁴² *Id.* § 1(c).

⁴³ Vail, *supra* note 39.

⁴⁴ *See id.* (noting Wetch's multiple concerns with the bill).

⁴⁵ CAL. CONST. art. IV, § 10(c); *see also* E-mail from Diane Colborn, Chief Consultant, Assembly Water, Parks & Wildlife Comm. to author (Jan. 2, 2015, 1:06 PST) (on file with *Animal Law*); *Complete Bill History: A.B. No. 2140*, *supra* note 35 (noting the last

However, Dr. Rose still has hope that the bill's intent and purpose will be achieved. While she believes that this assessment of the bill's status is correct, she frames that only:

as a technical matter, [as it] exists within the California Assembly. However, all this means as a practical matter is that when Asm Bloom reintroduces his bill it will receive a new number (a bill is numbered per the biennium session in which it is introduced, and is renumbered for each new biennium in which it is reintroduced). Despite this new number, it will be the same bill. So the orca bill is NOT dead - the only thing that is "dead" is the number it carried for the 2014-2015 biennium session.⁴⁶

As of the closing of the 2014 session, the bill was not slotted for reintroduction in 2015⁴⁷ and the bill's author has confirmed that he will wait until the study of orca captivity is complete.⁴⁸ Indeed,

[Dr.] Rose, a killer whale expert and marine mammal scientist at the Animal Welfare Institute, wrote to activists, scientists and journalists in an email on Wednesday. "As many of you know, the current political climate in the Assembly, with Speaker Toni Atkins having SeaWorld in her district, is difficult for this bill, so Assembly member Richard Bloom has chosen to wait for 2016."⁴⁹

Therefore, it is unlikely that we will see a bill proposed in 2015, and California may have to wait until 2016 before a new version of this bill is passed.

III. IVORY AND RHINO HORN BANS

Animal rights advocates warn that elephants and rhinos could be extinct in twenty years.⁵⁰ Global March for Elephants estimates that "[m]ore than 35,000 elephants are being killed every year so their tusks can be carved into ivory trinkets."⁵¹ Further, a rhino is slaughtered once every 9 to 11 hours for its horn.⁵² While these deaths take

Assembly history journal entry for AB 2140 indicates that on November 30, 2014, the bill went "[f]rom Committee without further action".

⁴⁶ E-mail from Naomi Rose to author, *supra* note 14.

⁴⁷ David Kirby, *SeaWorld District Politician Is Stalling on Bill to Help Orcas*, DODO, <https://www.thedodo.com/politician-stalling-orca-bill-933766100.html> [<http://perma.cc/89QA-J65F>] (Jan. 15, 2015) (accessed Feb. 13, 2015).

⁴⁸ Tony Perry, *Bill to Ban Orca Shows at SeaWorld Will Not be Reintroduced this Year*, L.A. TIMES (Jan. 17, 2015) (available at <http://www.latimes.com/local/lanow/la-me-ln-seaworld-bill-20150117-story.html> [<http://perma.cc/FA9C-7HNT>] (accessed Feb. 13, 2015)).

⁴⁹ Kirby, *supra* note 47. Kirby quotes Dr. Rose as saying "The important thing for all to understand is that the bill is not dead . . . It is delayed." *Id.*

⁵⁰ Ludovica Iaccino, *Poaching Will Make Elephants and Rhinos 'Extinct by 2034'*, INT'L BUS. TIMES, <http://www.ibtimes.co.uk/poaching-will-make-elephants-rhinos-extinct-by-2034-1468413> [<http://perma.cc/8JS2-S3R8>] (Oct. 3, 2014) (accessed Feb. 13, 2015).

⁵¹ *State of the Elephants and Rhinos*, GLOBAL MARCH FOR ELEPHANTS & RHINOS, <http://www.march4elephantsandrhinosaurs.org> [<http://perma.cc/K7RV-8ASV>] (accessed Feb. 13, 2015).

⁵² *Id.*

place in the face of legal limits on the ivory trade, expanding the legal space for ivory trading would only lead to even greater demand for ivory.⁵³ Additionally, it has become increasingly clear that the underlying premise of a legal ivory trading system is fatally flawed: it “is impossible to have a controlled trade in elephant ivory.”⁵⁴

The poachers pushing the rhino into extinction are international criminals who “have gone high-tech, using helicopters, silencers and night vision goggles to meet the growing demand for rhino horn in East Asia, especially Vietnam.”⁵⁵

The slaughter pushing rhinos towards extinction is entirely attributable to demand for rhino horn, which in turn is rooted in the horn’s use in traditional medicine throughout Asia, and its potency as a status symbol.⁵⁶ Despite this traditional medicinal usage, the notion that rhino horn could act as an effective treatment lacks scientific support,⁵⁷ and many traditional medicine practitioners have stopped us-

⁵³ See Katarzyna Nowak et al., *Elephants Are Not Diamonds*, THE ECOLOGIST, http://www.theecologist.org/News/news_analysis/1800368/elephants_are_not_diamonds.html [<http://perma.cc/GN76-55U5>] (Feb. 8, 2013) (noting that legal ivory trade is empirically associated with failures to regulate elephant deaths, increases demand for illegal ivory, and ultimately undermines efforts to make ivory consumption socially unacceptable: “regulated, legal trade is not the way forward”). See generally George Wittemyer et al., *Illegal Killing for Ivory Drives Global Decline in African Elephants*, 111 PROC. OF THE NAT’L ACAD. OF SCI. 13117, 13117–21 (Aug. 18, 2014) (available at <http://www.pnas.org/content/111/36/13117.full> [<http://perma.cc/D5VQ-GWJL>] (accessed Feb. 13, 2015)) (providing a detailed assessment of illegal African elephant kills, and noting correlation with black market pricing and demand).

⁵⁴ Christina Russo, *Can Elephants Survive a Legal Ivory Trade? Debate Is Shifting Against It*, NAT’L GEOGRAPHIC NEWS, <http://news.nationalgeographic.com/news/2014/08/140829-elephants-trophy-hunting-poaching-ivory-ban-cities> [<http://perma.cc/T9FX-AW7Q>] (Aug. 29, 2014) (accessed Feb. 13, 2015) (noting the opinion of Elizabeth Bennett, Wildlife Conservation Society vice president); see also Elizabeth L. Bennett, *Legal Ivory Trade in a Corrupt World and its Impact on African Elephant Populations*, 29 CONSERVATION BIOLOGY 54, 58 (2015) (Bennett argues that “the only sustainable solution is for demand for ivory—the ultimate driver of the system—to be reduced.” While she allows that this could “theoretically” be accomplished through a narrow legalized “superluxury market,” doing so requires external forces being able to restructure and manage the entirety of a world-wide commodity chain that currently operates illegally, and contains members who have a speculative economic interest in elephant extinction. Bennett therefore concludes that effective legalization is “unrealistic in the present situation . . . the presence of a legal ivory trade in a corrupt system facilitates an illegal trade, undermines efforts to protect elephants, and continues to foster conditions dangerous to the wild animals, the rangers striving to protect them, and the local communities living nearby.”).

⁵⁵ Frank Langfitt, *Vietnam’s Appetite for Rhino Horn Drives Poaching in Africa*, NPR, <http://www.npr.org/blogs/parallels/2013/05/14/181587969/Vietnams-Appetite-For-Rhino-Horn-Drives-Poaching-In-Africa> [<http://perma.cc/5VJK-7VSB>] (May 13, 2013) (accessed Feb. 8, 2015).

