

A QUARTER OF A CENTURY OF ANIMAL LAW:
OUR ROOTS, OUR GROWTH, AND OUR
STRETCH TOWARD THE SUN

By
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This Article explores the author's experience as one of the early student pioneers of the animal law program at Lewis & Clark Law. The author discusses her work on the Oregon Cougar and Bear Initiative as an introduction to the power of the ballot initiative process. The Article then recounts the progress that has been made by animal advocates via federal and state legislation and ballot measures, as well as the setbacks driven by industry interest. It concludes with a discussion of the need for a good defense as industry interests attempt to roll back the progress made by animal advocates over the years.

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Let us make our future now, and let us make our dreams tomorrow's reality.

—Malala Yousafzai¹

A plant needs to do more than stretch its leaves toward the sun. It also needs to send down roots deep into the ground. They hold on

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¹ Speech at Harvard University (Sept. 27, 2013).

tightly in the dark, out of sight where it is easy to forget about them. But it is the fact that a plant can do these two things at once, anchoring itself to the earth even as it reaches for the sky, that makes it strong.

—Cameron Dokey²

I. INTRODUCTION

Everything is temporary. Everything we create is temporary. Everyone we know is temporary. This is the truth we spend so much time avoiding. We invest in our own lives as though they are permanent. We distract ourselves from this reality with flights of fancy and ego. But however much we pretend that our foundations, our memories, and our work are permanent, we will sooner or later face the grim reality that these are sand castles and the tide will win in the end. People, animals, institutions, societal norms—will all fade, shift, morph, and give birth to the future, and they will all be fundamentally different. Entire constructs are erected only to become irrelevant over time or fail to thrive for lack of support. It was this undeniable reality that we were pushing against when we decided to lay down roots for an important idea, a gift for future generations, and to create a place for animals at Lewis & Clark Law School and ultimately for the U.S. legal system. In doing so, we have learned that it is the things our creations give birth to that become the future. And that is just fine.

A. *The Birth of Animal Law at Lewis & Clark Law School*

When a small group of law students³ and I contemplated the origins of a program at Lewis & Clark Law School, permanence was on our minds. This idea of animal law was far too precious to us to surrender it to a temporary shelter—we worked on its foundation and thought about how we could ensure that it would withstand the test of time. We forced ourselves to be deliberate despite our own impatience as midwives to this program. Our own transience worried us—we knew that it would all fall to future generations to invest in the long-term vision of this tiny but growing field of animal law. The seeds sown so deliberately and lovingly were successful beyond our imagination thanks to the devotion of those who, each in turn, developed the concept further and handed off a more robust program than the one they received.⁴

² CAMERON DOKEY, WINTER'S CHILD 78 (2013).

³ Matt Howard, Ben Allen, Glen Tarr, John Sohn and the author were the original founders of the first Student Animal Legal Defense Fund in 1992. Bobbie Hasselbring, *Seeking Justice for Animals*, LEWIS & CLARK LAW SCH. (Apr. 28, 2010), <https://www.lclark.edu/live/news/8505-seeking-justice-for-animals> [https://perma.cc/X9PP-KKLU] (accessed Apr. 27, 2019).

⁴ See Nancy Perry, *Passing the Baton: How Teamwork and Unbridled Optimism Created Lewis & Clark's Animal Law Program*, 18 ANIMAL L. 175 (2012) (demonstrating the cooperation in the development of animal law at Lewis & Clark Law School).

The same year we founded the animal law program at Lewis & Clark Law School we started building a statewide campaign in Oregon to end two egregious hunting methods via the use of the citizen initiative law making tool.⁵ We thought these two actions were not terribly related and we tried to maintain an insular focus on setting the cornerstones for an organization on campus, investing in membership growth, maintenance of an email newsletter, crafting by-laws, and event planning for the future. But like a plant, we were simultaneously sending down roots and shooting toward the light.

