

NOTE

IT TAKES A VILLAGE TO PROTECT ITS PETS: HOW TO EMPOWER LOCAL COMMUNITY ORGANIZATIONS IN THE FIGHT FOR COMPANION ANIMAL RIGHTS

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This Note aims to provide a guide for state law reforms to ease the responsibility on southern states' shelter, rescue, and foster systems. It employs a three-pronged strategy to address two main challenges for homeless companion animals—overpopulation and unprosecuted animal cruelty. The United States euthanizes an estimated 1.5 million companion animals annually in its companion animal shelters, largely due to overpopulation, and the South plays an exponentially larger role in this statistic than the North, with some southern cities annually euthanizing hundreds of thousands of companion animals each. Approximately 6.5 million companion animals enter shelters each year, and in addition to facing the possibility of euthanasia in their future, a large fraction of those companion animals have been subject to abuse before their arrival. Lack of funds to support homeless companion animals, however, has left overpopulation and animal abuse largely unaddressed. Animal abusers responsible for homeless companion animals' suffering frequently escape arrest and prosecution for these crimes.

To address these challenges, legislators should employ a comprehensive approach to state animal law reform to avoid the unpopular decision to raise taxes on pet owners. First, states should heighten state breeding fees and penalties to help shrink the future homeless companion animal population. Second, states should establish a private civil action for shelters to

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hold animal abusers accountable and collect money forfeitures of any profits abusers gained through their cruelty to animals. Third, funds collected from breeding fees, penalties, and civil action forfeitures should finance greater enforcement of breeder regulations. Surplus revenue should then finance any combination of the following: a state spay and neuter program, a homeless companion animal transport program, or a state animal abuser registry. By executing all three prongs concurrently, legislators can provide sustainable support to their state's overwhelmed shelter, rescue, and foster system without inflicting a general tax on pet owners.

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I. INTRODUCTION

Of the 6.5 million dogs and cats (companion animals) that enter United States animal shelters each year, 1.5 million never make their way out.¹ This problem is especially acute in the South, where several states kill hundreds of thousands of companion animals every year.²

¹ *Shelter Intake and Surrender: Pet Statistics*, AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, <https://www.aspc.org/animal-homelessness/shelter-intake-and-surrender/pet-statistics> [https://perma.cc/5VFA-V3K8] (accessed Jan. 21, 2019). Only 90,000 cats in shelters are returned to their owners per year, while 620,000 dogs are returned per year. *Id.*

² About 200,000 shelter companion animals are euthanized annually in the Dallas-Fort Worth area alone. *The Problem of Pet Overpopulation*, SPCA OF TEXAS, <https://www.spc.org/page.aspx?pid=428> [https://perma.cc/45Z4-PPU5] (accessed Jan. 21, 2019). Louisiana euthanizes nearly 100,000 annually. *Oachita Parish Animal Shelter Statistics*, PAWS OF NE LOUISIANA, <http://www.pawsonela.org/shelter-stats.php> [https://perma.cc/LJD9-Q32L] (accessed Jan. 21, 2019). Georgia euthanizes over 150,000 shelter companion animals per year. *ShelterStats*, TABLEAU PUB., <https://public.tableau.com/profile/eabunc#!/vizhome/ShelterStats/RegionalTrends> (accessed Jan. 4, 2019). Alabama animal shelters euthanize more than 150,000 companion animals annually.

Though most animal shelters do their best to rescue, protect, and rehome homeless companion animals, they require adequate funding, which can be difficult to come by.³ Another problem is that the abuse and neglect that too many of these animals suffer goes mostly unpunished.⁴ Prosecutors rarely pursue animal cruelty cases, even though every state has felony punishments for animal cruelty and an overwhelming majority of Americans consider animal protection an important priority.⁵ Likewise, shelters rarely hold animal abusers accountable because they lack sufficient resources, legal standing, or both.⁶

To remedy these problems, this Note will propose legislation designed to accomplish three goals: make breeding substantially more difficult and costly;⁷ enable asset forfeiture from individuals who profit from animal abuse;⁸ and divert these additional resources toward en-

About Us, ALA. SPAY/NEUTER, <http://alspay.org/about-us/> [<https://perma.cc/N7XD-6PCZ>] (accessed Jan. 21, 2019). This discrepancy in euthanasia rates between the North and the South is partly due to the fact that the South has longer breeding seasons because of its warm weather. Karin Brulliard, *These Rescuers Take Shelter Animals on Road Trips to Help Them Find New Homes*, WASH. POST (May 13, 2017), https://www.washingtonpost.com/news/animalia/wp/2017/05/13/from-death-row-to-adoption-saving-animals-by-car-van-bus-and-even-plane/?utm_term=.5cf1237c0176 [<https://perma.cc/PGG3-Y6GK>] (accessed Jan. 21, 2019).

³ See Sean Green, *Lack of Funds Puts Future Pets in Danger*, BOSSIER PRESS-TRIBUNE (July 10, 2017), <http://bossierpress.com/lack-funds-puts-future-pets-danger/> [<https://perma.cc/P6RY-AH2E>] (accessed Jan. 21, 2019) (explaining the necessity of outside funds for the care of shelter animals); Holly Duchmann, *Local Animal Rescue to Host Annual Fundraiser Saturday*, HOUMATODAY.COM (July 12, 2017, 9:21 AM), <http://www.houmatoday.com/entertainment/-20170712/local-animal-rescue-to-host-annual-fundraiser-saturday> [<https://perma.cc/2L8X-QKBR>] (accessed Jan. 21, 2019) (explaining the means undertaken to procure funds for shelter animals).

⁴ Allie Phillips & Randall Lockwood, *Investigating & Prosecuting Animal Abuse*, NAT'L DIST. ATT'YS ASS'N (2013), <https://ndaa.org/wp-content/uploads/NDAA-Animal-Abuse-monograph-150dpi-complete.pdf> [<https://perma.cc/SXG7-5WBS>] (accessed Jan. 21, 2019).

⁵ *Id.*; see Lori Brown, *Broken System Fails Abused Animals in Dallas*, FOX4 (May 16, 2016), <http://www.fox4news.com/news/broken-system-fails-abused-animals-in-dallas> [<https://perma.cc/G7JJ-2AL3>] (accessed Jan. 21, 2019) (discussing the troubling lack of prosecution in Texas animal cruelty reports); see *infra* Part II.B (discussing lack of prosecution in animal abuse cases).

⁶ See *infra* Part II.B (showing the difficulties that shelters face in animal cruelty situations).

⁷ See *infra* Part IV.A (discussing making backyard breeding for companion animals more costly).

⁸ See *infra* Part IV.B.2 (discussing money forfeiture as a consequence for an offender's animal abuse). Forfeiture is defined as "an action brought against individuals as part of a criminal prosecution. Their illegal assets can be seized or frozen by the government, and then after a conviction or guilty plea, a forfeiture order is meted out during the sentencing . . ." *Seizing Crime Proceeds and Compensating Victims: Forfeiture as an Effective Law Enforcement Tool*, FBI (Jan. 17, 2017), <https://www.fbi.gov/news/stories/forfeiture-as-an-effective-law-enforcement-tool> [<https://perma.cc/E5Q8-VMK4>] (accessed Jan. 21, 2019).

forcement of breeder regulations, spaying and neutering, state animal abuser registries, and companion animal transport programs.⁹

II. SOUTHERN COMPANION ANIMAL SHELTERS LACK RESOURCES

States maintain loose systems of public shelters that often work closely with private organizations and individuals.¹⁰ Unfortunately, these systems are plagued by overpopulation, ineffective legislation, and a lack of resources.¹¹

A. Homeless Companion Animal Care System

Shelters are generally governed by parishes, counties, and municipalities (localities) and managed by the Public Works department, the mayor's office, or the sheriff's office.¹² Their resources usually come from local taxpayer funds, private donations, or grants.¹³ Many homeless companion animals enter publicly run shelters after law enforcement officers confiscate them or their owners surrender them.¹⁴ Typically, when a companion animal arrives at a shelter, shelter employees run various tests to determine if the animal is adoptable.¹⁵ If the employees' conclusion is that the animal is adoptable, the shelter will take care of it, either until it is adopted or until space must be made for a newcomer, at which point it will be euthanized.¹⁶ Through-

⁹ See *infra* Part III.C (discussing diverting profits from backyard breeding into programs that benefit animals).

¹⁰ See *infra* Part II.A (identifying the organizational structure of animal shelters).

¹¹ See *infra* Part II.A (detailing the common problems within animal shelters).

¹² Telephone Interview with Julia Breaux, State Dir. for La., Humane Soc'y of the U.S. (Sept. 20, 2017) (on file with author) (discussing the structure of government that manages public shelter systems).

¹³ *Id.*

¹⁴ See e.g., *Frequently Asked Questions*, LA. SPCA, <https://www.la-sPCA.org/faqs> [<https://perma.cc/4XNT-NUXA>] (accessed Jan. 21, 2019) (listing the three main ways animals get to the Louisiana SPCA). About 5,000 shelters and rescues operate in the United States.

¹⁵ Interview with Wendy Wolfson, Assistant Professor, LSU Veterinary Sch. Shelter Med. Program in Baton Rouge, La. (Sept. 6, 2017) (on file with author) (explaining the intake protocol for most shelters in the Louisiana area). In Louisiana, for instance, an owner is generally considered to have abandoned their animal when the owner fails to pay veterinary or boarding services within ten days of receiving invoice, relinquishing all rights and claims to the animal. "[I]f the animal is not claimed within ten days after receipt of the notice, the animal may be sold, donated or turned over to the nearest humane society or animal control center, or otherwise disposed of as the person having custody of the animal may deem proper." Notice or return of attempted notice "shall relieve the custodian of any liability for the sale, donation, euthanasia, or other disposal of the animal." LA. REV. STAT. § 3:2452-53 (2018).

¹⁶ Ashley Hinson, *Local Animal Shelter Nears Full Capacity*, DAILY IBERIAN (June 2, 2015), http://www.iberianet.com/news/local-animal-shelter-nears-full-capacity/article_436505b8-093b-11e5-8d9d-13b487f5758a.html [<https://perma.cc/M64B-QVNA>] (accessed Jan. 21, 2019); *Euthanasia*, PETA, <https://www.peta.org/issues/companion-animal-issues/overpopulation/-euthanasia/> [<https://perma.cc/L9ZG-29AD>] (accessed Jan. 21, 2019); Interview with Beth Brewster, Exec. Dir. of the Companion Animal All.,

out this process, shelters generally work closely with rescues and fosterers.¹⁷ Rescues are private organizations that pull many homeless companion animals from shelters with the shared goal of finding suitable families to adopt them.¹⁸ Rescues do not euthanize their fosters and do not receive public funding.¹⁹ Fosterers are individuals who volunteer to care for companion animals until a suitable permanent home can be found.²⁰

B. Overpopulation and Animal Cruelty

Companion animals in the South face two significant problems: overpopulation (leading to mass euthanasia) and animal cruelty.²¹ These problems cannot be addressed adequately until shelters are pro-

in Baton Rouge, La. (Oct. 9, 2017) (on file with author) (discussing the intake procedure for shelters in the Louisiana area, including the Baton Rouge animal shelter); *Creating Animal Shelter Guidelines: Selecting Animals for Euthanasia*, HUMANE SOC'Y INT'L, http://www.hsi.org/assets/pdfs/creating_shelter_guidelines_eng.pdf [https://perma.cc/Q9YV-W92N] (accessed Jan. 21, 2019); see Rebecca F. Wisch & Ashley Dillingham, *Table of State Holding Laws*, ANIMAL LEGAL & HISTORICAL CTR., <https://www.animallaw.info/topic/state-holding-period-laws-impounded-animals> [https://perma.cc/WDN6-GSUD] (accessed Jan. 21, 2019) (stating that the holding period that an animal must be kept at a pound or public animal shelter before it is euthanized “runs from 5 to seven days”); Those select shelters that manage to euthanize less than 10% of their companion animals are considered “no kill” shelters. Arin Greenwood, *What's a 'No-Kill' Animal Shelter? The Answer is More Complicated Than it Seems*, WASH. POST (Jan. 23, 2017), https://www.washingtonpost.com/news/animalia/wp/2017/01/23/whats-a-no-kill-animal-shelter-the-answer-is-more-complicated-than-it-seems/?utm_term=.af8b6cc1a8bc [https://perma.cc/C29C-S552] (accessed Jan. 21, 2019). However, strategies to achieve “no kill” status have received extremely controversial feedback. Brian Palmer, *Are No-Kill Shelters Good for Cats and Dogs?*, SLATE (May 19, 2014), http://www.slate.com/articles/health_and_science/science/2014/05/no_kill_animal_shelters_and_peta_what_is_the_most_humane_way_to_treat_stray.html [https://perma.cc/M6K3-SMVY] (accessed Jan. 21, 2019).

