TAXPAYER STANDING: A STEP TOWARD ANIMAL-CENTRIC LITIGATION

By
Varu Chilakamarri*

This comment takes a novel approach in animal law jurisprudence by evaluating the taxpayer standing doctrine and how animal welfare proponents may utilize it. Taxpayer standing may solve the disconnect that exists between traditional standing doctrine and animal welfare laws. Traditional standing rules often prevent citizens from enforcing animal welfare laws because these laws are directed at preventing injury to the animal. Taxpayer standing however, is aimed at ensuring that state and local governments are accountable by giving taxpayers a means to stop illegal use of the monies. Thus, the doctrine can potentially be used for public interest litigation whenever a link can be found between a social harm and the use of public monies.

* © Varu Chilakamarri, 2004. Varu Chilakamarri is a law student at Georgetown University Law Center, with her J.D. expected in 2004. Ms. Chilakamarri is the Articles Editor for the Georgetown Law Journal and will be clerking for the 6th Circuit following graduation. She also received a B.S. in Environmental Science and a B.A. in Political Science from Ohio State University in 2001.

I. INTRODUCTION

A fundamental and longstanding question that plagues both legal scholars and the courts is who should have access to the judicial system—a question that the standing doctrine attempts to answer. At the most basic level, standing requires that a party have a direct stake in the outcome of a controversy in order to obtain a judicial resolution of a conflict. The Supreme Court has articulated the requirements for standing at the federal level as consisting of both constitutional and prudential requirements.[1] Article III of the U.S. Constitution limits judicial power to the adjudication of cases or controversies.[2] The Supreme Court has interpreted this limitation to allow for judicial access only in cases where a plaintiff has alleged a concrete and particularized injury, where a causal relationship between the injury and the alleged illegal act exists, and where there is the potential that a favorable judicial outcome will provide redress for the injury.[3] The Court has recognized that injuries can be either tangible or aesthetic; however, the alleged injury must affect the plaintiff in a personal and individual way, meaning that the plaintiff must either presently suffer the injury or prove that he will imminently suffer the injury absent judicial action.[4] Furthermore, the prudential limitations on standing, which apply when the plaintiff alleges injury to a right granted by statute, require that the plaintiff has more than a mere generalized grievance, and that his injury falls within the "zone of interests" protected by the relevant statute.[5]

These federal standing requirements have proven a difficult barrier for advocates of the animal rights and welfare movement who have often tried to enforce federal protections for animals through civil suits.[6] As a result of heavy workloads and higher priorities, federal agencies, and in particular the United States Department of Agriculture, have been either unable or unwilling to fully enforce democrati-

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[1] *Bennett v. Spear*, 520 U.S. 154, 162 (1997).

[2] U.S. Const. art. III, § 2.

[3] *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs*., 528 U.S. 167, 180–81 (2000).

[4] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563–65 (1992) (requiring plaintiffs, who alleged injury because they lost the opportunity to visit endangered species abroad, to produce proof that they had made actual arrangements to visit the species in the near future). *See* Joseph Mendelson, III, *Should Animals Have Standing? A Review of Standing Under the Animal Welfare Act*, 24 B.C. Envtl. Aff. L. Rev. 795, 811 (1997) (clarifying the Supreme Court's standing requirements).

[5] *Bennett*, 520 U.S. at 163.

[6] Geordie Duckler, *The Economic Value of Companion Animals: A Legal and Anthropological Argument for Special Valuation*, 8 Animal L. 199, 210 (2002).

cally produced legislation,[7] such as the Animal Welfare Act[8] or the Humane Slaughter Act.[9] Because animals themselves have not been granted standing via third-party representation[10] in the way that children have standing via adult guardians, animal rights and welfare advocates must sue on behalf of themselves, even when their aim is to protect an animal's legal interest. The transparent legal maneuver of proving a direct injury to oneself when the legal right belongs to another is difficult to complete and results in a clash between traditional notions of standing and the development and enforcement of animal rights.

Consequently, alternate avenues to judicial access could prove important for the enforcement and advancement of animal rights. As state courts are not required to operate under the same rules as federal courts,[11] an examination of any relevant state doctrines, such as the taxpayer standing doctrine,[12] may open a new door to those seeking to enforce animal protection statutes. This comment examines a relatively unexplored topic in animal law scholarship by evaluating the usefulness of the taxpayer standing doctrine as a means of compelling state courts to hear cases concerning animal welfare issues. Part II introduces the concept of taxpayer standing and contends that this doctrine is important for the animal rights and welfare movement because it may advance a greater legal scheme in which animal, rather than human interests, are the focus in animal litigation. Part III provides a categorical breakdown of how the taxpayer standing doctrine has evolved differently in various states, and briefly discusses how these differences may affect animal welfare cases. Finally, Part IV analyzes cases in which taxpayer standing effectively forced a court to hear an animal law complaint and considers the implications for future use of the doctrine for animal welfare.[13]

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[7] Helena Silverstein, *Unleashing Rights: Law, Meaning, and the Animal Rights Movement* 124 (U. Mich. Press 1996) (stating that "[m]ost legislation involving nonhumans grants enforcement power to a specific government agency . . . [h]owever, the USDA and other authorized agencies have shown little interest in enforcing animal protection laws. At the local and state level, prosecutors and law enforcement officers display considerable reluctance to enforce compliance with anticruelty statutes.").

[8] *Animal Welfare Act of 1970*, 7 U.S.C. §§ 2131–2156 (2001).

[9] *Humane Slaughter Act,* 7 U.S.C. §§ 1901 et seq. (2003).

[10] Mendelson, *supra* n. 4, at 805.

[11] Helen Hershkoff, *State Courts and the "Passive Virtues": Rethinking the Judicial Function*, 114 Harv. L. Rev. 1833, 1853–56 (2001).

[12] *Infra* part II(A) (general explanation of taxpayer standing doctrine).

[13] The terms "animal welfare" and "animal rights" certainly have distinct meanings in this area of study. However, while all current legal protections for animals take the form of animal welfare, this comment argues that the taxpayer standing doctrine may be an important vehicle for the enforcement of certain "rights" belonging to animals.

II. TAXPAYER STANDING AND HOW IT MAY SHAPE ANIMAL LAW

A. Introduction to Taxpayer Standing

When a public official or public body performs illegal or unauthorized acts, taxpayers within that district may seek relief for themselves and on behalf of their fellow taxpayers. In a taxpayer suit, "the taxpayer himself is the actual party to the litigation and represents not the whole public, nor the state, nor even all the inhabitants of his municipality, but a comparatively limited class, namely the citizens who pay taxes."[14] In broad terms, a taxpayer suit provides the citizens of a state with the opportunity to challenge their government's fiscal decisions when they result in illegal conduct.[15] The novelty of taxpayer standing is that it is completely removed from formal notions of injury in fact, causation, and redressability that typify the traditional federal standing doctrine.[16] A plaintiff invoking taxpayer standing has a different, amorphous injury involving at least some *de minimis* pecuniary loss, and perhaps a need to hold the government accountable for its unauthorized actions. The courts have given several justifications for the validity of this common law doctrine, including the pecuniary interest to the taxpayer, the trust relationship between the taxpayer and public officials, and the shareholder derivative action analogy.[17] Commentators on this topic have stated that "the fundamental reason for such actions is that court challenges to broad areas of government activity would be foreclosed if taxpayers' suits were not recognized."[18]

The applicability of the taxpayer standing doctrine at the federal level greatly differs from the doctrine employed at the state level. Taxpayer standing at the federal level has evolved into an extremely limited doctrine, such that a federal taxpayer will only have standing against the federal government if the government expends substantial tax dollars in violation of the Establishment Clause of the First Amendment to the U.S. Constitution.[19] However, a more liberal approach to taxpayer standing has evolved in all of the 50 states to varying degrees.[20] Taxpayers generally retain some control over how their state and local governments use their tax dollars, so that if govern-

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[14] *State ex rel. Conrad v. Langer*, 68 N.D. 167, 186 (1937).

[15] *See generally* Comment, *Taxpayers' Suits: A Survey and Summary*, 69 Yale L.J. 895 (1960) [hereinafter *Survey and Summary*] (providing the first treatment of taxpayer standing as a common law doctrine); Susan L. Parsons, Student Author, *Taxpayers' Suits: Standing Barriers and Pecuniary Restraints*, 59 Temp. L. Q. 951 (1986) (providing an overview on the evolution of taxpayer standing, with a particular focus on the general restrictions which many state courts apply to taxpayer-plaintiffs).

[16] Hershkoff, *supra* n. 11, at 1853–56.

[17] Parsons, *supra* n. 15, at 952–55.

[18] *Id*.

[19] *Protestants & Other Ams United for Separation of Church & St. v. Watson*, 407 F.2d 1264, 1265 (D.C. Cir. 1968).