For our first year, we were merely a subcommittee of the Environmental Law Caucus—and were not a recognized entity with a budget of our own. To initiate dialogue on campus, we asked local attorneys who worked on animal protection cases to speak about their work. When the Fund for Animals' regional representative contacted us and asked if we could attend the Oregon Department of Fish and Wildlife meeting on the question of banning baiting bears and hounding bears and cougars, we agreed to attend and offer support. There we learned that Oregon was one of the few states that allowed these particularly abusive hunting methods as well as a state that offered citizens tools for changing the law directly.⁶ The Oregon Bear and Cougar Coalition was born from a network of advocates in every corner of the state willing to gather signatures to place the question of baiting and hounding before the voters.⁷

It took nearly a year to assemble the team of volunteers, draft and gain approval for ballot language and then gather the almost 90,000 signatures needed for a November 1995 vote,⁸ but that work served as the foundation of my own knowledge of the benefits and challenges of direct law making. After Measure 18 was approved,⁹ my education in the less direct form of law making in the state legislature began. I was tasked with organizing a resistance effort to block the repeal of Measure 18, which was aggressively advanced by pro-hunting interests in the spring of 1996.¹⁰ As it turned out, the external distraction of the Measure 18 campaign was precisely what was needed to fuel the future of the animal law program. It was during the initial campaign that Pamela Frasch emerged as a bright and dedicated lawyer in Portland willing to lend her talents to the cause. Pam is now Associate Dean of the Animal Law Program at Lewis & Clark Law School and she has provided the leadership and stability so critical for its longev-

⁵ See generally Nancy Perry, *The Oregon Bear and Cougar Initiative: A Look at the Initiative Process*, 2 ANIMAL L. 203 (1996) (discussing the development and implementation of the Oregon Bear and Cougar Initiative).

⁶ See Perry, *supra* note 4, at 178–79 (showing how Oregon citizens could get involved against the hunting methods).

⁷ Perry, *supra* note 5, at 203–04.

⁸ *Id.* at 203–05 (discussing the ballot initiative “for a bill to outlaw the use of bait and of hounds in hunting bears and cougars”).

⁹ *Id.*

¹⁰ *Id.* at 206.

ity.¹¹ Working together, we hosted the nation's first animal law conference and laid the groundwork for the creation of *Animal Law*.¹² Without a budget for that first conference, we begged nationally recognized speakers to come on their own dime and we paid for the first dinner on credit, assuming our CLE fees would cover it (they did—just barely). It was scrappy, thrilling, and far less polished than the sophisticated conferences the program offers today, but it was the nation's very first animal law conference and out of it, relationships formed that still fuel key work in today's animal law field.

One critically important aspect of this early work was the training ground it offered bright new minds. Taking the long view on legal education, training, and support is important. Animals deserve to be represented by those with long-term vision and a similarly single-minded devotion to making their protection and elevation in our society a reality, independent of any particular institution, individual, or organization. The quarter century of work at Lewis & Clark Law School has resulted in dozens of new leaders who are walking the halls of Congress, state legislatures and federal and state courthouses, and who are quietly creating a new world using their legal training as a springboard.¹³ The very existence of a place for such training cannot be underestimated for its power to legitimize the notion of animals as legally important beings in our society.

In this Article, I will focus on how animal law-making work has stretched toward the sun over this last quarter century. I will first analyze how the trajectory of animal protection via direct democracy channels has accelerated advances in other forums. From there, I will explore some of the progression and key themes in state and federal reforms achieved using more traditional legislative channels. Finally, I will comment on the value of good defensive work and how it has served simultaneously as a crucial backstop against erosion and an important springboard for the affirmative work ahead.

B. *Taking Matters into Our Own Hands*

Animal abuse and institutionalized cruelty has most often, in modern times, occurred behind closed doors and outside of the realm of average citizens. When the public learns of puppy milling, dogfighting, farm animal confinement and mutilation, etc. they are appalled, and, beyond the wildest hopes of any political candidate, they will vote in high percentages to codify that reaction. Animal protection has no party, no economic sector, and no other demographics to restrain it. While there are variations within demographics, most forms of animal abuse do not enjoy majority support across the board. Nevertheless,

¹¹ *Law Faculty: Pamela Frasch*, LEWIS & CLARK LAW SCH., https://law.lclark.edu/live/pro_files/274-pamela-frasch [<https://perma.cc/W9NW-U2W6>] (accessed Feb. 17, 2019).

