

COMMENTS

DEAD DOG RUNNING: THE CRUELTY OF GREYHOUND RACING AND THE BASES FOR ITS ABOLITION IN MASSACHUSETTS*

By
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Under the guise of sport, greyhound racing persists in Massachusetts and sixteen other states, despite the industry's notoriety for animal abuse. The cruel practices employed in greyhound racing, including the culling of litters; the use of live lures in training; the provision of substandard living conditions and care; and the systemic, premature killing of greyhounds bear undeniable likeness to the barbarity perpetrated in the illicit animal fighting sports of bullfighting, dogfighting, and cockfighting. Yet, greyhound racing masquerades in the Commonwealth as an innocuous pastime, even though the industry-wide, calculated refusal to provide care for and consequent killing of throngs of greyhounds annually to perpetuate the cycle of entertainment offends both Massachusetts statutory and common law.

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I. INTRODUCTION

Greyhound racing stands as a shameful bastion of animal cruelty in Massachusetts, dimming the Commonwealth's reputation as one of the most progressive states in the country in terms of animal protection.¹ As home to Wonderland Greyhound Park and Raynham-Taunton Greyhound Park, Massachusetts wallows in the unenlightened minority of seventeen states that allow greyhound racing,² despite the widespread and well-known animal abuse rampant in the industry and synonymous with the sport.³ Given this disgraceful and intolerable reality, greyhound racing in the state of Massachusetts

¹ Luz Delgado, *State Lags in Animal Fire Rules; Rash of Blazes Fosters Scrutiny*, BOSTON GLOBE, Feb. 23, 1992, at 19, available at 1992 WL 4164400.

² Greyhound racing is also permitted in Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Idaho, Iowa, Kansas, New Hampshire, Oregon, Rhode Island, South Dakota, Texas, West Virginia, and Wisconsin. Fred Halliday, *A Race to the Death*, Greyhound Placement Service Literature, at 2 (on file with author). Only sixteen of these states have active tracks, creating a combined total of fifty-seven greyhound racetracks in the country. Seventeen of these facilities are located in Florida, while Colorado has five tracks and Alabama and Wisconsin have four apiece. In contrast, eight other states have passed statutes explicitly banning greyhound racing, including California, Idaho, Maine, Nevada, North Carolina, Vermont, Virginia, and Washington. PAMELA D. FRASCH ET AL., ANIMAL LAW 173 (2000); *Making a Difference*, ANIMALS' AGENDA, Jan. 1, 1999, at 6, available at 1999 WL 13508863.

³ See generally *infra* Sections II. A.-E. (discussing various forms of abuse in the greyhound racing industry).

should be abolished on the grounds that the abuse the dogs suffer is analogous to that perpetrated in outlawed animal fighting sports and that industry practices violate the basic Massachusetts anti-cruelty statute and common law.

Many people are unaware of the full extent of animal cruelty that occurs in the greyhound racing industry and, therefore, fail to grasp the urgency of abolishing this so-called sport. For these reasons, Section II discusses the ways in which greyhounds and other animals are abused every day in this sector and evaluates the success and viability of greyhound adoption efforts as a solution to the overwhelming number of dogs retired annually from racetracks.

Section III argues that greyhound racing is comparable, in terms of the animal abuse inflicted, to bullfighting, dogfighting, and cockfighting—sports that have been outlawed in this country.⁴ Through a detailed analysis of the cruel similarities between greyhound racing and these animal fighting sports, Section III contends that greyhound racing should be outlawed in Massachusetts, like bullfighting, dogfighting, and cockfighting,⁵ as a sport in which animals are killed for the sole purpose of providing entertainment. While for bulls, fighting dogs, and cocks, death often comes within their first match, greyhounds race until their owners find they are no longer competitive and are killed shortly after their final contest.

Section IV argues that statutory and common law bases exist for abolishing greyhound racing in the state of Massachusetts. Through the use of statutes and supporting case law, this section will examine how the failure to provide care for retiring greyhounds and the associated euthanization of staggering numbers of these dogs annually in Massachusetts constitutes unlawful animal cruelty within the scope of the Commonwealth's laws. In addition, Section IV explores the distinct common law foundation for outlawing greyhound racing, which is rooted in the Massachusetts Supreme Judicial Court's condemnations of sports in which animals are killed to provide entertainment.

II. ANIMAL ABUSE IN THE GREYHOUND RACING INDUSTRY

Greyhound racing has a notorious history of abusing greyhounds, as well as other animals. Proponents of the sport have challenged those who condemn it to prove that the mistreatment alleged actually occurs in Massachusetts. During one hearing on the future of greyhound racing in the state, Massachusetts legislators "challenged supporters of a ban [on the sport] to substantiate their contention that dogs are mistreated at tracks in Massachusetts and not in other states."⁶ Given the evidence included within this section in the form of

⁴ FRASCH ET AL., *supra* note 2, at 663, 654, 655.

⁵ MASS. GEN. LAWS ch. 272, § 94 (2000) (outlawing exhibitions of fighting of birds, dogs, or other animals).

⁶ Michael Rezendes, *Scores Join Debate on Banning Dog Racing*, BOSTON GLOBE, Apr. 20, 2000, at C19, available at 2000 WL 3322974.

admissions by Massachusetts trainers and other racing enthusiasts that the abuses discussed below do in fact occur in the Commonwealth,⁷ this challenge should be laid to rest. In addition, despite the myopia that racing enthusiasts exhibit in focusing solely on what takes place in Massachusetts, it is equally important to note the abuses in the greyhound racing industry that occur outside of the state's borders. This acknowledgment is critical, because most greyhounds are bred and trained for racing in states that do not have the same animal protection laws that are in existence in Massachusetts.⁸ Therefore, even if some of the animal abuse referred to in this section is not occurring within Massachusetts, the Commonwealth is still fueling animal cruelty through greyhound racing by allowing dogs trained elsewhere to be imported to race on Massachusetts tracks.

A. *Culling the Litter*

The process of selecting only the fastest greyhounds for a stint on the racing circuit begins just moments after a puppy's birth.⁹ Some greyhound breeders are so seasoned that "they can tell from the greyhound's joint structure and health at birth whether the pup has a chance at the big time."¹⁰ Those pups that will not succeed on the track are put down on the spot by "bash[ing] the head in."¹¹ If the runts are not killed immediately after birth, the breeder typically culls them from the litter within the first three weeks.¹² Because a greyhound's racing capacity is not always visually discernible at the outset, the culling process continues at the training grounds where young greyhounds learn to race.¹³ It is there that "the slow afoot, the slow to learn, or the just plain stubborn get winnowed again."¹⁴ As the pups grow older, death usually comes by bullet, though it has been rumored that sport fisherman have also purchased young greyhounds for shark bait in Key West, Florida.¹⁵

The inexperience of amateur backyard breeders interested in turning a quick buck multiplies the number of puppies that will be born and killed for lack of racing potential.¹⁶ These backyard breeders often have no understanding of the pedigree required to produce a win-

⁷ See *infra* text accompanying notes 23, 39, 95-96, 110.

⁸ See *infra* text accompanying notes 24-26.

⁹ James A. Grisanzio, *Going to the Dogs; The Cruel Truth Behind a Day at the Dog Track*, ANIMALS, Mar./Apr. 1993, at 20.

¹⁰ *Id.*

¹¹ *Id.*

¹² Halliday, *supra* note 2, at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Allegedly, "[t]here are scores of [greyhound] breeders across New England and hundreds, maybe thousands, in the backwoods of Alabama, the panhandle of Texas and the plains of Oklahoma and Kansas who operate out of their backyard or equally modest surroundings." Larry Tye, *Greyhounds Pay the Price of Racing's Shadow World*, BOSTON GLOBE, Nov. 8, 1992, at 1, available at 1992 WL 4200555.

ning racer and lack access to strong greyhound bloodlines.¹⁷ Nevertheless, they persist in breeding greyhounds deemed inferior for racing purposes with the hope of producing one winner.¹⁸ As one trainer observed, backyard breeders will "breed anything, trying to come up with that one champion. . . . Then some jerk sees that and says 'Hey, I can do that, too.' They're breeding quantity instead of quality."¹⁹ Predictably, the offspring are not fast or strong enough for competitive racing, resulting in even greater numbers of greyhounds being bred only to be killed for not earning a profit.²⁰ To make matters worse, Massachusetts indirectly encourages this irresponsibility by offering cash awards through the Massachusetts state breeding program to Massachusetts breeders and stud owners whose greyhounds place first, second, or third at one of the state's racetracks.²¹ The financial incentive that supports breeding one's way toward a jackpot is significant, promising a payment to the breeder of up to twenty-five percent of the purse money secured by the greyhound's performance.²²

B. *The Use of Live Lures During Training*

At the training grounds of young greyhounds, trainers use small animals such as jackrabbits, kittens, guinea pigs, chickens, and even puppies as live bait to entice the dogs to run.²³ While the practice of using live animals as lures is illegal in Massachusetts²⁴ and in at least two other states,²⁵ it has not been outlawed in those states where most greyhound training facilities are located, including Nebraska, Texas, Kansas, Iowa, and Oklahoma.²⁶ These training grounds are often hidden from public sight²⁷ and abuses persist undetected. Trainers commonly use live lures for training purposes even in states where the practice is illegal, because they are convinced it coaxes the greyhounds to run faster.²⁸ In defense of this tactic, a trainer at Wonderland Greyhound Park in Revere, Massachusetts admitted to using any animals he could find as live bait to train greyhounds in his backyard and flatly observed, "Gotta let 'em be killers; gotta let 'em hunt."²⁹ Similarly, a

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ MASS. GEN. LAWS ch. 128, § 2(i) (2000).

²² *Id.*

²³ Grisanzio, *supra* note 9, at 18-19; FRASCH ET AL., *supra* note 2, at 173; Alexi Wyatt, *Greyhounds for Pets, Not Gambling Bets*, FLORIDA TODAY, Jan. 2, 1997, at 08A, available at 1997 WL 6860641.

²⁴ MASS. GEN. LAWS ch. 272, § 77 (2000).

²⁵ The use of live bait is also outlawed in Wisconsin and Florida. Grisanzio, *supra* note 9, at 19.

²⁶ *Id.* at 18-19.

²⁷ *Id.* at 18.

²⁸ *Id.* at 19.

²⁹ *Id.*

top breeder in Florida, where live baiting is also outlawed, was caught using a live jackrabbit to stimulate his greyhounds to run faster.³⁰

Greyhounds are first introduced to live lures at roughly one year of age when they learn to chase a jackrabbit.³¹ The jackrabbit is used until too many successful catches wear it down.³² The animal is then "tossed in a barrel," though it may still be alive. An investigator for the Humane Society of the United States recalled seeing a discarded jackrabbit "with major lacerations and its intestines hanging out—and it was still breathing."³³ At fourteen months, the dogs are trained to run in a circle by chasing live animals that dangle from a pole as they "watch a pack of greyhounds closing in" for the kill.³⁴ The greyhounds' efforts are rewarded by trainers who "let the dogs catch up to the animal and tear it apart."³⁵ In the final stages of training, the dogs move up to larger racing tracks, where they are fitted with muzzles that restrict them to biting only smaller pieces of the live animal bait.³⁶ At this point, the same live rabbit hung from a pole is used repeatedly as a lure for multiple sets of racing dogs in what amounts to nothing less than torture.³⁷

In 1993, "[h]umane officials estimate[d] that more than 100,000 small animals die each year" in the course of greyhound training.³⁸ While some industry officials deny that live lures are used at all and claim that only artificial ones are employed, an official at the Raynham-Taunton Greyhound Park in Raynham, Massachusetts acknowledged that some trainers do use live bait and that it is "the black eye of the industry."³⁹ The use of live lures allegedly will result in suspension of a trainer's ability to register dogs by the National Greyhound Association (NGA), thereby ending his ability to do business.⁴⁰ However, as of 1993, the NGA had never suspended anyone for using live bait.⁴¹ This was the case despite Massachusetts trainers' admissions of using live lures⁴² and a Florida breeder actually being caught doing so.⁴³ Additionally, a Chicago-based humane investigator personally witnessed the managing editor of *The Greyhound Review*, an NGA publication, watch a training session with live lures at one of the largest racetracks

³⁰ Tye, *supra* note 16, at 1.

³¹ This stage is known as "jacking" the dogs. Grisanzio, *supra* note 9, at 19.

³² *Id.*

³³ *Id.*

³⁴ This stage is known as the "whirl-a-gig." *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*; ROD PREECE & LORNA CHAMBERLAIN, ANIMAL WELFARE AND HUMAN VALUES 175 (1993).

³⁹ Grisanzio, *supra* note 9, at 19.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See *supra* text accompanying notes 28-39.

⁴³ See *supra* text accompanying note 30.

in Kansas, which was only three miles from NGA headquarters.⁴⁴ Moreover, in 1993, fourteen live rabbits were reportedly found in the NGA President's truck when he was stopped for a traffic violation.⁴⁵ He claimed that the rabbits were food for his father.⁴⁶ Nonetheless, the coincidence of such factors as rabbits commonly being used in greyhound training; the sheer number of rabbits found in his truck; and this individual's profile as a greyhound racing official makes the incident smack of animal abuse. The picture that emerges is one in which the greyhound racing industry publicly condemns the use of live bait, at the same time that it secretly sanctions the practice to produce top racers.

C. *Living Conditions and Fire Hazards in the Kennels*

On the racing circuit, trainers house greyhounds in kennels that are usually located on the premises of the racetracks where the greyhounds run.⁴⁷ One exception is the O'Donnell-Pike Kennel Compound in Lynn, Massachusetts, where greyhounds racing at Wonderland Greyhound Park in Revere, Massachusetts are housed.⁴⁸ This compound is located a few miles away from the racetrack.⁴⁹ A typical kennel houses approximately eighty to one hundred dogs, and there may be thirty or more kennels at a major track.⁵⁰ At the O'Donnell-Pike Compound, there are twenty-eight kennels located within twenty-four buildings.⁵¹ As one might expect when so many animals are warehoused in limited amounts of space, greyhounds very often spend much of their day in metal crates, which are roughly three feet by three feet by four feet⁵² and stacked atop each other in small spaces.⁵³ Outside of a few thirty-second races that the greyhounds run each week, most greyhounds are only allowed out of their cages three or four times per day "for a pit stop,"⁵⁴ which may last about fifteen minutes.⁵⁵ In addition, the dogs are typically muzzled throughout the day, with the exception of feeding time, a practice that deprives the animals of scratching an itch or

⁴⁴ Grisanzio, *supra* note 9, at 20.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Luz Delgado, *Officials Say Lynn Kennel Lacked Alarm, Sprinklers*, BOSTON GLOBE, Feb. 17, 1992, at 15, available at 1992 WL 4163580.

⁴⁸ *Id.* Wonderland Greyhound Park, unlike most greyhound tracks in the country, does not have a kennel compound onsite. *Id.*

⁴⁹ *Id.*

⁵⁰ Halliday, *supra* note 2, at 1.

⁵¹ Ron Indrisano, *Kennel Devastated by Greyhound Fire; Wonderland Leader Virtually Wiped Out*, BOSTON GLOBE, Feb. 16, 1992, at 73, available at 1992 WL 4163304; Delgado, *supra* note 47, at 15.