¹⁷ Breaux, *supra* note 12.

¹⁸ E.g., *Companion Animal Alliance: Second Quarter 2017*, COMPANION ANIMAL ALL. OF BATON ROUGE, <http://www.caabr.org/statistics> [https://perma.cc/G837-8YTE] (accessed Jan. 21, 2019) (stating that of the 5,803 companion animals Baton Rouge’s animal shelter received during 2018, 924 were taken by rescues).

¹⁹ Laura Gary, *Angel Paws Gives a Helping Hand to Cats and Dogs*, DAILY IBERIAN (Dec. 7, 2016), http://www.iberianet.com/news/angel-paws-gives-a-helping-hand-to-cats-and-dogs/article_c98a1cec-bc35-11e6-bbcf-d3e84f7c423b.html [https://perma.cc/8ZDN-4DTS] (accessed Jan. 21, 2019); Duchmann, *supra* note 3; Michelle Bates, *Animal Rescue Seeks Foster Homes for Pets*, MINDEN PRESS-HERALD (March 27, 2015), <http://press-herald.com/animal-rescue-seeks-foster-homes-for-pets/> [https://perma.cc/84M6-L6XL] (accessed Jan. 21, 2019).

²⁰ In Houston, hundreds of foster families host more than 2,000 animals annually for the local SPCA, one of the city’s many shelters. *Numbers of People and Animals Served by Our Programs 2015*, HOUSTON SPCA (2015), <http://www.houstonspca.org/assets/files/2015-annual-report.pdf> [https://perma.cc/B69Y-S73G] (accessed Jan. 21, 2019).

²¹ See *supra* Part I (explaining the acute problem in the South with companion animals).

vided with greater resources.²² Donations help, but sometimes fail to close the gap.²³

For now, shelters must often euthanize arrivals because of severe overpopulation.²⁴ One of the reasons for overpopulation is that many people breed companion animals for profit.²⁵ Backyard breeders contribute to the overpopulation problem in three ways: First, for every animal they sell, the demand for local shelter animals is reduced;²⁶ second, backyard breeders typically produce too many for them to sell and dump their “leftovers”—defectively bred animals, unsold animals, and females no longer breeding satisfactorily—at shelters;²⁷ and third, most backyard breeders do not spay or neuter their litters; these litters

²² Breaux, *supra* note 12.

²³ *Id.* Medical expenses are often one of the shelter’s highest costs. *Id.*; Gary, *supra* note 19; see Wolfson, *supra* note 15. Medical bills for a single healthy shelter animal hover around \$75. *Id.* For example, Baton Rouge City-Parish budgeted only \$735,000 for Baton Rouge’s shelter even though it requires roughly \$1.7 million per year to operate. *The Consolidated Government of the City of Baton Rouge and Parish of East Baton Rouge Louisiana*, 2017 ANN. OPERATING BUDGET 28 (2017), <https://www.brla.gov/DocumentCenter/View/3633/2017-City-Parish-Budget?bidId=> [<https://perma.cc/7AFA-839V>] (accessed Jan. 21, 2019). Likewise, the Louisiana Animal Welfare Commission receives no direct state funding for shelters. LA. REV. STAT. § 3:2364 (2017) (discussing financial means for animal welfare projects).

²⁴ See Hinson, *supra* note 16 (explaining euthanization is often required).

²⁵ Backyard-bred companion animals are often sold through online websites like Craigslist for use as bait for larger animals, dogfighting, or guarding property. *Backyard Breeder Law and Definition*, US LEGAL, <https://definitions.uslegal.com/b/backyard-breeder/> [perma.cc/834K-6FUQ] (accessed Jan. 21, 2019); see Stephanie Valle, *Special Report: Backyard Breeder Crackdown*, KVIA (Oct. 27, 2016), <http://www.kvia.com/special-reports/special-report-backyard-breeder-crackdown/133612894> [perma.cc/FTP8-SVEW] (accessed Jan. 21, 2019) (attributing the declining number of cats and dogs euthanized to laws cracking down on backyard breeding).

²⁶ *Breeders*, PETA, <https://www.peta.org/issues/companion-animal-issues/pet-trade/breeders> [<https://perma.cc/3MD7-5F9V>] (accessed Jan. 21, 2019).

²⁷ See, e.g., Rob Blizard, *Exploring the Question of Pet Overpopulation*, VIRGINIA-PILOT (Sept. 29, 2017), https://pilotonline.com/opinion/columnist/guest/article_74c22643-8eff-5c8d-bba2-1c7f2b8a8d64.html [<https://perma.cc/6LY6-2YMV>] (accessed Jan. 21, 2019) (“On one hand, I believe we are facing pet overpopulation. Or maybe we should call it a ‘breeding problem.’ . . . Animal shelters are cleaning up the messes that so many other people make — backyard breeders pumping out babies for cash We are facing a pet overpopulation onslaught caused by breeding.”); Katy Brink, *People are Breeding Pit Bulls Over and Over—Then Dumping Them*, DODO (Jan. 26, 2016), <https://www.thedodo.com/people-are-breeding-pit-bulls-over-and-over-again-for-money-1572593079.html> [<https://perma.cc/8GAU-DXAQ>] (accessed Jan. 21, 2019) (explaining the common practice of breeding female dogs until they can no longer satisfactorily breed and then abandoning them, after which they end up at shelters); Tim Wood, *Pit Bull Ordinance has Responsible Owners Barking Foul*, HILTON HEAD MONTHLY (Dec. 29, 2015), <http://www.hiltonheadmonthly.com/news/hilton-head/3018-pit-bull-ordinance-has-responsible-owners-barking-foul> [<https://perma.cc/9SLX-UNQE>] (accessed Jan. 21, 2019) (“Ninety percent of the dogs in shelters are pit bulls or pit bull mixes. They’re abandoned or neglected by owners who overbreed or have no use for them when they can’t fight anymore,” said Hilton Head Humane Association director Franny Gerthoffer.”); Cheryl Hanna, *Tinsley Dumped at Shelter: Backyard Breeding at its Worst*, PET RESCUE REP. (May 15, 2017), <https://petrescuereport.com/2017/tinsley-dumped-shelter-backyard-breeding-worst/> [<https://perma.cc/AD2S-U727>] (accessed Jan. 21, 2019) (showing

then go on to reproduce, a situation that exponentially expands the companion animal population.²⁸ Shelters struggle to finance the operations necessary to meet the needs of this large companion animal population, and, as a result, many of the shelters eventually go bankrupt.²⁹

Addressing the second issue of animal cruelty, companion animals often arrive at a shelter after abuse, but they rarely receive justice.³⁰ The main federal law purposed with protecting animals, the Animal Welfare Act (AWA), falls well short.³¹ The AWA addresses theft of companion animals, animal fighting, animal placement in zoos, transportation of animals, large-scale animal breeding, and wholesale distribution of animals, but the AWA is not a broad statutory protection against animal cruelty of all animals; instead it focuses on particular animals, such as those involved in scientific experimentation and those traveling in foreign commerce.³² Most states have passed aggressive animal cruelty laws, making up for the AWA's inadequacy.³³ In-

an instance of a suspected backyard-breeding pregnant female dog abandoned and later discovered by a Texas shelter).

²⁸ *Breeders*, *supra* note 26. Failure to spay or neuter companion animals is a leading cause of overpopulation in companion animal shelters. *The Fix Is In: Substantial Progress Made on Slowing Pace of Dog and Cat Euthanasia*, SCI. AM., <https://www.scientificamerican.com/article/pet-overpopulation-progress/> [<https://perma.cc/G29K-NBLH>] (accessed Jan. 21, 2019).

²⁹ See Whitney Good, *Sevier County Humane Society Needs More Funding to Stay Open*, WATE (May 25, 2016), http://www.wate.com/news/sevier-county-humane-society-needs-more-funding-to-stay-open_20170818081658192/792893182 [<https://perma.cc/EZ8B-U6DQ>] (accessed Jan. 21, 2019); Chandler Rogers, *Sebastian County Humane Society Faces Closing Its Doors*, 5NEWS (Aug. 11, 2015), <http://5newsline.com/2015/08/10/sebastian-county-humane-society-faces-closing-its-doors/> [<https://perma.cc/Y5EK-PWGS>] (accessed Jan. 21, 2019); Cynthia Roldan, *This SC Humane Society is Shutting Down, and is Searching for Homes for its Residents*, THE STATE (Oct. 12, 2017), <http://www.thestate.com/news/state/article178419681.html> [<https://perma.cc/GS78-NBZZ>] (accessed Jan. 21, 2019) (documenting how many shelters may face shut down because of financial needs).

³⁰ See *Why Prosecutors Don't Prosecute*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/when-you-witness-animal-cruelty/why-prosecutors-dont-prosecute/> [<https://perma.cc/U4T3-WVAR>] (accessed Jan. 21, 2019) (explaining reasons why prosecutors often do not pursue animal cruelty cases, including lack of funding, excessive case-loads, low priority given to animal cases in some areas, inexperience prosecuting animal cases, and lack of evidence to prove crime occurred beyond reasonable doubt).

³¹ Jessica Rugeley, *Going to the Dogs: The Successes, Failures, and Hopes for the Future of Texas Animal Law*, 46 TEX. TECH L. REV. 593, 598–99 (2014).

³² *Id.* at 599 (citing to DAVID FAVRE, ANIMAL LAW: WELFARE, INTERESTS, AND RIGHTS 188, 350 (Vicki Been et al. eds., 2d ed. 2011) (“[The AWA] is a federal law of limited purpose and scope. It is not a broad anti-cruelty law.”)); Katherine C. Tushaus, *Don't Buy the Doggy in the Window: Ending the Cycle that Perpetuates Commercial Breeding with Regulation of the Retail Pet Industry*, 14 DRAKE J. AGRIC. L. 501, 514 (2009); Interview with Louise Hines, Assistant District Attorney at East Baton Rouge District Attorney's Office, in Baton Rouge, La. (Sept. 27, 2017) (on file with author) (discussing the difficulties of prosecuting animal cruelty as a prosecutor under the current judicial system); Breaux, *supra* note 12.

³³ See Joyce Tischler, *A Brief History of Animal Law, Part II (1985 – 2011)*, 5 STAN. J. ANIMAL L. & POL'Y 27, 57–58 (2012); Earl Blumenauer, *Changing Humanity: Fifteen*

deed, the Animal Legal Defense Fund recently ranked several southern states' animal protection statutory schemes among the top twenty state schemes.³⁴ Unfortunately, however, the root of the problem is that these otherwise rigorous laws are rarely enforced. Prosecutors usually choose not to prosecute animal cruelty because they prioritize human victims over nonhuman victims.³⁵ Building a case against an animal abuser can also be challenging. Evidence gathered from animal cruelty scenes is often scarce or poor in quality.³⁶

III. EMBRACING ANIMAL LAW REFORM

Companion animals are not the only victims of animal cruelty. Animal abuse is often a precursor to other violent crimes, and those who commit crimes against animals are more likely to be violent toward humans.³⁷ The Federal Bureau of Investigation has long recog-

Years of Progress in Animal Welfare and Protection, 22 ANIMAL L. 203, 210–11 (2016) (discussing various state statutes protecting animals).