¹² Hasselbring, *supra* note 3.

¹³ *Id.*

our political system makes change difficult. Our legislative bodies are inherently flawed, because power is distributed and held in ways that do not support the easy passage of new reforms.¹⁴ That power is consolidated among some who are disproportionately targeted and influenced by those with excessive resources.¹⁵ Industries dependent on the use and harmful treatment of animals for profit have long enjoyed a marked advantage in a system that allows such undue influence.¹⁶ Therefore, when a proposal to ban the use of body gripping traps for sport or commercial purposes is introduced in nearly any state legislature, it dies a swift death, unlike the animals it is attempting to protect. Committee chairs, friendly with local sport hunting and trapping associations, are not required to offer such legislation a hearing or a vote and they bury those bills.¹⁷ And so the story was written up until the early 1990s when animal advocates realized that the tool available to them in nearly half of the states—the ballot initiative and referendum process—could be employed to their advantage. It had been attempted well before that, but without some ability to match resources in the latter half of the campaign, those efforts also failed.¹⁸ The formula for success using this much more direct form of democracy was discovered and then cultivated for the next several decades and continues to be a hammer for advocates who employ it properly.

My own introduction to the ballot measure in process occurred in 1994—the early days of the creation of the animal law program at Lewis & Clark Law School. The Oregon Bear and Cougar Initiative campaign, also known as Measure 18, was just the third election cycle for the movement’s modern work in this arena.¹⁹ In 1990, Californians had voted to reserve habitat for mountain lions and to end all sport hunting of them via Proposition 117.²⁰ On the heels of that campaign, Coloradans organized to ban the spring, baiting, and hounding of black bears, passing their measure with 70% approval.²¹ The 1993 Oregon

¹⁴ See James M. DeMarco, *Lobbying the Legislature in the Republic: Why Lobby Reform is Unimportant*, 8 NOTRE DAME J.L. ETHICS, & PUB. POL’Y 599, 600 (1994) (discussing the numerous problems with the structure of the legislative process).

¹⁵ *Id.* at 601; see also Khalid B. Sayeed, *The American Political System: A Critique of Its Functioning*, 27 ECON. & POL. WKLY. 2125, 2129 (1992) (discussing the influence interest groups have on government policy in pursuit of their goals).

¹⁶ See Mallorie McCue, *Follow the Money: Insulating Agribusiness Through Lobbying and Suppression of Individual Free Speech*, 6 J. ENVTL. & PUB. HEALTH L. 215, 231–32 (2012) (discussing the consequences of the strength of agribusiness lobby groups).

¹⁷ THAD KOUSSER, TERM LIMITS AND THE DISMANTLING OF STATE LEGISLATIVE PROFESSIONALISM 126 (2005).

¹⁸ *Ballot Measures*, HUMANE SOC’Y LEGIS. FUND, <http://www.hslf.org/our-work/learn-more-about-ballot.html#.XGzNxuhKgZI> [<https://perma.cc/XH8Y-TVMM>] (accessed Feb. 19, 2019).

¹⁹ OR. SEC’Y OF STATE, VOTERS’ PAMPHLET, STATE OF OREGON GENERAL ELECTION NOVEMBER 8, 1994 (1994), <http://library.state.or.us/repository/2010/201003011350161/S-8V94-2-994-9.pdf> [<https://perma.cc/HK57-ADJE>] (accessed Feb. 16, 2019).

²⁰ 1990 Cal. Legis. Serv. Prop. 117 (West).