[20] John Egan, III, Note, *Analyzing Taxpayer Standing in Terms of General Standing Principles: The Road not Taken*, 63 B.U. L. Rev. 717, 730 (1983).

ment officials are illegally spending public funds, then an affected taxpayer has standing to enjoin the illegal spending.

A typical fact pattern for a state taxpayer suit may arise when a state or municipality awards a public contract to a party that is not the lowest bidder.[21] If taxpayers suspect that government officials have colluded with particular contractors, resulting in unnecessary and illegal expenditures, they may invoke the taxpayer standing doctrine to sue these officials.[22]

However, taxpayers may stray from this standard format to invoke unconventional claims. For example, depending on the specific state's common law, a taxpayer may have standing to sue her municipal animal control authority if it uses state funds to euthanize dogs in an illegally cruel manner.[23] If the taxpayer succeeds, she can potentially enjoin the method of euthanization until the municipality uses methods deemed legal.

The general theory of taxpayer standing provides individual taxpayers with the potential opportunity to challenge illegal state and local conduct in a variety of areas, including the state's treatment of animals. Part III(A) will consider how individual state courts currently treat taxpayer claims.

B. Taxpayer Standing in the Overall Legal Movement Toward Animal Rights

The animal rights movement has faced a variety of obstacles in its quest for legal and social change, including a passive public and reluctant legislature.[24] Perhaps the most frustrating obstacle however, occurs when the movement has actually been successful in gathering public support and passing legislation, because at that point, the effectiveness of its agenda becomes dependent upon the actions taken by enforcement agencies. The enforcement of animal protection statutes has been minimal at best, and given the traditional standing requirements, civil enforcement of these statutes is virtually nonexistent.[25]

Although animal rights proponents have attempted to use civil suits to enforce animal protection statutes, such litigation must generally be brought under human-centric laws[26] and under the guise of

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[21] *See e.g. Conduit & Found. Corp. v. Philadelphia*, 401 A.2d 376, 378 (Pa. Cmmw. 1979) (taxpayer has standing to question the allocation of city funds).

[22] *Id.*

[23] *See Ohio ex rel. Phelps v. Columbiana County Commrs.*, 708 N.E.2d 784, 791 (Ohio App. 1998) (a taxpayer has standing to question how the city carries out a policy); *see also infra* part III(A) (for an in-depth analysis of this case).

[24] Symposium, *The Legal Status of Nonhuman Animals*, 8 Animal L. 1, 64 (2002).

[25] *See* Silverstein, *supra* n. 7, at 128 (noting that social change requires more than the passing of legislation, but also enforcement, often through successful litigation).

[26] *Id*. at 19, 97, 100 ("Although animal rights talk has not found an explicit place within the courtroom, another version of rights talk has: human rights talk . . . [t]hus while attorney-activists strategically avoid animal rights talk in court, they deploy human rights talk in a strategic bid to advance the ideals of animal rights.").

some personal right, as courts have thus far not been receptive to animals as plaintiffs.[27] For example, an individual may rely on property law to demand the replacement value of his injured or killed pet;[28] tort law to allege an indirect injury to him resulting from an injury to his animal;[29] or he could invoke his first amendment right to publicly protest animal abuse.[30] This strategy of employing human-centric laws to advance animal causes is subject to the philosophical criticism that such short-term success does nothing to dispel the notion that the judiciary should be reserved for human-oriented concerns, and may in fact further entrench the view of animals as property.[31] Critics of human-centric litigation argue that animal advocates must influence the legal landscape so that animals are seen less as a means for human ends, and more as beings with some legally protected interests of their own. They therefore argue that the animal rights movement must promote animal-centric statutes and litigation.[32]

The strategy of employing human-centric laws to advance animal interests also faces analytic problems within the traditional standing rules. Traditional standing requirements often prevent the enforcement of animal interests because, while animal protection statutes are written with the animal as the beneficiary, the judiciary focuses on the plaintiff's injury and not the real animal injury at issue. *Lujan v. Defenders of Wildlife* demonstrates the difficulty that plaintiffs concerned

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[27] Sonia S. Waisman et al., *Animal Law: Cases and Materials* 73, 227 (2d ed., Carolina Academic Press 2002).

[28] *See State v. Weber*, 1995 WL 238940 at *1 (Minn. App. Apr. 25, 1995) (holding that a defendant who shot and killed his neighbor's dog was required to pay restitution to the dog's owner, but such restitution was limited to the replacement value of the dog); *see also Rabideau v. City of Racine*, 627 N.W.2d 795, 806 (Wis. 2001) (noting that while the property value of a pet is an appropriate damage, damages for emotional distress of the owner are not attainable).

[29] *See La Porte v. Associated Independents, Inc*., 163 S.2d 267, 268–69 (Fla. 1964) (holding that limited punitive damages were warranted when defendant injured and killed plaintiff's dog, irrespective of the property value of the animal because the defendant's malicious behavior exhibited extreme indifference to plaintiff's rights).

[30] Silverstein, *supra* n. 7, at 147.

[31] *See* Gary L. Francione, *Animal Rights and Animal Welfare*, 48 Rutgers L. Rev. 397, 397–401 (1996) (discussing the importance of recognizing that "at least some nonhumans possess rights that function in a manner substantially similar to human rights . . . [whose] value must be respected regardless of the consequences to humans of ignoring it in favor of treating animals as instruments.").

[32] *See* Steven M. Wise, *Drawing the Line: Science and the Case for Animal Rights* 21 (Perseus Publg. 2002) ("Personhood is the legal shield that protects against human tyranny; without it, one is helpless. Legally, persons count, things don't. Until, and unless, a nonhuman animal becomes a legal person, she will remain invisible to civil law. She will not count."). The entire discussion regarding human-centric versus animal-centric laws must be read with the understanding that any "rights" that are bestowed upon animals to be exercised in the human judiciary, are in some sense subject to the whims of humans. Therefore the distinction between human-centric and animal-centric may collapse. However, such an analysis is equally applicable to any "right" the majority bestows on the minority. Thus, for the purposes of this comment, the meaningfulness of any distinction between human-centric and animal-centric will be assumed.

with animal welfare face when they are forced to elevate an indirect, secondary injury to themselves as the only legally cognizable interest in the case, even though these litigants' underlying motivation is to protect a third party's interest (i.e. the interests of animals).[33]

In *Lujan*, the Court held that plaintiffs in federal court must make two showings in order for their case to be adjudicated: (1) that the defendant infringed upon a substantive right or cognizable interest of the plaintiff (either constitutional or statutorily inferred); and (2) that the plaintiff meets the procedural requirements of Article III, thereby showing that he is among the injured, as well as any prudential requirements if he is claiming a statutory rather than constitutional right has been violated.[34] The Court stated that "[w]e do *not* hold that an individual cannot enforce procedural rights; he assuredly can, so long as the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his standing." [35]

While the Court accepted that a human's desire to observe endangered species is a cognizable interest under the Endangered Species Act,[36] the plaintiffs in the case were not among those injured, because they could not prove that they had concrete plans to observe the species in the future.[37] The Court clarified that in order for a party to have standing, Article III requires the party to have a concrete, present, or imminent injury.[38] *Lujan* demonstrates the analytic problem plaintiffs face when trying to promote a non-human interest using human-centric standing rules, because the traditional standing requirements make an animal's injury irrelevant if there is no human consequence.[39] The standing requirements as interpreted in *Lujan* have a grave substantive impact on when a legal right can be enforced, as they relegate legally recognized animal interests to the coattails of human claims.

Taxpayer standing is also a human-centric doctrine. It provides a *taxpayer* with the right to hold the government accountable in the use of *his* government investment.[40] Nevertheless, the taxpayer standing doctrine remains sufficiently different from the other human-centric laws that have been used to indirectly promote animal welfare because

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[33] *Lujan*, 504 U.S. at 561.

[34] *Id*.

[35] *Id*. at 573 n. 8 (majority refused an interpretation of the Endangered Species Act's citizen suit provision that would have bestowed both procedural and substantive rights on all citizens).

[36] *Id*. at 562–63.

[37] *Id*. at 564.

[38] *Id*. at 560.

[39] *Id.*; *see also Sierra Club v. Morton*, 405 U.S. 727, 737–38 (1972) (holding that while the Administrative Procedure Act and other statutes recognize injuries other than economic harm, such as aesthetic, conservation, and recreational, the broadened recognition of such injuries is a separate analytic issue from the constitutional requirement that the plaintiff himself suffered the injury).