³⁴ ANIMAL LEGAL DEF. FUND, 2017 U.S. ANIMAL PROTECTION LAWS RANKINGS (2016). Arizona ranked 11th, Florida ranked 16th, Tennessee ranked 17th, and Louisiana ranked 21st. *Id.* Texas ranked slightly lower at 29th. *Id.* Lower-ranked states in the South include Arkansas ranked 37th; Georgia ranked 34th; South Carolina ranked 39th; Alabama ranked 41st; and Mississippi ranked 44th. *Id.* Simple animal cruelty in Louisiana, for instance, includes abandonment of a living animal; inflicting unnecessary and unjustifiable pain through act or omission; and unjustifiable failure to provide proper food, shelter, or veterinary care. Each companion animal abuse suffered constitutes a separate offense. Instances deemed first-offense simple cruelty may result in up to six months of prison time, a \$1,000 fine, or both, as well as mandatory community service. The definition of simple cruelty is broad, and the corresponding punishment is strict compared to other states' legislation. If an offender commits more than one simple cruelty offense or the crime is aggravated, a conviction triggers a fine up to \$25,000, a maximum of ten years in prison, or both. LA. STAT. ANN. § 14:102.1 (2018). Arizona similarly defines felonious animal cruelty as including abandonment or "cruel neglect," meaning failure to "provide an animal with necessary food, water, or shelter." ARIZ. REV. STAT. ANN. § 13-2910 (2018). In Florida, "[a] person who unnecessarily . . . deprives [an animal] of necessary sustenance or shelter" is guilty of a misdemeanor. "A person who intentionally commits an act to any animal, or a person who owns or has the custody . . . of an animal and *fails to act*, which results in . . . repeated infliction of unnecessary pain or suffering" is guilty of a felony. FLA. STAT. §828.12 (2018) (emphasis added). In Tennessee, "aggravated cruelty" to animals is considered a felony offense and includes "the failure to provide food and water to a companion animal resulting in a substantial risk of death." TENN. CODE ANN. § 39-14-212 (2018). In Texas, a person is guilty of a misdemeanor if he "fails unreasonably to provide necessary food, water, or care for a livestock animal" in his custody. The person is guilty of a felony if he fails to do so three or more times. TEX. PENAL CODE ANN. § 42.09 (2018).

³⁵ *Why Prosecutors Don't Prosecute*, *supra* note 30; see Heather D. Winters, *Updating Ohio's Animal Cruelty Statute: How Human Interests are Advanced*, 29 CAP. U. L. REV. 857, 861 (2002) ("Many feel that by prosecuting animal cruelty cases they are wasting what limited resources they have on non-humans.")

³⁶ See Hines, *supra* note 32 (discussing the challenges of gathering evidence from authorities who assess animal cruelty scenes with varying levels of thoroughness).

³⁷ Winters, *supra* note 35, at 858, 881; RANDALL LOCKWOOD, AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, ANIMAL CRUELTY PROSECUTION: OPPORTUNITIES FOR EARLY RESPONSE TO CRIME AND INTERPERSONAL VIOLENCE, AM. PROSECUTORS RESEARCH INST. 10 (2006); Lydia S. Antoncic, *A New Era in Humane Education: How Troubling*

nized the connection between violence toward animals and violence toward humans.³⁸ Animal cruelty is significantly correlated with serial killing, rape, assault, child abuse, and elder abuse.³⁹ Some of the most infamous serial killers and mass shooting suspects have histories of animal abuse.⁴⁰

Like animal cruelty, companion animal overpopulation affects more than just companion animals. First, overpopulation damages the environment. Overpopulation increases the number of stray companion animals that kill and spread disease to wildlife species,⁴¹ and the disposal of shelter animal carcasses has actually prompted environ-

Youth Trends and a Call for Character Education are Breathing New Life into Efforts to Educate Our Youth About the Value of All Life, 9 ANIMAL L. 183, 194–95 (2003); Blumenauer, *supra* note 33, at 209; see Sharon L. Nelson, *The Connection Between Animal Abuse and Family Violence: A Selected Annotated Bibliography*, 17 ANIMAL L. 369 (2011) (collating legal and social literature examining the link between domestic violence and animal abuse).

³⁸ Antoncic, *supra* note 37, at 195.

³⁹ N.Y. STATE HUMANE ASS'N, *THE CONNECTION BETWEEN ANIMAL ABUSE AND HUMAN VIOLENCE* 19–20 (2015), http://www.nyshumane.org/wp-content/uploads/2016/02/Connection_Animal_And_Human_Abuse.pdf [<https://perma.cc/HYU2-LCCB>] (accessed Jan. 21, 2019); About 63% of violent criminals in the U.S. have a history of animal cruelty. *Id.* About 90% of serial killers and 48% of rapists in U.S. prisons have a history of animal cruelty. *Id.* Approximately 85% of the largest battered women's shelters across the United States reported that the women they serve relay accounts of pet abuse at home. Melissa Trollinger, *The Link Among Animal Abuse, Child Abuse, and Domestic Violence*, 30 COLO. LAW. 29, 30 (2001); Randall Lockwood, *Making the Connection Between Animal Cruelty and Abuse and Neglect of Vulnerable Adults*, LATHAM LETTER 10 (2002), <http://nationallinkcoalition.org/wp-content/uploads/2013/01/ElderAbuse-Lockwood-.pdf> [<https://perma.cc/B85B-SQBS>] (accessed Jan. 21, 2019).]

⁴⁰ See Brittany Sifontes, *Expansion for Animal Rights? Arizona's Push for an Animal Abuser Registry*, 8 ARIZ. SUMMIT L. REV. 211, 214 (2014) (“Many animal abusers have a history of domestic violence or other criminal activity, and there is a disturbing trend of animal abuse among our country's most notorious serial killers.”). Devin Patrick Kelley, responsible for fatally shooting twenty-six people in a rural Texas church in November 2017, was charged with animal cruelty just three years before the shooting took place. Eli Rosenberg & Wesley Lowery, *Devin Patrick Kelley had a Violent Past, Records Indicate*, WASH. POST (Nov. 6, 2017), https://www.washingtonpost.com/national/devin-patrick-kelley-had-a-violent-past-records-indicate/2017/11/06/f7ee6222-c33d-11e7-84bc-5e285c7f4512_story.html?utm_term=.1e1983f1e5bf [<https://perma.cc/JYP7-TP57>] (accessed Jan. 21, 2019). Nikolas Cruz, allegedly responsible for fatally shooting seventeen classmates in Florida, had a history of killing defenseless animals. Kathleen Joyce, *Nikolas Cruz: A Portrait of Suspected Florida High School Gunman Who Shot and Killed 17 People*, FOX NEWS (Feb. 15, 2018) <https://www.foxnews.com/us/nikolas-cruz-a-portrait-of-suspected-florida-high-school-gunman-who-shot-and-killed-17-people> [<https://perma.cc/2MHS-FLCN>] (accessed Jan. 21, 2019).

⁴¹ Arianna Pittman, *How Stray Cats and Dogs are Harming Native Wildlife and What You Can Do About It*, ONE GREEN PLANET (Aug. 29, 2016), <http://www.onegreenplanet.org/animalsandnature/stray-dogs-and-cats-harming-wildlife/> [<https://perma.cc/2MM5-5VJA>] (accessed Jan. 21, 2019). The Humane Society of the United States estimates between 30–40 million cats live outdoors, and cats are estimated to have contributed to the extinction of thirty-three bird species worldwide. *Id.* Stray companion animals typically are not vaccinated, either, and often spread diseases like rabies to other wildlife populations and even humans. *Id.*

mental concerns because carcasses are often destroyed by an incinerator or stored in landfills.⁴²

Second, overpopulation drains public funds. Companion animals that end up in shelters require expensive facilities and programs.⁴³ Euthanizing a single dog can cost several hundred dollars depending on the jurisdiction, and disposing of companion animal carcasses can cost a single shelter tens of thousands of dollars per year.⁴⁴ Florida's Lee County Animal Services alone spent \$20 million on euthanasia between 2008 and 2013.⁴⁵ Indeed, American taxpayers spend two billion dollars per year to impound, shelter, euthanize, and dispose of them.⁴⁶

Lastly, more than a third of Americans who work in positions that involve euthanizing companion animals experience traumatic distress because of their euthanasia duties.⁴⁷ In fact, people who work in animal rescues and shelters are more than three times as likely to commit suicide as the average American, and they have a high suicide rate among all American workers.⁴⁸

Since protecting animals protects people, the time to reform animal law is now.⁴⁹ More people today know that animals and humans share a wide range of emotions, and the study and practice of animal law has grown substantially in the last decade.⁵⁰ Scientific dis-

⁴² Monte Reel, *Shelters Face Higher Cost for Disposal of Carcasses*, WASH. POST (June 27, 2000), https://www.washingtonpost.com/archive/local/2000/06/27/shelters-face-higher-cost-for-disposal-of-carcasses/2c7da88f-0376-4472-9e08-428f28ba2dd2/?utm_term=.ce3b53ed908f [https://perma.cc/3E4M-DNBP] (accessed Jan. 21, 2019); *City Halts Disposing Deceased Animals in Landfill*, WRCBTV (Feb. 6, 2014), <http://www.wrcbtv.com/story/24656641/city-halts-disposing-deceased-animals-in-landfill> [https://perma.cc/H5KL-KM48] (accessed Jan. 21, 2019); Brian Fraga, *Deceased Pets Often End Up In City Landfill*, S. COAST TODAY (Nov. 14, 2010), <http://www.southcoasttoday.com/article/20101114/News/11140355> [https://perma.cc/VX2N-5FYB] (accessed Jan. 21, 2019).

⁴³ Schyler P. Simmons, *What is the Next Step for Companion Pets in the Legal System? The Answer May Lie with the Historical Development of the Legal Rights for Minors*, 1 TEX. A&M L. REV. 253, 255 (March 2016).

⁴⁴ *Id.*; *Pet Overpopulation Costs Taxpayers*, NBC-2 (May 18, 2013), <http://www.nbc-2.com/story/22287152/pet-overpopulation-costs-taxpayers> [https://perma.cc/K3KN-PB6J] (accessed Jan. 21, 2019).

⁴⁵ *Pet Overpopulation Costs Taxpayers*, *supra* note 44.

⁴⁶ Simmons, *supra* note 43.

⁴⁷ Jessica Pierce, *Animal Euthanasia and Traumatic Stress*, PSYCHOL. TODAY (Oct. 15, 2013), <https://www.psychologytoday.com/us/blog/all-dogs-go-heaven/201310/animal-euthanasia-and-traumatic-stress> [https://perma.cc/RE7D-2RVV] (accessed Jan. 21, 2019). A survey study conducted with 148 participants working in animal care positions that involve euthanizing companion animals revealed that 39% experience symptoms of euthanasia-related traumatic distress. *Id.*

⁴⁸ Kym Klass, *Animal Rescue Workers More Prone to Depression, Suicide*, MONTGOMERY ADVERT. (Apr. 20, 2017), <https://www.montgomeryadvertiser.com/story/news/2015/06/19/animal-rescue-workers-prone-depression-suicide/28968501/> [https://perma.cc/6CSK-LBK8] (accessed Jan. 21, 2019).

⁴⁹ *See* Winters, *supra* note 35, at 857–58 (explaining that protecting animals protects humans).

⁵⁰ *See* Blumenauer, *supra* note 33, at 204 (explaining that animal issues are becoming more widely regarded in various practices).

coveries increasingly show humans and animals share cognitive and emotional characteristics that justify improvement in animal protection law.⁵¹ University of Colorado professor Marc Bekoff asserts a close connection between humans and animals, finding they share the ability to reason abstractly, mourn, and even love.⁵² National interest in how the law affects animals has increased, spilling over into law schools across the country.⁵³ “Animal welfare has moved from the periphery of public dialogue into a . . . central role.”⁵⁴ Businessmen, politicians, and academics are taking an interest.⁵⁵ This wave of interest in animal welfare makes reform more feasible today than in the past.

A. Low Breeding Fees

Breeders typically produce more companion animals than they can adopt out, so many of them end up in shelters and eventually euthanized.⁵⁶ Breeders keep contributing to the overpopulation prob-

⁵¹ See Thomas G. Kelch, *A Short History of (Mostly) Western Animal Law: Part II*, 19 ANIMAL L. 347, 349–50, 368 (2013) (discussing a historical account of recognition of animal sentience from the 18th century leading up to modern discoveries of cognitive and emotional characteristics in animals).

⁵² *Id.* at 368. In 2010, Marc Bekoff, professor of Ecology and Evolutionary Biology at the University of Colorado, Boulder, released *The Animal Manifesto: Six Reasons for Expanding Our Compassion Footprint* explaining the spectrum of rich emotions that animals experience during their lifetimes. MARC BEKOFF, *THE ANIMAL MANIFESTO: SIX REASONS FOR EXPANDING OUR COMPASSION FOOTPRINT* (2010).

⁵³ Schools include Harvard Law School, Northwestern University, and the University of California, which all currently offer elective animal law courses. Winters, *supra* note 35, at 857. Formally speaking, animal law is “a combination of statutory and case law that relates to or has an impact on nonhuman animals. It encompasses companion animals and wildlife and animals used in entertainment, research and ones raised for food.” Animal Law 101, ANIMAL LEGAL DEF. FUND, <http://aldf.org/about-us/saldf/animal-law-101/> [<https://perma.cc/YYH2-EQQF>] (accessed Jan. 21, 2019).