⁵² Tye, *supra* note 16, at 1; Wyatt, *supra* note 23, at 08A.

⁵³ Halliday, *supra* note 2, at 2.

⁵⁴ PREECE & CHAMBERLAIN, *supra* note 38, at 175; Halliday, *supra* note 2, at 2.

⁵⁵ David Samuels, *Going to the Dogs*, HARPER'S MAG., Feb. 1, 1999, at 52, available at 1999 WL 3650452.

engaging in natural grooming instincts.⁵⁶ When greyhounds are not muzzled, boredom from sitting in a cage all day often drives them to stereotypic gnawing, which erodes tooth enamel.⁵⁷

The kennel owners at the O'Donnell-Pike Compound lease space from the owners of the kennel compound and are responsible for maintaining the kennel facilities and making improvements.⁵⁸ However, they are not reimbursed for expenses incurred in upgrading the facilities, a fact that appears to have been an indirect cause of the fires that killed eighty-seven greyhounds at the O'Donnell-Pike Compound in 1992,⁵⁹ as well as twenty-eight dogs in 1986 and eight more in 1999.⁶⁰ Standing as yet another example of how the greyhound racing industry values profits over animal welfare, a total of 123 dogs have burned to death in these kennels in three different fires, largely because the buildings in which the greyhounds are sheltered at this compound lacked basic fire safety features, such as an alarm and sprinklers.⁶¹ These features most likely were never installed because kennel owners do not want to invest capital in kennel units that they are only renting, and the owners of the compound have no difficulty leasing the premises, despite their inferior condition. Further exacerbating the problem, Massachusetts statutes and regulations addressing greyhound racing and prohibiting animal cruelty are devoid of specific fire protection requirements for animal housing.⁶²

The fire that struck the O'Donnell-Pike Compound on the evening of February 14, 1992 has been described as "the worst recorded fire to strike the sport in memory."⁶³ However, the tragedy should have come as no surprise, considering the potential for a grand-scale blaze inherent in the poor quality buildings at the site and the fact that two previ-

⁵⁶ Halliday, *supra* note 2, at 2.

⁵⁷ Lucy Kaplan, *Natural Healing Help Desk*, ANIMALS' AGENDA, July 1, 1999, at 36.

⁵⁸ William O'Donnell of Lynn, Massachusetts and Sidney Pike of Lynnfield, Massachusetts are joint owners of the O'Donnell-Pike Compound. Jeremiah V. Murphy, *A Case of Cruelty to Animals*, BOSTON GLOBE, Mar. 1, 1992, at 2, available at 1992 WL 4165271. There are approximately ten privately owned kennels at this facility. Sara Neufeld, *Kennel Fire Kills 4 Greyhounds; 6 Still Missing*, BOSTON GLOBE, June 20, 1999, at B2, available at 1999 WL 6067982. Owners who race greyhounds at Wonderland Greyhound Park house the dogs at the Lynn compound with the kennel owners who lease kennel space from O'Donnell and Pike. Delgado, *supra* note 47, at 15.

⁵⁹ Delgado, *supra* note 47, at 15.

⁶⁰ There was a fourth fire in 1990, but no greyhounds were killed. *Id.*; Neufeld, *supra* note 58, at B2; *You Animal, Greyhounds*, at <http://youanimal.net/Greyhound/greyhound.htm> (last visited Nov. 5, 2000).

⁶¹ Delgado, *supra* note 47, at 15; Neufeld, *supra* note 58, at B2.

⁶² Of the seventeen states that permit greyhound racing, only six have specific fire safety laws and regulations, including Alabama, Colorado, Florida, Kansas, Texas, and Wisconsin. Delgado, *supra* note 1, at 19 (listing of states modified from article based on updated information in Halliday, *supra* note 2, at 2). Westlaw searches of the Massachusetts statutory (MA-ST-ANN) and administrative code (MA-ADC) databases on April 21, 2000 did not reveal any laws or regulations addressing fire safety with regard to animal or greyhound housing.

⁶³ Indrisano, *supra* note 51, at 73.

ous fires had erupted at the facility in the preceding six years.⁶⁴ Comprised of nearly fifty-year-old “antiquated wooden facilities lacking sprinklers and a central fire alarm,” the O’Donnell-Pike Compound stood in sharp contrast to “the concrete buildings equipped with sprinkler systems at most facilities around the nation.”⁶⁵ Fire officials did not locate even a single fire extinguisher in the Lynn facility.⁶⁶ This state of ill-preparedness existed even though approximately twenty-eight greyhounds died as a result of the July 1986 fire that ignited under precisely the same facility conditions.⁶⁷ As a dog owner who lost six greyhounds in the 1986 blaze logically observed, “I thought that after the . . . fire in ’86, that surely they’d do something about an alarm system into the guard shack.”⁶⁸ Even now, little has been done since the 1992 massacre to safeguard the kennels where greyhounds live. When a fire broke out in June of 1999, there were still no sprinkler systems on the premises, and the caps on the one privately owned fire hydrant at the compound were screwed on so tightly that firefighters had difficulty removing them, impeding the firefighters from extinguishing the fire for a full hour and a half.⁶⁹ Literally adding fuel to kennel fires is the standard practice in the greyhound racing industry of bedding greyhounds on newspaper.⁷⁰ This practice creates a situation where the dogs essentially rest on kindling when they are harbored in tinderbox-like structures such as the one in Lynn, Massachusetts with few and inadequate fire safety mechanisms in place.

The greyhounds trapped in these fires did not die painlessly. One trainer recalled that during the 1992 blaze, the greyhounds were “screaming and barking and howling and yelping” the whole time from their cages inside the inferno.⁷¹ As one greyhound owner acknowledged, “It’s just the cruelest way to die that there is. They can’t get out. They can’t run for their lives. It should never have happened.”⁷² Yet, it has happened—repeatedly. There have been four fires at the Lynn compound with one as recently as July 1999, and still no steps have been taken to prevent this brutal killing. The sole explanation as to why such patently dangerous conditions are allowed to persist can only be that “[t]ime after time the economic interests outweigh the interests of the dogs.”⁷³

⁶⁴ Delgado, *supra* note 47, at 15.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Neufeld, *supra* note 58, at B2.

⁷⁰ Indrisano, *supra* note 51, at 73.

⁷¹ Delgado, *supra* note 47, at 15.

⁷² *Id.*

⁷³ Neufeld, *supra* note 58, at B2.

D. Racing Injuries and Lack of Proper Care

Running in weaving packs of eight at top speeds of greater than forty miles per hour⁷⁴ exposes greyhounds to the risk of physical injury each time they round the racetrack. As dirt kicked up from the track flies through the air,⁷⁵ the dogs push into each other, jockeying within the pack in pursuit of the mechanical rabbit lure. As a result, dogs can be seen “tumb[ing] head over heels” and “limp[ing] over the finish line last.”⁷⁶ Given the speeds at which greyhounds race, and the laws of physics, falls on the track causing blows to the neck, spine, shoulders, legs, and feet can result in a fatal injury. Fatal injuries are those that prevent a dog from racing, even though the animal may recover, since a greyhound that cannot race will likely be destroyed. Moreover, greyhound races are run in all types of weather and every season,⁷⁷ which can result in treacherously slick tracks when precipitation falls.

Industry advocates claim that greyhounds receive the best veterinary care and food available, because the industry needs to protect and nurture its investment.⁷⁸ They argue that it is only logical that an owner would provide the best care during the dogs' racing careers “so they can remain competitive and profitable to their owners.”⁷⁹ In fact, the NGA claims that it has “suspend[ed] trainers for improper care and treatment of the dogs.”⁸⁰ Nevertheless, untreated broken bones and other ailments are so common in racing greyhounds that when these animals are adopted, veterinarians sometimes recommend full sets of x-rays to determine the extent of the injuries a greyhound has suffered and to document an accurate medical history.⁸¹ Websites created by greyhound adoption groups featuring particular greyhounds available for placement as pets further attest to the broken legs so many greyhounds suffer during their racing careers. On just one website, two out of the four greyhounds listed for adoption were described as having had a rear leg broken due to racing.⁸² In fact, a four-year-old greyhound's leg was either so badly damaged or poorly treated that although it has healed, it “looks a little weird.”⁸³ While one would imagine that an injured greyhound would refuse to run, thereby disabling a trainer from further exploiting the dog and forcing the trainer to seek veterinary care, in actuality “the excessive prey drive bred into

⁷⁴ Grisanzio, *supra* note 9, at 18 (describing a race at Raynham-Taunton Greyhound Park).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 21.

⁷⁸ *Id.* at 22.

⁷⁹ *Id.*

⁸⁰ *Id.* at 19.

⁸¹ See generally Kaplan, *supra* note 57, at 36 (discussing the veterinary care provided for one adopted greyhound).

⁸² Lisa Losardo, *Grateful Greyhounds*, at <http://www.ehsis.net/gratefulgreyhounds/adoptme.htm> (last visited Apr. 21, 2000).

⁸³ *Id.*

these dogs will make many of them run despite painful injuries.⁸⁴ In turn, owners and trainers take advantage of the ingrained chasing response that the dogs exhibit and scrimp on veterinary costs.⁸⁵

Contrary to what industry officials claim, the food that greyhounds consume is cause for alarm and has been known to bear the stamp of "unfit for human consumption."⁸⁶ One veterinarian, who had a contract with the Iowa State Racing Commission to care for greyhounds, referred to the food being fed to these animals as a "pathogenic smorgasbord."⁸⁷ He observed that the dogs were fed grade 4D meat, which stands for livestock that was dead, dying, diseased, or down at slaughter (and typically pumped full of drugs before dying in an effort to salvage the animal for food).⁸⁸ This contaminated meat is often sold raw and unsterilized for greyhound feed.⁸⁹ The meat may cause the dogs to become ill or even "die in a reaction called 'blow out.'⁹⁰ A poor diet manifests itself in the form of various other health problems for greyhounds as well, including early tooth and gum disease.⁹¹ In addition, greyhounds are often underfed, appearing emaciated with dry, brittle coats and bald patches.⁹²

Greyhounds suffer from a variety of other ailments due to the inadequacy of veterinary care. Many greyhounds rescued by adoption groups are riddled with fleas, ticks, worms, and other parasites.⁹³ They suffer from sores on their slender bodies, and it is not unheard of for part of an ear to be missing.⁹⁴ In addition to the afflictions greyhounds endure from racing injuries and lack of proper care, some trainers physically abuse the animals as well. At Raynham-Taunton Greyhound Park, a trainer had inserted wire rings over the penises of two greyhounds, without anesthesia, so as to prevent the dogs from masturbating.⁹⁵ As with other aspects of the greyhound racing industry, the testimony of trainers who deal with the greyhounds on a daily basis is quite telling with regard to the care these dogs receive. In the course of advocating for state governments to share a greater percent-

⁸⁴ Kaplan, *supra* note 57, at 36. One three-year-old greyhound who was diagnosed shortly after adoption as having at least two broken toes was so stimulated to chase small animals in the backyard that she would wildly pursue the animals without hesitation, thereby further aggravating her injuries, only to limp from the pain afterwards. *Id.*

⁸⁵ *See id.*

⁸⁶ Samuels, *supra* note 55, at 52.

⁸⁷ Grisanzio, *supra* note 9, at 22.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Phoebe Wolf, *Phoebe Wolf's Den*, at <http://wolfsden.homepage.com/race.html> (last visited Nov. 5, 2000).

⁹¹ Kaplan, *supra* note 57, at 36.

⁹² Larry Tye, *Adoption A Better Option*, BOSTON GLOBE, Nov. 8, 1992, at 65, *available at* 1999 WL 4200558.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ The trainer defended his actions by claiming that this practice was common when he began working in the industry over fifty years ago. Tye, *supra* note 16, at 1.

age of profits from greyhound racing, one Massachusetts trainer indirectly admitted that greyhounds are receiving substandard care when he stated, "If the state that licenses the [racing] facility would open their eyes, put aside their greed and do what's right, people and greyhounds could survive in a proper manner. . . . [G]reyhounds could get proper care."⁹⁶

E. *The Average Racing Career and Retirement*

A greyhound is ready to begin a racing circuit career by about sixteen to eighteen months old,⁹⁷ but only about one in five of those bred will be fast enough to be registered as a racer, while the rest are "either killed, sold for laboratory experimentation, or turned into constant breeding machines."⁹⁸ The dogs that do make it to the track are grouped in classes ranging from Class A through Class D.⁹⁹ A greyhound may be dropped to a lower class by losing just a few races or a matter of seconds on his racing time.¹⁰⁰ Demotion to Class D at one of the least competitive tracks marks the end of the racing line and "stands for death,"¹⁰¹ as those dogs will no longer bring in profits on the racetrack. Without injuries, most dogs will race for roughly two years before they are considered too slow or too old to compete.¹⁰² It is estimated that only one dog in eight will live to be four years old, despite the fact that a greyhound's normal life expectancy is between twelve and sixteen years.¹⁰³ Most dogs step down to a Class D status by the age of four.¹⁰⁴ When a greyhound is no longer deemed fit for competition, he is retired, a euphemism for death unless the dog was valuable enough as a racer to breed once his career has ended¹⁰⁵ or lucky enough to be adopted as a pet.¹⁰⁶ The majority of dogs, however, are either destroyed by euthanasia or less humane means, or sold to labs for biomedical research "where greyhounds are prized for their

⁹⁶ Larry Tye, *Can Cycle Be Less Vicious? Genetics, Abolition, Hinsdale Model Program Proposed Solutions*, BOSTON GLOBE, Nov. 11, 1992, at 37, available at 1992 WL 4200946.

⁹⁷ Grisanzio, *supra* note 9, at 20.

⁹⁸ PREECE & CHAMBERLAIN, *supra* note 38, at 175.

⁹⁹ Halliday, *supra* note 2, at 1.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*; Wolf, *supra* note 90.

¹⁰² Grisanzio, *supra* note 9, at 20; Tye, *supra* note 16, at 1.

¹⁰³ Kathy Cleveland, *Running Home; Retired Greyhounds Look for Love*, Greyhound Placement Service Literature, at 1 (on file with author).

¹⁰⁴ Halliday, *supra* note 2, at 1-2.

¹⁰⁵ Tye, *supra* note 16, at 1; PREECE & CHAMBERLAIN, *supra* note 38, at 175. The top stud dog in the nation as of 1992 brought in a stud fee of \$1,500, earning his owner \$625,000 as a sire as of that time. Tye, *supra* note 16, at 1. A few simple calculations reveal that the dog was probably mated 416 times in the early years of his life, which likely resulted in the birth of 2,912 puppies, if one assumes that most female greyhounds carry a litter of approximately seven or more puppies and that stud fees are dependent upon the female actually becoming impregnated. See Wolf, *supra* note 90.