⁵⁶ WILDAID, RHINO HORN DEMAND 2 (2014) (available at <http://www.wildaid.org/sites/default/files/resources/WEBReportRhinoHornDemand2014.pdf> [<http://perma.cc/LL27-U7TR>] (accessed Mar. 25, 2015)) (“African rhinos face only one major threat: poaching, specifically for their horns.”).

⁵⁷ See Melissa Cronin, *Who’s Still Buying Rhino Horn*, THE DODO, <https://www.thedodo.com/vietnam-rhino-horn-usage-767817268.html> [<http://perma.cc/V3MJ->

ing it out of concern for the species' plight, horn's lack of effectiveness, or both.⁵⁸

The effect of the ivory and horn trade has reached national attention. In July 2013, President Obama issued an Executive Order committing the U.S. to step up its efforts to combat wildlife trafficking.⁵⁹ The U.S. Fish and Wildlife Service (FWS) is currently undertaking a series of administrative actions to implement a nearly complete ban on commercial elephant ivory trade, with some exceptions.⁶⁰ Building on these federal administrative actions taken this past year, some states moved to impose stricter bans on ivory sales "in an effort to stop [the] recent surge in elephant poaching."⁶¹

However, the bans are not without opposition. Groups such as the National Rifle Association (NRA) are against the bans. According to an NRA spokesperson, "The NRA is deeply concerned with the Obama administration's anticipated rule and the actions taken by New York and New Jersey to effectively ban the sale and trade of legally owned pre-

G97C] (Oct. 16, 2014) (accessed Mar. 25, 2015) ("Studies conducted on animals found no pharmacological effects of the product whatsoever . . ."); WILDAID, *supra* note 56 ("Western pharmaceutical studies concluded that, while in high dosage rhino horn might slightly reduce fever, it is not worth pursuing as a medicine, particularly because acetaminophen works more effectively."); Katherine Ellis, *Tackling the Demand for Rhino Horn*, THE HORN (Spring 2013) (available at http://www.savetherhino.org/rhino_info/thorny_issues/tackling_the_demand_for_rhino_horn [<http://perma.cc/BQU7-SY6P>] (accessed Mar. 25, 2015)) (noting that Taiwan's success in combating the horn trade was supported by the Ministry of Health conducting "double-blind randomized clinical trials" in the 1990s to "study the [medical] efficacy of rhino horn," after which the Ministry "recommended that rhino horn was not worth using").

⁵⁸ OFF. OF LAW ENFORCEMENT, U.S. FISH & WILDLIFE SERV., FACTS ABOUT RHINO HORN (available at <https://www.fws.gov/le/pdf/rhino-horn-factsheet.pdf> [<https://perma.cc/G38A-XRPW>] (accessed Feb. 8, 2015)); *see, e.g.*, LIXIN HUANG, STATEMENT OPPOSING THE USE OF RHINO HORN IN MEDICINES BY THE AMERICAN COLLEGE OF TRADITIONAL CHINESE MEDICINE AND COUNCIL OF COLLEGES OF ACUPUNCTURE AND ORIENTAL MEDICINE, 2-3 (2011) (available at http://www.rhinoreourcecenter.com/pdf_files/131/1313448970.pdf [<http://perma.cc/BC6R-2P4U>] (accessed Mar. 25, 2015)) ("If [rhinos] are to continue to survive, we must do all we can to protect them . . . [R]hino horn is no longer approved for use by the traditional Chinese medicine profession and there is no traditional use, nor any evidence for the effectiveness of, rhino horn as a cure for cancer.").

⁵⁹ Exec. Order No. 13,648, 3 C.F.R. § 314 (2013) (available at <http://www.gpo.gov/fdsys/pkg/CFR-2014-title3-vol1/pdf/CFR-2014-title3-vol1-chapI.pdf> [<http://perma.cc/L83H-EKLD>] (accessed Mar. 14, 2015)).

⁶⁰ *USFWS Moves to Ban Commercial Elephant Ivory Trade: Questions & Answers*, U.S. FISH & WILDLIFE SERV., <http://www.fws.gov/international/travel-and-trade/ivory-ban-questions-and-answers.html> [<http://perma.cc/5PMZ-CQ3P>] (accessed Feb. 8, 2014) (noting prohibitions on all commercial imports, any commercial exports except those meeting CITES permitting requirements, and any domestic commerce unless owner can prove the ivory was legally imported before elephants were listed in CITES Appendix I in 1990).

⁶¹ Marianne Levine, *States Are Eyeing Stiffer Ivory Laws amid a Surge in Elephant Poaching*, L.A. TIMES (Sept. 2, 2014) (available at <http://www.latimes.com/business/la-fi-ivory-bans-20140902-story.html> [<http://perma.cc/GB89-VTMA>] (accessed Feb. 8, 2015)).

ban ivory . . . [because] many priceless personal effects will be rendered valueless.”⁶² The NRA’s Institute of Legislative Action states:

Ivory has been used in gun making for centuries, just as it has been used in fine furniture, jewelry, or musical instruments. Ivory is widely used in rifle and shotgun sights and sight inserts, and for ornamental inlays in rifle and shotgun stocks. Custom handguns—such as General George S. Patton’s famous revolvers—are also often fitted with ivory grips.⁶³

The justification, less eloquently, is that the historical aspects of material possessions are more important than the life that is surrendered on its behalf.

The NRA is not alone in this regard. Clinton Howell, president of the Art and Antique Dealers League of America, “wish[es] [the states] would take a moment to try to understand that what we are doing has absolutely no impact [on the ivory trade].”⁶⁴ Ivory is specifically used in multiple media of art and antiques; though pianos are the “most obvious ivory instrument, [ivory] is also found in violin bows, guitar pegs, and other details on historic instruments.”⁶⁵ In New York alone:

About 80 antique dealers had special licenses to sell endangered ivory under old state law, estimates Lark Mason, a Manhattan dealer who specializes in Chinese art. For his own part, Mason says he sold more than \$2 million worth of rhino horn last year, accounting for roughly 20 percent of his total sales. Fear of losing a big chunk of his business has Mason considering a move to Texas.⁶⁶

However, there appears to be a discrepancy between what is legal and what is not. Opponents of the ban say that “the fear of stiffer penalties and the hassle of documenting the provenance and composition of antiques will make selling ivory more trouble than it’s worth.”⁶⁷ According to Gina Kinzley, lead elephant keeper at the Oakland Zoo, “The problem is no one knows what’s legal and what’s illegal unless you’re a true expert. There are actually places that will put a stain on the illegal stuff to make it look antique.”⁶⁸

The two states leading the fight against ivory and rhinoceros horn are New Jersey and New York.

⁶² *Id.*

⁶³ *Ivory Ban Fact Sheet*, NAT’L RIFLE ASS’N–INST. FOR LEGIS. ACTION, <https://www.nraila.org/articles/20140305/ivory-ban-fact-sheet> [<http://perma.cc/8LDL-UN9W>] (Mar. 5, 2014) (accessed Feb. 8, 2015).

⁶⁴ Levine, *supra* note 61.

⁶⁵ Allison Meier, *Museums, Musicians, and Antiques Dealers Resist Harsh New Ivory Restrictions*, HYPERALLERGIC, <http://hyperallergic.com/134867/museums-musicians-and-antique-dealers-resist-harsh-new-ivory-restrictions> [<http://perma.cc/68AY-5ZAA>] (June 26, 2014) (accessed Feb. 8, 2015).

⁶⁶ Patrick Clark, *Antique Shops Threaten to Flee New York over Ivory Ban*, BLOOMBERG BUSINESSWEEK, <http://www.businessweek.com/articles/2014-08-18/new-yorks-ivory-ban-has-antique-shops-threatening-to-flee> [<http://perma.cc/K4UH-FSK9>] (Aug. 18, 2014) (accessed Feb. 8, 2015).