⁵⁴ Blumenauer, *supra* note 33, at 222 (“Reviewing the progress in animal welfare protection during the last fifteen years, there is no doubt the tide has turned.”).

⁵⁵ *Id.* at 204. Animal law practitioners tackle animal custody disputes, veterinary malpractice cases, housing disputes, domestic violence issues, anti-cruelty law, companion animal trusts, and more. Animal Law 101, *supra* note 53.

⁵⁶ Joshua Frank, *An Interactive Model of Human and Companion Animal Dynamics: The Ecology and Economics of Dog Overpopulation and the Human Costs of Addressing the Problem*, 32 HUMAN ECOLOGY 107, 108 (2004) (“Pet store suppliers, commercial breeders, and private owners (or ‘backyard breeders’) intentionally produce millions of animals every year to meet public demand. Millions of consumers initially decide to purchase or adopt a dog, only to later abandon that animal because it is inconvenient or no longer suits their needs. Millions more choose not to spay or neuter their dog. Therefore, it is human actions and inaction that perpetuate dog overpopulation and create the need for the human-made ‘solution of euthanasia.’”); Phyllis Coleman et al., *It’s Raining Cats and Dogs . . . Government Lawyers Take Note: Differential Licensing Laws Generate Revenue, Reduce Costs, Protect Citizens, and Save Lives*, 40 STETSON L. REV. 393, 397–98 (2011) (“Individuals who buy from breeders or pet stores rather than adopt ‘used’ dogs and cats from shelters make the problem worse because each puppy or kitten purchased creates a demand for breeders to produce additional animals. At the same time, each sale reduces the available adoptive homes and decreases the likelihood that a shelter animal will be adopted; this makes it more likely he or she will be euthanized to reduce the numbers in overcrowded facilities.”); ANDREI S. MARKOVITS & KATHERINE N.

lem because their profits exceed their minimal costs, incentivizing them to continue their practice.⁵⁷ Breeders earn up to \$60,000 per year on average, and small operators commonly take home \$100,000 or more.⁵⁸ By contrast, their annual breeder license fees cost at most \$500.⁵⁹ In Louisiana, for instance, the minimum kennel license fee (breeder license fee) required to breed 11–75 dogs simultaneously is a mere \$30, only \$10 more than owners are required to pay for their pets' annual licenses.⁶⁰

B. A Private Civil Action to Punish Animal Cruelty

Many companion animals brought to shelters have been abused by their breeder or someone else, but shelters generally cannot sue on their behalf.⁶¹ Companion animals have no legal rights because they

CROSBY, FROM PROPERTY TO FAMILY: REGIONALISM IN THE BREED RESCUE WORLD 165 (2014) (“[T]here is definitely not a spay and neuter policy and culture, so that is the big long-term problem that you have in the South . . . and a lot of backyard breeding . . .”).

⁵⁷ See Ruth Altman, *What is the Salary Range for a Dog Breeder?*, CAREER TREND (July 5, 2017), <https://careertrend.com/info-12075702-salary-range-dog-breeder.html> [<https://perma.cc/FX7R-4CMP>] (accessed Jan. 21, 2019) (showing that dog breeders earned an average \$40,000 per year in the United States in 2013); Adrian Hirsch, *Unleashed: Louisiana’s Dog Breeding Regulations Strengthened*, 225 MAGAZINE (June 23, 2015), <https://www.225batonrouge.com/article/unleashed-062215> [<https://perma.cc/25V4-A2WP>] (accessed Jan. 21, 2019); see *How Much Does it Cost to be a Dog Breeder?*, BREEDINGBUSINESS.COM (Oct. 7, 2017), <https://breedingbusiness.com/cost-of-dog-breeding/> [<https://perma.cc/5K9A-TR7C>] (accessed Jan. 21, 2019) (showing the large disparity in annual breeding costs based on the level of care given where low ranges are small costs compared to annual salaries).

⁵⁸ See Hirsch, *supra* note 57 (explaining that “breeders with only five dogs could easily make \$100,000 annually”); see Altman, *supra* note 57 (reporting some breeders “earned up to \$63,190”).

⁵⁹ Rebecca F. Wisch, *Table of State Commercial Pet Breeders Laws*, ANIMAL LEGAL & HIST. CTR. (2017), <https://www.animallaw.info/topic/table-state-commercial-pet-breeders-laws/> [<https://perma.cc/T66U-FQAR>] (accessed Jan. 21, 2019). Michigan charges a \$500 breeder license fee to run a kennel with more than fifteen intact female dogs. *Id.*

⁶⁰ LA. STAT. ANN. § 3:2772 (2015). Arizona requires a \$75 breeder license fee to maintain five or more dogs. Wisch, *supra* note 59. Georgia requires a \$100 breeder license fee to maintain up to twenty companion animals at once. *Animal Protection FAQs*, GA. DEPT. OF AGRIC., <http://agr.georgia.gov/animal-protection-faqs.aspx> [<https://perma.cc/2665-3UAZ>] (accessed Jan. 21, 2019). Texas requires a \$300 breeder license fee to maintain 11–25 intact companion animals. *How to Apply for a Cat or Dog Breeder License*, TEX. DEPT. OF LICENSING AND REG., <https://www.tdlr.texas.gov/bre/breapply.htm#application> [<https://perma.cc/P52H-L5SU>] (accessed Jan. 21, 2019). In Phoenix, Arizona, a single pet owner may pay up to a \$50 annual fee. *Dog License*, MARICOPA.GOV, <https://www.maricopa.gov/226/Dog-License> [<https://perma.cc/TP7Y-W6F2>] (accessed Jan. 21, 2019). In Atlanta, a pet owner may pay up to \$60 triennially for one pet. *License Your Pet*, FULTON COUNTY ANIMAL SERV., <http://www.fultonanimalservices.com/resources-services/licensing> [<https://perma.cc/H8H5-M3W4>] (accessed Jan. 21, 2019). In Dallas, a pet owner must pay up to an annual \$30 fee. *City of Dallas Implements Online Pet Registration*, DALLAS CITY NEWSROOM, <https://content.govdelivery.com/accounts/TXDALLAS/bulletins/b8626> [<https://perma.cc/EWG6-XGA3>] (accessed Jan. 21, 2019).

⁶¹ See Simmons, *supra* note 43, at 265 (showing that animals legally are considered property and thus their owners cannot sue on their behalf).

have traditionally been considered their owners' private property.⁶² Essentially, they are at the mercy of their owners.⁶³ But states are challenging the property status of companion animals, as they recognize that owners generally value their pets considerably more than they value their material possessions.⁶⁴ The Supreme Court of Alaska, the Court of Appeals of Minnesota, and a New York appellate court, for instance, have considered companion animals' best interests during custody proceedings, distinguishing companion animals from mere objects.⁶⁵ Some states have passed laws giving companion animals an intermediate status, between humans and inanimate objects.⁶⁶ These laws enable owners to recover heightened damages when third parties hurt or kill them.⁶⁷

Still, these laws alone are not strong enough to combat animal cruelty on behalf of companion animals, for several reasons. First, many states have not adopted this more progressive stance. Second, even in the more progressive states, many companion animals have no families to sue on their behalf.⁶⁸ Third, shelters generally have no standing to sue on behalf of companion animals in animal cruelty situations.⁶⁹ Fourth, prosecutors could prosecute animal cruelty in shelters' place, but they rarely do.⁷⁰ When undertaken, prosecutors' animal cruelty cases receive more attention from the media and the public than many other types of cases,⁷¹ but prosecutors lack the resources to conduct thorough investigations.⁷²

⁶² RICHARD A. LEITER, NATIONAL SURVEY OF STATE LAWS 553 (7th ed. 2015).

⁶³ Kristen Stuber Snyder, *No Cracks in the Wall: The Standing Barrier and the Need for Restructuring Animal Protection Laws*, 57 CLEV. ST. L. REV. 137, 139 (2009).

⁶⁴ See Simmons, *supra* note 43 (showing that legislatures have enacted such laws to prevent harm to animals); see also Hillary A. Leonard & Debra L. Scammon, *No Pet Left Behind: Accommodating Pets in Emergency Planning*, 26 J. OF PUB. POLICY & MARKETING 49, 49 (2007) (showing that post-Katrina, legislators pass laws because of the importance of pets to humans).

⁶⁵ Simmons, *supra* note 43 at 271–72 (showing instances where several courts have taken a pet's "best interest" into consideration); see also Heidi Stroh, *Puppy Love: Providing for the Legal Protection of Animals When Their Owners Get Divorced*, 2 J. ANIMAL L. & ETHICS 231, 244 (2007) (showing scholars arguing that courts should consider living conditions, frequency of pet-guardian interaction, and the amount of affection the companion animal receives).

⁶⁶ N.Y. AGRIC. & MKTS. LAW § 353-a (McKinney 1999).

⁶⁷ *Id.*

⁶⁸ See *Pets by the Numbers*, HUMANE SOC'Y, http://www.humanesociety.org/issues/pet_overpopulation/facts/pet_ownership_statistics.html [https://perma.cc/EDK7-46CP] (accessed Jan. 21, 2019) (showing that the millions of animals in shelters do not have families to sue for them).

⁶⁹ Simmons, *supra* note 43, at 282–83.

⁷⁰ *Id.* at 283.

⁷¹ LOCKWOOD, *supra* note 37; Winters, *supra* note 35, at 861 ("The Animal Legal Defense Fund claims that prosecutors have expressed their dismay that they receive more calls and mail about animal cruelty cases than about child abuse.").

⁷² See Hines, *supra* note 32 (discussing the lack of resources in a city prosecutor's office compared to the caseload).

IV. A THREE-PRONGED SOLUTION

Reform of animal cruelty and breeding laws in many states across the South would reduce the rampant euthanasia of companion animals, bring more abusers to justice,⁷³ and raise funds for shelters' routine operations, breeding regulation enforcement, animal abuser registries, transport programs, and spay/neuter programs—all without raising taxes on the general public or responsible pet owners.⁷⁴

A. *Make Backyard Breeding Companion Animals More Costly*

Backyard breeders should be compelled to pay significantly higher fees for their breeding licenses and significantly higher fines for breeding without a license.⁷⁵ Raising breeder license fees and penalties would accomplish three goals. First, it would shift the burden of sustaining shelters from taxpayers to the constituents who are causing these shelters to remain full.⁷⁶ Second, it would help deter breeders, reducing the problems breeding causes—including mass “dumping” of overbred, ill-bred, and surplus companion animals at shelters.⁷⁷ Third, it would help raise revenue to finance more over-arching solutions to these problems.⁷⁸

⁷³ See *infra* Parts III.A–B (discussing how reform of animal cruelty can empower shelters to bring to justice abusers of those animals that end up at the shelter and reform of breeding laws can lower euthanasia rates by lowering the rate of companion animal breeding).

⁷⁴ Diana Samuels, *Baton Rouge Pet License Fees to Increase, Extra Revenue Going to Shelter*, NOLA (May 28, 2014), http://www.nola.com/news/baton-rouge/index.ssf/2014/05-baton_rouge_pet_license_fees_t.html [<https://perma.cc/86E6-YKRS>] (accessed Jan. 21, 2019); *infra* Part IV.C.

⁷⁵ See *infra* Part III.A.1–2. Fees are often enforced by states' respective Departments of Agriculture and Forestry.

⁷⁶ *Reasons to Breed*, AM. KENNEL CLUB, <http://www.akc.org/content/dog-breeding/articles/-reasons-to-breed/> [<https://perma.cc/7DDL-A3RC>] (accessed Jan. 21, 2019); *Buyer Beware: The Problem with Puppy Mills and Backyard Breeders*, PAWS, <https://www.paws.org/get-involved/take-action/explore-the-issues/puppy-mills/> [<https://perma.cc/Q9DR-JP9R>] (accessed Feb. 2, 2019). An estimated 5–25% of dogs in shelters are believed to be pure-bred. *Pets by the Numbers*, *supra* note 68; *NAIA Study Confirms Fewer Dogs, Scarce Purebreds in US Animal Shelters*, NAT'L ANIMAL INTEREST ALL. (July 14, 2015, 6:35 PM), <https://www.prnewswire.com/news-releases/naia-study-confirms-fewer-dogs-scarce-purebreds-in-us-animal-shelters-300112635.html> [<https://perma.cc/7BUS-P5QX>] (accessed Jan. 21, 2019).