¹⁰⁶ Tye, *supra* note 16, at 1.

tolerance of pain.”¹⁰⁷ Although Massachusetts law requires greyhounds to be destroyed by lethal injection or other humane methods,¹⁰⁸ many dogs are killed by gunshot.¹⁰⁹ As one spectator at the Raynham-Taunton Greyhound Park recalled,

I used to know a guy that had a farm out on the Cape. He'd just shoot 'em in the back of the head, right between the ears. One time he shot a dog, but it didn't die. It ran out into the street with its jaw blown off. Most greyhounds end up shot and dumped in the woods someplace.¹¹⁰

Further proof of these suspicions is the fact that in Massachusetts, the number of greyhounds brought to the shelters of the Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA) for euthanization each year has dramatically declined over the years.¹¹¹ In 1985, two thousand five hundred greyhounds were euthanized by the MSPCA at a fee of \$3.00 per dog, but when the fee rose to \$12.00 per animal, a price still well below cost, fewer owners brought their retired greyhounds into shelters.¹¹² By 1991, only about 427 greyhounds were euthanized in MSPCA shelters.¹¹³ The decline in numbers may also be attributed to the fact that some greyhounds are being transported to South and Central America with the intent of introducing other countries to dog racing.¹¹⁴ In any case, the one certainty is that as more room is made at the racetracks by killing slower grey-

¹⁰⁷ PREECE & CHAMBERLAIN, *supra* note 38, at 175; Grisanzio, *supra* note 9, at 20. Records obtained from the U.S. Department of Agriculture through Freedom of Information Act requests “show that hundreds of greyhounds are sold to universities and biomedical [research] companies in California each year.” *Id.* This number is likely multiplied several times over for sales of dogs for the same purposes in other states. Moreover, Department of Agriculture documents will not reflect unreported sales of the throngs of dogs that are stolen and the like by the sellers. Greyhound rescues have occurred by court order from facilities where it has been proven that the dogs were stolen. *See id.* (discussing a 1990 case in which twenty greyhounds were rescued from the United States Army's Letterman Institute for Research in San Francisco, California where the dogs were being used in trauma experiments). Finally, it is not difficult to imagine that those in the racing industry who are responsible for disposing of dogs have a real incentive, given all of the negative publicity that could result, to sell dogs into biomedical research in a secretive manner so as to avoid recorded transactions.

¹⁰⁸ MASS. GEN. LAWS ch. 128C, § 7 (2000).

¹⁰⁹ Grisanzio, *supra* note 9, at 20, 23.

¹¹⁰ *Id.* at 23.

¹¹¹ *See id.* at 21.

¹¹² *Id.*

¹¹³ *Id.* While it is true that the number of dogs killed by euthanization was declining due to costs, the number of greyhounds killed in this manner still remained quite high generally. For example, in 1992, the Brockton, Massachusetts animal shelter had euthanized 106 greyhounds by November 8th of that year. Of those greyhounds euthanized, ninety-three percent were age four or younger. Tye, *supra* note 16, at 1.

¹¹⁴ Grisanzio, *supra* note 9, at 21. Beginning in 1992, a shipment of greyhounds that were too slow to run on U.S. racetracks were sent to Brazil from New England with the intent of introducing that country to dog racing. Although the number of greyhounds assigned to this fate is uncertain, it appears that the number could burgeon if the sport grows in popularity. This new trend is cause for alarm, as there are virtually no animal protection laws in place in these countries to ensure the humane treatment of the dogs.

hounds, the cycle of death just keeps reproducing itself when faster dogs become available.

The estimated number of greyhounds killed each year varies considerably between greyhound adoption groups, humane societies, and outside investigators as compared with those of industry advocates. Adoption groups, humane societies, and outside investigators claim that the number of culling deaths during the selection and training process combined with deaths upon retirement results in fifty thousand to ninety thousand dogs being killed each year.¹¹⁵ The NGA and the American Greyhound Track Operators Association (AGTOA) balk at such numbers.¹¹⁶ The NGA claims that only twenty thousand greyhounds are killed annually.¹¹⁷ However, it is difficult to find this figure credible considering that these two organizations do not record such statistics and plainly state, "It's of no interest to us. When a dog is through racing, he will go back to his owner, to an adoption program, or to some place away from the race track."¹¹⁸

Despite this disagreement over statistics, one undeniable fact is that the NGA registers approximately forty thousand new greyhounds for racing each year.¹¹⁹ Thus, the forty thousand greyhounds registered in each prior year must be going somewhere, and they certainly are not all going into adoptive homes. In one example of how the annual destruction of retired greyhounds has become a standardized practice, the yearly slaughter at the Hinsdale racetrack in New Hampshire's Lakes Region has been aptly dubbed the "October Massacre" to refer to the time of year when "a couple hundred dogs, the ones who are old, lame, or not quite fast enough, are killed."¹²⁰ In addition, reports from humane societies and veterinarians in New England confirm that each racetrack in the region puts down at least two hundred dogs per year.¹²¹ Moreover, mass graves filled with greyhound bones have been uncovered in various locations throughout the country.¹²² Questioning their own complicity in the practice, one humane official confessed, "At some point, we have to ask whether we're really providing humane deaths or [whether we] are part of the problem. . . . The cost of seeing that senseless death over and over is real."¹²³

Larry Tye, *Concerns Follow Dogs to Brazil*, BOSTON GLOBE, Nov. 10, 1992, at 77, available at 1992 WL 4200850; Tye, *supra* note 16, at 1; Tye, *supra* note 92, at 65.

¹¹⁵ Grisanzio, *supra* note 9, at 20; PREECE & CHAMBERLAIN, *supra* note 38, at 175; Halliday, *supra* note 2, at 1; Tye, *supra* note 16, at 1; FRASCH ET AL., *supra* note 2, at 173.

¹¹⁶ Grisanzio, *supra* note 9, at 20.

¹¹⁷ Tye, *supra* note 16, at 1.

¹¹⁸ Grisanzio, *supra* note 9, at 20.

¹¹⁹ *Id.*

¹²⁰ Cleveland, *supra* note 103, at 1; Tye, *supra* note 92, at 65.

¹²¹ Tye, *supra* note 16, at 1.

¹²² See Grisanzio, *supra* note 9, at 22 (photographing a trench filled with the bones of five hundred euthanized greyhounds from the summer of 1992); Halliday, *supra* note 2, at 1 (revealing the unearthing of a mass grave of two hundred greyhounds in Idaho).

¹²³ Tye, *supra* note 16, at 1.

F. The Adoption Option

Most adoption volunteers and racing industry officials estimate that about ten percent of the dogs coming off the racetrack are adopted as pets, but the NGA claims that adoptions could be as high as twenty percent.¹²⁴ Greyhound adoption programs place approximately ten thousand greyhounds in homes every year.¹²⁵ In 1992, adoption groups in New England managed to place one out of six greyhounds retired from the racetrack, which was a major improvement over past years and was double the placement numbers for the rest of the nation.¹²⁶ Despite these successes, making the transition from life as a racer to life as a pet is not always smooth for greyhounds. A small percentage of the dogs are prone to chasing cats and other pets,¹²⁷ a behavior that is ingrained in the greyhounds through the use of live animal lures during training.¹²⁸ Some adoption groups use foster homes to evaluate a greyhound's tolerance for pets and children and to rehabilitate the greyhound's health before making him available for adoption.¹²⁹ Another obstacle to greyhound adoption is the perception that this breed wears muzzles because the dogs are vicious.¹³⁰

Part of the reason that greyhound adoptions started out slowly was that racetracks were reluctant to give the dogs up for adoption out of fear that as more greyhounds were adopted, the public would question the fate of all the other greyhounds not being adopted.¹³¹ Instead, "greyhound tracks just wanted to keep it a deep secret that thousands of dogs are killed each year."¹³² Along these lines, while the efforts of volunteers are noble, the adoption solution itself should not be viewed as unquestionably favorable or as a definitive success in terms of re-

¹²⁴ Tye, *supra* note 92, at 65. The interesting point here is that in boasting about adoptions, as if they erase all the greyhound deaths, the NGA has confirmed indirectly that at least thirty-five thousand to fifty thousand retired greyhounds are being killed each year. The number of deaths would have to be at least that high for the NGA to claim that the seven thousand to ten thousand greyhounds adopted in 1991 represented twenty percent of the dogs coming off the track. In fact, if the adoption rate is actually lower than twenty percent (since the NGA seems to admit that twenty percent is probably the maximum), then the death rate is even higher. In either case, the total deaths are more than the twenty thousand greyhounds that the NGA repeatedly cites as the total number of greyhounds killed annually. See *supra* text accompanying notes 116-117.

¹²⁵ Grisanzio, *supra* note 9, at 21.

¹²⁶ Improved success was due in part to some racetracks' and trainers' efforts to help place retired greyhounds. Tye, *supra* note 92, at 65. In New Hampshire's Lakes Region, where hundreds of dogs are destroyed each year in the "October Massacre," efforts between the tracks and the volunteers helped to "substantially curtail[] the last-minute killing." Tye, *supra* note 16, at 1.

¹²⁷ Tye, *supra* note 92, at 65.

¹²⁸ See *discussion supra* Section II. B. (discussing the use of live animals as lures to train greyhounds to race).

¹²⁹ Tye, *supra* note 92, at 65.

¹³⁰ Tye, *supra* note 16, at 1.

¹³¹ Tye, *supra* note 92, at 65.

¹³² *Id.*

forming the industry. Greyhounds will continue to be bred and killed regardless of adoptions, just as they always have been to perpetuate racing. For that reason, adoption efforts may inadvertently mask the evils perpetrated by the greyhound racing industry. Where the public is so vastly uninformed about the plight of greyhounds, seeing adoptions may lead many to believe that every greyhound is given a happy retirement home.¹³³ Even adoption workers are concerned that "with tens of thousands of greyhounds still being euthanized, adoption programs are being used to deceive the public into believing greyhounds are guaranteed a good life as pets when they're done racing."¹³⁴ Some adoption organizations are actually funded by the greyhound racing industry. These groups are sometimes criticized for being "smokescreens and public relations tools to gloss over abuses in the industry"¹³⁵ and for "only serv[ing] to aid the industry" by remaining silent about the abuse.¹³⁶ For instance, the American Greyhound Council (AGC), which was established by the AGTOA and the NGA in 1987, funds Greyhound Pets of America, but requires any adoption agency it sustains to "support the greyhound industry" and to refrain from making "negative quotes . . . about the greyhound industry in any media."¹³⁷

Regardless of how successful adoptions have been thus far, adoption programs will eventually tap out the resources of a community. As one track owner even pointed out, "There are a finite number of homes

¹³³ This author in no way means to imply that adoption efforts should end. Rather, this critique is only intended to draw attention to the reality that, while adoption efforts have a role in saving as many dogs as possible, the real focus must continue to be on abolishing greyhound racing entirely.

¹³⁴ Tye, *supra* note 92, at 65.

¹³⁵ Grisanzio, *supra* note 9, at 21.

¹³⁶ *Id.*; Tye, *supra* note 92, at 65.

¹³⁷ Grisanzio, *supra* note 9, at 21; Tye, *supra* note 92, at 65. However, in 1992, the AGC did provide an allegedly unconditional grant of \$100,000 to the American Society for the Prevention of Cruelty to Animals (ASPCA) "for distribution to greyhound adoption agencies and as an emergency fund for food, veterinary care, and other services." Grisanzio, *supra* note 9, at 21. While a no-strings-attached grant is helpful, this endowment is rather paltry in light of the profits made off of these dogs in even a single year by the industry, an amount which totals approximately \$3.4 billion. *Id.* at 23. Moreover, the MSPCA's criticism of the ASPCA for accepting money from the industry that is the source of the problem, when that industry should put an end to the killing in its entirety, is also valid. See Tye, *supra* note 92, at 65. At the very least, the actions of the owner of the Hinsdale track in New Hampshire's Lakes Region, Joseph E. Sullivan, III, provide an example of how the industry could strive to control some of the killing and reduce the number of dogs who require adoptive homes. Sullivan has limited the twelve kennels racing at his track, each of which maintains about eighty greyhounds, to bringing in thirty new dogs per year per kennel, with the exception of greyhounds that leave the kennel to race elsewhere; those that are too old to race; and those that are being retired to breed. His attempt, small though it may be, at least assumes some moral responsibility for the wanton killing caused by trainers who "replace dogs too quickly, always looking for one that's running faster and can earn them more." Tye, *supra* note 96, at 37. Nevertheless, these measures obviously fall far short of eliminating the senseless overabundance of greyhounds and the related slaughter.

for animals, a finite number of people who want to own a dog."¹³⁸ Similarly, the head of adoption programs for the MSPCA insightfully noted, "We're saturating the area with greyhounds put up for adoption. I'm not sure how many animals you can warehouse before it just runs out."¹³⁹ Yet, one can be sure that the greyhound racing industry will not terminate its massive overbreeding and killing practices when the stream of adoptive homes runs dry. For this very reason, adoption can be analogized to little more than a Band-Aid on a bursting dam, no matter how well intentioned. Ignoring this reality, both the NGA website and the AGC website tout the placement of dogs in adoptive homes and improvements in adoptions generally over the years without stating that the increased adoptions are fueled by the fury and scrambling of adoption agencies trying to slow the hemorrhaging known as greyhound deaths.¹⁴⁰ In fact, the industry almost portrays itself as engaging in a positive activity by making an endless supply of greyhounds available for adoption without mentioning that it is the cause of the problem. The image projected is one of adoptions being a happy by-product of racing rather than a desperate attempt to prevent carnage.

III. CRUEL SIMILARITIES BETWEEN BULLFIGHTING, DOGFIGHTING, COCKFIGHTING, AND GREYHOUND RACING

"It is said that America is too kind a place to be entertained by sporting events in which the animal is terminated."¹⁴¹ Yet in greyhound racing, just as in bullfighting, dogfighting, and cockfighting, animals are ultimately killed for the sake of entertainment. Although bullfighting is illegal in the United States,¹⁴² and dogfighting has been outlawed in every state,¹⁴³ three states still permit cockfighting.¹⁴⁴ Many of the types of abuse perpetrated in bullfighting, dogfighting, and cockfighting are common to greyhound racing as well. To make matters worse, enthusiasts romanticize each of these sports in a way that completely disregards the suffering the animals endure and the senseless deaths caused by these so-called forms of entertainment. Despite all of the abuses that greyhound racing shares in common with these animal fighting sports, greyhound racing remains legal in Massachusetts and sixteen other states, and is only explicitly outlawed in eight states.¹⁴⁵ Indeed, one critic noted that "[p]ractices—current, common, and legal—in dog racing would put a feather in the cap of

¹³⁸ Tye, *supra* note 92, at 65.

¹³⁹ *Id.*

¹⁴⁰ See National Greyhound Association, *Adoption Statistics*, at <http://nga.jc.net/adopt.htm> (last visited Nov. 5, 2000); American Greyhound Council, *Statistics*, at <http://www.agcouncil.com/> (last visited Nov. 5, 2000).

¹⁴¹ Halliday, *supra* note 2, at 1.

¹⁴² FRASCH ET AL., *supra* note 2, at 654.

¹⁴³ As of early 1999, dogfighting constituted a felony in all but six states. *Id.* at 663.

¹⁴⁴ Louisiana, Oklahoma, and New Mexico allow cockfighting. *Id.* at 655.