⁶⁷ *Id.*

⁶⁸ Levine, *supra* note 61.

A. *New Jersey*

On April 28, 2014, New Jersey introduced Senate Bill 2012, the first of its kind in the nation to “ban both the import and in-state sale of rhino horn and ivory from elephants, walruses, whales and several other animals.”⁶⁹ The bill passed the legislature on June 16, 2014, and was signed by Governor Chris Christie on August 5, 2014.⁷⁰

The reasoning for the new law is that “ivory trafficking is at the highest rate ever recorded, with an estimated confiscation of more than 41 tons of illegal ivory worldwide in 2013.”⁷¹ The legislature felt that the FWS’s new regulation was not enough, because “despite laws to protect elephants, more than 35,000 African elephants were slaughtered in 2012 and scientists expect the current levels of illegal trade in ivory will bring elephants to extinction within 20 years[.]”⁷² Consequently, the New Jersey legislature determined

that it is an important public purpose to protect all species of rhinoceros and all species of animals with ivory teeth and tusks by prohibiting the import, sale, purchase, barter, or possession with intent to sell, of any ivory, ivory product, rhinoceros horn, or rhinoceros horn product.⁷³

The law protects more than just elephants and rhinoceros: By broadly defining “[i]vory as any tooth or tusk composed of ivory from any animal . . . or any piece thereof, whether raw ivory or worked ivory, or made into, or part of, an ivory product,” the law addresses hippopotamuses, narwhals, walruses, whales, and others.⁷⁴ The law goes even further by specifically defining “ivory product” as “any item that contains, or that is wholly or partially made from, any ivory. . . .”;⁷⁵ similarly, “rhinoceros horn product” is defined to include “any item that contains, or is wholly or partially made from, any rhinoceros horn.”⁷⁶ Additionally, the law makes it “unlawful for any person to import, sell, offer for sale, purchase, barter, or possess with

⁶⁹ Byers, *supra* note 2; S. 2012, 216th Leg. (N.J. 2014) (available at http://www.njleg.state.nj.us/2014/Bills/S2500/2012_11.HTM [<http://perma.cc/95UM-8L6H>] (accessed Feb. 25, 2015)).

⁷⁰ *Bills 2014–2015: S2012*, N.J. OFF. OF LEGIS. SERV., <http://www.njleg.state.nj.us/bills/bills0001.asp> [<http://perma.cc/9YST-JQS4>] (click “Bill Number”; then search for “2012” in the “Bill Number” prompt; then click “S2012”) (accessed Feb. 25, 2014); Press Release, Off. of the Gov., State of N.J., Governor Christie Signs Bipartisan Legislation to Crack down on Black Market Ivory Trafficking (Aug. 5, 2014) (available at <http://www.state.nj.us/governor/news/news/552014/approved/20140805c.html> [<http://perma.cc/J5PD-RSJG>] (accessed Mar. 5, 2015)).

⁷¹ N.J. STAT. ANN. § 23:2A-13.1 (West 2014).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* § 23:2A-13.2. Rhinos, elephants, hippos, narwhals, walruses, and whales—along with extinct mammoths—are all specifically mentioned in the statute, which notes that it encompasses ivory from “any animal,” not just those listed.

⁷⁵ *Id.*

⁷⁶ *Id.*

intent to sell,” ivory, ivory products, rhino horn, or rhino horn products.⁷⁷

B. New York

On August 12, 2014, New York Governor Andrew M. Cuomo signed a pair of laws to combat the illegal ivory trade and protect endangered elephants and rhinos.⁷⁸ This legislation amends New York’s Environmental Conservation law to bar the sale, purchase, trade, barter, or distribution of “ivory article[s] or rhinoceros horn.”⁷⁹ The second set of bills, which amends the first bill, is Assembly Bill 10153 and Senate Bill 7916. Both of which “[r]elate to the distribution of certain ivory articles and rhinoceros horns to a museum authorized by special charter from the legislature of the state.”⁸⁰ Governor Cuomo signed the laws into effect in order “to prevent the trade of illegal ivory articles by strengthening criminal and civil penalties for buyers and sellers whose actions are endangering elephant populations worldwide.”⁸¹ According to the Governor, “[t]he adoption of these stricter sanctions is a major step to deter the ivory trade in the U.S. and protect important species.”⁸²

The first set of bills was codified as Environmental Conservation Law (ECL) § 11-0535-a, enacted by Chapter 326 of the Laws of 2014. It generally prohibits the sale, offer for sale, purchase, trade, barter or distribution of elephant and mammoth ivory articles and rhinoceros horns except in limited situations, where the Department of Environmental Conservation may issue a license under the provisions of ECL § 11-0535-a(3).⁸³ These limited exceptions where ivory or horn may be transferred under license include antiques that are both demonstrably over 100 years old and less than 20% ivory, where the horn or ivory is being transferred as part of an estate or trust, or when the horn or

⁷⁷ *Id.* § 23:2A-13.3.

⁷⁸ S. 7980, 2013–2014 Leg., Reg. Sess. (N.Y. 2014) (available at http://assembly.state.ny.us/leg/?default_fld=&bn=S07890&term=2013&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y [<http://perma.cc/7Y2U-ZCBP>] (accessed Feb. 25, 2015)); A.B. 10143, 2013–2014 Leg., Reg. Sess. (N.Y. 2014) (available at http://assembly.state.ny.us/leg/?default_fld=&bn=A10143&term=2013&Summary=Y&Text=Y [<http://perma.cc/8XHJ-9HLS>] (accessed Feb. 25, 2015)).

⁷⁹ N.Y. S. 7980; N.Y. A.B. 10143.

⁸⁰ S. 7916, 2013–2014 Leg., Reg. Sess. (N.Y. 2014) (available at http://assembly.state.ny.us/leg/?default_fld=&bn=A10153&term=2013&Summary=Y&Actions=Y&Text=Y&Votes=Y#jump_to_Text [<http://perma.cc/DHE4-7GL9>] (accessed Feb. 25, 2015)); A.B. 10153, 2013–2014 Leg., Reg. Sess. (N.Y. 2014) (available at http://assembly.state.ny.us/leg/?default_fld=&bn=A10153&term=2013&Summary=Y&Actions=Y&Text=Y&Votes=#jump_to_Text [<http://perma.cc/J8H6-ZKZC>] (accessed Feb. 25, 2015)).

⁸¹ *Governor Cuomo Signs New Law*, *supra* note 2.

⁸² *Id.*

⁸³ N.Y. ENVTL. CONSERV. LAW § 11-0535-a (McKinney 2015); *Sale of Elephant and Mammoth Ivory or Rhinoceros Horn*, N.Y. STATE DEP’T OF ENVTL. CONSERVATION, <http://www.dec.ny.gov/permits/99792.html> [<http://perma.cc/TU46-BFAC>] (accessed Mar. 8, 2015).

ivory is being transferred for “bona fide educational or scientific purposes,” or to authorized museums.⁸⁴

IV. AG-GAG BILL PASSAGE

The Humane Society of the United States (HSUS) defines “anti-whistleblower bills (“ag-gag” bills) [as legislation that] seek[s] to criminalize whistleblowing on factory farms, keeping Americans in the dark about where their food is coming from.”⁸⁵ In its opinion, “[w]histleblowing employees have played a vital role in exposing animal abuse, unsafe working conditions, and environmental problems on industrial farms.”⁸⁶ HSUS alleges that, “[i]nstead of working to prevent these abuses from occurring, the agribusiness industry has been working to prevent people from finding out about such problems by supporting anti-whistleblower bills.”⁸⁷ This is one example of why whistleblowing employees are necessary:

A hidden camera worn by an employee at a Butterball turkey farm in North Carolina recorded workers stomping and kicking birds, throwing them by their necks into metal cages, and beating them with metal bars. The animals had festering wounds on their bodies and eyes. Some writhed in pain on the ground. For three weeks, the employee, an undercover investigator for Mercy For Animals, documented abuse after abuse in the milking barn, which is where semen is manually collected from the toms; the birds have been bred so large and deformed that they can no longer reproduce naturally. After the investigation, the nonprofit turned over the video footage to prosecutors.⁸⁸

In 2013, fourteen state legislatures attempted to pass ag-gag laws of this sort—with none of the fourteen passing into law.⁸⁹ Though 2014 saw fewer states attempt passage of ag-gag legislation, it did see a number of such statutes enter into law. This section covers these states that have recently attempted to pass ag-gag legislation—whether successfully or not.