⁷⁷ See, e.g., Blizard, *supra* note 27 (“On one hand, I believe we are facing pet overpopulation. Or maybe we should call it a ‘breeding problem.’ . . . Animal shelters are cleaning up the messes that so many other people make — backyard breeders pumping out babies for cash . . . We are facing a pet overpopulation onslaught caused by breeding.”); Brink, *supra* note 27 (explaining the common practice of breeding female dogs until they can no longer satisfactorily breed and then abandoning them, after which they end up at shelters); Wood, *supra* note 27 (“Ninety percent of the dogs in shelters are pit bulls or pit bull mixes. They’re abandoned or neglected by owners who overbreed or have no use for them when they can’t fight anymore,” said Hilton Head Humane Association director Franny Gerthoffer.”).

⁷⁸ See Tushaus, *supra* note 32, at 518 (stating “the mandatory licensing fee can alleviate at least some of the financial burden it creates”). One female dog and one male dog

1. Breeder License Fee

Backyard breeders primarily operate out of their residences, so they are difficult and expensive to monitor,⁷⁹ especially when they use the internet to conduct sales.⁸⁰ Authorities need more resources to ensure that the industry will finally start operating ethically and stop contributing to the massive overpopulation crisis. Higher breeder license fees, with stricter requirements,⁸¹ will help accomplish both goals of providing a strong form of deterrence and providing more resources for enforcement.⁸² Responsibly raising a litter of companion animals typically costs between \$15,000 and \$20,000, and high breeder license fees would discourage backyard breeders who are unable to invest adequately.⁸³ At the same time, the higher fee would be reasonable considering the average annual salary of a backyard breeder, which can reach six figures.⁸⁴

2. Penalty for Failure to Obtain License

Backyard breeders who operate without a license should have to pay a significant monetary penalty.⁸⁵ Northern states have embraced higher penalties as a tool for deterrence. In Wisconsin, selling at least twenty-five dogs without a license triggers up to a \$10,000 fine, nine months in prison, or both.⁸⁶ This sharp penalty gives credence to the Wisconsin Department of Agriculture's demands for breeders to main-

who reproduce once per year over seven generations will result in roughly 4,370 dogs in only seven years if none of the dogs are spayed or neutered. *Interesting Facts about Dogs*, MSPCA, https://www.mspca.org/pet_resources/interesting-facts-about-dogs/ [https://perma.cc/6VPC-8P8E] (accessed Jan. 21, 2019).

⁷⁹ Hirsch, *supra* note 57; Zach Beard, *Backyard Breeders Present Hard-to-Spot Issue with Dogs*, THE SHREVEPORT TIMES (Aug. 24, 2015, 9:50 PM), <http://www.shreveporttimes.com/-story/news/local/2015/08/24/backyard-breeders-present-hard-spot-issues-dogs/32307539/> [https://perma.cc/W8SX-AK7R] (accessed Jan. 21, 2019).

⁸⁰ Anne Ryman, *Backyard Breeders Widespread*, TUCSON (Dec. 31, 2007), http://tucson.com/news/local/backyard-breeders-widespread/article_359eebf6-efca-544c-81a4-da76d67dd13b.html [https://perma.cc/PK6Y-QB3X] (accessed Jan. 21, 2019).

⁸¹ See Robyn Fae Katz, *The Importance of Enacting a Texas Commercial Breeder Law to Regulate Loopholes that the Federal Law Creates*, 11 TEX. TECH. ADMIN. L.J. 185, 194–95 (2009) (explaining how a business license forces the “operation to comply with more stringent regulations”).

⁸² See, e.g., *The Cost of Raising a Responsibly Bred Litter of Puppies*, CRYSLLEN.COM, <http://cryslen.com/blog/2015/09/06/the-cost-of-raising-a-responsibly-bred-litter-of-puppies/> [https://perma.cc/GL3T-SNTK] (accessed Jan. 21, 2019) (summarizing expenses associated with responsibly raising a litter of puppies); *Cost to Breed and Raise a Litter*, O'MAL ALASKAN MALAMUTES, <https://omal Malamutes.com/omal/littercost.htm> [https://perma.cc/S6S7-SSJ8] (accessed Jan. 21, 2019).

⁸³ *Cost to Breed and Raise a Litter*, *supra* note 82.

⁸⁴ See *infra* Part III.A (noting that small-scale breeders can make \$100,000 selling a handful of dogs).

⁸⁵ See Wisch, *supra* note 59 (“This table covers state laws and administrative regulations . . . whether a state has a minimum standard of care, inspection provisions, and penalties for violations.”).

⁸⁶ *Id.* at 44.

tain acceptable breeding standards.⁸⁷ Many irresponsible breeders who did not comply when those standards were put in place are no longer in operation.⁸⁸ Nebraska and Minnesota currently allow for up to a \$5,000 civil penalty for violating state breeding laws.⁸⁹ Louisiana, by comparison, only provides for an optional \$500 penalty and/or jail time,⁹⁰ and Tennessee only imposes a class C misdemeanor consisting of a fine no greater than \$50 and/or jail time.⁹¹

The penalty needs to be significant, so backyard breeders are not willing to risk practice without a license. Given that those who breed just five dogs can easily make an annual \$100,000, the penalty needs to be significant to be effective;⁹² people would be less likely to breed without a license if the penalty substantially affects their potential for profit.⁹³ States should install a *mandatory* flat penalty significantly higher than the license fee for practicing without a license.⁹⁴ Doing so would encourage backyard breeders to obtain a license and generate public revenue.

3. *How the Fee and Penalty Work Together*

The penalty and fee increase would be effective means to counteract overpopulation in four ways.⁹⁵ First, the high flat cost for a breeder license may shrink the backyard breeding industry because many may be unable or unwilling to pay the fee, in addition to the other costs to

⁸⁷ See Telephone Interview with Dr. Yvonne Bellay, Animal Welfare Programs Manager, Dep't of Agriculture, Trade and Consumer Protection, in Wis. (Jan. 10, 2018) (on file with the author) (referring to the potential penalty as a "hammer" that bolstered compliance with the agency's breeding standards when it installed its first comprehensive breeder licensing program and breeder dog health standards in 2011 under 2009 Wisconsin Act 90).

⁸⁸ *Id.*

⁸⁹ Wisch, *supra* note 59.

⁹⁰ LA. STAT. ANN. § 3:2772 (2015).

⁹¹ TENN. CODE ANN. § 44-17-116 (2018); John M. Scheb II, *An Overview of Criminal Offenses under Tennessee Law*, <https://web.utk.edu/~scheb/overview.html> [<https://perma.cc/E5TQ-ZA77>] (accessed Jan. 21, 2019).

⁹² See Hirsch, *supra* note 57 (explaining that "breeders with only five dogs could easily make \$100,000 annually"); see *Inspection Reports Search*, U.S. DEP'T OF AGRIC., [https://acis.aphis.edc.usda.gov/ords/f?p=118:1\[https://perma.cc/7BBV-8X8U\]](https://acis.aphis.edc.usda.gov/ords/f?p=118:1[https://perma.cc/7BBV-8X8U]) (accessed Jan. 21, 2019) ("This Public Search Tool provides a list of persons licensed and registered under the AWA, inspection report, and research facility animal use annual reports.").

⁹³ See Bellay, *supra* note 87 (referring to the potential penalty as a "hammer" that bolstered compliance with the agency's breeding standards when it installed its first comprehensive breeder licensing program and breeder dog health standards in 2011 under 2009 Wisconsin Act 90).

⁹⁴ Wisch, *supra* note 59; see *Eckhart v. Dep't of Agric.*, 8 A.3d 401 (Pa. Commw. Ct. 2010) (finding an administrative penalty of \$15,000 to not be excessive when the defendant acquired 30 dogs while "under revised notice" after being ordered not to operate a kennel and was fined \$500 per violation).

⁹⁵ Tushaus, *supra* note 32, at 514.

responsibly breed.⁹⁶ With fewer breeders in action, shelters could work with the pet industries and facilitate more adoptions of homeless animals.⁹⁷ Second, the penalty and fee increase would pay for resources to monitor breeding more closely and would put irresponsible backyard breeders out of business, further decreasing the number of backyard-bred companion animals entering shelters.⁹⁸ Third, as the industry shrinks, less backyard-bred companion animals would be available to the public. Given the growing popularity of rescue companion animals, more individuals in search of a pet would turn to shelters or breed-specific rescues out of convenience and affordability.⁹⁹ Fourth, the penalty and fee increase would ensure more ethical breeding practices by funding routine inspections. Penalties initially assessed for operating without a license could generate revenue to pay authorities to inspect backyard breeders,¹⁰⁰ and long-term monitoring would become financially feasible as the pool of breeders shrinks.¹⁰¹

This approach of targeting breeders as a source of revenue may also garner legislators' public support.¹⁰² Public officials would avoid unpopular increases in taxes on responsible pet owners,¹⁰³ and the heightened penalty and fee would produce results, leaving revenue to finance future projects.

B. Create a Private Civil Action for Shelters to Sue Animal Abusers

Like reforms to breeding laws, providing shelters with a private civil action against animal abusers has multiple benefits.¹⁰⁴ Re-

⁹⁶ See *The Cost of Raising a Responsibly Bred Litter of Puppies*, *supra* note 82 (showing it is expensive to be a responsible breeder).

⁹⁷ Tushaus, *supra* note 32, at 517.

⁹⁸ See Robyn R. Katz, *Overview of Commercial Breeding*, MICH.STATE UNIV. COLL. OF LAW ANIMAL LEGAL & HISTORICAL CTR. (2008) (discussing the importance of prioritizing the inspection of commercial breeding facilities at the state level, including small-scale operations, as a means of closing irresponsible breeding operations).

⁹⁹ Heather Mohan-Gibbons, *Evaluation of a Novel Dog Adoption Program in Two US Communities*, 9 PLoS ONE 3 (2014), <http://journals.plos.org/plosone/article/-file?id=10.1371/journal.pone.0091959&type=printable> [<https://perma.cc/HB4Y-UESH>] (accessed Jan. 21, 2019); see Coleman, P., et al., *It's Raining Cats and Dogs . . . Government Lawyers Take Note: Differential Licensing Laws Generate Revenue, Reduce Costs, Protect Citizens, and Save Lives*, 40 STETSON L. REV. 393, 397–98, 423–24 (2011) (“[E]ach sale reduces the available adoptive homes and decreases the likelihood that a shelter animal will be adopted; this makes it more likely that he or she will be euthanized to reduce the numbers in overcrowded facilities.”).

¹⁰⁰ Tushaus, *supra* note 32, at 517.

¹⁰¹ See Katz, *supra* note 81, at 195 (“The impact on the [relevant] agency [to do breeding inspections twice per year] would be approximately \$53,381 for fiscal year 2010 and the addition of a ‘half position.’”).

¹⁰² See e.g., Samuels, *supra* note 74 (showing a Louisiana council member's support).

¹⁰³ See *id.* (showing a recent increase in Baton Rouge's fees for owning a companion animal sparked controversy in the community even though the raise generated about \$187,000 for the local animal shelter).

¹⁰⁴ See *supra* Part IV.A (showing that breeding license fees both deter irresponsible breeding and provide revenue to aid shelters and the enforcement of breeding regulations).

forming breeding laws would decrease the companion animal population and provide revenue;¹⁰⁵ likewise, establishing a private civil action for shelters would make suing animal abusers easier and provide additional revenue.¹⁰⁶

Every state considers some version of animal cruelty a felony today, but still prosecutors rarely convict animal abusers. Instead, the number of convictions depends on whether a given district attorney prioritizes these cases.¹⁰⁷ Allowing shelters to sue in civil court would bring offenders to court more often.¹⁰⁸ North Carolina law allows citizens to civilly enjoin animal cruelty, and animal advocates recently removed hundreds of dogs from abusive owners by enforcing this provision.¹⁰⁹ A private civil action for shelters would provide similar opportunities.¹¹⁰ To reap these benefits, shelters should be allowed limited standing as representatives of the public in civil court.¹¹¹ Several strategic reforms would make these actions effective. First, the civil action could parallel the state's already-existing criminal anti-cruelty laws to make legislating the civil action easier.¹¹² Second, the civil actions could be assigned to a single judge to streamline the legal process.¹¹³ Third, civil forfeitures could be awarded to shelters when they are successful in court to provide them with revenue.¹¹⁴

1. *Standing on All Four Legs*

Shelters could gain standing in civil court under a theory of public nuisance.¹¹⁵ Black's Law Dictionary defines a public nuisance as "[a] tort whereby the tortfeasor creates a nuisance or otherwise interferes with the public welfare," specifically by affecting the health, safety, or

¹⁰⁵ *See id.*

¹⁰⁶ *See infra* Parts IV.B.1, IV.B.2 (explaining how to install a private civil action for shelters to encourage accountability of animal abusers and raise revenue through litigation).