[40] Survey & Summary, *supra* n. 15.

it is a process-oriented, rather than substantive, right. In state courts, taxpayer standing repairs the disconnect that existed in *Lujan* when plaintiffs relied on human-centric laws to enforce third party interests of animals. Taxpayer standing invites plaintiffs to enforce legal rights that are "not the correlative of a legal duty owed to them . . . 'and that are valued for moral or political reasons independent of economic interests.'"[41] Thus, compared to the traditional federal standing requirements as set forth in *Lujan*, a plaintiff-taxpayer in state court would not need to show a substantive injury in fact, because the doctrine itself provides that political accountability *is* the cognizable interest, and that all taxpayers are among the injured.[42]

The underlying principle of taxpayer standing is to enforce democratically-approved measures, at least to the extent that the government cannot do the opposite of what the governed has permitted it to do with its funds. And in all states, the amount of pecuniary interest may be *de minimis*.[43] The use of this procedural right in animal welfare litigation could allow the court, in its analysis of the merits, to focus on the actual animal interest at hand. In this regard, taxpayer standing gives the plaintiff-taxpayer the ability to enforce a right that the legislature has already bestowed on animals, without showing that any of his own substantive rights have been disturbed.

In many states, the taxpayer is not required to show that he suffered any direct or aesthetic injury to have standing to enforce an animal welfare statute against illegal state conduct.[44] The application of the taxpayer standing doctrine offers the animal rights movement an important opportunity that is distinct from traditional standing requirements. If a court were to require the plaintiff to meet traditional standing requirements in an animal welfare claim, the plaintiff's substantive right would have to be some sort of aesthetic injury that occurs from witnessing animal cruelty, and perhaps a broader social desensitization to violence, which is often the named justification for animal welfare laws. However, in a taxpayer suit, the plaintiff would likely not need to prove any injury to himself, besides a *de minimis* pecuniary loss. The use of taxpayer standing, then, leaves the court to ponder the *other* justification for the enactment of animal welfare laws—an animal's own interest.[45] Thus, by invoking the procedural right of taxpayer standing, animal proponents may succeed in forcing

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[41] Hershkoff, *supra* n. 11, at 1854 (quoting Richard F. Fallon Jr., *Of Justiciability, Remedies and Public Law Litigation: Notes on the Jurisprudence of Lyons*, 59 N.Y.U. L. Rev. 1, 4 (1984)).

[42] *Id*.

[43] *Chapman v. Bevilacqua*, 42 S.W.3d 378, 383 (Ark. 2001).

[44] *Infra* Appendix A.

[45] It is likely that even in a taxpayer standing case, the court would not, as a formal matter, announce that the substantive right disputed in the case belongs to the animal. A court would likely focus on the illegal conduct of the state. However, this analytic shift is real and has real, though subtle consequences. Even if the court only alludes to the substantive animal injury, it will exist in the backdrop of the legal dispute as the only substantive interest in the case.

the courts to speak in a more animal-centered rubric. Initial evidence of this shift in the court's focus is seen in the few cases where animal issues were brought via taxpayer actions.[46]

Given the potential role that taxpayer suits can play in shifting the legal paradigm, albeit slowly, towards animal-centric litigation, a closer analysis of how the taxpayer standing doctrine is applied in the various states is warranted.

III. TAXPAYER STANDING IN THE VARIOUS STATES

All states require some form of illegal spending of state funds by government officials before a taxpayer is granted standing.[47] It is important to note however, that the amount of illegal government spending that is traceable to each taxpayer's individual contribution can be miniscule.[48] States do not inquire as to the amount of a taxpayer's contribution that was illegally spent; the mere fact that taxpayer money was used impermissibly is sufficient to provide standing.[49] Given that the magnitude of pecuniary loss to the taxpayer is not investigated (though many states technically require that the taxpayer-plaintiff prove that a pecuniary loss actually exists), the right bestowed on the taxpayer is clearly not an economic right, but a process-oriented right. In fact, the most persuasive rationale given by courts for granting taxpayer standing is that the "failure to accord such standing would be in effect to erect an impenetrable barrier to any judicial scrutiny of legislative action."[50]

The development of taxpayer standing has led to a diverse range of treatments by state courts regarding their ability to adjudicate claims. General distinctions can be drawn between (1) states that require some pecuniary loss as well as additional criteria to be met by the taxpayer before granting standing, (2) states requiring only pecuniary loss, and (3) states requiring only a monetary connection, but no actual loss.

A. Strict Taxpayer Standing States: Requiring More Than a Pecuniary Loss

Several state courts and legislatures have restricted the taxpayer standing doctrine in various ways, including by requiring the taxpayer to show more than an illegal spending of tax dollars. Some of the rules

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[46] *Supra* part II(A).

[47] *Infra* Part VI, Appendix A; *see* Parsons *supra* n. 15, at 962 n. 84 (listing representative taxpayer actions from each state prior to 1986); *see Survey and Summary supra* n. 15, at 900 n. 30 (listing taxpayer actions prior to 1960).

[48] *Alliance for Affordable Energy v. Council of New Orleans*, 677 S.2d 424, 428 (La. 1996).

[49] *Id*.

[50] *Colella v. Bd. of Assessors of Cty. of Nasau*, 85 N.Y.2d 401, 404 (2000) (quoting *Boryszewski v. Brydges*, 334 N.E.2d 579, 581 (N.Y. 1975); *Schultz v. State*, 599 N.Y.S.2d 469, 471–72 (1993); *Schultz v. N.Y. St. Exec*., 660 N.Y.S.2d 881, 884 (N.Y. App. Div. 3 Dept. 1996), *aff'd,* 92 N.Y.2d 1 (1998)).

adopted in this regard include: a strict requirement that the alleged official misconduct is directly responsible for state revenue loss; a requirement that taxpayers file a demand with the state before commencing suit; requirements on the minimum number of plaintiffs; restrictions on who may be the defendants; requirements of a public interest at stake; and the requirement that the taxpayer suffer an injury unique from others taxpayers—an obstacle that seems to effectively invalidate the doctrine.[51]

In several states, the sole fact that government officials are illegally spending tax dollars is not enough to guarantee taxpayer standing to enjoin the illegal conduct.[52] Though many states have not clearly explicated their rules, some have indicated that if the allegedly illegal conduct actually brings in revenue for the state, then such conduct is not challengeable under the taxpayer standing doctrine.[53] For example, the Supreme Court of Connecticut held that even though a real property tax abatement relating to real estate development invoked equal protection issues and was possibly illegal under the state's general spending laws, taxpayers and citizens did not have standing to challenge the expenditure because the program would increase state revenues.[54]

Several states require that in addition to suffering some pecuniary loss, a taxpayer must file a demand with the State's Attorney General and await his timely response.[55] This requirement is derived from the theory that taxpayer suits are analogous to shareholder derivative actions, and that the state or municipality is acting as a corporation.[56] By filing a demand, the taxpayer, like a shareholder, is informing the government, analogous to the corporate board, of a potential breach of duty committed by one of its agents and is providing the government the opportunity to internally resolve the matter, or to take legal action. If the government does not respond, the taxpayer may then have an opportunity to take action.

In a rather specific requirement, the state of Massachusetts has, through legislation, placed a numerical floor on the number of taxpayer-plaintiffs that are needed before standing is granted, requiring a minimum of 24 plaintiffs.[57]

Several other states have placed limits on which government entities the taxpayer may sue. New Mexico and New York have limited taxpayers to actions against municipalities and prohibits suits against

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[51] *Infra* Part VI, Appendix A.

[52] *Id*.

[53] *Sadloski v. Town of Manchester*, 668 A.2d 1314, 1319–20 (Conn. 1995).

[54] *Id*.

[55] Ariz. Rev. Stat. § 35-213 (2002); Ohio Rev. Code Ann. § 309.13 (West 1994); *City of Tacoma v. O'Brien*, 534 P.2d 114, 115 (Wash. 1975).

[56] Parsons, *supra* n. 15 at 954.

[57] Mass. Gen. Laws ch. 29 § 63 (2002) (requiring that "not less than twenty-four taxable inhabitants of the commonwealth, not more than six of whom shall be from any one county . . . [may] restrain the unlawful exercise of abuse of such right and power").

the state.[58] In Colorado and Wisconsin, a taxpayer may only invoke taxpayer standing to sue on *behalf* of the state and is required to meet traditional standing requirements in order to take action *against* the state.[59] In Illinois, taxpayers only have standing to sue on behalf of the state, and only so long as they are the real party in interest.[60] This means that if the court finds that a government entity would be entitled to the benefits of a successful action, then only the State's Attorney General has standing to sue.[61]

Additionally, some states require that the alleged illegal spending be an act of public significance that "imperils the public interest,"[62] with some courts holding that acts of significant economic or constitutional significance will meet this standard.[63] The requirement that the alleged government misconduct be "significant" may be a judicial disguise for discretion, in which case proponents of animal interests must be aware of how particular courts will view the animal interests at stake.

Finally, in what may be the most restrictive limitation, select states require the taxpayer-plaintiff to demonstrate how the illegal state expenditures violated a unique interest of the plaintiff, in a manner different from the rights of other taxpayers.[64] Thus, in these restrictive states, even if the illegal spending by the state would result in an increase in taxes for all similarly situated taxpayers, the taxpayer must show an additional injury unique to himself. This restriction is bewildering because it reads the traditional requirements of standing back into the doctrine of taxpayer standing and threatens to nullify, or

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[58] *Kuhn v. Burroughs*, 342 P.2d 1086, 1087 (N.M. 1959); *Survey and Summary supra* n. 15 at 901.