⁸⁴ N.Y. ENVTL. CONSERV. LAW § 11-0535-a(3). The exception allowing for transfer for educational or museum purposes was created by amending the original bill. S. 7916, 2013–2014 Leg., Reg. Sess. (N.Y. 2014) (available at <http://assembly.state.ny.us/leg/?sh=printbill&bn=S7916&term=2013> [<http://perma.cc/K36H-2USE>] (accessed Mar. 11, 2015)).

⁸⁵ *Anti-Whistleblower Bills Hide Factory-Farming Abuses from the Public*, HUMANE SOC’Y OF THE U.S., http://www.humanesociety.org/issues/campaigns/factory_farming/fact-sheets/ag_gag.html#id=album-185&num=content-3312 [<http://perma.cc/6A2B-C7WL>] (Mar. 25, 2014) (accessed Jan. 5, 2015).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Will Potter, *Beat Your Meat: Factory Farmers Want to Choke Their Chickens in Private*, VICE, <http://www.vice.com/read/meat-the-press> [<http://perma.cc/CRP3-XJNL>] (Mar. 14, 2013) (accessed Mar. 8, 2015).

⁸⁹ Cameron Taylor, *2013 State Legislative Review*, 20 ANIMAL L. 453, 455 (2014).

A. Arizona

House Bill 2587 was introduced on February 10, 2014, passed the House on March 10, 2014, and died in the Senate on April 14, 2014.⁹⁰ The Arizona House of Representatives' overview of the bill described it as "reorganiz[ing] language regarding livestock and poultry cruelty in a new section of statute under Arizona Revised Statutes (A.R.S.) Title 3 and modif[ying] current statutes regarding animal cruelty including increased penalties for repeat offenders, exemptions and new acts that constitute animal cruelty."⁹¹ Tellingly, the bill also required that evidence of livestock cruelty violations be turned over to the Arizona Department of Agriculture within five days, and prohibited local jurisdictions from enacting more restrictive ordinances relating "to the treatment of livestock or animal husbandry" than state-level law.⁹² As such, despite the bill's ostensible purpose to update animal cruelty law, its full impact encompassed classic ag-gag territory.⁹³

While these provisions of the bill's final form would act to restrict investigation or regulation of agricultural animal cruelty, the bill initially had been even starker in its attempts to protect industry at the expense of investigations. The National Anti-Vivisection Society said "this bill has had the most objectionable ag-gag language removed[.]"⁹⁴ One of the provisions removed from the bill would have given responsibility for investigating livestock cruelty (e.g., abuse of horses, goats and sheep raised in back yards, farmed animals, etc.) to the Department of Agriculture, removing the power from police departments.⁹⁵ State law enforcement officials ranging from sheriffs to prosecutors objected that the provision would hamper attempts to address animal cruelty.⁹⁶ Testifying before the Arizona legislature, Deputy Pima

⁹⁰ *Bill Status Overview: H.B. 2587*, ARIZ. STATE LEG., http://www.azleg.gov/FormatDocument.asp?inDoc=/Legtext/51leg/2r/bills/hb2587o.asp&Session_ID=112 [http://perma.cc/68VZ-7CPD] (accessed Feb. 25, 2015).

⁹¹ H.R. 2587, 51st Leg., 2d Reg. Sess. (Ariz. 2014) (available at <http://www.azleg.gov/legtext/51leg/2r/bills/hb2587h.htm> [http://perma.cc/8GJG-53V8] (accessed Mar. 9, 2015)).

⁹² H.R. 2587 § 1(C)-(D).

⁹³ Associated Press, *Arizona House Approves Livestock Cruelty Bill*, AZCENTRAL, <http://www.azcentral.com/news/politics/free/20140310arizona-house-approves-livestock-cruelty-bill.html> (Mar. 10, 2014) (accessed Sept. 10, 2015).

⁹⁴ *Ag-Gag Bills Gaining Steam Again in 2014*, NAT'L ANTI-VIVISECTION SOC'Y, <http://www.navs.org/pages/news/ag-gag-bills-gaining-steam-again-in-2014> [http://perma.cc/P9C7-NBPE] (accessed Feb. 9, 2015).

⁹⁵ *Compare* Ariz. H.R. 2587 § 1 ("The Director or the Director's designee shall be notified of any investigation of an alleged violation of this section and after being notified of the investigation may choose to participate or not participate in the investigation."), *with* H.R. 2587 § 1, 51st Leg., 2d Reg. Sess. (Ariz. 2014) (as introduced in the Arizona House of Representatives, Feb. 10, 2014) ("Only the Director or the Director's designee has the authority to investigate an alleged violation of this section."). *See also* ARIZ. REV. STAT. ANN. § 3-101 (2015) ("Department' means the Arizona department of agriculture. . . . 'Director' means the director of the department.>").

⁹⁶ *See* Howard Fischer, *House Approves Amended Animal Cruelty Law that Lessens Punishments on Farmers, Ranchers*, EAST VALLEY TRIBUNE, <http://www.eastvalleytrib>

County Attorney, Kathleen Mayer, argued that the provision's impact would be so extreme that it would enable her, as a person who uses her property to train horses, to "beat my dog with impunity."⁹⁷

Representative Kate Brophy McGee (R-Phoenix), one of the bill's defenders, suggested that the bill's creating the option for judges to bar convicted abusers from owning future animals and expansion of criminal responses to include hoarding were independently positive reasons to vote for the bill.⁹⁸ Representative McGee further argued that attempts to protect farmed animals similarly to companion animals were inappropriate.⁹⁹

Representative John Kavanagh (R-Fountain Hills), however, framed his view that the bill was unacceptable precisely because it would lower penalties for abuse of farm animals: "This bill makes it a misdemeanor on a first offense to intentionally torture to death an animal," such that for farm animals an offender could expect to face merely six months confinement and a \$2,500 fine. Representative Kavanagh criticized the bill as illogical for applying the same penalty to those who abuse farm animals as for those who illegally loiter.¹⁰⁰ Representative McGee predicted that a failure to adequately incorporate ranchers' and farmers' concerns would result in the bill failing.¹⁰¹ Indeed, the bill did not pass.¹⁰²

B. Idaho

Idaho enacted its farm protection law, Senate Bill No. 1337, on February 28, 2014, when it was signed by Idaho Governor C.L. "Butch" Otter.¹⁰³ The law amends Chapter 70, Title 18, Section 18-7042 of the

une.com/arizona/politics/article_2581521c-a8ad-11e3-aece-0019bb2963f4.html [http://perma.cc/4DQ2-4A4R] (Mar. 10, 2014) (accessed Feb. 13, 2014) (noting opposition of "Maricopa County Sheriff Joe Arpaio whose agency has prioritized animal cruelty complaints and Deputy Pima County Attorney Kathleen Mayer who said it would allow ranchers to mistreat working dogs without fear of police intervention").