¹⁴⁵ *Id.* at 173; *Making a Difference*, *supra* note 2, at 6.

cock fighting and make a social point for bullfighting."¹⁴⁶ To explore this observation and the dissonance between permitting greyhound racing while outlawing animal fighting sports, bullfighting, dogfighting, and cockfighting will each be described briefly below, followed by a discussion exploring the similarities between the abusive practices employed in animal fighting and those in the greyhound racing industry.

A. Bullfighting

There are four general stages in a Spanish-style bullfight.¹⁴⁷ In the first portion of the match, the bull enters the arena where the fight will occur and is lured to charge at capes being waved by performers known as *peones*, who assist the star performer called the *matador*.¹⁴⁸ A fluttering cape triggers the bull's aggression and concomitant "natural inclination" to charge so that the matador may observe the animal's attack movements, while the performers display their "artistry, ability, dexterity, skill and grace, by executing ballet-like movements and postures" as they attempt to dodge the onrushing animal.¹⁴⁹ The second phase, denominated the *Suerte de Varas* (Act of the Spears), involves performers called *picadors* who enter the ring on horseback carrying long wooden lances.¹⁵⁰ The picadors use the movements of the horses to incite the bull to charge and then spear the bull in the neck.¹⁵¹ Allegedly targeted to "test[] the bull's mettle,"¹⁵² this spearing series occurs three times and is intended to cause the bull to lower its head.¹⁵³ In the third stage, deemed the *Suerte de Banderillas*, the peones drive three pairs of *banderillas*, which are poles with barbed darts on the end, into the bull's back.¹⁵⁴ The stabbing of these darts causes the bull to lower its head still further, preparing the animal for the matador to reach over the bull's head and slay him.¹⁵⁵ Remarkably, *banderillas* are intended to "brighten the bull after the sapping effect of the [picadors' lances]," although as one author ob-

¹⁴⁶ Halliday, *supra* note 2, at 1.

¹⁴⁷ There are other forms of bullfighting, including the Portuguese-style "bloodless" bullfight. However, at least one American court has refused to permit even a "Portuguese-style simulated bloodless bullfight" for public entertainment, as it recognized the stress induced in a bull subject to any form of bullfighting. The court observed, "Just how this idea of a 'simulated' bullfight is going to be gotten across to the bull is unexplained." *C.E. Am., Inc. v. Antinori*, 210 So. 2d 443, 444 (Fla. 1968); see also *infra* text accompanying note 204 (quoting the Florida Supreme Court's opinion as to the torment perpetrated on the bull by provoking its fury in the course of a bullfight). California, however, does permit "bloodless" bullfights as part of a religious festival. A.L. KENNEDY, ON BULLFIGHTING 87 (1999).

¹⁴⁸ KENNEDY, *supra* note 147, at 114.

¹⁴⁹ *C.E. Am.*, 210 So. 2d at 444; KENNEDY, *supra* note 147, at 114.

¹⁵⁰ KENNEDY, *supra* note 147, at 115.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* at 117.

¹⁵⁴ *Id.* at 118.

¹⁵⁵ *Id.* at 120.

served, "how six small stab wounds [from the darts] could remedy several larger ones [from the previous lances] is beyond me."¹⁵⁶ In the final stage known as the *Suerte de Matar*, the matador engages in an extended performance of capework and footwork first to antagonize and then elude the charging bull.¹⁵⁷ At the conclusion of his performance, the matador ultimately kills the bull with a sword that bears a slightly curved steel blade by driving the sword down into the space between the animal's shoulder blades and severing the *vena cava* or one of the pulmonary blood vessels.¹⁵⁸

The physical injury that the animal endures throughout the bullfight is nothing short of brutish. After witnessing a bull drop to the ground with pain and exhaustion and watching participants in the fight tug the animal's tail and wave capes to goad him back onto his feet, one spectator observed, "This is much nearer butchery and farce than art."¹⁵⁹

B. Dogfighting

Although outlawed in every state, organized dogfighting is on the rise throughout the country and is very often linked to other criminal dealings, including gambling, weapons possession, and gang activity.¹⁶⁰ The Humane Society of the United States ranks California, Florida, Georgia, Louisiana, and Texas among the most active states in which this clandestine pastime occurs.¹⁶¹ Based on conservative estimates, it is believed that more than ten thousand people put dogs up to fighting in the United States.¹⁶² The dog of choice is the Pit Bull Terrier, although dogfighting enthusiasts will use other breeds, such as Rottweilers, Doberman Pinschers, and Akitas, with much less frequency.¹⁶³ Because the dogfighting culture is virtually centered on the Pit Bull Terrier breed, the discussion herein regarding dogfighting will primarily refer to these dogs.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 120-22.

¹⁵⁸ *Id.* at 18, 120-22; *C.E. Am., Inc. v. Antinori*, 210 So. 2d 443, 444 (Fla. 1968).

¹⁵⁹ KENNEDY, *supra* note 147, at 132.

¹⁶⁰ Dan Mihalopoulos, *Arrests Put Spotlight on Bloodsport; 4 People are Charged with Animal Cruelty in Incidents that Attest to Dogfighting's Popularity, Police and Animal Rights Activists Say*, CHI. TRIB., Apr. 10, 2000, at 1, available at 2000 WL 3654712; Sean O'Hara, *Community Must Take a Stand Against Pit Bull Fighting*, SOUTH BEND TRIB., Jan. 12, 2000, at A7, available at 2000 WL 7394461; Alan Judd, *Dogfighting in Georgia: A Blood Sport; Raid Focuses Spotlight on Dark, Gory Tradition*, ATLANTA J.-ATLANTA CONST., Dec. 19, 1999, at D7, available at 1999 WL 3818835.

¹⁶¹ Judd, *supra* note 160, at D7.

¹⁶² FRASCH ET AL., *supra* note 2, at 663.

¹⁶³ Dustin Wunderlich, *Dogfights Flourish, Despite City Efforts Stakes High in Bloody, Macho Sport*, WASH. TIMES, Dec. 26, 1999, at C17, available at 1999 WL 3101849.

Dogfighting involves placing two dogs into a pit¹⁶⁴ where they fight until one either dies or becomes too injured or exhausted to continue.¹⁶⁵ Immediately before the fight, the dogs are usually bathed in washtubs “to ensure that no poisoning or paralytic agents have been applied to the dogs’ coats.”¹⁶⁶ The dogs are also weighed on scales to ensure that they meet the specified fighting weight written into the contract.¹⁶⁷ At this point, each dog is placed in the pit with its handler, as well as the referee.¹⁶⁸ The dog that remains alive is usually the winner, and a dog that jumps out of the pit automatically loses.¹⁶⁹ “There is a detailed rule for determining the winner or declaring a draw if the dogs quit fighting” on their own.¹⁷⁰ Fights can last anywhere from a matter of minutes to over two hours.¹⁷¹ If it is necessary to break up a fight, “breaking sticks”¹⁷² and screwdrivers may be inserted between a dog’s back teeth to unlock its jaws,¹⁷³ and water may be blasted from garden hoses to separate the animals.¹⁷⁴ In the end, the owner of the winning dog collects a purse worth several hundred to tens of thousands of dollars.¹⁷⁵

In urban areas, most dogfights occur in alleys or parks where owners, often members of street gangs, make small bets on the dogs with money or drugs.¹⁷⁶ Sometimes pit bull owners who cross paths while walking their dogs, or who are specifically cruising the neighborhood looking to engage a fight, will allow the dogs to strike up an impromptu match called a “roll.”¹⁷⁷ Typically, these fights occur in the middle of the street or in someone’s front yard.¹⁷⁸

Puppies begin their training for dogfighting at just two months old.¹⁷⁹ Training includes walking the dogs with ten pound weights or heavy chains around their necks to build strength, and using devices to strengthen their jaws and teach them to “clamp onto their victims

¹⁶⁴ A pit is an enclosure that is roughly ten to fourteen feet square with sides that are approximately thirty inches high and a carpeted floor. *Ash v. State*, 718 S.W.2d 930, 931 (Ark. 1986); Robert Eckhart, *Dogs Bear Scars of Fighting Ring*, SARASOTA HERALD-TRIB., Apr. 11, 2000, at 1A, available at 2000 WL 16697113.

¹⁶⁵ O’Hara, *supra* note 160, at A7; Judd, *supra* note 160, at D7.

¹⁶⁶ Hargrove v. State, 321 S.E.2d 104, 106 (Ga. 1984).

¹⁶⁷ *Id.*

¹⁶⁸ *Ash*, 718 S.W.2d at 931.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Eckhart, *supra* note 164, at 1A; Mihalopoulos, *supra* note 160, at 1; O’Hara, *supra* note 160, at A7; Judd, *supra* note 160, at D7.

¹⁷² Hargrove v. State, 321 S.E.2d 104, 106 (Ga. 1984).

¹⁷³ *People v. Bergen*, 883 P.2d 532, 535 (Colo. 1994).

¹⁷⁴ Mihalopoulos, *supra* note 160, at 1.

¹⁷⁵ O’Hara, *supra* note 160, at A7; Wunderlich, *supra* note 163, at C17.

¹⁷⁶ Wunderlich, *supra* note 163, at C17; Judd, *supra* note 160, at D7.

¹⁷⁷ Wunderlich, *supra* note 163, at C17; Judd, *supra* note 160, at D7. “Rolling” is also the name used to refer to placing two dogs together to determine if they will fight with each other. See *Ash v. State*, 718 S.W.2d 930, 932 (Ark. 1986).

¹⁷⁸ Judd, *supra* note 160, at D7.

¹⁷⁹ Wunderlich, *supra* note 163, at C17.

resolutely.”¹⁸⁰ Using a rotating pole or a “hang pole,” trainers teach their dogs to bite down on a chain or a leash that is attached either to one end of a pole or to a spring.¹⁸¹ The trainer then hoists the dog into the air where the animal hangs on by its jaws, thereby increasing jaw muscle strength.¹⁸² Strength and endurance training is also accomplished by forcing the dogs to run for hours on treadmills¹⁸³ and to use a device called a “catmill” on which other animals are used as bait.¹⁸⁴ The dogs may also be trained by fighting with other dogs in matches where the animals are muzzled.¹⁸⁵

C. Cockfighting

At its most basic level, cockfighting entails outfitting two gamecocks with sharp metal spurs called “gaffs” that attach over the cocks’ natural spurs for fighting on the backs of their legs¹⁸⁶ and placing the animals in a pit to engage in mortal combat.¹⁸⁷ Because cocks do not always grow spurs that are equal in size and sharpness to those of the opponent, artificial spurs are used to place the cocks on equal footing for the fight.¹⁸⁸ With blades ranging from one and a quarter to three inches in length,¹⁸⁹ gaffs also “kill more quickly” and inflict wounds more cleanly than the bird’s natural spurs.¹⁹⁰ A cockfight can last a matter of seconds or minutes or carry on as long as a half-hour or more.¹⁹¹ As with dogfighting, the cock that lives is usually declared the winner, as long as he does not run away.¹⁹² If a cock leaves the pit, he will likely be deemed the loser.¹⁹³ However, if both cocks are fatally injured or just cease fighting, the match may be a draw.¹⁹⁴

To build muscle and increase stamina for the fighting pit, cocks may be subjected to a variety of training regimens. Some trainers force

¹⁸⁰ Mihalopoulos, *supra* note 160, at 1.

¹⁸¹ *Id.*; Tanya Eiserer, *Four Pit Bulls Confiscated; Owner Cited*, OMAHA WORLD-HERALD, Mar. 16, 2000, at 15, available at 2000 WL 4358368.

¹⁸² See Mihalopoulos, *supra* note 160, at 1; Eiserer, *supra* note 181, at 15.

¹⁸³ Wunderlich, *supra* note 163, at C17; *People v. Bergen*, 883 P.2d 532, 536 (Colo. 1994).

¹⁸⁴ *Hargrove v. State*, 321 S.E.2d 104, 107 (Ga. 1984); *Bergen*, 883 P.2d at 536.

¹⁸⁵ *Bergen*, 883 P.2d at 535-36.

¹⁸⁶ Allen Dundes, *Preface* to THE COCKFIGHT vii (Allen Dundes ed., 1994); Charles H. McCaghy & Arthur G. Neal, *The Fraternity of Cockfighters: Ethical Embellishments of an Illegal Sport*, in THE COCKFIGHT 67 (Allen Dundes ed., 1994); LAWRENCE FITZ-BARNARD, FIGHTING SPORTS 79 (1921).

¹⁸⁷ *Brackett v. State*, 236 S.E.2d 689, 690 (Ga. 1977); Dundes, *supra* note 186, at vii; FITZ-BARNARD, *supra* note 186, at 79. The pit may be any shape as long as it is at least sixteen feet across. Jim Harris, *The Rules of Cockfighting*, in THE COCKFIGHT 12 (Allen Dundes ed., 1994).

¹⁸⁸ FITZ-BARNARD, *supra* note 186, at 79.

¹⁸⁹ McCaghy & Neal, *supra* note 186, at 67.

¹⁹⁰ FITZ-BARNARD, *supra* note 186, at 79.

¹⁹¹ Dundes, *supra* note 186, at vii; McCaghy & Neal, *supra* note 186, at 75.

¹⁹² Harris, *supra* note 187, at 13.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

their cocks to run around a ring for up to twenty minutes at a time.¹⁹⁵ Others might tug on the leash attached to a cock's legs while he sits on his roost so as to make the bird fight and struggle to stay on the perch.¹⁹⁶ This approach is intended to force the cock to flap his wings furiously to stay alight, thereby developing the bird's breast muscles and cardiovascular system.¹⁹⁷

While only three states allow cockfighting, it is estimated that there are approximately seventy thousand gamecock breeders and five hundred thousand "cockers" in the United States.¹⁹⁸ Some states, such as Oregon, have adopted the precarious position of prohibiting cockfighting, but permitting the export of cocks raised in the state for fighting in those states where it is legal.¹⁹⁹ Although such a proposition excises the activity of cockfighting from the state, it still permits the state's residents to support an industry that thrives on animal cruelty by breeding gamecocks for sale. By banning the sport from occurring within state boundaries, and yet permitting state residents to sustain the industry, the state falls short of denouncing cockfighting for the abusive practices it entails and only succeeds in forcing its offensiveness to roost elsewhere. Such a policy relegates cockfighting to another state's backyard for blame, but still allows the breeding state to reap bloodmoney from the industry by supplying the fighting animals.

D. *The Cruel Commonalities of Animal Fighting Sports & Greyhound Racing*

1. *Instinct Exploitation through Psychological Manipulation, Pain, and the Use of Lures*

There is a common thread of exploiting animals' instincts through psychological manipulation, pain, and the use of lures in both the animal fighting and greyhound racing industries. In the bullfighting industry, long before any bull even approaches the fighting arena, both cows and bulls are psychologically manipulated through aggression-provoking and pain-inducing tests to determine the extent of their fighting instinct, which in turn signifies the suitability of the animals for breeding and fighting.²⁰⁰ In the name of breeding potential, a cow will be deliberately incensed into a charge by riders on horseback who wound the animal with a lance and others who wave capes intended to

¹⁹⁵ See Giles Tippet, *The Birds of Death*, in *THE COCKFIGHT* 59 (Allen Dundes ed., 1994).