¹⁰⁷ *See infra* Part II.B (discussing the prioritization of human cases in the justice system).

¹⁰⁸ *See Brewster, supra* note 16 (discussing the difficulty of bringing animal abusers to justice depending on a district's district attorney, who may or may not take animal cruelty seriously).

¹⁰⁹ Tischler, *supra* note 33, at 57.

¹¹⁰ *See Simmons, supra* note 43, at 256 (comparing animal rights to juvenile court and finding that similar methods would work for both).

¹¹¹ *See infra* Parts IV.B.1 (discussing how animal shelters should have standing as representatives of their communities).

¹¹² *See Tischler, supra* note 33, at 57 (showing examples of civil actions brought to help enforce anti-cruelty laws).

¹¹³ *See infra* Part IV.B.2 (discussing the advantages of assigning all animal cruelty cases to a single judge).

¹¹⁴ *See infra* Part IV.B.1 (discussing the revenue available to shelters in cases involving animal cruelty connected to profitable operations, such as dogfighting).

¹¹⁵ Karen L. McDonald, *Creating a Private Cause of Action Against Abusive Animal Research*, 134 U. PA. L. REV. 399, 413 (1986).

welfare of the public.¹¹⁶ Showing that the public is at risk because of a particular activity could help establish a cause of action.¹¹⁷ Extensive research connecting animal abuse and murder demonstrates that animal cruelty is a serious public nuisance.¹¹⁸ Animal abusers are five times more likely to hurt humans, and studies show a high correlation between animal cruelty and rape, assault, child abuse, and elder abuse.¹¹⁹ Likewise, children exposed to animal abuse at an early age are much more likely to become violent toward themselves and others later.¹²⁰

Shelters are uniquely qualified to represent the community against this public nuisance for several reasons. First, state legislators have already entrusted local shelters with the long-term commitment of maintaining humane standards for the community's companion animals.¹²¹ In *Animal Lovers Volunteer Ass'n v. Weinberger*, the U.S. Court of Appeals for the Ninth Circuit suggested that organizations may be able to obtain standing for animals by showing long-term commitment to preventing animal abuse.¹²² Because shelters work hard to care for their communities' homeless companion animals, they may be able to gain standing.¹²³ Second, shelters have expertise in companion animals that make them exceptionally capable of representing the animals' interests and of protecting the public from the harms of animal cruelty.¹²⁴ Third, shelters prioritize companion animals' well-being more than prosecutors. Unlike prosecutors who devote resources to

¹¹⁶ *Public Nuisance*, THELAW.COM, <https://dictionary.thelaw.com/public-nuisance/> (accessed Jan. 4, 2019).

¹¹⁷ McDonald, *supra* note 115, at 416.

¹¹⁸ See *infra* Part IV.C (discussing the connection between animal abuse and human abuse by offenders in the context of animal abuser registries); *supra* Part II (discussing the animal abuser history of human serial killers); Sifontes, *supra* note 40, at 214.

¹¹⁹ *Animal Abuse and Human Violence*, *supra* note 39; Trollinger, *supra* note 39, at 29, 30 (2001); Lockwood, *supra* note 39.

¹²⁰ Charles Siebert, *The Animal-Cruelty Syndrome*, N.Y. TIMES (June 11, 2010), <https://www.nytimes.com/2010/06/13/magazine/13dogfighting-t.html> [<https://perma.cc/W8YF-C3RC>] (accessed Jan. 21, 2018); Zazie Todd, *The Effects of Witnessing Animal Abuse on the Mental Health of Children*, PAC. STANDARD (June 27, 2016), <https://psmag.com/news/the-effects-of-witnessing-animal-abuse-on-the-mental-health-of-children> [<https://perma.cc/H9B3-38JD>] (accessed Jan. 21, 2019).

¹²¹ See McDonald, *supra* note 115, at 429–30 (showing that state legislators, through allowing the creation and maintenance of local animal shelters, have entrusted animal shelters with maintaining humane standards of animal care and have a special interest in animal welfare, suggesting that legislators should give shelters standing).

¹²² Erica R. Tatioian, *Animals in the Law: Occupying a Space Between Legal Personhood and Personal Property*, 31 J. ENVTL. L. & LITIG. 147, 154 (2015).

¹²³ McDonald, *supra* note 115, at 429; Tatioian, *supra* note 122, at 154.

¹²⁴ See McDonald, *supra* note 115, at 424–429 (discussing shelter operators as professional associations who have the expertise to prevent irresponsible behavior in their area of work). McDonald compares shelter operators to professionals in self-regulated industries, such as the legal or medical industry, that create associations to root out unlicensed, unlawful or irresponsible practitioners. In the same way, shelter operators are experts in the field of animal care who are most capable of rooting out irresponsible animal owners. *Id.*

prosecuting all types of crimes, shelters are devoted to companion animals alone, so animal cruelty cases can receive the attention they need.¹²⁵

Fourth, several shelters—unaccompanied by lawyers—are already entering the courtroom on a limited basis in criminal cases.¹²⁶ The American Society for the Prevention of Cruelty to Animals has authority to prosecute animal cruelty in several states.¹²⁷ Legislators already recognize that shelters are suitable public representatives in criminal cases, so they should be allowed to act in civil courts, as well.¹²⁸

If shelters alone have the right to lodge this civil action, allowing shelters standing will not congest the judiciary due to minor animal cruelty citizen claims.¹²⁹ There are a limited number of shelters, and their cases would likely account for a small fraction of a court's caseload.¹³⁰

2. *Conquering the Logistics of the Civil Action*

To make the civil action a reality, legislators should consider doing the following: Diverting all cases to a single judge,¹³¹ allowing the cases to move forward without using the abused companion animal as evidence,¹³² and providing a post-judgment money forfeiture of any profit gained through an offender's animal abuse.¹³³ By following

¹²⁵ *See id.* (“These societies have an expertise in the area of animal care not generally found in law enforcement agencies.”).

¹²⁶ *See id.* at 422 (“The legislatures in seven states have provided SPCA’s and humane societies with the power to prosecute violations of the anticruelty statutes.”).

¹²⁷ *See* Telephone Interview with Brandi Thibodeaux, Humane Law Enforcement Supervisor of the Louisiana SPCA (Oct. 20, 2017) (stating that humane law enforcement officers may represent the public in prosecuting animal cruelty violations, as opposed to attorneys) (on file with the author).

¹²⁸ McDonald, *supra* note 115, at 422.

¹²⁹ *Id.* at 428–29.

¹³⁰ *See id.* at 429 (explaining why humane societies have a strong argument for standing due to an additional private interest).

¹³¹ *See* Simmons, *supra* note 43, at 256 (“[J]udges who only have to concentrate on one area of law are more efficient in making their conclusions . . . [they] are more likely to produce higher-quality decisions from which no appeal can or need be taken.”).

¹³² LOCKWOOD, *supra* note 37, at 21, 26 (discussing the unique logistical issues that result from seizing animals as evidence in animal cruelty cases); *see* Brewster, *supra* note 16 (on file with the author) (In 2016, Baton Rouge’s animal shelter was forced to house eleven puppies for roughly six months; by the end of litigation, the puppies had become aggressive and were euthanized. The shelter had spent \$27,410 caring for the puppies) (on file with the author).

¹³³ *See* Sam Tegeltija, *An Illegal Dog Breeder Who Sold Puppies for up to £750 Each Has Been Ordered to Pay Back the Profits She Made*, WALES ONLINE (Nov. 4, 2016), <http://www.walesonline.co.uk/news/local-news/illegal-dog-breeder-who-sold-12129722> [<https://perma.cc/4S2Y-S78Q>] (accessed Jan. 21, 2019) (discussing how the illegal selling of puppies without a license resulted in a defendant forfeiting all profits made); *see* State v. Walder, No. 2009-0716, 2009 WL 3162220, at *5 (La. Ct. App. Sept. 11, 2009) (unpublished decision) (discussing the expenses shelters are forced to bear when they

these steps, legislators would create an inexpensive but effective route for shelters to hold animal abusers accountable in court.¹³⁴

First, to streamline these civil actions, the cases should be funneled to a single judge in each locality.¹³⁵ Specialized companion animal courts attract judges who take animal abuse seriously,¹³⁶ and judges who focus on one area of law are more efficient. They can move more quickly, and they hand down higher-quality rulings because they develop expertise in that area, avoiding the appeals process.¹³⁷ San Antonio, Tampa Bay, and San Francisco have each established specialized courts for companion animal disputes.¹³⁸ San Antonio achieved an increase in compliance with companion animal regulations,¹³⁹ and the San Francisco court system increased the number of companion animal cases it heard.¹⁴⁰ Legislators should follow their lead.¹⁴¹

Second, to further streamline litigation, companion animals should not be held as evidence for trial.¹⁴² Abuse could be proven more easily through photographs, medical records, and veterinarian testimony.¹⁴³ Forcing shelters to hold companion animals during trial costs taxpayers and the government significant amounts of money, and it could cost the companion animal its life.¹⁴⁴ During litigation, the animals receive little opportunity to bond with adopters because they are

attempt to hold animal abusers accountable through the current judicial system, including medical expenses).

¹³⁴ See Tegeltija, *supra* note 133 (regarding the penalty of profit forfeiture, RCT council director Paul Mees states: “[t]his is somewhat of a landmark case for us and shows . . . we have access to - and can use effectively - to deal with those who make a profit from criminal activity”); see generally Walder, 2009 WL 3612220 (discussing the expenses shelters are forced to bear when they attempt to hold animal abusers accountable through the current judicial system, including medical expenses); see LOCKWOOD, *supra* note 37, at 43 (discussing the many benefits of effective animal abuse prosecution); see Simmons, *supra* note 43, at 256 (“The legal system is slowly accepting the idea that companion pets deserve more *humane* legal protection.”).

¹³⁵ Simmons, *supra* note 43, at 256.

¹³⁶ *Id.* at 258.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Vincent T. Davis, *Animal Court Rules on City Pet Law Offenses*, MY SAN ANTONIO (June 26, 2011), <http://www.mysanantonio.com/community/article/Animal-court-rules-on-city-pet-law-offenses-1441327.php> (accessed Jan. 4, 2019) (discussing how San Antonio’s new system for hearing animal cases has resulted in increased compliance with the law).

¹⁴⁰ Meredith May, *‘Dog Judge’ Acts as Mediator Between Pets, People*, SF GATE (May 19, 2012), <http://www.sfgate.com/pets/article/Dog-judge-acts-as-mediator-between-pets-people-3569829.php> (accessed Jan. 4, 2019).

¹⁴¹ See Simmons, *supra* note 43, at 259 (“[T]he courts do guide a state into reasonably enforcing animal control laws and educate society on the correct and reasonable way to treat their companion pets in order to abide by the current animal laws in place.”).

¹⁴² See LOCKWOOD, *supra* note, 37 at 26 (“Prolonging proceedings is problematic for all concerned. The animals can suffer additional stress, disease or harm from improper or prolonged confinement.”); Brewster, *supra* note 16.

¹⁴³ See LOCKWOOD, *supra* note 37, at 36 (Figure 8).

¹⁴⁴ *Id.*; see Brewster, *supra* note 16 (in 2016, Baton Rouge’s animal shelter was forced to house eleven puppies for roughly six months; by the end of litigation, the puppies had

considered evidence that must be tracked closely.¹⁴⁵ If records were used for evidence, shelters could adopt them out regardless of ongoing litigation.¹⁴⁶ Should the shelter lose at trial, it could compensate the defendant with the companion animal's market value minus the cost of its medical treatment as assessed by the shelter's veterinarian.¹⁴⁷ Because the cost of care is so high, in some cases the shelter would owe the defendant no money.¹⁴⁸

Third, to incentivize civil actions, shelters should be awarded any profit the defendant gained through abuse post-guilty judgment as forfeiture—either in criminal *or* civil court.¹⁴⁹ Post-judgment forfeiture often takes place during a criminal prosecution and allows a defendant's illegal assets to be seized or frozen by the government. If the defendant is convicted, the assets can be permanently forfeited during sentencing.¹⁵⁰ Animal cruelty often coincides with profit-seeking activities like breeding and dogfighting, both of which are commonplace in the South.¹⁵¹ Raids of major dog fights have led to seizures of more

become aggressive and were euthanized. The shelter had spent \$27,410 caring for the puppies).