⁹⁷ Editorial Board, *House Bill 2587 Is Just a 'Softer Position on Abuse'*, THE ARIZ. REPUBLIC, <http://archive.azcentral.com/opinions/articles/20140211editorial-softer-position-animal-abuse.html> [http://perma.cc/35AM-5SYB] (Feb. 11, 2014) (accessed Mar. 25, 2015).

⁹⁸ Fischer, *supra* note 96; Ariz. H.R. 2587 § 2(A)(14).

⁹⁹ Fischer, *supra* note 96.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Bill Status Overview: H.B. 2587*, *supra* note 90.

¹⁰³ *Senate Bill 1337*, STATE OF IDAHO LEG., <http://www.legislature.idaho.gov/legislation/2014/S1337.htm> [http://perma.cc/XU5R-VLB9] (accessed Feb. 25, 2015); Ashley Newhall, *Anatomy of Farm Protection Laws*, MD. RISK MGMT. BLOG, <http://www.aglaw.umd.edu/blog/bft72ej1mg2m5u0q90t6u03cn3fqtq> [http://perma.cc/J4R2-X3M5] (Sept. 29, 2014) (accessed Apr. 11, 2015).

Idaho Code.¹⁰⁴ The law criminalizes fraudulent employment, trespass, or secretly filming without the owner's consent.¹⁰⁵

On March 17, 2014, the Animal Legal Defense Fund (ALDF) and other animal advocates filed a federal lawsuit against the Idaho Governor and Attorney General.¹⁰⁶ The lawsuit challenges the new law as unconstitutional.¹⁰⁷ The lawsuit alleges that:

[t]he statute defines "agricultural production facility" so broadly that it applies not only to factory farms and slaughterhouses, but also to public parks, restaurants, nursing homes, grocery stores, pet stores, and virtually every public accommodation and private residence in the state. In doing so, the statute violates the First Amendment, the Supremacy Clause, and the Fourteenth Amendment of the U.S. Constitution.¹⁰⁸

Erwin Chemerinsky, constitutional law expert and Dean at the University of California, Irvine School of Law, said he was "confident that this law will be struck down under Ninth Circuit and Supreme Court precedents."¹⁰⁹ Chemerinsky went on to say that "[t]he Idaho law is deeply distressing because it is aimed entirely at protecting an industry, especially in its worst practices that endanger people, at the expense of freedom of speech. It even would criminalize a whistleblower who took a picture or video of wrongdoing in the workplace."¹¹⁰

Ruling on Idaho's motion to dismiss, U.S. District Judge B. Lynn Winmill noted on September 4, 2014, that the law "raises First Amendment concerns because it restricts protected speech,"¹¹¹ and that ALDF's related equal protection challenge was sufficiently plausible to survive summary judgment.¹¹² Addressing ALDF's argument

¹⁰⁴ S. 1337, 62d Leg., 2d Reg. Sess. (Idaho 2014) (available at <http://www.legislature.idaho.gov/legislation/2014/S1337.pdf> [<http://perma.cc/XU5R-VLB9>] (accessed Mar. 11, 2015)).

¹⁰⁵ Newhall, *supra* note 103.

¹⁰⁶ Civil Rights Complaint at 1, *Animal Legal Def. Fund v. Otter*, 44 F. Supp.3d 1009, at *1 (D. Idaho Sept. 4, 2014) (available at http://www.centerforfoodsafety.org/files/dkt-1-complaint_43737.pdf [<http://perma.cc/UZN7-24NC>] (accessed Feb. 25, 2015)). The activists that are party to the suit are: Animal Legal Defense Fund, People for the Ethical Treatment of Animals, Inc., American Civil Liberties Union of Idaho, The Center for Food Safety, Farm Sanctuary, River's Wish Animal Sanctuary, Western Watersheds Project, Sandpoint Vegetarians, Idaho Concerned Area Residents for the Environment, Idaho Hispanic Caucus Institute for Research & Education, Counter Punch, Farm Forward, Will Potter, James McWilliams, Monte Hickman, Blair Koch, and Daniel Hauff. *Id.*

¹⁰⁷ *Id.* at *1-2.

¹⁰⁸ *Id.* at *2.

¹⁰⁹ Jacqui Fatka, *Idaho 'Ag Gag' Law under Fire*, FARM FUTURES, <http://farmfutures.com/blogs-idaho-ag-gag-law-under-fire-8293> [<http://perma.cc/GM8F-SR3K>] (Mar. 21, 2014) (accessed Feb. 25, 2015).

¹¹⁰ *Coalition Files Lawsuit over Controversial "Ag Gag" Law*, *supra* note 3.

¹¹¹ *Animal Legal Def. Fund*, No. 1:14-CV-00104-BLW, 44 F. Supp.3d at *1; Kimberlee Kruesi, *Idaho's Request to Dismiss Dairy Lawsuit Denied*, ASSOCIATED PRESS, <http://www.ktvb.com/story/news/politics/2014/09/04/dairy-lawsuit-idaho-denied/15089371/> [<http://perma.cc/4E2C-N7J3>] (Sept. 4, 2014) (accessed Feb. 25 2015).

¹¹² *Animal Legal Def. Fund*, 2014 WL 4388158, at *12.

that Idaho's law impermissibly conflicted with federal whistleblower protections embodied in the False Claims Act, the Food Safety Modernization Act, and the Clean Water Act, the court said, "ALDF's preemption claims are . . . ripe for review," denying the state's motion to dismiss those claims, and noting that while "[i]t is quite possible that no conflict exists between federal law and [Idaho's ag-gag law] . . . [the] question remains open."¹¹³ The court ordered that "[d]efendants' Motion to Dismiss [was] granted to the extent that Governor Otter will be dismissed as a defendant."¹¹⁴

Following the September decision, Idaho Dairymen's Association (IDA) put forth a motion to reconsider to allow their organization to intervene in the proceeding. Chief Judge Winmill opined:

The Court previously determined that the IDA should not be permitted to intervene as of right in this action because its interests are adequately represented by the State of Idaho. *Memorandum Decision and Order dated June 16, 2014* at 5, Dkt. 48. The Court further determined that although the IDA met all requirements for permissive intervention, permissive intervention was not appropriate because "the State can adequately represent [the] interests" of the IDA.¹¹⁵

Because IDA failed to meet the standards for reconsideration, the court denied its motion.¹¹⁶

C. Indiana

Senate Bill (SB) 101 was introduced January 7, 2014, passed the legislature on February 24, 2014, and was signed into law on March 14, 2014.¹¹⁷ The bill is now codified as Public Law 21-2014.¹¹⁸

SB 101 gives agricultural facilities the same heightened protection against criminal mischief that schools, churches, and community centers receive under Indiana law.¹¹⁹ Similarly, SB 101 extends to agricultural property the same level of legal protection against trespass that private dwellings in Indiana enjoy.¹²⁰ The law has penalties ranging from misdemeanor to felonies, and if the agricultural property suf-

¹¹³ *Id.* at *15.

¹¹⁴ The court determined that per *Ex Parte Young*, Gov. Otter lacked sufficient enforcement authority vis-à-vis the ag-gag law to be a valid defendant. *Id.*

¹¹⁵ *Id.* at *1.

¹¹⁶ *Id.* at *2.