²¹ COLO. REV. STAT. § 33-4-101.3 (2018).

campaign followed, scaffolding up from the Colorado experience and taking on a tougher audience but still passing with 52% in favor.²² From there, the movement, led by The Humane Society of the United States but perhaps more importantly supported by state and local organizations in every case, expanded to topics as varied as trapping and wildlife poisons (Arizona in 1994, Colorado and Massachusetts in 1996, California in 1998, Washington in 2000),²³ a successful defense of Oregon's 1992 measure in 1994 and a ban on the same issue in Washington in 1996,²⁴ three attempts to finally end helicopter hunting of wolves in Alaska (successful in 1996, 2000, but failed in 2008),²⁵ cockfighting bans (Arizona and Missouri in 1998, Oklahoma in 2002),²⁶ banning horse slaughter (California in 1998),²⁷ banning mourning dove hunting (Michigan in 2006),²⁸ restricting puppy mills (Missouri in 2010),²⁹ banning greyhound racing (Massachusetts in 2008, Florida in 2018),³⁰ and prohibiting confinement of farm animals (Florida in 2002, Arizona in 2006, California in 2008 and 2018, Massachusetts in 2016).³¹

Whether successful or not, the evolution of our society's legal framework on each of these issues was fundamentally impacted by these campaigns. They ultimately resulted in the complete takedown of cockfighting, despite shockingly resistant legislatures in the final holdout states.³² Using the ballot campaigns to isolate the final islands of such cruelty forced them to yield and when Oklahomans voted to ban cockfighting, there began a race for New Mexico and Louisiana to determine who would hold the stigma of being the last shelter for those

²² OR. SEC'Y OF STATE, OREGON BLUE BOOK, INITIATIVE, REFERENDUM AND RECALL, <https://sos.oregon.gov/blue-book/Documents/elections/initiative.pdf> [<https://perma.cc/QGF7-CF64>] (accessed Feb. 16, 2019).

²³ HUMANE SOC'Y U. S., INITIATIVE AND REFERENDUM HISTORY – ANIMAL PROTECTION ISSUES (2016) <https://www.humanesociety.org/sites/default/files/docs/ballot-initiatives-chart.pdf> [<https://perma.cc/44M3-B4QG>] (accessed Apr. 16, 2019).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* Florida's ban targets the gambling associated with races, rather than the races themselves, but has essentially the same effect. *Florida Amendment 13, Ban on Wagering on Dog Races Amendment (2018)*, BALLOTPEDIA (Nov. 6, 2018), [https://ballotpedia.org/Florida_Amendment_13,_Ban_on_Wagering_on_Dog_Races_Amendment_\(2018\)](https://ballotpedia.org/Florida_Amendment_13,_Ban_on_Wagering_on_Dog_Races_Amendment_(2018)) [<https://perma.cc/KJR7-MKX4>] (accessed Feb. 18, 2019).

³¹ HUMANE SOC'Y U. S., *supra* note 23; *California Proposition 12, Farm Animal Confinement Initiative (2018)*, BALLOTPEDIA (Nov. 6, 2018) [https://ballotpedia.org/California_Proposition_12,_Farm_Animal_Confinement_Initiative_\(2018\)](https://ballotpedia.org/California_Proposition_12,_Farm_Animal_Confinement_Initiative_(2018)) [<https://perma.cc/N4NA-H2L3>] (accessed Feb. 18, 2019).

³² *See, e.g.*, Russel McCulley, *Louisiana to Be the Last State to Ban Cockfighting*, REUTERS (Jun. 27, 2007), <https://www.reuters.com/article/us-louisiana-cockfighting/louisiana-to-be-last-state-to-ban-cockfighting-idUSN2729513120070628> [<https://perma.cc/PQR4-AK7D>] (accessed Feb. 16, 2019) (discussing how proponents of cockfighting in Louisiana delaying the ban).

with such brutal predilections.³³ Even though those two states do not offer citizens the option of placing issues before voters directly, the pressure created through this isolation tactic overcame the local resistance, leading to passage of a ban in New Mexico in 2007 and in Louisiana in 2008, thereby closing a chapter in history where this blood sport could pretend to be sanctioned.³⁴ This has not prevented malefactor cockfighting rings from persisting, but we are now in the phase of ratcheting up enforcement options rather than overcoming justifications for this now criminal activity.