¹⁴⁵ See *id.* (explaining the Animal Shelter recently held one miniature horse for 14 months during ongoing litigation, costing taxpayers approximately \$8,780).

¹⁴⁶ *Id.*

¹⁴⁷ See *Walder*, 2009 WL 3612220, at *5–6 (analyzing a restitution issue regarding animal boarding during trial); see also, *Brewster*, *supra* note 16 (noting that the average cost for one dog to remain in Baton Rouge's animal shelter, for example, is \$15 per day).

¹⁴⁸ See *Cost of Care Legislation*, AMERICAN SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, <https://www.aspc.org/animal-protection/public-policy/cost-care-legislation> [<https://perma.cc/A4YG-HSCH>] (accessed Jan. 19, 2019) (explaining how caring medically and otherwise for animal cruelty victims often becomes expensive when shelters hold these companion animals during litigation).

¹⁴⁹ See *Tegeltija*, *supra* note 133 (explaining a court ruling that held defendant must forfeit the profit she made from selling puppies when she had no legal license).

¹⁵⁰ *Seizing Crime Proceeds and Compensating Victims*, *supra* note 8.

¹⁵¹ See, e.g., James C. McKinley Jr., *Dogfighting Subculture Is Taking Hold in Texas*, N.Y. TIMES (Dec. 6, 2008), <https://www.nytimes.com/2008/12/07/us/07dogs.html> [<https://perma.cc/XG9K-S47Q>] (accessed Jan. 21, 2019) (discussing the prevalence of dogfighting in Texas, including for wagers of tens of thousands of dollars); Devin Rodriguez, *Florida Woman Charged After Fighting Dogs Euthanized, Kept in Garage for Weeks*, TAMPA BAY (Feb. 15, 2018), http://www.tampabay.com/news/publicsafety/crime/Florida-woman-charged-after-fighting-dogs-euthanized-kept-in-garage-for-weeks_165514597 [<https://perma.cc/989F-LRY8>] (accessed Jan. 21, 2019) (reporting evidence of dogfighting in Florida by a woman found with 9 dogs allegedly part of a dogfighting operation); Sarah Crawford, *30 Dogs Rescued, 3 Men Charged*, SHREVEPORT TIMES (Apr. 27, 2017), <http://www.shreveporttimes.com/story/news/2017/04/27/30-dogs-rescued-three-men-charged/100935456/> [<https://perma.cc/GAR7-HVTW>] (accessed Jan. 21, 2019) (reporting that authorities seized more than 30 dogs being used in an Atlanta-based dogfighting operation); Robbie Reynold, *Man Faces Dogfighting, Animal Cruelty Charges*, WAFB.COM (Oct. 18, 2016), <http://www.wafb.com/story/33414219/man-faces-dogfighting-animal-cruelty-charges> [<https://perma.cc/8A7R-7LDT>] (accessed Jan. 21, 2019) (reporting the discovery of an alleged dogfighting operation involving 15 dogs in Baton Rouge); *Nearly 3 Dozen Dogs Saved During Raids on Northwest Louisiana Dog Fighting Operation*, 965KVKI.COM (Apr. 27, 2017) <http://965kvki.com/nearly-3-dozen-dogs-saved-during-raids-on-northwest-louisiana-dog-fighting-operation-video/> [

than \$500,000; participants commonly exchange \$20,000–\$30,000 in one fight.¹⁵² Forfeiture, that is the seizure of the assets of a suspect, is often considered controversial in cases of non-violent crimes. In animal cruelty cases, however, forfeiture is appropriate, because animal abuse directly affects the welfare of living beings, is often violent in nature, and often offends the community.¹⁵³ Using these strategies to implement the civil action would make it an effective tool for shelters with minimal burden on the judicial system.

C. How to Use the Revenue Raised

Money from breeding fees and private action forfeitures could pay for better enforcement of breeding laws, as well as finance proactive projects like spay/neuter programs, transport programs, and animal abuser registries.¹⁵⁴

1. Spay/Neuter Program

The most direct solution to overwhelming companion animal populations in the South is a state-subsidized spay/neuter program.¹⁵⁵ New Hampshire established a spay/neuter program in the early '90s, and it dropped the state's euthanasia rate by 77% between 1994 and 2000; New Hampshire went from euthanizing 10,300 annually to just 2,600, and shelter arrivals decreased by 26%.¹⁵⁶ New Hampshire no

AW3Z] (accessed Jan. 21, 2019) (reporting the seizure of more than 30 dogs after a three-raid mission to rescue them from a northwest Louisiana dogfighting ring).

¹⁵² *A Closer Look at Dog Fighting*, ASPCA, <https://www.aspcapro.org/animal-cruelty/dog-fighting/closer-look-dog-fighting> [https://perma.cc/D2XJ-84XR] (accessed Jan. 21, 2019).

¹⁵³ See Rebecca J. Huss, *Ensuring Effective Tools for a Challenging Task: Amending the Animal Welfare Act's Animal Fighting Venture Civil Asset Forfeiture Provision*, 78 U. PITT. L. REV. 401, 423–24, 434–35 (2017) (Huss advocates for judicial forfeiture at the federal level under an amended AWA to collect proceeds in connection with dog fighting operations that cross state lines as a means to reimburse the federal government for its expenses in caring for seized animals.); Steve Annear, *Study: Students Are More Empathetic Towards Puppies Than People*, BOSTON MAGAZINE (Aug. 19, 2013), <https://www.bostonmagazine.com/news/2013/08/19/northeastern-study-puppies-empathy-levin-arluke/> [https://perma.cc/3GNQ-VZDK] (accessed Jan. 21, 2019) (detailing a study by Northeastern University sociology professors Jack Levin and Arnold Arluke comparing 240 Northeastern University students' reactions to abuse of humans, infants, and dogs that concluded students reacted with a greater degree of distress to a news story about a battered puppy or dog than a similarly harmed grown adult).

¹⁵⁴ See *infra* Part IV.C.1–3 (discussing opportunities to use revenue for spay/neuter programs, transport programs, and local animal abuser registries); Rugeley, *supra* note 31, at 618.

¹⁵⁵ *State Funded Spay Neuter in New Hampshire*, ASPCA PRO, http://www.aspcapro.org/sites/pro/files/nh-summary_0.pdf [https://perma.cc/JK5G-SJBG] (accessed Jan. 21, 2019).

¹⁵⁶ *Id.*; Sharon Seltzer, *New Hampshire is a Zero Kill State. Will Your State be Next?*, CARE2 (Feb. 12, 2013), <http://www.care2.com/causes/new-hampshire-is-a-zero-kill-state-will-your-state-be-next.html> [https://perma.cc/S9W7-K7DS] (accessed Jan. 21, 2019).

longer euthanizes companion animals simply because of a lack of space in its shelters.¹⁵⁷

The New Hampshire Department of Agriculture, Markets and Food provides financial assistance to low-income resident pet owners to spay or neuter up to three companion animals within a five-year period.¹⁵⁸ The state instituted a \$2 surcharge for dog licenses to provide cheaper spay/neuter services for dogs adopted from New Hampshire shelters that live with residents receiving state assistance.¹⁵⁹ Maryland implemented a similar spay/neuter program in 2013 that yielded a 39% decrease in the state's euthanasia rate and a 3% decrease in shelter arrivals in only three years.¹⁶⁰ By increasing breeding fees and offering civil money forfeitures, states across the South could establish similar programs.¹⁶¹

2. *Companion Animal Transports to North*

Funding private rescue operations that relocate companion animals from overcrowded shelters in the South (transfer organizations) could save thousands of lives more efficiently.¹⁶² In comparison to the South, euthanasia rates in the North are extremely low, and transfer organizations bringing companion animals north are contributing more and more to a decrease in euthanasia.¹⁶³ Transport organiza-

¹⁵⁷ Seltzer, *supra* note 156.

¹⁵⁸ *Animal Population Control Program FAQs*, N.H. DEP'T OF AGRIC., MARKETS & FOOD, <https://www.agriculture.nh.gov/divisions/animal-industry/faq-animal-control.htm#animals> [<https://perma.cc/PD3C-V58R>] (accessed Jan. 21, 2019).

¹⁵⁹ *State Funded Spay Neuter in New Hampshire*, *supra* note 155.

¹⁶⁰ *3 Year Trend Analysis of Intake and Euthanasia in Maryland Animals Shelters*, MD. DEP'T OF AGRIC. 5 (2016), http://mda.maryland.gov/spay_neuter_program/Reports/Three%20Year%20Trend%20Analysis%20Report%20%20July%202017.pdf [<https://perma.cc/5VYJ-7HWJ>] (accessed Jan. 21, 2019).

¹⁶¹ See *e.g.*, Samuels, *supra* note 74 (explaining that fee increases can generate money for animal organizations).

¹⁶² See Brulliard, *supra* note 2 ("The key is keeping facilities from filling in the first place, says the [American Society for the Prevention of Cruelty to Animals], which in 2014 pledged \$25 million to help do this in the Los Angeles area.").

¹⁶³ See, *e.g.*, Amy McRary, *East Tennessee Dogs Hitch Rides North to Find Families, New Lives*, KNOX NEWS (July 21, 2017, 8:00 AM), <https://www.knoxnews.com/story/life/2017/07/21/east-tennessee-dogs-hitch-rides-find-families-better-lives-north/479359001/> [<https://perma.cc/B87U-KYRQ>] (accessed Jan. 21, 2019) (showing that GoNorth Animal Transport Collaborative, a nonprofit in Knoxville, Tennessee, has sent more than 10,000 shelter animals to northern shelters that need adoptable pets). New Hampshire has a shortage of shelter companion animals for adoption and a euthanasia rate of zero for healthy companion animals. Seltzer, *supra* note 156. Maine euthanizes about 1,000 shelter companion animals yearly, and New Jersey and Maryland each euthanize between 15,000–20,000 annually. *Shelter Survey Results for the State of Maine*, MAINE DEP'T OF AGRIC., CONSERVATION AND FORESTRY, http://www.maine.gov/dacf/ahw/animal_welfare/shelter-survey.shtml [<https://perma.cc/3WTL-XEDQ>] (accessed Jan. 21, 2019); Steve Strunsky, *15,340 N.J. Dogs, Cats Euthanized in 2016. Here's Each County's Numbers*, NEW JERSEY REAL-TIME NEWS (Sept. 16, 2017), http://www.nj.com/news/index.ssf/2017/09/nj_euthanizations_down_in_2016_heres_each_countys.html [<https://perma.cc/RRA5-ERXT>] (accessed Jan. 21, 2019); *3 Year Trend Analysis of Intake and Euthanasia*

tions carry animals by car, van, or truck across state lines to a waiting shelter, rescue, or fosterer.¹⁶⁴ In some cases, they work directly with a particular shelter.¹⁶⁵ Every year, these transfer organizations transport thousands of companion animals to the North where they are adopted after arrival,¹⁶⁶ as the North has a high demand for breeds common to the South like labs and shepherds.¹⁶⁷ Wings of Rescue, a Southern California non-profit founded in 2012, has transported more than 26,000 animals from overcrowded shelters, including shelters in Texas.¹⁶⁸ Using the funds raised from breeding fees and money forfeitures, states could finance established transfer organizations to relieve overcrowded shelters.¹⁶⁹ Providing financial support to transfer organizations would have an instant impact on today's homeless companion animals, by removing them from shelters where they would otherwise be euthanized in a matter of days.¹⁷⁰

3. *State Animal Abuser Registry*

A concise catalogue of animal abusers would be a helpful tool for preventing harm to both companion animals and humans.¹⁷¹ Shelters encouraged to report animal abusers by potential money forfeitures would make a registry particularly helpful as more convictions are tallied. Registries offer a way for shelters to check potential adopters'

in Maryland Animal Shelters, *supra* note 160. Michigan only euthanized around 29,000 shelter companion animals in 2016. Julie Mack, *Adoptions Up, Euthanizations Down at Michigan Animal Shelters*, MICHIGAN NEWS (Aug. 7, 2017), http://www.mlive.com/news/-index.ssf/2017/08/post_117.html [<https://perma.cc/N2TQ-X6ZJ>] (accessed Jan. 21, 2019).