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ McCaghy & Neal, *supra* note 186, at 68. A "cocker" is an individual who puts a gamecock up to fight. *Id.*

¹⁹⁹ OR. REV. STAT. § 167.355 (2000). Similarly, the Animal Welfare Act prohibits interstate transportation of any animal that is to be used for fighting purposes, but excepts the transportation of birds for fighting purposes if the fight will occur in a state that permits cockfighting. 7 U.S.C. § 2156(a), (b), (d).

²⁰⁰ See KENNEDY, *supra* note 147, at 50.

launch the cow into a fit of aggression.²⁰¹ Two-year-old bulls who may be used as studs or in the fighting arena are also subjected to the lance-wounding test to determine their "keenness to attack before and after being injured."²⁰²

At the bullfight exhibition itself, the bull's instincts are again exploited by psychologically manipulating the animal into a rage through the use of a flapping cape lure.²⁰³ As the Florida Supreme Court aptly observed:

The statement "The waving of a cape does not anger or infuriate the bull, but simply is used as a method of drawing his attention" is contrary to common sense and common experience. . . . It is a matter of common knowledge that these bulls are bred to develop a pugnacious and vicious disposition. The acts of the performers in the bullring are designed to arouse and incite the bull's inherent fighting spirit. He is pestered and tormented into a fury. He paws the earth and bellows with rage, provoking the hoots and contemptuous laughter of the spectators. . . . The performers badger and tantalize him without end, until the poor brute is lashed into agonizing frenzy. . . . If the bull fails to show rage and violent anger the show is a "flop".²⁰⁴

The performer repeatedly captures the bull's attention by waving a cape only to jump out of the charging animal's path and begin again waving a cape to incite yet another charge,²⁰⁵ thereby intensifying the heated animal's frustration. To make matters worse, the bull is stabbed three times with a lance and six times with darts to stir up further agitation.²⁰⁶ During the second phase of the fight, blindfolded horses ridden by lance-carrying picadors are essentially used to bait the bull's charge.²⁰⁷ If the picador fails to maneuver the horse out of the bull's path, the horse absorbs the blow.²⁰⁸ Though horses today are equipped with heavy padding to prevent the disembowelment that would otherwise result, the horses still endure "great stress and possibly broken bones."²⁰⁹

In a similar manner, training for fighting pit bulls is accomplished by appealing to and sometimes frustrating the animal's attack instincts through the use of live animal lures. Just as bulls are antagonized into charging, these dogs are baited to run faster and longer on treadmills for endurance conditioning by dangling live animal bait in front of them.²¹⁰ As with bullfighting, a pit bull's ire is roused, only to

²⁰¹ *Id.*

²⁰² *Id.* at 50-51.

²⁰³ *C.E. Am., Inc. v. Antinori*, 210 So. 2d 443, 444 (Fla. 1968); *KENNEDY, supra* note 147, at 114.

²⁰⁴ *C.E. Am.*, 210 So. 2d at 445.

²⁰⁵ *FRASCH ET AL.*, *supra* note 2, at 651.

²⁰⁶ *See supra* text accompanying notes 151-156.

²⁰⁷ *See KENNEDY, supra* note 147, at 115-16.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ In one case, other pit bulls were being held in front of a running dog to encourage him to run faster. *People v. Bergen*, 883 P.2d 532, 536 (Colo. 1994). The use of another

be frustrated when the animal is unable to satisfy its purposely provoked urge to tear apart the bait. However, in training targeted to capitalize on the dogs' attack instincts, pit bulls are encouraged to indulge their taste for the kill by practicing their fighting skills on live animals.²¹¹ It is suspected that smaller breeds of dogs such as Poodles and Shih Tzus²¹² and other stolen pets and strays, like rabbits and cats, have been fed to pit bulls as "training fodder"²¹³ so that the dogs "would learn to lust after blood."²¹⁴

Cockfighting depends upon exploiting the gamecock's instinct to guard its territory from an invading bird.²¹⁵ The entire match relies on eliciting an attack response by deliberately crowding the birds together. In this way, each cock serves as a sort of live lure to its opponent, inspiring the other's fury and pushing the bird to become an aggressor. Indeed, to incite gamecocks to begin the fight, the birds are "billed" immediately before the match starts, a practice that involves "thrust[ing] the birds together to anger them" and permitting the cocks to peck and tug at each other while being held in the arms of their handlers.²¹⁶ Because gamecocks are believed to fight their best during the breeding season, "most cockfighters capitalize on this by depriving the cocks access to the hens while they are in training."²¹⁷ In this way, the cockfighters deprive the birds of acting on natural mating instincts solely to frustrate them and mount their aggression.

Finally, like fighting animals, greyhounds too are lured to perform by exploiting their base instincts through psychological manipulation and the use of live bait. As with pit bull endurance training, young greyhounds learning to race are often enticed to run through the pursuit of a live animal.²¹⁸ The prospect of capturing and ripping apart the live lure appeals to the greyhounds' prey instincts.²¹⁹ Similar to the training exercises for dogfights, it is well known that trainers often reward greyhounds for their efforts by permitting the dogs to catch the prey.²²⁰ Thus, animals are cruelly mangled alive for greyhound training. When they are fitted with muzzles that restrict their ability to

pit bull as a lure is a logical choice, considering that the ultimate goal is for these dogs to destroy one another. However, owners of fighting dogs "have also been known to obtain domestic animals for baiting through 'free pet' advertisements." O'Hara, *supra* note 160, at A7.

²¹¹ See Wunderlich, *supra* note 163, at C17.

²¹² Eckhart, *supra* note 164, at 1A.

²¹³ O'Hara, *supra* note 160, at A7; Wunderlich, *supra* note 162, at C17.

²¹⁴ Eckhart, *supra* note 164, at 1A.

²¹⁵ See McCaghy & Neal, *supra* note 186, at 67.

²¹⁶ Nathanael West, *California Cockfight*, in *THE COCKFIGHT*, 42 (Allen Dundes ed., 1994); Harris, *supra* note 187, at 12.

²¹⁷ Tippet, *supra* note 195, at 62.

²¹⁸ See *discussion supra* Section II. B. (discussing the use of live animals as lures to train greyhounds to race).

²¹⁹ See *supra* text accompanying notes 84-85.

²²⁰ See *supra* text accompanying notes 32, 35-36, 211-214.

tear at the animal lure,²²¹ greyhounds are being weaned from the need for live bait to produce a chasing behavior. Once the taste for the hunt is entrenched in the greyhounds, live lures are no longer used; muzzles remain on; and the dogs are not permitted to catch the objects they chase. Now, the exploitation of the prey instinct will only result in frustration, as the greyhounds will no longer capture the rewards they have come to expect.

2. *Romanticizing the Cruelty and Treating the Animals as Trophies*

Animal fighting sports and greyhound racing are often romanticized in a way that disregards the cruelty inflicted upon the animals by casting them as willing participants in a form of entertainment that merely engages their instinctual behaviors. The falsity of such a claim, however, is made patent by the need for psychological manipulation and lures to train or entice the animals to exhibit specific responses virtually on command.²²² Industry supporters, in both animal fighting and greyhound racing, justify their abusive practices by glorifying the activity and the animals' alleged willing participation.

"Even where the bullfight is labeled a 'tragedy,' the description of the process and the 'sport' more often than not glamorizes the (virtually) certain painful death of the bull."²²³ To that end, bulls thrust into a fight have often been described as "brave," "wise," or "cowardly,"²²⁴ as if projecting human qualities that signify honor (or a lack thereof) onto the animal makes the bull a willing participant in the spectacle by giving him a personal stake in his performance. This practice of identifying human values and attributing them to the bull as reasons for his behavior seems to be aimed at justifying the torment and killing that occurs during the bullfight. Presumably, it is easier to accept the cruelty of the performance if one believes that the bull views the battle as a challenge to his honor, just as the matador does. The brave and wise bulls are to be revered for their valiant and cunning performance, while the cowardly are to be shamelessly slain for the despicable qualities they represent. At the conclusion of a bullfight, "if the bull has done well it will be dragged once round the ring, limp head jolting, and applauded with genuine warmth."²²⁵ Thus, the personification of the bull and this caricature-like outpouring of respect likely make the barbarity witnessed more palatable to spectators.

In contrast to such a glorified account of a bullfight, in point of fact, the bull's "instinctive predisposition" to charge at objects that it finds threatening actually reveals that "the bull which charges hardest

²²¹ See *supra* text accompanying note 36.

²²² See *discussion supra* Section III. D. 1. (discussing the use of psychological manipulation, pain, and live bait in animal fighting sports and greyhound racing to elicit fighting and racing behaviors).

²²³ FRASCH ET AL., *supra* note 2, at 653.

²²⁴ KENNEDY, *supra* note 147, at 22.

²²⁵ *Id.* at 123.

and looks the bravest may actually be the most stressed and fearful."²²⁶ Participatory imagery is also evident in the way bulls are "portrayed as lowering their heads in supplication to the matador before the kill, and all but [politely] asking . . . for their own deaths."²²⁷ The unromanticized truth, however, lies in the reality that most bulls are so overcome with exhaustion, pain, and the loss of blood from stab wounds by the end of the fight, that these massive animals can no longer support their own weight or heads, and begin to sink toward the ground.²²⁸

In much the same way that embellishment of a bull's allegedly courageous spirit is used to dignify the gory slaying of the animal, dogfighting and cockfighting enthusiasts also tout the bravery of the animals they offer up to be killed in a fight. Fighting dogs have been exalted for being "braver than any living thing, . . . wiser than any man, and more faithful than a woman."²²⁹ Similarly, some have defended cockfighting by arguing that "the gamecock is a model to emulate. The bird is seen as emblematic of courage, commitment, and a variety of other virtues which manifest themselves in the pit."²³⁰ Through such glorification, the dog and the cock are painted not only as animals fighting of their own volition, but each animal is transformed into a sort of role model by virtue of his fighting exploits. As one cocker pondered, "Maybe we love a gamecock for the reason he has so many qualities we lack. Grit is fortitude, valor A real gamecock is loyal to his family and himself—and he has the grit to back that loyalty."²³¹

One defender of dogfighting and cockfighting asserted that "equally matched" dogs or cocks "voluntarily contending together" present a fine example of courage.²³² Such a statement evinces a second line of argument employed by supporters of dogfighting and cockfighting. Often, they will attempt to ennoble these sports by depicting them as a matter of choice by the animals forced into the fighting pit. An incarcerated dogfighting breeder expressed the belief that dogfighting is not cruel, because like two men placed in a boxing ring, "[t]hey have

²²⁶ *Id.* at 43.

²²⁷ *Id.* at 22.

²²⁸ See *supra* text accompanying notes 153-155, 159.

²²⁹ FITZ-BARNARD, *supra* note 186, at 155.

²³⁰ McCaghy & Neal, *supra* note 186, at 75.

²³¹ *Id.*

²³² FITZ-BARNARD, *supra* note 186, at 133. At the same time that the author made this claim, he declared bullfighting to be cruel, because it gives the bull "no option of retreat." *Id.* The irony of such a statement, of course, is the fact that dogs are incited to attack animals on sight through conditioning, in the same way that bulls are provoked through the use of cape lures. Similarly, cocks are compelled by instinct into a fight response only because handlers deliberately provoke them by shoving the gamecocks into each other. Thus, there is no plausible way to differentiate the sort of luring and baiting that occurs in one animal fighting sport from the other. See *discussion supra* Section III. D. 1. (discussing the use of psychological manipulation, pain, and live bait in animal fighting sports and greyhound racing to elicit fighting and racing behaviors).

a choice to fight—like a man has a choice to fight.”²³³ However, this reasoning is flawed because it ignores the human manipulation factor and fails to consider what the animals’ behavior would be were it not for human interference in animal interactions. Dogs that fight when placed in a pit have been conditioned to do so through the use of live animal bait and practice matches.²³⁴ Our daily experiences tell us that the average pit bull living as a pet does not attack every animal in sight. Unless they perceive a threat, dogs typically do not resort to fighting with every animal that crosses their path. The fighting response, if left untampered with, would likely only surface as a defensive reaction under appropriate circumstances, rather than an offensive attack. Similarly, if the bodies of gamecocks were not physically forced together, these birds probably would not be stimulated to begin a fight. The fight reaction is voluntary only in the sense that it is an instinctual, defensive response to the artificial crowding that a cock is subjected to in the context of a cockfight.²³⁵ However, humans manufacture the circumstances eliciting the response. As the Massachusetts Supreme Judicial Court once observed, it is the humans “who stimulate the fighting propensities of these animals, and who furnish them with instruments of destruction, or for the purpose of inflicting pain or causing bloodshed, which are not furnished by nature”²³⁶

Similarly flawed reasoning is identifiable in claims that greyhounds have a choice to race and do so because it is innate to their constitution. Again, this notion that greyhounds run in races because they yearn to do so completely disregards the role of live bait and mechanical lures in inducing the dogs to race—or more appropriately, to give chase.²³⁷ Like forced animal fights, staged greyhound racing cannot be characterized as a behavior in which greyhounds engage without provocation. The observation of greyhound adoption groups that on a daily basis these dogs are in fact “45 mph couch potatoes”²³⁸ further supports this argument. The reality is that these dogs do not initiate racing on their own, and any prey-chasing response exhibited outside of the racetrack is most likely a result of the repeated bait-training the dogs are exposed to in their first year and a half of life.²³⁹ The racing industry attempts to portray romantically the business of greyhound racing as a fortunate coincidence with the existence of a breed of dogs that just loves to run. This false characterization is yet another example of how the industry veils the cruelty perpetrated

²³³ Judd, *supra* note 160, at D7.

²³⁴ See *supra* text accompanying notes 185, 211-214.

²³⁵ See *supra* text accompanying notes 215-216.

²³⁶ Coolidge v. Choate, 52 Mass. 79, 83 (1846), available at 1846 WL 3963.

²³⁷ See *discussion supra* Section II. B. (discussing the use of live animals as lures to train greyhounds to race).

²³⁸ Lisa Losardo, *Grateful Greyhounds*, at <http://www.ehsis.net/gratefulgreyhounds/faq.htm> (last visited Apr. 23, 2000).

²³⁹ See *discussion supra* Section II. B. (discussing the use of live animals as lures to train greyhounds to race).

through overbreeding and gratuitous killing for the sake of entertainment. The tremendous overabundance of greyhounds and the associated destruction of these animals would not exist but for the industry's profit-motivated interest in having access to a constant supply of young, fresh racers.

Finally, in each of the animal fighting sports and greyhound racing, the animals are often treated in a manner that casts them as trophies. For instance, at the end of a bullfight, the matador may dedicate the slaying of a particularly challenging bull to the audience in a toast.²⁴⁰ In return for a strong performance, the audience may grant the matador one or both of the bull's ears or even his tail, tokens that are then used to rank matadors after each season.²⁴¹ In like fashion, the tooth of a successful fighting dog may be saved as souvenir.²⁴² At a slightly more sophisticated level, triumphant gamecocks have been memorialized in paintings,²⁴³ and greyhounds have been inducted into the NGA's Hall of Fame.²⁴⁴ Although intended to glorify animal fighting and greyhound racing, taking pieces of a slain animal's body to symbolize achievement or creating memorials to mark victory in sports where animals are killed is made all the more perverse by the fact that those responsible for the carnage claim honor in the trophy.