¹¹⁷ S. JOURNAL, 118th Gen. Assemb., 2d Reg. Sess. 8, 11, in STATE OF INDIANA, JOURNALS OF THE HOUSE OF REPRESENTATIVES AND SENATE (2014) (available at http://iga.in.gov/legislative/2014/session/combined_journals/ (accessed Mar. 11, 2015)); Act of March 14, 2014, Pub. L. No. 21-2014, § 2, 2014 Ind. Acts 252.

¹¹⁸ § 2, 2014 Ind. Acts at 252.

¹¹⁹ IND. CODE § 35-43-1-2(b) (2014) (statutory definition of "institutional criminal mischief").

¹²⁰ IND. CODE § 35-43-2-2(b)(5) (2014).

fers damages from either criminal mischief or trespass greater than \$750, the offender can face up to three years in jail.¹²¹

While it enhances agricultural property protection, SB 101 does not go so far as to include many of the elements common to ag-gag bills.¹²² Specifically, the law “does not ban taking pictures or making videos, does not change existing law on reporting animal abuse, and contains no penalties for getting creative on a job application.”¹²³ Therefore, animal welfare groups have considered this wording a victory.¹²⁴

D. Tennessee

Of the fourteen states who considered ag-gag laws in 2013, Tennessee came closest to passing such legislation, with a bill passing both the state House and Senate before being vetoed by Governor Bill Haslam, who noted the 2013 bill raised constitutional concerns.¹²⁵ Governor Haslam, however, asked the bill’s sponsors to re-draft their legislation, and following the veto, the bill’s sponsors—Representative Andy Holt (R-Dresden) and Senator Dolores Gresham (R-Somerville)—announced that they would do just that.¹²⁶ Indeed, acting quickly in 2014, Rep. Holt and Sen. Gresham introduced a re-written bill in late January¹²⁷ which was signed into law on May 1, 2014, taking effect on July 1, 2014.¹²⁸

The bill amends Tennessee’s Farm Animal and Research Facilities Protection Act—which already criminalized exercising control over animal facilities, their animals, or their other property “with the intent to deprive the owner . . . and to disrupt the enterprise conducted at the

¹²¹ Ind. S. 101; *see also* IND. CODE § 35-50-2-6, -2-7, -3-2 (defining a Class 5 felony, a Class 6 felony, and a Class A misdemeanor).

¹²² Dan Flynn, *Indiana General Assembly Passes Tough New Ag Property Trespass Law*, FOOD SAFETY NEWS, <http://www.foodsafetynews.com/2014/03/indiana-passes-tough-new-trespass-law-not-ag-gag/#.VJ3-oACAA> [<http://perma.cc/5WR5-ZY24>] (Mar. 4, 2014) (accessed Feb. 9, 2015).

¹²³ *Id.*

¹²⁴ *Top 10 Legislative Victories for Animals in 2014*, ASPCA, <https://www.aspc.org/blog/top-10-legislative-victories-animals-2014> [<http://perma.cc/W2W9-J5WD>] (Dec. 30, 2014) (accessed Feb. 10, 2015).

¹²⁵ Taylor, *supra* note 89.

¹²⁶ Chas Sisk, *Gov. Haslam Vetoes ‘Ag Gag’ Measure over Constitutional Issues*, TENNESSEAN, <http://archive.tennessean.com/article/20130514/NEWS0201/305140007/Gov-Haslam-vetoes-ag-gag-measure-over-constitutional-issues> [<http://perma.cc/XWE8-63SC>] (May 14, 2013) (accessed Apr. 11, 2015).

¹²⁷ *H.B. 2258: Bill History*, TENN. GEN. ASSEMBLY, <http://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=HB2258&ga=108> [<http://perma.cc/T2DW-2EEA>] (accessed Feb. 13, 2015); *S.B. 2406 Bill History*, TENN. GEN. ASSEMBLY, <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB2406&GA=108> [<http://perma.cc/9ANN-KJ38>] (accessed Apr. 11, 2015).

¹²⁸ 2014 Tenn. Pub. Acts 893 (available at <http://www.tn.gov/sos/acts/108/pub/pc0893.pdf> [<http://perma.cc/9UUH-VU5G>] (accessed Mar. 9, 2015)).

animal facility”—by defining ‘disrupt.’¹²⁹ The law does this through the following language:

Section 39-14-802, is amended by adding the following new, appropriately designated subdivision: “Disrupt” means to engage in conduct that materially interferes with the operations of the animal facility in a manner such that the activities conducted by or in the facility are permanently or temporarily halted, compromised, delayed, harmed or impaired.¹³⁰

‘Disrupt’ is the key word in the amendment. It appears that the word is open to future interpretation. The language of the bill does not explicitly say what would disrupt an animal operation, so it is not clear from the statute’s text whether taking video or photos of an animal facility would rise to the level of control over property with intent to both deprive its owner and disrupt operations.¹³¹

V. BREED-SPECIFIC LEGISLATION

The National Canine Research Council defines “[b]reed-specific legislation (BSL), also referred to as breed-discriminatory legislation (BDL), [as] a law or ordinance that prohibits or restricts the keeping of dogs of specific breeds, dogs presumed to be specific breeds, mixes of specific breeds, and/or dogs presumed to be mixes of one or more of those breeds.”¹³² At its most extreme, BSL completely bans the breed(s) in question.¹³³ Less severe versions of BSL impose requirements or limitations based on breed, such as mandating muzzling or microchipping.¹³⁴ Regardless, BSL results in increased canine euthanasia.¹³⁵

¹²⁹ Compare TENN. CODE ANN. § 39-14-803 (2012) (stating a person commits an offense if person takes certain actions “with the intent . . . to disrupt the enterprise” but not defining ‘disrupt’), with 2014 Tenn. Pub. Acts 893 (defining ‘disrupt’ broadly).

¹³⁰ 2014 Tenn. Pub. Acts 893.

¹³¹ See *Ag-Gag Bills Gaining Steam Again in 2014*, *supra* note 94 (“[T]he language of the bill does not explicitly state that video-recording and photography interfere with the operation of an agricultural facility, so discreet undercover investigations of animal facilities may not be outlawed.”). The National Anti-Vivisection Society summary further notes that Tennessee’s “governor vetoed a bill earlier this year that included a ban on videotaping animal abuse,” implying perhaps that at least the governor did not read HB 2258 as prohibiting recording cruelty during an investigation. *Id.*

¹³² *Breed Specific Legislation (BSL) FAQ*, NAT’L CANINE RES. COUNCIL, <http://nationalcanineresearchcouncil.com/dog-legislation/breed-specific-legislation-bsl-faq> [<http://perma.cc/V6DD-538R>] (Aug. 11, 2014) (accessed Feb. 12, 2015).

¹³³ *Id.*

¹³⁴ *Id.* (“including but not limited to: mandatory spay-neuter, mandatory muzzling, liability insurance requirements, special licensing and additional fees, mandatory microchipping or tattoos, owner/walker age requirements, property posting requirements, confinement and leash requirements, breed-specific pet limits, sale or transfer notification requirements, restrictions on access to certain public spaces with the dog [e.g., public parks, school grounds], required town-issued items [e.g., fluorescent collar; vest], training requirements, requirement that photos of the dog and/or owner be kept on town file”).

¹³⁵ *Id.*

The reasoning for BSL is that some incorrectly believe that certain breeds of dogs are more likely to injure or bite than others.¹³⁶ Opponents of BSL acknowledge that dog bites pose certain problems. According to the American Veterinary Medical Association, “[d]og bites are a serious public health problem that inflicts considerable physical and emotional damage on victims and incurs immeasurable hidden costs to communities.”¹³⁷ However, legislation to remedy this matter is not typically drafted in a vacuum. It is primarily introduced by lawmakers “[f]ollowing a severe attack, [when] there is usually an outcry to do something, and the something that is done often reflects a knee-jerk response.”¹³⁸ Sadly, “only later do officials realize that the response was not effective and, in fact, may have been divisive for the community.”¹³⁹ Introducing BSL is thus often legislators’ unfortunate emotional response to remedying the problem of dog-bite incidents.