¹⁶⁴ Kaitlyn E. Simmons and Christy L. Hoffman, *Dogs on the Move: Factors Impacting Animal Shelter and Rescue Organizations' Decisions to Accept Dogs from Distant Locations*, NAT'L INST. OF HEALTH (Feb. 3, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4773738/> (accessed Jan. 4, 2019).

¹⁶⁵ *Id.*

¹⁶⁶ See J. Courtney Sullivan, *Adopt a Dog with a Southern Drawl*, N.Y. TIMES, <https://www.nytimes.com/2014/05/26/opinion/adopt-a-dog-with-a-southern-drawl.html> [<https://perma.cc/B5SH-B3NN>] (accessed Jan. 21, 2019) ("In the last decade, hundreds of thousands of dogs have been transported north from overcrowded facilities in the rural South.")

¹⁶⁷ *Id.*

¹⁶⁸ *About Wings of Rescue*, WINGS OF RESCUE, <https://wingsofrescue.org/> [<https://perma.cc/N75H-YVH3>] (accessed Jan. 21, 2019). Long Island rescue North Shore Animal League America transported nearly 6,700 dogs from the South to New York for adoption in 2013. Sullivan, *supra* note 166.

¹⁶⁹ Connecticut, New York, and Pennsylvania require transfer organizations to obtain a pet dealer license if they charge any fee for the transportation of the companion animal. *Humane Transport*, ANIMAL SHELTERING, <https://www.animalsheltering.org/magazine/articles/-humanetransport> [<https://perma.cc/M8YV-DL4C>] (accessed Jan. 21, 2019).

¹⁷⁰ Brulliard, *supra* note 2.

¹⁷¹ See, e.g., Tennessee Animal Abuser Registration Act, T. C. A. § 40-39-101 (showing that in April 2015, Tennessee passed Senate Bill 1204 enacting the "Animal Abuser Registration Act" requiring convicted animal abusers to register on a publicly accessible list).

animal abuse histories.¹⁷² Identifying these situations is difficult unless they take place in public.¹⁷³ Animal abuse is a strong indicator of spousal, child, and elder abuse, too.¹⁷⁴ The public's and law enforcement's heightened awareness of convicted animal abusers through the registry would help identify, stop, and prevent undetected abuse.¹⁷⁵ Tennessee recently established the first and only statewide registry in the United States in 2016 at a negligible cost to the Tennessee Bureau of Investigation (TBI), and it would be a valuable model for implementing statewide registries across the South.¹⁷⁶ It makes available to the public standard information,¹⁷⁷ including each abuser's name, date of birth, physical address, offense, and photograph.¹⁷⁸ Installing a simi-

¹⁷² See Christina M. Russo, *Why Do People Who Abuse Animals Get to Own Them Again? And Again.*, THE DODO, <https://www.thedodo.com/why-do-people-who-abuse-animals-get-to-own-them-again-and-again-1218794868.html> [<https://perma.cc/K2VD-P5P6>] (accessed Jan. 21, 2019) (“The Do Not Adopt Database . . . will specifically aid animal shelters and rescue groups that want to search whether or not potential adopters have been convicted of animal abuse.”).

¹⁷³ Winters, *supra* note 35, at 867.

¹⁷⁴ Carol Wilson, *Understanding the Link Among Animal Abuse, Child Abuse, Elder Abuse and Domestic Violence: The Problem, the Facts, and the Importance*, CBH (October 10, 2012), <http://www.colonialbh.org/about-us/news-and-events/understanding-the-link-among-animal-abuse-child-abuse-elder-abuse-and-domestic-violence-the-problem-the-facts-and-the-importance.aspx> [<https://perma.cc/R923-XEL8>] (accessed Jan. 21, 2019).

¹⁷⁵ See *id.* (“The key is to know the signs of control and abuse. . . . To achieve this, it is essential that arrangements for communication and cooperation between relevant statutory and voluntary organizations be developed and enhanced. Everyone must work together.”).

¹⁷⁶ Leslie Ackerson, *Tennessee's Animal Abuse Registry One Year Later*, WBIR (Feb. 8, 2017), <http://www.wbir.com/news/local/animal-abuse-registry-one-year-later/404322256> [<https://perma.cc/58XR-L5W7>] (accessed Jan. 21, 2019). Citizens have pushed for animal abuser registries in several major cities, including Chicago, New York City, and Tampa, to install local registries through their corresponding parishes or councils. In 2017, twelve states introduced bills requiring some form of animal abuser registry, including Florida and Texas. *Animal Abuser Registry*, HILLSBOROUGH COUNTY, FLORIDA, <http://aar.hcflgov.net/> [<https://perma.cc/NH28-DA9R>] (accessed Jan. 21, 2019); Karin Brulliard, *Animal Abusers are Being Registered like Sex Offenders in these Jurisdictions*, WASH. POST (Sept. 13, 2016), https://www.washingtonpost.com/news/-animalia/wp/2016/09/13/animal-abusers-are-being-registered-like-sex-offenders-in-these-jurisdictions/?utm_term=.1be58bca5b30 [<https://perma.cc/9KF5-6PMQ>] (accessed Jan. 21, 2019); *Animal Abuse Registry*, N.Y.C., NY, <https://www1.nyc.gov/site/doh/health/health-topics/animal-abuse-registry.page> [<https://perma.cc/2QDM-JXBM>] (accessed Jan. 21, 2019).

¹⁷⁷ Tennessee Animal Abuser Registration Act, T. C. A. § 40-39-101.

¹⁷⁸ See *Tennessee Animal Abuse Registry*, TENN. BUREAU OF INVESTIGATION, <https://www.tn.gov/tbi/tennessee-animal-abuse-registry.html> [<https://perma.cc/FS5A-MRNP>] (accessed Jan. 21, 2019) (having a publicly accessible list of convicted animal abusers including name, date of birth, address, offense, and photograph); Kate Coil, *Tenn. Sees Results with Statewide Animal Abuse Registry, First in U.S.*, TENN. TOWN & CITY (Apr. 25, 2016), https://www.tml1.org/sites/default/files/tml/pdf/TT%26C_April_25_2016.pdf [<https://perma.cc/9UXZ-UGLQ>] (accessed Jan. 21, 2019) (“The abuse registry is still in its infancy, but is already showing results. The registry is provided at zero cost and has already been absorbed into regular duties for staff at [Tennessee Bureau of Investigation].”).

lar registry would complete an aggressive plan for aiding shelters and the communities in which they reside.¹⁷⁹

Most registry proposals in the United States fall flat for lack of funds,¹⁸⁰ but installing one can be extremely cheap.¹⁸¹ The TBI completely absorbed the cost of Tennessee's state registry, and a proposed bill for a state animal abuser registry in Arizona estimates its registry will cost nothing.¹⁸² If necessary, a small fraction of breeder license fees could pay startup and operating costs.¹⁸³ States could follow Tennessee's model by implementing the registry through an existing state entity.¹⁸⁴ For instance, Louisiana's Task Force under the Louisiana Department of Agriculture and Forestry could maintain a registry,¹⁸⁵ as the Task Force is already charged with maintaining the Louisiana Animal Shelter Registry and a lost companion animal database.¹⁸⁶ By allotting responsibility to an existing state animal welfare department, implementation would be seamless.¹⁸⁷

Unlike Tennessee, though, states should consider posting convicted misdemeanor and civil action offenders in addition to felony offenders.¹⁸⁸ Tennessee's registry only requires offenders charged specifically with felony aggravated cruelty, fighting animals, or sexual relations with an animal to be listed.¹⁸⁹ Documenting only felony

¹⁷⁹ See Ackerson, *supra* note 176 ("The original intent was for the list to be used by rescue organizations and shelters as a tool, so that no animals needing a home would end up in harmful hands.")

¹⁸⁰ Danielle K. Campbell, *Animal Abusers Beware: Registry Laws in the Works to Curb Your Abuse*, 48 VAL. U. L. REV. 271, 321 (2013).

¹⁸¹ Shaq Davis, *Arizona Lawmaker Will Try Again to Pass Animal Abuse Registry Bill*, TUCSON (Sept. 4, 2017), https://tucson.com/news/local/arizona-lawmaker-will-try-again-to-pass-animal-abuse-registry/article_13691401-286d-550c-916a-a9f24ad89a29.html [<https://perma.cc/H269-8Z9Z>] (accessed Jan. 21, 2019). The inexpensive registry is increasingly cost-effective because modern-day advances have extended the internet's reach. Despite the fact that employees working or volunteering at many companion animal shelters and rescues do not have direct access to the internet in an in-office computer system, 77% of Americans now own smartphones—up from 35% in 2011. Breaux, *supra* note 12; *Mobile Fact Sheet*, PEW RESEARCH CTR (Feb. 5, 2018), <http://pewinternet.org/fact-sheet/mobile/> [<https://perma.cc/9MNF-DUSP>] (accessed Jan. 21, 2019). Cellphones give employees easy access to check the registry before adopting out companion animals, increasing the probability that the registry will be consulted on a regular basis. *Id.*

¹⁸² Davis, *supra* note 181, at 25.

¹⁸³ See Coil, *supra* note 178, at 25 (explaining Tennessee's registry costs nothing to operate and has been absorbed into other duties).

¹⁸⁴ Ackerson, *supra* note 176, at 24.

¹⁸⁵ See *supra* Parts II.A, II.B.2 (discussing the homeless companion animal care system and overpopulation and animal cruelty). If necessary, the Task Force could collect a fraction of localities' breeder license fees and penalties to run the registry. LA. REV. STAT. § 3:2364 (2017); *supra* Part IV.B.

¹⁸⁶ LA. REV. STAT. § 3:2364 D(4), (5), (8).

¹⁸⁷ LA. REV. STAT. § 3:2364.

¹⁸⁸ See *supra* Part IV.C.1 (discussing neutering programs and animal overpopulation).

¹⁸⁹ See *supra* Part IV.C.1 (discussing neutering programs and animal overpopulation).

animal cruelty offenders has left the registry less effective because offenders often plea to a misdemeanor to avoid being listed on the registry;¹⁹⁰ only seven abusers are listed in Tennessee today.¹⁹¹ The public remains unaware of abusers who may have otherwise been convicted of felony animal abuse.¹⁹² Even misdemeanors not pleaded down from a felony are red flags for potential human abuse, as was the case with Texas mass shooter Devin Patrick Kelley, arrested on a misdemeanor count only a few years before fatally shooting more than two dozen people in rural Texas.¹⁹³ Offender registries have become popular in the United States recently, and using one to track animal abusers would be an excellent use of funds.¹⁹⁴

Revenue from the proposed approach generates money to fund better breeding law enforcement and other more proactive solutions to overpopulation and animal cruelty. By attacking multiple challenges at once through state legislation, goals otherwise unattainable become possible.

V. CONCLUSION

Millions of companion animals needlessly suffer and die every year because the South continues to turn a blind eye to overpopulation and animal abuse. Public officials must address these critical problems.¹⁹⁵ Local shelters, local rescues, and individual fosterers do their best to fill the gap,¹⁹⁶ but the gap is still too large. Their heroic efforts need to be supplemented by legislation that increases funding for shelters, spay/neuter programs, and transport organizations; disincentivizes backyard breeding; and maximizes enforcement of the laws prohibiting animal abuse and neglect.¹⁹⁷

¹⁹⁰ Ackerson, *supra* note 176, at 24.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ See *supra* Part IV.C (discussing how to use revenue raised from breeding fees and forfeitures); Daniella Silva, et al., *Texas Church Shooting: More than Two Dozen Parishioners Killed*, NBC NEWS (Nov. 5, 2017), <https://www.nbcnews.com/storyline/texas-church-shooting/several-casualties-reported-texas-church-shooting-n817751> [https://perma.cc/DYY4-KRZM] (accessed Jan. 21, 2019).

¹⁹⁴ See Molly J. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 LA. L. REV. 510, 512 (2013) (discussing offender registries and use of funds).

¹⁹⁵ See *supra* Part II.B (discussing overpopulation and animal cruelty).

¹⁹⁶ See *supra* Part II.B (discussing donations failing to close the gap in care for animals).

¹⁹⁷ See *supra* Part III, IV (discussing animal law reform and backyard breeding, civil action for shelters to sue animal abusers, and ways to use revenue raised).