[59] *McCroskey v. Gustafson*, 638 P.2d 51, 54 (Colo. 1981); *City of Appleton v. Menasha*, 419 N.W.2d 249, 251–54 (Wis. 1988).

[60] *Lyons v. Ryan*, 780 N.E.2d 1098, 1102 (Ill. 2002) (finding that the state was "actually and substantially interested" in a taxpayer action alleging that state officials conspired and obstructed justice in issuing commercial drivers' licenses to unqualified drivers in exchange for political contributions for the Governor. *Id*. Because the state was the real party in interest, taxpayers had no standing. The Illinois Supreme Court also held as unconstitutional a portion of the state's code that grants citizen standing in cases where the state is the real party in interest.).

[61] *Id.*

[62] *Henderson v. McCormick,* 215 P.2d 608, 611 (Ariz. 1950).

[63] *Trustees for Alaska v. Alaska*, 736 P.2d 324, 329–31 (Alaska 1987); *Henderson*, 215 P.2d at 610–12; *Colella*, 741 N.E.2d 113, 117.

[64] *Trustees for Alaska*, 736 P.2d at 329–30 (requiring that the taxpayer action be one of public significance, that the plaintiff is the most appropriate party, who is most directly affected by the challenged conduct, and that the plaintiff is capable economically and otherwise to advocate the position); *Pence v. Indiana*, 652 N.E.2d 486, 488 (Ind. 1995) (holding that "[w]hile the availability of taxpayer or citizen standing may not be foreclosed in extreme circumstances, it is clear that such status will rarely be sufficient. For a private individual to invoke the exercise of judicial power, such person must ordinarily show that some direct injury has or will immediately be sustained. '[I]t is not sufficient that he has merely a general interest common to all members of the public.'"); *Am. Legion Post v. City of Walla Walla*, 802 P.2d 784, 787 (Wash. 1991).

at least severely restrict, the existence of taxpayer standing in these states.

For taxpayer actions to be used to promote animal welfare in the aforementioned states, proponents would need to allege that the government engaged in illegal conduct that was harmful to animals, and that the conduct was in some way responsible for increasing the taxpayer burden. Additionally, the taxpayer would need to meet whatever other requirements his state has placed on such actions.

B. Middle Ground States: Requiring Pecuniary Loss

Several state courts have chosen a middle ground, requiring only that a taxpayer demonstrate that his tax dollars have contributed to a challenged project, and that the project directly or indirectly increased the taxpayer's taxes or caused some other injury.[65] It appears that as a technical matter, some states do not require an evidentiary showing of a loss, but instead infer a loss in some circumstances while the actual amount of loss remains irrelevant.[66] A few state courts have explicitly allowed for preventative taxpayer suits, so that the taxpayer may sue to enjoin an illegal action before it causes a pecuniary loss.[67] In these cases, the taxpayer obviously has suffered no actual loss at the time of the suit.[68]

Taxpayer actions for animal interests in these states would be slightly less difficult than in those in the first category, but the taxpayer would still need to show that the states mistreatment of animals is not only illegal but also inefficient.

C. Liberal States: No Pecuniary Loss Required

In several states, the courts have alluded to and in some cases directly held that a taxpayer does not have to suffer any pecuniary loss in order to sue the government for illegal conduct. While some states have made this liberal approach to the standing doctrine into the exception rather than the rule, others seem to have opened their doors to the so-called floodgates of litigation. Though all these states still require some, and perhaps even an almost untraceable, economic nexus, many will grant standing, even if the illegal conduct resulted in a *sav-*

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[65] *Tripp v. Bd. of County Comm'rs*, 362 P.2d 612, 614 (Kan. 1961); *Kaminskas v. Detroit*, 243 N.W.2d 25, 26–27 (Mich. App. 1976); *Okla. ex rel. Macy v. Bd. of County Comm'rs*, 986 P.2d 1130, 1143–44 (Okla. 1999); *Savage v. Munn*, 856 P.2d 298, 302 (Or. 1993); *Goldman v. Landsidle*, 552 S.E.2d 67, 72 (Va. 2001).

[66] *Md. St. Admin. Bd. of Election Laws v. Talbot County*, 558 A.2d 724, 729 (Md. 1988) (stating that "the taxpayer need not allege facts which necessarily demonstrate that taxes will be increased; rather the test is whether the taxpayer reasonably may sustain a pecuniary loss or a tax increase . . . [t]he amount of the potential pecuniary loss is irrelevant." *Id*.).

[67] *Hunt v. Windom*, 604 So. 2d 395, 396 (Ala. 1992); *Com. Cause v. Me.*, 455 A.2d 1, 9–13 (Me. 1983) (containing detailed discussion regarding taxpayer standing in state and federal courts and the justifications for the doctrine).

[68] *Com. Cause,* 455 A.2d at 9–13.

ings to the taxpayer.[69] On the other hand, some states will only loosen the pecuniary loss requirement for ministerial duties, and thus distinguish between restraining illegal government conduct and compelling discretionary conduct.[70]

Furthermore, while the states in this category generally do not require a pecuniary loss, several still require some other minimal interest be shown by the taxpayer that can be satisfied by a pecuniary or other type of loss.[71] Other states will completely excuse the pecuniary loss requirement on rare occasions when significant public interest is involved.[72] Delaware and Pennsylvania have explicitly stated that in cases where government conduct would go completely unchecked if a taxpayer were not permitted to bring a particular suit, the pecuniary loss requirement should be excused.[73] This logic clearly evokes the principal reason for taxpayer suits—to allow a procedural check on government action.

Taxpayers attempting to enforce animal protections should have the best chance of getting standing in these states. In many of the states in this category, the taxpayer only needs to show that a state actor, using state funds, is violating some animal protection statute. Thus, even if the action is efficient and is saving the state money, so long as the taxpayer alleges illegality, he should have standing to sue to compel enforcement of the statute. Furthermore, in these liberal

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[69] Cal. Civ. P. Code § 526a (West 1982 & Supp. 2003); *Wirin v. Parker*, 313 P.2d 844, 894–95 (Cal. 1957) (stating that a "plaintiff may maintain an action to restrain the expenditure of public funds for illegal purposes. It is immaterial that the amount of the illegal expenditures is small or that the illegal procedures actually permit a saving of tax funds . . . . It is elementary that public officials must themselves obey the law."); *E. Mo. Laborers Dist. Council v. St. Louis County*, 781 S.W.2d 43, 46 (Mo. 1989) (holding that the "right of a taxpayer, on behalf of himself and other taxpayers similarly situated, to bring an action to enjoin the illegal expenditure of public funds cannot be questioned . . . . In order to maintain a suit, taxpayers need not prove their taxes will increase because of the alleged expenditure. The impact on the taxpayer is presumed. A taxpayer who may be compelled to pay the assessment, or who has contributed to the sum jeopardized, is considered to have sufficient interest to enjoin the illegal act."); *Williams v. Lara*, 52 S.W.3d 171, 179 (Tex. 2001).

[70] *Price v. State*, 945 S.W.2d 429, 432 (Ky. App. 1996); *La. Associated Gen. Contractors, Inc. v. Calcasieu Parish Sch. Bd.*, 586 S.2d 1354, 1358 (La. 1991).

[71] *La. Associated*, 586 S.2d at 1358.

[72] *Ohio ex rel. Ohio Acad. of Tr. Lawyers v. Sheward*, 715 N.E.2d 1062, 1080–84 (Ohio 1999) (stating that when issues of great importance and interest to the public are attempted to be litigated, the court will hear the case even when no rights or obligations of the named parties are at issue); *Cummings v. Shorey*, 761 A.2d 680, 684 (R.I. 2000) (stating that "even if the requirement for standing has not been met . . . on rare occasions this court has allowed the case to proceed when substantial public interest is at stake."); *Stumes v. Bloomberg*, 551 N.W.2d 590, 592 (S.D. 1996).

[73] *City of Wilmington v. Lord*, 378 A.2d 635, 638 (Del. 1977); *Upper Bucks County Vocational-Technical Sch. Ed. Assn. v. Upper Bucks County Vocational-Technical Sch. Jt. Comm.*, 474 A.2d 1120, 1122 (Pa. 1984).

taxpayer standing states, some courts are even moving to a general citizen standing, which would only require citizenship of a state.[74]

This liberal formation of the taxpayer standing doctrine provides the best opportunity for the development of animal-centric litigation. It is in these states where the taxpayer standing doctrine is most clearly seen as a mere procedural right where the taxpayer-plaintiff's personal injuries (or lack thereof) are far removed from the substance of the litigation. Because these states do not require the traditional injury in fact, or even a concrete pecuniary injury, the only human-interest that is served by allowing taxpayers to proceed under these circumstances is the process interest in democracy and government accountability.