3. *The Premature Deaths and Wanton Killing of Animals for Entertainment*

Another commonality between the animal fighting sports and greyhound racing is the young age at which the animals are exploited and killed in the name of entertainment. Many bulls and cows are culled from the herds at approximately two years of age if they fail to exhibit a sufficient propensity for aggression suitable to fighting or breeding.²⁴⁵ For those bulls who do pass these tests, early life begins in a pasture with other bulls bred for fighting, where they "become accustomed to the adult length of their horns and learn to butt, toss and hook with them in tussles with each other."²⁴⁶ Entry into the fighting ring and subsequent death comes between ages three and six years, although most performers prefer not to contend with a bull who has as much as six years of experience in using his horns.²⁴⁷ Thus, in

²⁴⁰ KENNEDY, *supra* note 147, at 107.

²⁴¹ *Id.* at 107-08.

²⁴² See FITZ-BARNARD, *supra* note 186, at 150.

²⁴³ *Id.* at 107.

²⁴⁴ National Greyhound Association, *National Greyhound Association*, at <http://nga.jc.net/hoftop.htm> (last visited Nov. 5, 2000).

²⁴⁵ KENNEDY, *supra* note 147, at 50.

²⁴⁶ *Id.* at 49.

²⁴⁷ *Id.* In other words, it is desirable for the bull to develop enough to make a worthy adversary for the matador, but the odds should not be so evened that the bull might be able to gore men armed with swords, lances, and darts.

their youth, "more than 17,000 bulls are tortured to death in Spanish bull rings" annually.²⁴⁸

Gamecocks and pit bulls are killed at even younger ages and by the thousands as well.²⁴⁹ Often a gamecock less than a year old²⁵⁰ will be "armed with deadly weapons, and his first fight is generally his last."²⁵¹ Similarly, pit bulls still in their puppy years are thrown into fighting pits to battle until death.²⁵² Like the slow-running greyhounds, young but seriously wounded pit bulls who have lost a fight are often shot by their owners; beaten to death with a two-by-four;²⁵³ or simply left in an alley to die.²⁵⁴ On one occasion, police located a severely injured pit bull that was bleeding from multiple puncture wounds in a closet, essentially left to die under a pile of clothing.²⁵⁵ According to animal service workers and police, "[i]llegal dogfights have resulted in thousands of mangled stray pit bulls, which are typically abandoned by owners when their fighting days are finished"²⁵⁶ In fact, in Los Angeles, California alone, "[i]nvestigators estimate that nearly 17,000 pit bulls and pit bull mixes are wandering the county's streets as a result of the illegal sport."²⁵⁷

²⁴⁸ PREECE & CHAMBERLAIN, *supra* note 38, at 166. The most likely reason that clandestine bullfights are unheard of in the United States, while dogfighting and cockfighting, which are also unlawful, do take place, is that the latter sports only require a small fighting pit and relatively small animal participants, allowing impromptu fights to crop up rather discretely. A bullfight, on the other hand, would be considerably more noticeable given the size of the animal and ring needed for the fight. Bullfights, therefore, are not as easily conducted in secrecy.

²⁴⁹ Exact numbers of gamecocks and dogs killed in fighting sports each year are not available. However, considering that ten thousand people in the United States are involved in dogfighting and five hundred thousand people sponsor gamecocks, the numbers of these animals killed annually in fighting sports are likely extraordinary. See *supra* text accompanying notes 162, 198.

²⁵⁰ Cocks under a year old are called "stags." McCaghy & Neal, *supra* note 186, at 79 n.4.

²⁵¹ FITZ-BARNARD, *supra* note 186, at 104.

²⁵² See Mihalopoulos, *supra* note 160, at 1. Interestingly, unlike greyhound racing, research has not revealed reports of a prevalent practice of culling litters in the dogfighting industry. This may be due to the secrecy in which the illegal activity is shrouded. Alternatively, the economics of dogfighting may make it worthwhile to keep any live dog around. After all, training expenses are minimal, requiring only heavy chains, a treadmill, and crude jaw strengthening devices that may be used with every dog, as well as free or stolen animals for prey. See *supra* text accompanying notes 179-185, 210-214. Similarly, maintenance costs are made very inexpensive by simply denying the animals any veterinary care and adequate food. See *infra* text accompanying notes 287-290. Thus, it does the owner no harm to keep around any dog that can put up half a fight. From an owner's perspective, in the worst case, a dog may be used as bait to train the others. See *supra* text accompanying notes 210-214.

²⁵³ O'Hara, *supra* note 160, at A7; Wunderlich, *supra* note 163, at C17.

²⁵⁴ Wunderlich, *supra* note 163, at C17.

²⁵⁵ See Mark Shuman, *Man Charged with Battery in Wake of Alleged Dogfight*, CHI. TRIB., Apr. 4, 2000, at 2, available at 2000 WL 3652691.

²⁵⁶ Associated Press, *Wounded Pit Bulls Loose, Roaming L.A. After Illegal Fights*, SAN DIEGO UNION-TRIB., Aug. 29, 1999, at A6, available at 1999 WL 4085441.

²⁵⁷ *Id.*

Still, the practices of greyhound racing challenge each of these sports for the title of worst offender both in terms of the sheer number and the youth of greyhounds that are killed each year.²⁵⁸ As discussed at length in Section II above, premature killing is a standard practice in the industry beginning with the culling of the litter and continuing through training and retirement.²⁵⁹ Greyhounds are typically put to death any time during the first few moments of life to years of puppyhood, with the vast majority of greyhounds never reaching age five.²⁶⁰ Like the fighting animals, greyhounds also die in cruel ways. Methods of death include gunshot, beating, and scientific experimentation.²⁶¹ While at first blush some might argue that the violent deaths that occur in animal fighting sports go beyond the pale of the practices that occur in greyhound racing, the truth is that greyhound racing kills dogs that have far less significant injuries than those suffered by fighting animals. In fact, most greyhounds are killed irrespective of injury.²⁶² In terms of moral calculus, one could argue that while both scenarios are despicable, killing perfectly healthy, nonviolent greyhounds simply because they run a little too slow is far more reprehensible than leaving a mortally wounded, fighting pit bull to die. Yet, dogfighting is illegal in every state, while greyhound racing legally continues.²⁶³ This is the case in Massachusetts, despite the fact that serious injury and abuse result from both forms of animal exploitation. In fact, deaths resulting from greyhound racing are overwhelmingly brought about by far less serious injuries, or even none at all, when compared to the severity of wounds suffered by fighting animals.

The gratuitous killing of retired racing greyhounds, and their counterparts who never even see a track, that results from the practices of the greyhound racing industry is, in essence, no different than the wanton deaths caused by bullfighting, dogfighting, and cockfighting. The only identifiable variation between the industries is that greyhounds are killed after their final match, out of public view, while bulls, dogs, and cocks are slaughtered in plain sight. The cruelty of a practice, however, is not lessened simply because spectators cannot see it. The underlying principle remains the same in each of these so-

²⁵⁸ See *discussion supra* accompanying notes 9-15 (discussing how greyhound litters are culled) & Section II. E. (discussing widespread euthanization of greyhounds considered unfit to race). At just one animal shelter in Massachusetts, ninety-three percent of the greyhounds euthanized were age four or younger. See Tye, *supra* note 16, at 1.

²⁵⁹ See *discussion supra* accompanying notes 9-15 (discussing how greyhound litters are culled) & Section II. E. (discussing widespread euthanization of greyhounds considered unfit to race).

²⁶⁰ See *discussion supra* accompanying notes 9-15 (discussing how greyhound litters are culled) & Section II. E. (discussing widespread euthanization of greyhounds considered unfit to race).

²⁶¹ See *supra* text accompanying notes 11, 107-110.

²⁶² See *discussion supra* accompanying notes 9-15 (discussing how greyhound litters are culled) & Section II. E. (discussing widespread euthanization of greyhounds considered unfit to race).

²⁶³ See *supra* text accompanying notes 1-2, 143.

called sports—all of these animals, including greyhounds, ultimately will be killed for the sake of entertainment. While the killing of bulls, fighting dogs, and gamecocks is the source of entertainment, the killing of greyhounds is the engine of entertainment, as slower greyhounds are executed so that new dogs may be imported to perpetuate the racing cycle.

4. *Sport-Inflicted Injuries & Denial of Proper Veterinary Care*

Breeders, owners, and handlers seeking to make their animals' bodies battle-ready often inflict injury upon the fighting animals before they even enter the main contest. For instance, it is customary for bull breeders to shave their bulls' horns so as to make the bulls more attractive to a matador for purchase.²⁶⁴ A bull fighting with shorter horns than he is accustomed to will prove less challenging for the matador, thereby increasing the matador's odds of winning.²⁶⁵ In the fighting ring, "[i]nches or fractions of inches taken out of the diameter of a [bull's] hooking move might mean the difference between life and death."²⁶⁶ Because the practice constitutes a fraud under the rules of bullfighting,²⁶⁷ the procedure is done in a crude manner without the assistance of a veterinarian or anesthetics.²⁶⁸ The bull is restrained, causing stress to the animal, and given a largely ineffective sedative just before a saw is used to cut one or two inches off the ends of the bull's horns.²⁶⁹ The horns are then "filed, sanded, polished and dyed to resemble an unadulterated horn."²⁷⁰ If breeders cut the horn too deeply, it can cause the bull continuous pain, and fluid or blood may ooze from the site of the injury.²⁷¹ In addition, the ends of the shaven horn may "splinter and split" upon impact against the wooden arena during a fight.²⁷² Horn-shaving also impairs the bull's fighting abilities by "throw[ing] the animal off when it . . . use[s] horns which are now a length it is unused to."²⁷³

Pit bull breeders also mutilate their dogs to participate effectively in their sport. To reduce the noise generated by dogs engaged in combat and minimize the chance of law enforcement officers discovering a dogfight, some owners have their fighting dogs' vocal cords cut out.²⁷⁴ Similarly, to prepare a gamecock for fighting and minimize the possi-

²⁶⁴ KENNEDY, *supra* note 147, at 98-99.

²⁶⁵ *See id.*

²⁶⁶ *Id.* at 99.

²⁶⁷ *Id.* at 98. Allegedly, all participants in bullfighting are "intended to be held by rules which attempt to make the bull's death more than slaughter, something beyond ten or fifteen minutes of torment and clumsy flight." *Id.* at 11.

²⁶⁸ *Id.* at 98-99.

²⁶⁹ *Id.* at 98.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ Glenn Sheller, *Mutilation, Torture of Animals Goes by Other Names*, COLUMBUS DISPATCH, Apr. 6, 2000, at 11A, available at 2000 WL 18888247.

bility of injury, some cockfighters will simply cut off parts of the bird's body so as to make him "less of a target for the opponent."²⁷⁵ Using scissors to "dub" the bird,²⁷⁶ some owners cut off a gamecock's wattles²⁷⁷ and comb,²⁷⁸ without the use of anesthetics, which may cause the animal to bleed.²⁷⁹

While greyhounds may not experience the pre-match bodily mutilation known to fighting animals, they are vulnerable to the very same racing injuries during training, including leg and toe breaks, strains, and sprains, that they may experience on race day.²⁸⁰ In this way, the nature of greyhound injury holds constant, but it is ever-present.

As with racing greyhounds, animals engaged in bullfighting, dogfighting, and cockfighting also suffer severe, if not fatal, injuries during the actual sporting event. Tricked by performers waving capes in front of solid arena walls, bulls may suffer concussions and break their horns by ramming into hard structures, only to strike repeatedly the same injured area with each charge, thereby increasing the bleeding and pain.²⁸¹ As a matter of ritual, the bull will also suffer several stab wounds throughout the fight.²⁸² Similarly, dogs engaged in a fight endure broken bones and deep, bloody bite wounds to their muzzles, ears, and necks.²⁸³ For the gamecock, the extent of fighting injuries suffered runs the gamut from having a gaff stuck into an eye, a beak cut off, a wing broken, or a leg severed.²⁸⁴ Virtually any maiming that one could imagine might be inflicted by a pair of blades is possible in the cockfight. In addition, cocks may become ill during a fight after pecking at an opponent covered with poisonous substances that were spread on the cock's feathers by his handler.²⁸⁵

Because of the mortal nature of many of the injuries described, animals forced into fighting often do not live beyond the match in the same way that a greyhound too hurt to run may be killed following his last race.²⁸⁶ When the animals do survive the fight, however, their injuries typically go untreated just as greyhounds' broken legs and toes go unattended.²⁸⁷ According to the Humane Society of the United

²⁷⁵ Harris, *supra* note 187, at 12; FITZ-BARNARD, *supra* note 186, at 50.

²⁷⁶ Harris, *supra* note 187, at 12.

²⁷⁷ The wattles are the two tear-drop-shaped, fleshy appendages that hang on both sides of the cock's beak. See Webster's New Collegiate Dictionary 213, 1315 (1979).

²⁷⁸ The comb of a cock is the "fleshy crest on the head" of the bird, located just above the beak and between the eyes. *Id.* at 213, 221.

²⁷⁹ FITZ-BARNARD, *supra* note 186, at 50.

²⁸⁰ See *supra* text accompanying notes 74-77.

²⁸¹ See KENNEDY, *supra* note 147, at 164; State *ex rel.* Crow v. Canty, 105 S.W. 1078, 1081 (Mo. 1907).

²⁸² See *supra* text accompanying notes 151-156.

²⁸³ O'Hara, *supra* note 160, at A7; Eckhart, *supra* note 164, at 1A.

²⁸⁴ See West, *supra* note 216, at 43-44.

²⁸⁵ See Tippet, *supra* note 195, at 62.

²⁸⁶ See *supra* text accompanying notes 74-77, 105, 158, 169, 251-255.

²⁸⁷ Tippet, *supra* note 195, at 65 (describing a cockfighter's plan to allow his cock's broken leg to "mend itself" and to leave the cock's injured eye untreated); see also *supra* text accompanying notes 81-85.

States, “[fighting] dogs often die from dehydration, blood loss, infection, exhaustion or shock as a result of a fight,”²⁸⁸ as they endure untreated broken bones, multiple puncture wounds, and deep lacerations.²⁸⁹ In addition to the fighting-related injuries, pit bulls, like greyhounds, are often infested with fleas and ticks and are sometimes as much as twenty percent underweight.²⁹⁰

IV. THE STATUTORY AND COMMON LAW BASES FOR ABOLISHING GREYHOUND RACING IN MASSACHUSETTS

Many of the abuses in the greyhound racing industry that were discussed at length in Section II²⁹¹ easily constitute cruelty to animals in violation of various Massachusetts animal protection laws. For instance, the basic Massachusetts anti-cruelty statute explicitly outlaws the use of live lures in greyhound training and racing.²⁹² In addition, killing a licensed racing greyhound in an inhumane manner, such as by gunshot²⁹³ or beating its head in,²⁹⁴ is also illegal, as Massachusetts law requires that these animals be put to death only by “euthanasia by lethal injection, or by such other standard of humane killing as may be established by the American Veterinary Association.”²⁹⁵ Likewise, general physical abusiveness²⁹⁶ and neglect in the daily care or veterinary needs²⁹⁷ of these dogs also violate Massachusetts law.²⁹⁸

²⁸⁸ O'Hara, *supra* note 160, at A7.