The worst part about BSL is that it has consistently failed globally.¹⁴⁰ BSL has not resulted in any odq;quantifiable impact on a de-

¹³⁶ See *id.* (“In the United States, jurisdictions have either banned or put discriminatory restrictions on one or all of the following: Akita, ‘Alapaha Blue Blood Bulldogs’, Alaskan Malamute, ‘American Bandogge’, American Bulldog, American Staffordshire Terrier, American Pit Bull Terrier, Belgian Malinois, Bullmastiff, Bull Terrier, Cane Corso, Chihuahua, Chow Chow, Dalmatian, Doberman Pinscher, Dogo Argentino, ‘Fila Brasileiro’, German Shepherd Dog, Miniature Bull Terrier, Neapolitan Mastiff, ‘Pit bull’ (please note that ‘pit bull’ is not a breed of dog), Perro de Presa Canario, Rottweiler, Shar Pei, Siberian Husky, Staffordshire Bull Terrier, ‘Tosa Inu’, and wolf-hybrids. These ordinances also target dogs suspected of being mixes of one or more of the named breeds.”).

¹³⁷ Task Force on Canine Aggression and Human-Canine Interactions, American Veterinary Medical Association, *A Community Approach to Dog Bite Prevention*, 218 J. OF THE AM. VETERINARY MED. ASS’N 1732, 1733 (2001) (available at <https://www.avma.org/public/Health/Documents/dogbite.pdf> [<http://perma.cc/ZP3F-TNFZ>] (accessed Feb. 13, 2015)).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See *Breed Specific Legislation (BSL) FAQ*, *supra* note 132 (“BSL has not succeeded in reducing dog bite-related injuries wherever in the world it has been enacted.”); see, e.g., NAT’L CANINE RES. COUNCIL, DENVER’S BREED-SPECIFIC LEGISLATION: BRUTAL, COSTLY, AND INEFFECTIVE 1 (Aug. 2, 2013) (available at http://nationalcaninere searchcouncil.com/uploaded_files/tinymce/Denver%20BSL%20Brutal,%20Costly,%20and%20Ineffective%20_%20Aug%202013.pdf [<http://perma.cc/6MPS-ACPS>] (accessed Feb. 13, 2015)) (noting higher incidents of dog bite-related hospitalizations in Denver County, Colorado after enacting a breed-specific ban than in breed-neutral Larimer County, Colorado, despite Denver County’s higher population); Belén Rosado et al., *Spanish Dangerous Animals Act: Effect on the Epidemiology of Dog Bites*, 2 J. OF VETERINARY BEHAVIOR 166, 166–67, 169 (2007) (reporting no significant effect on the number of dog bite incidences in the five years before and after enacting BSL in Aragon, Spain); Jessica M.R. Cornelissen & Hans Hopster, *Dog Bites in the Netherlands: A Study of Victims, Injuries, Circumstances and Aggressors to Support Evaluation of Breed Specific Legislation*, 186 VETERINARY J. 292, 293, 297 (2010) (reporting a study on the effectiveness of a 15-year-old breed ban in the Netherlands revealed dog bites had not decreased); Don Peat, *Pit Bull Ban Fails to Reduce Dog Bites*, TORONTO SUN, <http://www.torontosun.com/news/torontoandgta/2010/04/28/13753106.html> [<http://perma.cc/U7PK-RRBJ>] (Apr. 28, 2010) (accessed Feb. 13, 2015) (reporting the Toronto Humane Society found no significant decrease in dog bites after five years of BSL in Ontario,

crease in dog bites or an increase in public safety,” said longtime advocate Lisa LaFontaine, president of the Washington Humane Society.¹⁴¹ “A recent American Veterinary Medical Association (AVMA) survey covering 40 years and two continents concluded that no group of dogs should be considered disproportionately dangerous.”¹⁴² Currently, few states have proactively barred local jurisdictions from implementing BSL.¹⁴³ This section covers the most recent states to have made an effort to end BSL.

A. Maryland

“Maryland law is finally catching up to science in finding that pit bulls are not inherently dangerous.”¹⁴⁴ Nine sponsors introduced Bill HB 73 with bipartisan support on November 8, 2013.¹⁴⁵ Governor Martin O’Malley signed the bill into law on April 8, 2014.¹⁴⁶ Many view its passage as meaning that lawmakers agree that public safety is best served by holding dog owners equally liable regardless of breed.¹⁴⁷

The main thrust of the bill is to overturn the holding of the Maryland Court of Appeals in *Tracey v. Solesky*.¹⁴⁸ *Solesky* held that harboring a pit bull was an inherently dangerous activity for which a

Canada); NAT’L CANINE RES. COUNCIL, WINNIPEG, MANITOBA FAR BEHIND CALGARY IN COMMUNITY SAFETY 2 (July 9, 2012) (available at http://nationalcanineresearchcouncil.com/uploaded_files/tinymce/Winnipeg,%20Manitoba%20far%20behind%20Calgary%20in%20community%20safety_July%2009,%202012.pdf [<http://perma.cc/M3CM-33NJ>] (accessed Feb. 13, 2015)) (noting Winnipeg, Manitoba has seen no change in dog bite-injury hospitalizations since enacting a breed ban in 1990 and it has more than in breed-neutral Calgary).

¹⁴¹ Arin Greenwood, *Maryland Does Right by Pit Bulls, Says They Aren’t Inherently Dangerous (Updated)*, HUFFINGTON POST, http://www.huffingtonpost.com/2014/04/03/maryland-pit-bull-bill-n_5086024.html [<http://perma.cc/GH92-B4E7>] (Apr. 8, 2015) (accessed Feb. 13, 2015).

¹⁴² *Id.*; NAT’L CANINE RES. COUNCIL, “PIT BULL” REGULATION NOT A BASIS FOR DOG BITE PREVENTION, AVMA EXPERTS REPORT (available at http://nationalcanineresearchcouncil.com/uploaded_files/tinymce/Pit%20bull%20not%20implicated%20in%20controlled%20studies%20of%20Dog%20Bite%20Risk_AVMA_FINAL%20w%20corrected%20URL.pdf [<http://perma.cc/SVM8-FWB8>] (accessed Feb. 13, 2015)).

¹⁴³ Arin Greenwood, *Six More States May Outlaw Breed-Specific Legislation, Making Everything Better for Pit Bulls*, HUFFINGTON POST, http://www.huffingtonpost.com/2014/02/07/breed-specific-legislation_n_4738583.html [<http://perma.cc/Y5CM-CW86>] (Feb. 7, 2014) (accessed Feb. 13, 2015) (“Seventeen states have already passed laws that stop localities from discriminating against dogs by breed.”).

¹⁴⁴ *Id.*

¹⁴⁵ H.R. 73, 431st Gen. Assemb., Reg. Sess. (Md. 2014) (available at <http://mgaleg.maryland.gov/2014RS/bills/hb/hb0073T.pdf> [<http://perma.cc/FR48-YCYW>] (accessed Feb. 13, 2015)).

¹⁴⁶ 2014 Md. Laws 49.

¹⁴⁷ *Legislature Overturns Court’s Pit Bull Ruling*, BAYNET, <http://www.thebaynet.com/articles/0414/legislature-overturms-courts-pit-bull-ruling.html> [<http://perma.cc/P666-QW2N>] (Apr. 3, 2014) (accessed Feb. 13, 2015).