A stark comparison between taxpayer standing suits and *Lujan* indicates how animal proponents may use taxpayer standing to strategically transform litigation. *Lujan* requires a plaintiff to meet both procedural and substantive elements of standing, relying heavily on the human injury,[75] whereas the taxpayer standing doctrine requires only a procedural element—namely, that the state expends public funds. It is in the taxpayer suit where the interests of animals actually have the best chance of being honestly litigated.

IV. PRACTICAL APPLICATIONS OF TAXPAYER STANDING FOR ANIMAL PROTECTION

Taxpayer standing has been used in a variety of ways, predominantly for challenging corrupt government actors who use public funds to favor certain parties in government contracts, and less frequently to further environmental claims—an area that also suffers from standing barriers.[76] Proponents of animal welfare have already begun using taxpayer standing, albeit infrequently, as a means of enforcing animal protection statutes.[77] These cases suggest the possibility that taxpayer standing can be an effective means to ensure that animal welfare litigation actually focuses on animal, rather than human-centric interests.[78] Even without complete victory on the merits, these cases may provide a foundation for future animal-centric litigation.

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[74] *Infra* Part VI, Appendix A (noting Alaska, California, and Ohio as states that have expanded taxpayer standing to state citizens in general).

[75] *Lujan,* 504 U.S. at 562–63.

[76] *See e.g. Whitmire v. Cooper*, 570 S.E.2d 908 (N.C. App. 2002) (denying taxpayer standing to citizens alleging the acquisition of a tract of land was an unauthorized expenditure of monies).

[77] A search of cases at the state level indicates only a handful of taxpayer standing suits aimed at preventing illegal state conduct towards animals. However, this search does not include suits at the trial level, as these are not available.

[78] *Infra* Part III(A).

A. Taxpayer Standing as It Has Already Been Used in Animal Law Cases

In Ohio, a resident and taxpayer sent a demand letter to her county prosecutor requesting that he take legal action to enjoin the county's use of carbon monoxide to euthanize dogs at the city pound.[79] The taxpayer asserted that carbon monoxide poisoning was an illegal method of euthanization under an Ohio statute, which only permitted methods of euthanizing dogs in a manner that "immediately and painlessly renders the dog[s] initially unconscious and subsequently dead."[80] The taxpayer argued that the only legal method of killing dogs was by a sodium phenobarbital injection.[81] Because the county prosecutor failed to take action, the taxpayer filed a suit against both the county commission and dog warden seeking to enjoin the use of carbon monoxide.[82] The taxpayer claimed that public funds were used to euthanize animals, thereby asserting the pecuniary connection generally required in taxpayer actions.[83]

The taxpayer suit met only partial success as the trial court temporarily enjoined carbon monoxide poisoning of animals other than dogs, but ultimately held that the statute gave specific discretion as to the methods of killing dogs.[84] The court of appeals affirmed the trial court's decision, holding that the county ultimately had discretion in how it euthanizes animals.[85]

While the immediate result of this case may have been a negative decision for the plaintiff, one should not overlook its long-term ramifications. The taxpayer's standing was never seriously questioned, even though there was no showing of a traditional injury in fact. Consequently, proponents of an animal cruelty statute were at the very least able to compel the court to hear the merits of a case that otherwise would not have been heard. Although in most animal welfare cases the courts can simply avoid deciding the merits of a difficult moral and practical issue because the plaintiffs lack traditional standing, the doctrine of taxpayer standing in this case has provided a way of compelling the court to address these issues. This may serve to open the courtroom to the realities of animal cruelty through photographs, videotapes, testimonials, and expert witnesses. While there are no assur-

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[79] *State ex rel. Phelps*, 708 N.E.2d at 786. The taxpayer filed a demand letter in accordance with Ohio Rev. Code Ann. § 309.13.

[80] *See* Ohio Rev. Code Ann. § 955.16(f) (West 1994) (providing that "[n]o person shall destroy any dog by the use of a high altitude decompression chamber or by any method other than a method that immediately and painlessly renders the dog initially unconscious and subsequently dead").

[81] *State ex rel. Phelps*, 708 N.E.2d at 786.

[82] *Id*.

[83] *Id*. at 788.

[84] *Id*. at 786, 788.

[85] *Id*. at 788.

ances that a judge will find in favor of animal proponents,[86] the very exposure of the underworld of slaughterhouses, laboratories, and shelters to juries and judges could mark a significant beginning. Furthermore, decisions on the merits of animal welfare cases may in the very least produce positive dictum that may influence future courts. For example, in *State ex rel. Phelps*, the court had no choice but to acknowledge that "[n]o known method can painlessly and humanely render a dog immediately unconscious."[87]

In *Westermann v. Missouri Conservation Commission*, Missouri taxpayers employed taxpayer standing to challenge the treatment of animals in the wildlife management context.[88] Taxpayers challenged the decision of the Missouri Conservation Commission to allow otter trapping following a successful otter restoration program.[89] The court rejected the "notion that a hypothetical injury to plaintiffs' aesthetic interests [would be] enough to confer standing," and instead held that because the Commission was expending state funds in implementing the otter-trapping season, the plaintiffs had taxpayer standing to challenge the state's use of public monies.[90] The court made this finding despite the fact that the plaintiffs had not set forth explicit evidence of pecuniary loss.[91] Instead, the court was satisfied with the fact that the plaintiffs were taxpayers challenging state conduct funded by public monies.

Finally, in *Jones v. Beame*, taxpayers and organizations challenged the city's operation of certain zoological parks, and were unsuccessful.[92] Amongst their claims, the plaintiffs alleged that the animals in the zoo did not receive proper veterinary care, were deprived of necessary habitats, and were being sold to persons who were unqualified to care for them.[93] The lower court held that the interested groups had standing to challenge management at state zoological parks because to hold otherwise would leave this area of state conduct completely unchecked.[94] However, the court of appeals subsequently held that the taxpayers and other interested parties could not maintain their action in court because "the judicial process is not designed or intended to

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[86] In taxpayer suits, animal proponents may have more difficulties with the merits of their cases when arguing over the proper construction of a statute, as they did in *State ex rel. Phelps,* 708 N.E.2d at 787*,* rather than when they claim a violation of a law where the fundamental meaning is already well accepted and investigatory evidence reveals clear violations by the state.

[87] *State ex rel. Phelps*, 708 N.E.2d at 788.

[88] *Westermann v. Missouri Conservation Commission*, No. 964-02539 (Mo. Cir. Ct. filed Nov. 19, 1996).

[89] *Id*.

[90] *Id*. at 2.

[91] *Id*. at 3.

[92] *Jones v. Beame*, 56 A.D.2d 778 (N.Y. App. Div. 1 Dept. 1977), *aff'd*, 45 N.Y.2d 402 (N.Y. 1978) [hereinafter *Jones I*].

[93] *Id*. at 779.

[94] *Jones v. Beame*, 86 N.Y. Misc. 2d 832, 837 (N.Y. App. Div. Spec. Term 1976), *rev'd in part,* 56 A.D.2d 778 (N.Y. 1st Dept. 1977) [hereinafter *Jones II*].

assume the management and operation of the executive enterprise."[95] The court, by categorizing the dispute as one of "management" instead of "illegality," avoided deciding how the state-run zoological parks must treat animals.

The aforementioned cases provide a summary overview of how advocates of animal welfare have already utilized taxpayer standing. These cases signal the emergence of a new tool in animal jurisprudence that may be used to transform litigation about animals into litigation for animals.

B. Potential Expansion of the Taxpayer Standing Doctrine for Animal Welfare

Having examined the general principles of taxpayer standing, its heterogeneous development in the 50 states, and how it has been used as a tool in the animal welfare movement, this comment now turns to the potential future applications of taxpayer standing by animal welfare advocates. Animal welfare concerns arise in all facets of life, including scientific research, wildlife management, zoological parks, animal shelters, agriculture, and entertainment.[96]

For taxpayer standing to effectively influence how a research facility treats animals, the facility must receive and use state funds and purportedly engage in illegal treatment of animals. The additional requirements would depend on the state in which the taxpayer files suit. The easiest scenario for taxpayer standing would be if the state itself conducted research on animals through its agencies or state-run facilities, such as local hospitals.[97] However, many other facilities, including public and private universities and non-profit and private research facilities, also receive state research and development grants for a variety of programs.[98] If a facility obtains a grant for research involving potentially illegal animal experimentation methods, a taxpayer may

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[95] *Jones v. Beame*, 380 N.E.2d 277, 279 (N.Y. 1978) [hereinafter *Jones III*].

[96] *See generally* Rod Preece and Lorna Chamberlain, *Animal Welfare and Human Values* (Wilfrid Laurier U. Press 1995) (reviewing animal welfare history and detailing categories of contentious animal welfare disputes).