²⁸⁹ *See id.*

²⁹⁰ Eckhart, *supra* note 164, at 1A; *see supra* text accompanying notes 92-93.

²⁹¹ *See discussion supra* Sections II. A.-E. (discussing various forms of abuse in the greyhound racing industry).

²⁹² MASS. GEN. LAWS ch. 272, § 77 (2000). The statute provides in pertinent part, [W]hoever uses in a cruel or inhuman manner in a race, game, or contest, or in training therefor, as lure or bait a live animal, except an animal if used as lure or bait in fishing . . . shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

Id.

²⁹³ *See supra* text accompanying notes 109-110.

²⁹⁴ *See supra* text accompanying note 11.

²⁹⁵ MASS. GEN. LAWS ch. 128C, § 7 (2000).

²⁹⁶ *See supra* text accompanying note 95.

²⁹⁷ *See generally supra* text accompanying notes 78-94 (discussing the lack of proper care that greyhounds experience).

²⁹⁸ MASS. GEN. LAWS ch. 272, § 77 (2000). The statute provides in pertinent part, Whoever . . . tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or kills an animal, or causes or procures an animal to be tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated or killed; . . . and whoever, having the charge or custody of an animal, either as owner or otherwise, inflicts unnecessary cruelty upon it, or unnecessarily fails to provide it with proper food, drink, shelter, sanitary environment, or protection from the weather, and whoever, as owner, possessor, or person having the charge or custody of an animal, cruelly drives or works it when unfit for labor, or willfully abandons it, . . . or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering or cruelty of any kind shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

At this point, because the unlawfulness of these practices under Massachusetts statutes is manifest, this article will not persist in examining the extent of their illegality. Rather, the unlawfulness of deliberately overbreeding and acquiring greyhounds with no intention of providing for their post-racing care, and then killing them to avoid having to provide care, will be examined in light of the statutory offense of unnecessarily failing to provide care for the animals in one's charge. This industry practice will be scrutinized through the Massachusetts Supreme Judicial Court's interpretations of the main anti-cruelty statute, which makes the unnecessary failure to provide care for one's animal an offense.²⁹⁹ This section will focus specifically on this form of animal cruelty in greyhound racing for several reasons. To begin, an allegation of animal cruelty on this ground appears to be a highly contestable proposition for some, because the legal contours of and support for the argument have not been explored in detail up to the present time. Secondly, unlike some of the other forms of abuse in greyhound racing that industry officials protest as nonexistent, it is widely known that nearly every racing greyhound will be subject to this final phase of animal cruelty in the vicious racing cycle.³⁰⁰ Premature greyhound death has proven to be virtually inescapable, with the exception of those comparatively few dogs that are fortunate enough to be adopted.³⁰¹ Finally, because of its universality, the failure to provide care for and the concomitant killing of retired greyhounds is a form of cruelty that claims most greyhounds' lives, arguably making the greatest impact of all the abuses perpetrated by the greyhound industry.

In addition, this section will explore the distinct common law basis for outlawing greyhound racing that exists apart from the statutory context. The Massachusetts Supreme Judicial Court has recognized common law authority to declare unlawful as against "the law of humanity"³⁰² those sports in which animals are killed, such as cockfighting and bullfighting, for the sake of entertainment. Given this judicial acknowledgment and the fact that greyhounds too are killed to perpetuate recreation, there appears to be a clearly rooted common law basis in Massachusetts for abolishing greyhound racing.

A. *Greyhounds as Animals within the Scope of the Massachusetts Anti-Cruelty Laws*

It is important to establish at the outset that greyhounds fall within the scope of protection intended for animals under Massachu-

Id.

²⁹⁹ *Id.*; see *supra* note 298 for the relevant text of this statute.

³⁰⁰ See *discussion supra* Section II. E.

³⁰¹ See *supra* text accompanying notes 124-126.

³⁰² *Commonwealth v. Tilton*, 49 Mass. 232, 234 (1844), available at 1844 WL 4263.

setts anti-cruelty laws.³⁰³ In discussing the meaning of the word “animal” within a Massachusetts anti-cruelty statute, the court in *Commonwealth v. Turner* noted, “There is nothing in the general purpose and intent of the statute that would prevent it from including all animals, within the common meaning of [the word ‘animal’] The word ‘animal’, in its common acceptance, includes all irrational beings.”³⁰⁴ Similarly, Massachusetts courts have accepted the characterization in secondary sources of Massachusetts anti-cruelty statutes as “protect[ing] all animals . . . including all living creatures except man.”³⁰⁵ In addition, the sheer range of living creatures from wild foxes³⁰⁶ to goldfish³⁰⁷ that Massachusetts courts have concluded fall within the definition of “animal” supports the assertion that Massachusetts anti-cruelty laws protect greyhounds. Moreover, the Massachusetts legislature has made no exceptions to any of these statutes for the purpose of excluding greyhounds, racing animals, or the activity of greyhound racing generally from the anti-cruelty laws. The failure to exclude greyhounds from state animal protection laws is made even more significant by the fact that in the past, the legislature has explicitly exempted greyhound racetracks, racing meetings,³⁰⁸ and the racing greyhounds themselves from statutory requirements when necessary. For example, the legislature excluded racing entities and greyhounds from the reach of statutes governing kennel licenses and kennel inspections in the counties, cities, and towns.³⁰⁹ Therefore, it is apparent that had the legislature intended to exclude racing grey-

³⁰³ The basic anti-cruelty statute in Massachusetts is entitled “Cruelty to Animals” and is located at MASS. GEN. LAWS ch. 272, § 77 (2000). However, there are several other statutes within the Massachusetts General Laws that also address animal protection in more specific contexts. This body of laws, with the common purpose of preventing cruelty to animals, will be referred to collectively as the “Massachusetts anti-cruelty laws,” while individual statutes will be identified where appropriate.

³⁰⁴ 14 N.E. 130, 132 (Mass. 1887) (concluding that a wild fox is an animal within the meaning of a Massachusetts anti-cruelty statute). In 1887 when *Turner* was decided, the citation for the anti-cruelty statute to which the court referred was Pub. St. c. 207, § 53. However, today, the language of that statute is incorporated in the basic anti-cruelty statute entitled “Cruelty to Animals” and located at MASS. GEN. LAWS ch. 272, § 77 (2000).

³⁰⁵ *Knox v. Mass. Soc’y for the Prevention of Cruelty to Animals*, 425 N.E.2d 393, 396 n.3 (Mass. App. Ct. 1981).

³⁰⁶ *Turner*, 14 N.E. at 131-32 (concluding that a wild fox is an animal within the meaning of a Massachusetts anti-cruelty statute).

³⁰⁷ *Knox*, 425 N.E.2d at 396 (concluding that a goldfish is an animal within the meaning of a Massachusetts anti-cruelty statute).

³⁰⁸ A racing meeting is defined as “every meeting within the commonwealth where . . . dogs are raced and where any form of betting or wagering on the speed or ability of . . . dogs shall be permitted, but shall not include any meeting where no such betting or wagering is permitted even though . . . dogs or their owners are awarded certificates, ribbons, premiums, purses, prizes or a portion of gate receipts for speed or ability shown.” MASS. GEN. LAWS ch. 128A, § 1 (2000).

³⁰⁹ *Id.* § 13A. The statutes governing kennel licenses and kennel inspections are MASS. GEN. LAWS ch. 140, §§ 137A & 137C (2000) respectively.

hounds or the activity of greyhound racing from the protections of Massachusetts anti-cruelty statutes, it surely would have done so.

B. The Principles Behind Massachusetts Statutes Protecting Animals from Neglect

Through its anti-cruelty statutes, the Commonwealth of Massachusetts has expressed an interest in ensuring that animals receive adequate provision of care. This sentiment is expressed in at least two Massachusetts anti-cruelty laws. The state's basic anti-cruelty statute forbids any individual who has "the charge or custody of an animal" from "unnecessarily fail[ing] to provide it with proper food, drink, shelter, sanitary environment, or protection from the weather."³¹⁰ In addition, the state's inclination toward ensuring adequate provision of care is supported by another humane statute which forbids the "offer[ing] or giv[ing] away of any live animal as a prize or an award in a game, contest or tournament involving skill or chance."³¹¹ As the court in *Knox v. Massachusetts Society for the Prevention of Cruelty to Animals* acknowledged, the aim of this statute is "to protect animals subject to possible neglect by prizewinners."³¹² In other words, Massachusetts wants to prevent individuals who have not thought through the decision to own or the commitment to care for an animal from acquiring an animal through passive means. This is further demonstrated by the fact that the statute forbidding the awarding of an animal as a prize makes an exception for "awards made to persons participating in programs relating to animal husbandry."³¹³ Quite apparently, the rationale behind this exception is that such individuals have demonstrated a desire to possess and care for animals, making it far less likely that an animal will suffer neglect in their hands.

Collectively, these humane statutes illustrate the Commonwealth's interest in preventing animal ownership that may result in failure to care for the animal, because it is not the consequence of a knowing and active choice to maintain an animal. Through its statutory mandates, Massachusetts is clearly compelling would-be animal owners to recognize their obligation to provide for an animal's long-term care. The state is emphasizing that the commitment to care for an animal's well-being is an enduring one, not one that exists only while it is convenient and titillating, such as when someone wins an animal as a prize as in *Knox*³¹⁴ or when someone wins prizes off of an animal as in greyhound racing.

³¹⁰ MASS. GEN. LAWS ch. 272, § 77 (2000).

³¹¹ *Id.* § 80F.

³¹² 425 N.E.2d at 396.

³¹³ § 80F.

³¹⁴ See generally 425 N.E.2d at 393 (explaining that the awarding of a live goldfish as a prize in a game of chance violates the Massachusetts law designed to protect animals subject to possible neglect by prizewinners).

In drawing out these principles behind the Massachusetts anti-cruelty laws, it becomes evident that the failure to provide for the long-term care of retiring greyhounds and opting to kill them instead stands as a direct violation of the spirit and intent of the Commonwealth's laws. As such, permitting breeders and owners of racing greyhounds not only to own hordes of animals that will not be provided with care beyond their immediate racing careers, but also to take on additional dogs, makes a mockery of the state's policy against such conduct, as it is implicitly asserted through the Massachusetts anti-cruelty statutes and case law discussed. Beyond the violation of the principles, spirit, intent, and policy behind Massachusetts law, this pervasive practice in the greyhound racing industry is also unlawful within the letter of the basic Massachusetts anti-cruelty statute as interpreted by the Supreme Judicial Court, an argument that will be explored below.³¹⁵

C. *The Offense of Unnecessarily Failing to Provide Care*

The basic anti-cruelty statute for the Commonwealth of Massachusetts addressing the offense of unnecessarily failing to provide care to an animal in one's charge provides in pertinent part,

[W]hoever, having the charge or custody of an animal, either as owner or otherwise, . . . unnecessarily fails to provide it with proper food, drink, shelter, sanitary environment, or protection from the weather, . . . shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.³¹⁶

The Massachusetts Supreme Judicial Court has not parsed the meaning of the statutory requirement that one's animal be provided with food, drink, shelter, and the like, but seems to have assumed its plain language meaning. Presumably, breeders and owners who continue to take on new greyhounds but refuse to grant care to the retired greyhounds already in their custody, opting to kill them instead, could fall within the plain meaning of the statute's words.

Perhaps the more challenging question with regard to the statute is whether these individuals have "unnecessarily" failed to provide for their retiring greyhounds. On that point, *Curry v. Commonwealth* is one of the earliest cases in which the Massachusetts Supreme Judicial Court fleshed out the statute's meaning as to what constitutes unnecessarily failing to provide care.³¹⁷ In that case, the court held that a defendant unnecessarily failed to provide care when he left a horse harnessed to a carriage overnight in the woods without food, drink, and shelter.³¹⁸ In determining the meaning of "unnecessarily," the *Curry* court held that the defendant's intoxication was material in de-

³¹⁵ See discussion *infra* Sections IV. C.-D. (analyzing the Massachusetts Supreme Judicial Court's rulings regarding the offense of unnecessarily failing to provide care).

³¹⁶ MASS. GEN. LAWS ch. 272, § 77 (2000).

³¹⁷ 23 N.E. 212 (Mass. 1890).

³¹⁸ *Id.* at 213.

termining whether he unnecessarily left his horse overnight in the woods, which resulted in his failure to provide food, drink, and shelter for the horse.³¹⁹ The court found that if the defendant's failure to care for the animal came about as a result of his voluntary choice to become drunk, the defendant could not claim that his failure to provide care was necessary.³²⁰ This finding implies that one's reason for failing to care for an animal will not be deemed necessary if the conditions that brought about the failure were a direct result of the individual's personal choice to behave irresponsibly, as opposed to circumstances beyond one's control that might be inflicted upon a person thereby creating necessity in the omission to provide care.

Applying the *Curry* court's interpretation of the term "unnecessarily" as used in the relevant anti-cruelty statute, the failure by owners of racing greyhounds to provide care for their dogs in retirement appears to be wholly inexcusable under Massachusetts law. In light of the personal responsibility element emphasized in *Curry*, one would be hard pressed to lodge a plausible claim of necessity for failing to provide care for retiring greyhounds and killing them instead, while continuing to take on new greyhounds. Such a claim would be without merit, because it is within the power of greyhound breeders and owners to stop reproducing and buying more animals than they wish to care for at a given time. Indeed, these racing enthusiasts cannot truthfully claim that the overabundance of greyhounds in their charge is unanticipated, creating strained circumstances under which they must necessarily fail to provide care. Rather, greyhound breeders and owners have knowingly and voluntarily established a practice of overbreeding and continuously replenishing their kennels to perpetuate a cycle of racing only the fastest greyhounds so as to turn a profit. In recognizing this, it becomes plain that the consequent killing of the retired dogs actually serves as a mechanism by which the deliberate and calculated plan not to provide care is ultimately executed.

Moreover, the anti-cruelty statute does not excuse a claim of business or financial necessity as an acceptable reason for one's failure to provide care. Thus, those in the greyhound racing industry cannot point to their desire to make a profit as an acceptable reason for killing multitudes of dogs. Furthermore, any overabundance of greyhounds that might constrict the resources of those in the greyhound racing industry is a condition that racing participants have knowingly and voluntarily created by deliberately breeding more dogs than they wish to care for. Simply not wanting to spend money to care for the greyhounds would not qualify as necessity under the *Curry* court's analysis. The breeder's circumstance is a self-created one, which just like Defendant *Curry*'s drunkenness, does not excuse a violation of the basic anti-cruelty law for unnecessarily failing to provide care. In addition, the Massachusetts Supreme Judicial Court has explicitly rejected

³¹⁹ *Id.*

³²⁰ *Id.*

financial hardship or business considerations as reasons for not enforcing anti-cruelty laws.³²¹ In *Commonwealth v. Higgins*, where a humane statute outlawing the use of animal traps that could cause suffering was enforced, the court stated, "This decision is reached with full appreciation of the hardship to farmers and raisers of poultry in restricting their means of defense against so cunning an enemy as the fox."³²² The court clearly chose to recognize, but also to disregard, the negative financial impact that enforcement of this anti-cruelty law might entail.