¹⁴⁸ Md. H.R. 73. (“[I]t is the intent of the General Assembly that this Act abrogate the holding of the Court of Appeals in *Tracey v. Solesky*, 427 Md. 627 (2012).”).

landlord could be held strictly liable.¹⁴⁹ However, the case did not just stand for landlords being held strictly liable. It also pertained to dog owners, boarders, groomers, veterinarians, and other third parties.¹⁵⁰ The Humane Society of the United States (HSUS) described the *Solesky* ruling as “a massive departure from existing Maryland law”¹⁵¹ that is “unprecedented across the country [in forcing] many Maryland dog owners to choose between their pets and their homes.”¹⁵² After two years of negotiations following *Solesky*, the legislature reached a compromise in HB 73.¹⁵³ Opponents of BSL applauded the bill; Tami Santelli, Maryland state director for the HSUS, said:

Passage of this compromise legislation ends this disgraceful era of court sanctioned canine profiling, in which families with pit bull-type dogs were forced to choose between their homes and their beloved pets. Lawmakers . . . voted against singling out particular breeds and in favor of raising the bar for all dog owners to protect victims of dog bites.¹⁵⁴

Among the law’s benefits are increased powers and responsibilities for dog owners but decreased responsibility for landowners. The law allows dog owners the right to “present evidence in their dog’s defense” after a bite.¹⁵⁵ Meanwhile, it relieves landowners from strict liability unless the landlord knew, or should have known, the dog was dangerous.¹⁵⁶ Instead, the law imposes strict liability on dog owners when “a dog is running at large.”¹⁵⁷ The law ensures dog owners are held responsible while no longer discouraging landlords from allowing renters to have pets.

B. South Dakota

Senate Bill 75 was introduced on January 23, 2014.¹⁵⁸ The purpose of the law is to “prohibit local governments from enacting, maintaining, or enforcing regulations on certain dog breeds.”¹⁵⁹ The bill passed the state legislature on March 4, 2014, and was signed by Gov-

¹⁴⁹ *Tracey v. Solesky*, 50 A.3d 1075, 1075 (Md. 2012).

¹⁵⁰ *Id.* at 1089.

¹⁵¹ *Md. Senate Praised for Passage of Compromise Legislation for Maryland Dogs*, HUMANE SOC’Y OF THE U. S., http://www.humanesociety.org/news/press_releases/2014/02/md-senate-compromise-dog-bite-liability-compromise-legislation-praised-022814.html [<http://perma.cc/97TX-CQNA>] (Feb. 28, 2014) (accessed Feb. 13, 2015).

¹⁵² *Id.*

¹⁵³ *Legislature Overturns Court’s Pit Bull Ruling*, *supra* note 147.

¹⁵⁴ *Id.*

¹⁵⁵ Md. H.R. 73.

¹⁵⁶ *Tracey*, 50 A.3d at 1089; Md. H.R. 73.

¹⁵⁷ Md. H.R. 73.

¹⁵⁸ *Senate Bill 75*, S.D. LEG., http://legis.sd.gov/Legislative_Session/Bills/Bill.aspx?Bill=75&Session=2014&cookieCheck=true [<http://perma.cc/PY6E-DBYK>] (accessed Mar. 9, 2015).

¹⁵⁹ S. 75, 89th Gen. Assemb. (S.D. 2014) (available at <http://legis.sd.gov/docs/legsession/2014/Bills/SB75P.pdf> (accessed Mar. 9, 2015) (site no longer available)).

ernor Dennis Daugaard on March 14, 2014.¹⁶⁰ The law provides that no local government:

may enact, maintain, or enforce any ordinance, policy, resolution, or other enactment that is specific as to the breed or perceived breed of a dog. This section does not impair the right of any local government unit to enact, maintain, or enforce any form of regulation that applies to all dogs.¹⁶¹

The law has been positively received by anti-BSL groups, such as the National Canine Research Council (NCRC).¹⁶² The NCRC said, “SB 75 makes clear that responsible pet ownership is a legitimate and important government concern and that its responsible pet ownership obligations apply to everyone equally.”¹⁶³

C. Utah

Utah House Bill 97 was introduced by House Minority Leader Brian King on February 3, 2014, passed the legislature on March 13, 2014, and was signed into law by Governor Gary Herbert on April 2, 2014.¹⁶⁴ The Enrolled Copy of the bill is titled “Limitation on Local Government Regulations of Animals.”¹⁶⁵ The bill “prohibits a municipality from enacting or enforcing a breed-specific rule, regulation, policy, or ordinance about dogs,” and further declares “[a]ny breed-specific rule, regulation, policy, or ordinance regarding dogs is void.”¹⁶⁶ This bill took effect on January 1, 2015.¹⁶⁷ Thankfully, “[t]he signing into law of HB 97 makes Utah the 19th state to pass a provision banning some form of breed discrimination.”¹⁶⁸

Before this ruling, the law allowed “local governments to ban or restrict people’s rights regarding certain breeds or mixed breeds.”¹⁶⁹ Indeed, while Utah did not have state-wide BSL, ten cities had enacted such laws.¹⁷⁰ Five of the cities prohibited “residents from owning pit bull terriers and some other breeds, while five other cities impose[d]

¹⁶⁰ *Senate Bill 75*, *supra* note 158.

¹⁶¹ S.D. S. 75.

¹⁶² *South Dakota and Utah to be the 17th and 18th States to Preempt Breed-Specific Legislation*, NAT’L CANINE RES. COUNCIL, <http://www.nationalcanineresearchcouncil.com/blog/south-dakota-and-utah-to-be-the-17th-and-18th-states-to-preempt-breed-specific-legislation> [<http://perma.cc/NUK5-QTMQ>] (Mar. 17, 2014) (accessed Mar. 9, 2015).

¹⁶³ *Id.*

¹⁶⁴ *H.B. 97 Limitation on Local Government Regulation of Animals*, UTAH. STATE LEGISLATURE, <http://le.utah.gov/~2014/bills/static/HB0097.html> [<http://perma.cc/3ZUU-3YN4>] (accessed Mar. 9, 2015) (follow “Status”).

¹⁶⁵ H.R. 97, 2014 Gen. Sess. (Utah, 2014) (available at <http://le.utah.gov/~2014/bills/hbillenr/hb0097.pdf> [<http://perma.cc/B6C9-SRTA>] (accessed Mar. 9, 2015)).

¹⁶⁶ Utah. H.R. 97.

¹⁶⁷ *Id.*

¹⁶⁸ *Best Friends Animal Society Officials Celebrate New Utah Law That Protects Pet Owners’ Property Rights, Bans Breed Discrimination*, PRWEB, <http://www.prweb.com/releases/2014/04/prweb11731315.htm> [<http://perma.cc/7YLJ-C4DW>] (Apr. 3, 2014) (accessed Mar. 9, 2015).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

stringent restrictions on owning pit bull terriers and a variety of other breeds, including German Shepherds, Huskies, Alaskan Malamutes, Akitas, Shar Peis and Tosas.”¹⁷¹ Ledy VanKavage, senior legislative attorney for Best Friends Animal Society hailed passage of the legislation, and Utah’s new BSL-free future: “It enhances public safety, protects pet owners’ rights and saves tax dollars. Our special thanks go to Rep. Brian King who led the effort with Best Friends to end breed discrimination in the Beehive State, along with Sen. Okerlund and Sen. Dayton, who stood up to protect citizens’ property rights.”¹⁷²

¹⁷¹ *Id.*

¹⁷² *Id.*