[97] *Compare Ala. St. Florists Assn. v. Lee County Hosp. Bd.*, 479 S.2d 720, 722 (Ala. 1985) (holding that taxpayers could challenge hospital conduct as unfair competition because the hospital received earmarked public funds) *with Tiemann v. U. of Cinn*.,127 Ohio App. 3d 312 (Ohio 1998) (holding that taxpayer lacked standing to seek a declaratory judgment against the university because the project at issue was not funded with public monies).

[98] *See* Elisabeth Colville & James Corrigan, *Animals in Laboratories*, N.Y. Times 12LI (March 19, 1989) (describing an action against the state university which conducts animal experiments using taxpayer dollars and its violation of the New York's Open Meeting Laws); Sandra Sugawara, *Inventing a Biotech Industry; Worchester, Mass., Attracts Young Firms With Experiment in Entrepreneur Ship*, Washington Post HI (May 3, 1992) (describing Massachusetts' effort to boost its biotechnology industry by providing grants to the budding industry); Susan Green, *Seagrass Planter Puts Down Roots*, Tampa Trib. 1 (May 26, 2002) (noting that Florida gave public grants for marine research projects to the Tampa Bay Estuary Program and Florida Marine Research Institute).

challenge the state grant. In such cases, the taxpayer would need to allege that animals were being treated in an illegal manner, either in violation of the Animal Welfare Act and its regulations, or an applicable state law.[99] Note that if the taxpayer invokes a federal statute, and the defendant meets federal removal requirements, a federal court will not adhere to the taxpayer standing doctrine of the state. Possible claims include challenging the environment of laboratory animals, in terms of ensuring the necessary food, cleanliness, ventilation, and veterinary care, and more specifically, the administration of anesthetics or painkillers in limited situations.[100]

Wildlife management is an area of study that links both environmental and animal law. Hunting, trapping, relocation, and other population controls are the primary wildlife management techniques that raise animal welfare concerns.[101] Wildlife management is a government function and thus provides fertile ground for the use of taxpayer standing. Taxpayer standing has already been used in traditional environmental controversies,[102] which may make the transition to extended use in animal law slightly more palatable for the courts. Possible claims include challenging the types of species that are legally hunted,[103] the types of traps used in the program, and the length of particular hunting seasons. Because the state and local governments often manage hunting, trapping, and population control programs with state funds, plaintiff-taxpayers wishing to challenge certain expenditures should generally be able to find the necessary pecuniary link to pursue cases in this area. For the stricter states, however, the taxpayer-plaintiff will have the higher burden of proving that the claimed illegal behavior is costing taxpayer dollars, especially if the state's hunting program is self-sufficient or even profitable.[104] Furthermore, since wildlife programs involve managerial decisions by state agencies, taxpayer standing suits are susceptible to criticism by courts that such suits violate the separation of powers and infringe on executive discretion.[105]

Taxpayer standing may also open the door to suits against zoological parks, conservatories, shelters, pounds, and any other state facilities operated in a potentially illegal manner.[106] Furthermore, if state funds reach entertainment activities involving animals, such as circuses, state fairs, and amusement parks, taxpayers may have a viable

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99 *Animal Welfare Act*, *supra* n. 8.

100 *Id*.

101 Preece, *supra* n. 96, at 103–20.

102 *See Folk v. Phoenix*, 551 P.2d 595 (1976) (taxpayers had standing to sue to block development of a road in recreational area).

103 *See Westermann*, No. 964-02539 (holding that plaintiffs have standing as taxpayers to challenge the validity of an otter trapping rule).

104 *Supra* part II(a).

105 *Jones III*, 380 N.E.2d at 279.

106 *St. ex rel. Phelps*, 708 N.E.2d at 786.

opportunity to enforce animal protection measures against these entities as well.

There are a variety of situations in which a taxpayer may learn that his tax contributions are being spent to harm the interests of animals. The aim of this comment is not to foresee each and every potential case. The importance of the taxpayer standing doctrine is that a taxpayer can potentially stop injuries towards animals that happen behind closed doors, where only the animal suffers.

C. The Limitations of the Taxpayer Standing Doctrine for Animal Welfare

While the taxpayer standing doctrine plays an important role in ensuring that democratic measures are given full effect, it is a narrow doctrine with limitations that must be considered. The most obvious drawback in utilizing taxpayer standing as a mechanism of enforcement is that it applies primarily to the expenditure of tax dollars. Consequently, it seeks to ensure state accountability, not private policing. For example, if a private citizen violates an anti-cruelty statute and the state refuses to take action, the taxpayer standing doctrine, in even its most liberal iteration, could not presently be used to compel the state to prosecute the conduct. Furthermore, many state activities do not use tax dollars. In such a situation, when the state acts merely as a regulator, regulating private conduct with relation to animals, it will be difficult for a taxpayer to find an economic nexus, though not impossible.[107]

Even taxpayer standing may prove to be ineffective to the public in certain states. While the federal government requires everyone to pay federal income taxes, seven states—Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming—have no income taxes and two others—New Hampshire and Tennessee—tax only dividend interest income.[108] Although this tax status undoubtedly pleases the residents of these states, it also limits who may hold the state accountable in illegal expenditures of state funds. Notably, in South Dakota, only a property owner subject to property taxes may have taxpayer standing.[109] Furthermore, the State Supreme Court held that sales tax does not provide a sufficient nexus.[110] Finally, one must not forget what taxpayer standing provides, and what it does not; it provides an opportunity but is not a guarantee of success on the merits.

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[107] *See Billey v. N.D. Stockmen's Assn.*, 579 N.W.2d 171, 172–73 (N.D. 1998) (holding that brand inspection and registration fees are public monies which must be paid to the state treasurer. Taxpayers were able to require that individuals contribute to the public funds by paying certain fees, because by not doing so, taxpayers lost money.).

[108] The Federation of Tax Administrators, State Individual Income Taxes, http://www.taxadmin.org/fta/rate/ind_inc.html (accessed Nov. 2, 2003).

[109] *Winter Bros. Underground, Inc. v. City of Beresford*, 652 N.W.2d 99, 105 (S.D. 2002).

[110] *Id.*

V. CONCLUSION

One court summarized the nature of standing for animals by stating that "[w]here an act is expressly motivated by considerations of humaneness towards animals, who are uniquely incapable of defending their own interests in court, it strikes us as eminently logical to allow groups specifically concerned with animal welfare to invoke the aid of the courts in enforcing the statute."[111] While this eminent logic has not yet made its way into the court system at large, taxpayer standing may provide animal advocates with a means to attain similar results.

As a doctrine, taxpayer standing allows taxpayers of a state to challenge illegal expenditures of state funds. While some states require the illegal conduct to drain the state of its resources, others require no pecuniary loss to the taxpayer and will allow challenges of even productive illegal conduct.[112] This doctrine can play an important role in redirecting the dialogue that currently exists in many animal law cases, which now focuses on the human interests at stake when animals are injured, rather than the animal interests. Traditional standing rules solidify the requirement of a human injury in fact, making it impossible for the courts to focus solely on the statutorily created animal rights that are violated. Because taxpayer standing removes this injury in fact requirement, it could make state courts a new forum for the discussion of animal rights.

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111 *Animal Welfare Inst. v. Kreps*, 561 F.2d 1002, 1007 (D.C. Cir. 1977) (dictum).
112 *Infra* Part VI, Appendix A.

VI. APPENDIX A
Summary of Statutory & Common Law Developments in the Taxpayer (TP) Standing Doctrine at the State Level

STATE	GENERAL REQUIREMENTS	PUBLIC INTEREST EXCEPTION?*	PECUNIARY LOSS REQUIRED?	SOURCE
Alabama	• TP suits can be preventative in nature- filed before actual harm occurs • TP has the right to challenge an expenditure of public funds by a county official as illegal or unconstitutional.	Court *may* grant TP standing solely because no other party would be able to sue.	✓ (Cases allude to pecuniary interest as generally necessary)	*Hunt*, 604 S.2d at 396–97; *Knutson v. Bronner*, 721 S.2d 678 (Ala. 1998).
Alaska	• TP/citizen suit is not an automatic right, instead it should be judged on a case-by-case basis using a 3-part test: 1) The case must be one of public significance (economic and constitutional significance; some statutes will meet this requirement); 2) The plaintiff must be the most appropriate party, thus standing is denied if another party who is more directly affected by the challenged conduct has brought, or is likely to bring suit; and 3) The plaintiff must be capable, economically and otherwise, to competently advocate the position, and the claim must be justiciable- not a political question.	✓	Unclear	*Trustees for Alaska*, 736 P.2d at 329–30.
Arizona	• TP may sue after providing a written request to the state Attorney General (after waiting for 60-day period), and paying bond to the state. • The mere illegality of an official act does not justify injunctive relief; the illegality must imperil the public interest or be calculated to work public injury or produce public mischief.	✓	✓	Ariz. Rev. Stat. § 35-213; *Henderson*, 215 P.2d at 608.