On a related note, even if a business or financial necessity exception were recognized by the Massachusetts Supreme Judicial Court, failing to provide care for and killing greyhounds to perpetuate a business serving the sole purpose of human amusement would provide the court with only the shallowest of reasons to excuse a violation of an anti-cruelty law. This is especially true in light of *Higgins*, where the hardship inflicted on farmers trying to make a living was not even a strong enough reason to waive enforcement of a Massachusetts anti-cruelty statute.³²³ In all likelihood, such an exception would be made only in those circumstances where the failure to provide care was truly unavoidable. For example, such an exception might be recognized for a dairy farmer who, due to a major drought, was unable to provide proper food and drink to his cows. Surely the perpetuation of an activity as frivolous as racing, with no productive, essential purpose, cannot be deemed a necessary reason for subjecting so many animals to cruelty. Moreover, calling something an "exception" implies that it is a rare occurrence. Clearly, the repeated, calculated, industry-wide practice of slaughtering retired greyhounds does not rise to the level of unusual circumstances that the word "exception" would suggest. Deliberately overbreeding and killing retired greyhounds is not "necessary" or an "exception" unless the meanings of these words are set at such a low threshold as to have no purpose. Silly entertainment or human amusement cannot be enough to justify failure to enforce Massachusetts's basic anti-cruelty statute.

One might argue that the statutory offense of unnecessarily failing to provide care for one's animal has never been and was not intended to be construed so as to outlaw an individual's decision to euthanize his animal. However, the industry-wide, deliberate refusal to provide care for thousands of retired greyhounds, only to make room for more, exemplifies precisely the kind of reckless animal ownership that the statute was designed to prevent and prohibit.³²⁴ Such calculated and repeated abandonment of endless numbers of greyhounds arguably represents the most blatant form of irresponsible ownership

³²¹ *Commonwealth v. Higgins*, 178 N.E. 536, 538 (Mass. 1931).

³²² *Id.*

³²³ See *supra* text accompanying notes 321-322.

³²⁴ See generally *supra* text accompanying notes 310-315 (discussing the aims of Massachusetts anti-cruelty laws).

and unnecessary failure to provide care that one could imagine, in that people in the greyhound racing industry are breeding and taking on staggering numbers of animals with no intention of providing for their needs in the long-term. Just as soon as one greyhound is killed because the owner does not wish to care for it, another one is brought into the kennel eventually to be resigned to the same fate. As one commentator observed with respect to a similar practice in horse-racing, "This is not an unfortunately rare and random occurrence, but the decided policy of many owners . . ."³²⁵ If the purpose of the anti-cruelty statute is to hold those individuals choosing to own animals responsible for their care and to prevent ownership of animals who will not be provided for,³²⁶ then permitting individuals in the greyhound racing industry deliberately to breed and own greyhounds with no intention of providing for their long-term care essentially sanctions an end-run around the statute's requirement that owners provide care for the animals in their charge. The Massachusetts legislature could not have intended to allow a result that is so antithetical to the aims of the anti-cruelty laws generally and this statute in particular.³²⁷

D. Animal Suffering and Cruel Intent as Inessential Elements of Unnecessarily Failing to Provide Care

In *Commonwealth v. Curry*, the court distinguished the statutory prohibition of unnecessarily failing to provide for the basic needs of one's animal from that of inflicting unnecessary cruelty upon an animal.³²⁸ On this point, the court found, "It cannot be held as [a] matter of law that the two clauses mean the same thing, or that the meaning of one clause is to be determined by the meaning of the other."³²⁹ In so asserting, the court made it clear that the two offenses are, in fact, distinct. The court elaborated on the elements of the offense of unnecessarily failing to provide care by stating, "As we interpret the words, the statute does not require that the failure to provide proper food, drink, and protection must be such that on account of it the animal has cruelly suffered."³³⁰ Consequently, irrespective of whether an animal experiences suffering, the omission to provide care unto itself appears to be a statutory violation under the Massachusetts Supreme Judicial Court's interpretation of the law. The court reinforced this reading five years later in *Commonwealth v. Edmands*, when it held that it was surplusage to allege that a person both "unnecessarily and cruelly" failed to provide care for a horse in order to claim a statu-

³²⁵ PREECE & CHAMBERLAIN, *supra* note 38, at 173.

³²⁶ See generally *supra* text accompanying notes 310-315 (discussing the aims of Massachusetts anti-cruelty laws).

³²⁷ See generally *supra* text accompanying notes 310-315 (discussing the aims of Massachusetts anti-cruelty laws).

³²⁸ 23 N.E. 212, 213 (Mass. 1890).

³²⁹ *Id.*

³³⁰ *Id.*

tory violation.³³¹ Simply stating that one unnecessarily failed to provide care was deemed an adequate assertion of the complaint.³³² In fact, one might construe the court's findings in *Curry* and *Edmands* to mean that unnecessarily failing to provide care alone is an inherently cruel act, such that the cruel character need not be patently stated in pointing out a violation.

As applied to greyhound racing, unnecessarily failing to provide care to greyhounds seems to stand as a cruelty offense, in the eyes of the Massachusetts Supreme Judicial Court, regardless of whether the dogs experience suffering by virtue of the omission to provide care. The mere occurrence of unnecessary failure to provide care is enough to violate the statute. The dogs need not cruelly suffer before the omission to provide care will constitute a statutory violation, according to the Supreme Judicial Court's reading of the law.³³³ In other words, even if a dog does not experience pain before being killed—an act which constitutes the execution of the plan not to provide care—the offense of unnecessarily failing to provide care is still committed.

In much the same way that animal suffering is not an essential element of the offense of unnecessarily failing to provide care for an animal, one may be guilty of unnecessary cruelty despite lack of intent. In *Commonwealth v. Magoon*, the Massachusetts Supreme Judicial Court held that the guilt of one charged with cruelty to animals “did not depend upon whether he thought he was unnecessarily cruel, but upon whether he was so in fact. It need not appear that he knew that he was cruel, and that he was willing to be so, but only that he intentionally and knowingly did acts unnecessarily cruel.”³³⁴ Thus, greyhound breeders and owners may be guilty of cruelty under the Massachusetts anti-cruelty statutes by unnecessarily failing to provide care regardless of their personal intent. For although these racing enthusiasts may not believe that killing surplus greyhounds is cruel, they do knowingly and intentionally bring the dogs to their deaths. In this way, it appears that the unjustifiable killing of healthy dogs as the mechanism to perpetrate the scheme under which care is denied provides a further basis for alleging cruel treatment.

E. The Common Law Basis for Outlawing Sports in which Animals are Killed

In *Commonwealth v. Tilton*, the Massachusetts Supreme Judicial Court recognized a common law basis for outlawing cockfighting, apart from the anti-cruelty statutes in existence in 1844 that might have been grounds for prohibiting the sport.³³⁵ The court held, “[Cockfight-

³³¹ 39 N.E. 183, 183 (Mass. 1895).

³³² *Id.*

³³³ See *Curry*, 23 N.E. at 213.

³³⁴ 51 N.E. 1082, 1083 (Mass. 1898).

³³⁵ 49 Mass. 232, 232 (1844), available at 1844 WL 4263. Today, MASS. GEN. LAWS ch. 272, § 94 (2000) explicitly outlaws “own[ing], possess[ing], keep[ing] or train[ing] a bird,

ing] is prohibited by the principles of the common law as a cruel and barbarous sport."³³⁶ With this early pronouncement, the court identified in the common law opposition to activities in which animals are killed for purposes of entertainment. This overarching principle implicit in the court's declaration becomes even more apparent when the court groups cockfighting with other animal fighting sports to denounce them all as offensive to the common law. In so doing, the court declared,

As being barbarous and cruel, leading to disorder and danger, and tending to deaden the feelings of humanity, both in those who participate in it, and those who witness it, [*cockfighting*] appears to us to stand on the same footing with *bull-fighting* [*and*] *bear-baiting*, . . . all of which, we think, would be considered as unlawful games or sports.³³⁷

By categorizing these animal fighting sports in this manner, the court recognized the element common to each—that animals are killed for entertainment—and outlawed cockfighting on the basis of this factor. Elaborating upon the common law foundation for its ruling, the *Tilton* court held that cockfighting violates “the law of humanity, which is at the basis of the common law, and specially recognized in the constitution”³³⁸ In asserting this, the court reveals how the common law foundation for its holding is intertwined with a concern over the coarsening of the human spirit that results when society is indifferent to animal suffering. This consideration is evident in the court's reasoning that the common law has been offended, as the court acknowledges that animal fighting sports “deaden the feelings of humanity.”³³⁹

The *Tilton* court's condemnation of sports in which animals are killed for the sake of entertainment bears directly upon greyhound racing in the Commonwealth. For although greyhounds are not slaughtered within the immediate match in which they compete, as bulls and gamecocks are, greyhounds are killed shortly after the final race in which they run.³⁴⁰ Thus, the end result of the sport of greyhound racing is death for the animal just as in the animal fighting sports, which places greyhound racing “on the same footing with bull-fighting” and cockfighting under the *Tilton* court's analysis.³⁴¹ Therefore, the *Tilton* court's holding, that animal fighting sports violate the common law as it is predicated upon the law of humanity, should by analogy apply with equal force to greyhound racing. As such, the *Tilton* analysis re-

dog or other animal, with the intent that it shall be engaged in an exhibition of fighting” and “establish[ing] or promot[ing] an exhibition of the fighting of birds, dogs or other animals.” *Id.*

³³⁶ *Tilton*, 49 Mass. at 232.

³³⁷ *Id.* (emphasis added).

³³⁸ *Id.* at 234.

³³⁹ *Id.* at 234-35.

³⁴⁰ See discussion *supra* Section II. E. (discussing widespread euthanization of greyhounds considered unfit to race).

³⁴¹ *Tilton*, 49 Mass. at 232.

quires abolition of greyhound racing in Massachusetts under “the principles of the common law as a cruel and barbarous sport.”³⁴² If the Supreme Judicial Court believed that the unjustifiable killing of gamecocks and bulls for sport hardens the compassion of human beings, then by extension, continuing to permit the reckless slaying of greyhounds for mere lack of speed should similarly cultivate a social callousness. When life can be extinguished so gratuitously, it carries less value. As one humane official observed with respect to animal fighting, “Exposure to such violence can promote insensitivity to animal suffering and an enthusiasm for violence.”³⁴³ Such an observation rings true for greyhound racing as well, because it too is an activity passed off as entertainment at the same time that thousands of dogs are killed to provide amusement.

Two years after deciding *Tilton*, the Massachusetts Supreme Judicial Court addressed the senselessness of animals dying in the name of sport in *Coolidge v. Choate*.³⁴⁴ In that case, the court held that a gaming statute that called for the seizure and destruction of all “implements of [illegal] gaming” did not reach gamecocks used in cockfighting, because that phrase was “not intended to include fighting cocks, or any animal or being having life.”³⁴⁵ After addressing the cruelty of cockfighting, the court identified the destruction of seized gamecocks as “cruelty which the law is intended to prevent,”³⁴⁶ by which the court could only mean that the laws against gaming generally are designed to prevent the death of birds in cockfighting in the first place. In fact, the court boldly stated, “[L]et the offenders be punished, who stimulate the fighting propensities of these animals, and who furnish them with instruments of destruction . . . ; but why should these animals be burnt or otherwise destroyed?”³⁴⁷ With this language, the Massachusetts Supreme Judicial Court again unequivocally condemned the cruelty of killing animals in the name of entertainment. Perhaps even more powerfully, the court further condemned the unnecessary destruction of animals to foster entertainment by declaring, “Life is the gift of God, not to man only, but to all animals, and it ought not to be taken away, except from necessity, or for some useful and proper purpose.”³⁴⁸

Given the context of *Coolidge*, where the court denounced cockfighting and the destruction of gamecocks as tools of gaming, the court’s statement clearly was intended to identify the killing of animals for entertainment as unnecessary, useless, and improper. Thus, the court’s declarations, like those in *Tilton*, appear to constitute a common law basis for outlawing any sport in which an animal is de-

³⁴² *Id.*

³⁴³ O’Hara, *supra* note 160, at A7.

³⁴⁴ See 52 Mass. 79 (1846), available at 1846 WL 3963.

³⁴⁵ *Id.* at 82.

³⁴⁶ *Id.* at 83.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

stroyed to promote amusement, because that end is not deemed a necessity or a useful or proper purpose. The logical inference then is that greyhound racing is also unlawful under the common law, as greyhounds are slaughtered solely to perpetuate racing, an activity akin in terms of its purposelessness to the gaming denounced in *Coolidge*. Under the *Coolidge* court's analysis, the sport lacks legal legitimacy in Massachusetts, because greyhound racing's solitary aspiration is to provide amusement for which animals are killed.

V. CONCLUSION

The Commonwealth of Massachusetts, through its legislature and judiciary, should recognize greyhound racing for the unlawful and barbarous sport that it is. From birth when greyhound litters are first culled through the retirement of young dogs too slow to race, fifty thousand to ninety thousand greyhounds are sacrificed annually by the racing industry for the exclusive purpose of perpetuating gambling amusement. In this and many other respects, the cruel parallels between greyhound racing and the animal fighting sports of bullfighting, dogfighting, and cockfighting—all forms of entertainment that have been outlawed in this country—are undeniable. In both the fighting and racing contexts, animals are exploited, abused, and ultimately killed solely for the sake of entertainment. Moreover, whether it be through the use of live animal lures or direct combat, animals are deployed to maim and destroy each other.

Despite these ugly realities and the Massachusetts Supreme Judicial Court's denouncement of sports in which animals are killed for entertainment as inimical to common law principles grounded in the law of humanity, the greyhound racing industry survives in Massachusetts. Accordingly, just as the Supreme Judicial Court outlawed animal fighting sports in the Commonwealth in the 1800s, the Massachusetts judiciary, when an appropriate case is presented, should abolish greyhound racing for the cruel activity that it is under common law authority. In addition to this common law basis, the omission to provide care for and the concomitant killing of retired greyhounds violates both the spirit and letter of Massachusetts animal protection statutes. The industry-wide practice of deliberately overbreeding greyhounds with no intention of providing for their post-racing care is a blatant and calculated violation of Massachusetts anti-cruelty laws, as it constitutes the offense of unnecessarily failing to provide care for the animals in one's charge. The wanton slaughter of greyhounds merely for the preservation of entertainment is the mechanism by which the refusal to care for the dogs taken on by industry participants is ultimately executed.

Although in violation of Massachusetts statutory and common laws, greyhound racing enthusiasts have been permitted to take hordes of new dogs into their custody while abdicating their obligation to support the retired animals already in their charge by simply killing

them off. Not only does such reckless ownership lack moral imperative, but it is devoid of the legal legitimacy necessary to continue as a sport in Massachusetts. Greyhound racing is a form of organized animal cruelty that has been permitted to persist in the Commonwealth for far too long. The state should no longer permit the slaying of greyhounds solely to perpetuate the capital-producing cycle of gaming by freeing up resources to race and kill still more dogs.