APPENDIX A (continued)

STATE	GENERAL REQUIREMENTS	PUBLIC INTEREST EXCEPTION?*	PECUNIARY LOSS REQUIRED?	SOURCE
Arkansas	• TP must have a special and peculiar injury.	No	✓ (Peculiar injury)	Ark. Const. art. XVI § 13.
California	• TP does not have to show special injury peculiar to himself, and the amount of illegal expenditure is immaterial: TP may sue even if the illegal state conduct actually saves tax dollars. *See* n. 6 of Cal. Civ. P. Code § 526a (West 1982 & Supp. 2003).	✓	No	Cal. Civ. P. Code § 526a (West 1982 & Supp. 2003); *Wirin*, 313 P.2d at 844; *White v. Davis*, 533 P.2d 222 (Cal. 1975).
Colorado	• If TP v. municipality, then (1) TP must be injured in fact, and (2) injury must be of a legally protected interest under a statute or the constitution. This requirement is very similar to federal standing rules. • If TP sues on *behalf* of municipality, then (1) municipality must have the right and power to bring suit and has refused to do so despite TPs demand and (2) municipality refused within its discretion because of fraud, bad faith, or failed non-discretionary duty to bring action. This requirement is very similar to the requirement in shareholder derivative actions.	*No*	*No pecuniary loss required, though peculiar injury required for suits against municipalities.*	*McCroskey*, 638 P.2d at 51; *O'Bryant v. Pub. Util's Commn. of St. of Colo.*, 778 P.2d 648 (Colo. 1989).
Connecticut	• TP must not only show that tax dollars were used in alleged wrongdoing by public officials, but also that the illegal project itself increased taxes. The court must determine this evaluating the totality of the fiscal context. • If specific conduct can only reduce revenue (such as a tax abatement), then the court can infer injury. Otherwise, illegal programs that bring in revenue remain unchallengeable using TP standing.	No	✓	*Sadloski*, 668 A.2d at 1319–20.

APPENDIX A (continued)

STATE	GENERAL REQUIREMENTS	PUBLIC INTEREST EXCEPTION?*	PECUNIARY LOSS REQUIRED?	SOURCE
Delaware	• TP has standing to enjoin unlawful expenditure of public monies or misuse of public property, *regardless* of any showing of special damages. • Additionally, TP should be accorded standing in situations where government action would otherwise continue unchecked.	✓	No	*Wilmington*, 378 A.2d at 637–38.
District of Columbia	• Municipal TP has standing when he suffers a direct and immediate injury from government conduct, resulting in increased taxes.	Unclear	✓	*Township of Franklin v. Tugwell*, 85 F.2d 208, 215–16 (D.C. App. 1936).
Florida	• TP must prove a pecuniary loss to have standing. Otherwise TP must raise a constitutional challenge based upon the legislature's taxing and spending powers.	No	✓ (except in constitutional challenges)	*Sch. Bd. of Volusia County v. Clayton*, 691 S.2d 1066 (Fla. 1997); *N. Broward Hosp. Dist. v. Fornes*, 476 S.2d 154, 155–56 (Fla. 1985); *Dept. of Revenue of St. of Fla. v. Markham*, 396 S.2d 1120, 1121–22 (Fla. 1981).
Georgia	• TP can sue to prevent official misconduct involving public monies, but it appears that absent pecuniary loss, TP must have peculiar injury akin to traditional federal standing requirements.	No	✓	Ga. Code Ann. § 9-6-24 (2002); *Juhan v. City of Lawrenceville* 306 S.E.2d 251 (Ga. 1983); *League of Women Voters of Atlanta-Fulton County, Inc. v. City of Atlanta*, 264 S.E.2d 859, 860–61 (Ga. 1980); *Faulk v. Twiggs County*, 504 S.E.2d 668, 670 (Ga. 1998).

APPENDIX A (continued)

STATE	GENERAL REQUIREMENTS	PUBLIC INTEREST EXCEPTION?*	PECUNIARY LOSS REQUIRED?	SOURCE
Hawaii	• TP must show (1) that he contributed to the fund from which illegal expenditures were made, and (2) suffered a pecuniary loss, though in cases of fraud, this requirement is presumed.	No	✓	*Haw.'s Thousand Friends v. Anderson*, 768 P.2d 1293, 1295 (Haw. 1989); *Mottl v. Miyahira*, 23 P.3d 716, 726 (Haw. 2001).
Idaho	• TP must show special, peculiar injury.	No	✓	*Scott v. Buhl Jt. Sch. Dist. No. 412* 852 P.2d 1376, 1378 (Idaho 1993); *Idaho Branch Inc. v. Nampa Hwy. Dist. No. 1*, 846 P.2d 239, 243 (Idaho 1993).
Illinois	• TP may sue on behalf of TPs generally, but must show pecuniary loss. • No TP standing to sue on *behalf* of government: this is reserved for Attorney General.	No	✓ (peculiar injury)	*Lyons*, 780 N.E.2d at 1102–05; *Barco Mfg. Co. v. Wright*, 139 N.E.2d 227, 229–30 (Ill. 1957); *Lynch v. Devine*, 359 N.E.2d 1137, 1140–41 (Ill. App. 1977).
Indiana	• TP standing should be rarely granted and TP must demonstrate interest beyond general public (indicates trend away from TP standing).	No	✓ (peculiar injury)	*Pence*, 652 N.E.2d 486 at 488.
Iowa	• Case development is inadequate for comment.			

APPENDIX A (continued)

STATE	GENERAL REQUIREMENTS	PUBLIC INTEREST EXCEPTION?*	PECUNIARY LOSS REQUIRED?	SOURCE
Kansas	• TP may sue if he suffers pecuniary loss.	No	✓	*Tripp*, 362 P.2d at 612; Kan. Stat. Ann. § 60-907 (1994).
Kentucky	• TP can sue if public official violates ministerial duty to take action beneficial to public, even if TP has no special injury. Otherwise, special injury required.	No	✓ (except for ministerial duties)	*Price*, 945 S.W.2d at 432.
Louisiana	• TP seeking to *restrain* illegal government action must show a *minimal* interest that can be satisfied by pecuniary loss *or* otherwise (however, interest need not be distinct from the public at large). • TP seeking to *compel* action must show distinct special interest.	✓ (except for compelling action)	✓ (except for restraining action)	*Hudson v. City of Bossier*, 823 S.2d 1085 (La. 2002); *La. Associated Gen. Contractors*, 586 S.2d at 1357–59; *Alliance For Affordable Energy*, 677 S.2d at 428–29; La. Stat. Ann. § 723 (2002).
Maine	• TP must show special injury for remedial suits. • Municipal TP suits are restricted to preventative suits where TP need not show special injury. • TP suits against the state can be either preventative or remedial. • Sales tax does not afford TP standing (adopted by S. Dakota and California).	✓	✓ (but not for preventative relief)	*Collins v. State*, 750 A.2d 1257 (Me. 2000); *Com. Cause*, 455 A.2d at 7–13; *Lehigh v. Pittston Co.*, 456 A.2d 355, 358–59 (Me. 1983); 14 Me. Rev. Stat. Ann. § 6051 (2003).
Maryland	• TP must show whether pecuniary loss or a tax increase is reasonably sustained—the amount is irrelevant.	No	✓	*Md. St. Admin. Bd. of Election Laws v. Talbot County*, 558 A.2d 724, 728–29 (Md. 1988).

APPENDIX A (continued)

STATE	GENERAL REQUIREMENTS	PUBLIC INTEREST EXCEPTION?*	PECUNIARY LOSS REQUIRED?	SOURCE
Massachusetts	• TP may sue for unlawful expenditure with at least 24 other TPs. • There is a distinction between expenditure of funds and merely raising revenue. • Courts may grant TP standing simply because no one else can sue.	No	✓	*Tax Equity Alliance for Mass. v. Commr. of Revenue*, 672 N.E.2d 504, 507–08 (Mass. 1996); Mass. Gen. Laws ch. 29, § 63.
Michigan	• TP must show unlawful expenditure of state funds and pecuniary loss.	No	✓	Mich. Stat. Ann. § 600.2041 (2003); *Kaminskas*, 243 N.W.2d at 26.
Minnesota	• TP must show that he requested the state to take action.	Unclear	✓	*Muirhead v. Johnson*, 46 N.W.2d 502, 505 (Minn. App. 1951).
Mississippi	• TP may sue government for unlawful appropriation. The suit must be brought on behalf of the public and the public must be invited to join. Public officials must have been presented with demand.	Unclear	Unclear	*Lewis v. Mass Appraisal Servs.*, 396 So.2d 35, 37 (Miss. 1981); *Prichard v. Cleveland,* 314 So.2d 729, 730 (Miss. 1975).
Missouri	• TP standing granted to make officials conform to ministerial duties in spending public monies. • TP need not prove taxes will increase. Impact is presumed if there is an illegal expenditure, even if money would be added to the treasury. • TP must show either (1) a direct expenditure of funds generated through taxes, (2) increase in tax, or (3) pecuniary loss.	✓	No	*E. Mo. Laborers Dist.*, 781 S.W.2d at 47; *Genevieve Sch. Dist. v. Bd. of Aldermen*, 66 S.W.3d 6, 10–11 (Mo. 2002); Thomas C. Albus, *Taxpayer Standing in Missouri,* 54 J. Mo. B. 199 (1988).

APPENDIX A (continued)

STATE	GENERAL REQUIREMENTS	PUBLIC INTEREST EXCEPTION?*	PECUNIARY LOSS REQUIRED?	SOURCE
Montana	• TP (and citizens in general) can sue if they show (1) injury (pecuniary or peculiar) and (2) injury is distinguishable from the public in general but not necessarily expressly unique.	No	✓	*Helena Parents Commn. v. Clark County Commr's*, 922 P.2d 1140, 1144 (Mont. 1996).
Nebraska	• TP must show special injury *unless* it involves an illegal expenditure of public funds or an increase in the burden of taxation. Exception exists in matters of great public concern: usually constitutional issues.	✓	No	*Nebraskans Against Expanded Gambling, Inc. v. Neb. Horsemen's*, 605 N.W.2d 803, 807 (Neb. 2000); *Hagan v. Upper Rep. Nat. Res. Dist.*, 622 N.W.2d 627, 630 (Neb. 2001).
Nevada	• Case development is inadequate for comment.			
New Hampshire	• TP has standing to seek redress for unlawful acts by public officials; pecuniary loss not needed.	Unclear	No	*Green v. Shaw*, 319 A.2d 284, 291 (N.H. 1974); *Clapp v. Town of Jaffrey*, 91 A.2d 464, 467 (N.H. 1952).
New Jersey	• Municipal TP can seek review of action without proof of unique financial detriment.	Unclear	No	*Kozesnik v. Montgomery Tp.*, 131 A.2d 1 (N.J. 1957); *Socy. for Animal Rights, Inc. v. Mahwah Tp.*, 350 A.2d 544 (N.J. Super L. Div. 1975).
New Mexico	• TP can sue municipality but not state.	No	Unclear	*Kuhn*, 342 P.2d at 1087.

Appendix A (continued)

STATE	GENERAL REQUIREMENTS	PUBLIC INTEREST EXCEPTION?*	PECUNIARY LOSS REQUIRED?	SOURCE
New York	• TP standing exists when (1) failure to grant standing would erect an impenetrable barrier to any judicial scrutiny of legislative action, (2) but standing should not be granted when there is no public significance. • Under § 51 of the New York General Municipal Laws, TP suit may be brought when government act is fraudulent, or a waste. Pecuniary interest or special injury required.	✓	✓ (except common law remedy does not require pecuniary loss)	N.Y. Gen. Mun. Laws § 51 (Consol. 2002); *Colella*, 95 N.Y.2d at 409-10; *Abrams v. N. Y. C. TA*, 39 N.Y.2d 990 (N.Y. 1976); *Jones I*, 56 A.D.2d at 779.
N. Carolina	• TP can only sue for personal injury, unless Attorney General refuses to act in which case TP must show (1) that demand was made and the agency refused to take action, or (2) that demand would be useless.	✓	No	*Fuller v. Easley*, 553 S.E.2d 43 (N.C. 2001); *Peacock v. Shinn*, 533 S.E.2d 842 (N.C. 2000).
N. Dakota	• TP may sue on behalf of himself and other TPs without showing any special or distinct injury from public. Pecuniary loss might be required.	Unclear	*Billey v. N.D. Stockmen's Assn.,* 579 N.W.2d at 173.	
Ohio	• TP may sue for a public interest that has been violated.	✓	No	Ohio Rev. Code Ann. § 309.12 (West 1994 & Supp. 2003); *Ohio Academy*, 715 N.E.2d at 1082.
Oklahoma	• TP may sue to enjoin an illegal use of moneys by municipal corporation.	No	✓	*Brandon v. Ashworth*, 955 P.2d 233 (Ok. 1998); *State ex rel. Macy v. Bd. of County Commr's of County of Ok.*, 986 P.2d 1130 (Ok. 1999).

APPENDIX A (continued)

STATE	GENERAL REQUIREMENTS	PUBLIC INTEREST EXCEPTION?*	PECUNIARY LOSS REQUIRED?	SOURCE
Oregon	• It appears that TP may sue only for actual illegal levying of taxes.	No	✓	*Savage*, 856 P.2d at 291.
Pennsylvania	• TP must show direct link from alleged misconduct and tax contribution (pecuniary or other special injury). • In certain cases, courts will waive pecuniary/special injury requirement when judicial review would otherwise not occur. "[T]he fundamental reason for granting standing is simply that otherwise a large body of governmental activity would be unchallenged in the courts." *Faden v. Phila. Housing Auth.*, 227 A.2d 619, 621-22 (Pa. 1967).	✓	✓	*Upper Bucks*, 474 A.2d at 1122; *Application of Biester*, 409 A.2d 848 (Pa. 1979).
Rhode Island	• TP can sue if he shows a personal stake beyond that of the public or other TPs. On rare occasions, the court will allow case to proceed when "substantial public interest" is at stake.	✓	✓ (except rare cases)	*Cummings*, 761 A.2d at 684.
S. Carolina	• A citizen-taxpayer has standing to contest the expenditure of public funds under an allegedly unconstitutional statute.	No	✓(pecuniary or unconstitutional)	*Sloan v. Sch. Dist. of Greenville County*, 537 S.E.2d 299 (S.C. 2000); *Beaufort County v. Trask*, 563 S.E.2d 660 (S.C. 2002).
S. Dakota	• TPs and electors have standing without demonstrating a special injury, if TP seeks to protect a public right (where a public official is compelled by law to take certain conduct but fails to do so, or where TP is acting to protect public monies).	✓	No	*Stumes,* 551 N.W.2d at 592.

APPENDIX A (continued)

STATE	GENERAL REQUIREMENTS	PUBLIC INTEREST EXCEPTION?*	PECUNIARY LOSS REQUIRED?	SOURCE
Tennessee	• TPs may sue for illegal expenditure of public funds (but not for mere waste, and not to simply challenge bad policy). • Prior demand must have been made.	No	✓	*Cobb v. Shelby County Bd. of Commr's,* 771 S.W.2d 124 (Tenn. 1989).
Texas	• TPs may sue "to enjoin the illegal expenditure of public funds, and need not demonstrate a particularized injury."	Unclear	No	*Williams,* 52 S.W.3d at 179.
Utah	• TP can challenge actions of political subdivisions for illegal expenditures of public funds.	No	✓	*Olson v. Salt Lake City Sch. Dist*., 724 P.2d 960 (Utah 1986); *Jenkins v. Swan*, 675 P.2d 1145 (Utah 1983).
Vermont	• TP can challenge the illegal expenditure of public funds.	Unclear	Unclear	*C. Vt. Pub. Serv. Corp. v. Town of Springfield*, 379 A.2d 677 (Vt. 1977).
Virginia	• TP standing requirements are narrow, as they are in the traditional federal standing doctrine.	No	✓	*Goldman,* 552 S.E.2d at 71-72.
Washington	• TP has standing if he (1) makes demand on Attorney General, and (2) shows a unique right or interest that is being violated in a manner *different* from the rights of other TPs. • Some case law indicates, however, that TP may sue without alleging a personal stake in controversy. However, there appears to be a division in case law.	Unclear	✓ (note division in case law)	*City of Walla Walla*, 802 P.2d at 787;*Tacoma*, 534 P.2d at 115-16.

APPENDIX A (continued)

STATE	GENERAL REQUIREMENTS	PUBLIC INTEREST EXCEPTION?*	PECUNIARY LOSS REQUIRED?	SOURCE
W. Virginia	• TP may have standing to challenge the constitutionality of a statute that requires the payment of public funds.	No	✓	*State ex rel. Goodwin v. Cook*, 248 S.E.2d 602 (W. Va. 1978); *Delardas v. County Ct. of Monongalia County*, 186 S.E.2d 847 (W. Va. 1972).
Wisconsin	• TP may file suit on *behalf* of municipality without showing special or direct harm. • TP may file suit *against* government with showing of personal/pecuniary loss different from that by the general public.	Unclear	✓ (if on behalf of TP)	*Appleton*, 419 N.W.2d 249 at 251-52.
Wyoming	• Case development is inadequate for comment.			

* **Public Interest Exception-** this exception varies depending on the particular state. However, for the purposes of this appendix, a checkmark indicates that the courts in this jurisdiction have at least implied that they will grant a taxpayer standing to enjoin illegal government conduct because of the need for the judiciary to check this type of government action. These jurisdictions have articulated this exception as necessary for the greater public interest.