Each issue area has a similar story. A time-lapse map could reveal the slow creep of codification. With each success, there was a backlash—sometimes outright repeal attempts. Indeed, the very first measure marked here, California’s Prop 117 protecting mountain lions, was referred back to the ballot during the 1996 primary by trophy hunting interests who relentlessly raised the specter of lurking mountain lions lying in wait for small children, hoping to frighten voters into undoing those protections.³⁵ Instead, voters doubled their support, widening the margin of success in a 58% to 42% vote (the original measure passed 52% to 48%).³⁶

Mirroring that scenario in California, northern neighbors in Oregon were again faced in 1996 with unverified reports of mountain lion threats and attacks, as the trophy hunting community pushed for a repeal of the original ban on bear baiting and hounding of bears and cougars enacted just two years prior.³⁷ Animal advocates calmly recited the facts in the face of this assault and were able to pierce through the fearmongering rhetoric devised to instill terror in Oregon voters—including one particularly comical advertisement showing a rural police officer reading a script in a stilted voice about how he wanted to chase criminals not cougars. Their rebuke of these transparent tactics was rewarded when voters reinforced their support for a

³³ Steve Larese, *Cockfighting Spurs Battle Over Culture*, BOSTON GLOBE, Apr. 6, 2003.

³⁴ *State Initiative & Referendum*, UNIV. OF SOUTHERN CAL. INITIATIVE & REFERENDUM INSTITUTE, <http://www.iandrinstitute.org/states.cfm> [https://perma.cc/35ZJ-HZUA] (accessed Feb. 21, 2019); McCulley, *supra* note 32.

³⁵ Pete Thomas, *Key Conservative Questions Raised by Cougar Attack: Wildlife: The Mountain Lion Population Has Increased in California. Is a Resumption of Hunting the Answer?*, L.A. TIMES, May 4, 1994.

³⁶ *Primary Election - Statement of Vote, June 5, 1990*, CAL. SEC’Y OF STATE: RES. AND HIST. INFO. (2006), <https://elections.cdn.sos.ca.gov/sov/1990-primary/measures.pdf> [https://perma.cc/SR8F-N8DA] (accessed Feb. 20, 2019); *Primary Election - Statement of Vote, March 26, 1996*, CAL. SEC’Y OF STATE: RES. AND HIST. INFO. (2006), <https://elections.cdn.sos.ca.gov/sov/1996-primary/measures.pdf> [https://perma.cc/NVY2-9ZEV] (accessed Feb. 20, 2019).

³⁷ *About Predator Defense*, PREDATORDEFENSE.ORG, <http://www.predatordefense.org/about.htm> [https://perma.cc/XU4Z-GNPS] (accessed Feb. 18, 2019) (“records indicated that the vast majority of cougar incidents reported to the media by ODFW during a heated ballot initiative campaign were unsubstantiated”); Editorial, *Give Hunting Law a Fair Test*, OREGONIAN, Sept. 22, 1996 (linking trophy hunters to support for the ballot measure).

ban, voting by twice as large a margin to retain it.³⁸ These defensive victories were more than another check in the win column—they demonstrated a resistance by voters once they codified an anti-cruelty measure and they showed a resilience within the animal protection movement as well as its ability to pivot and defend past victories even while taking on affirmative efforts in other states.

Staying power and long-term vision are critical for policy reform, regardless of the forum. The ballot box approach may appear to be a short-cut, but it is instead the most resource intensive and long-haul approach in many cases. In fact, many states that offer the initiative and referendum process do not offer any or significant protections for those same measures in the legislature.³⁹ Some states prevent tampering, backsliding or outright repeal, but most do not,⁴⁰ leaving the very same legislature—possibly lacking courage or inclination to enact those policies and smarting from the public bypass—to determine their final fate. The massive investment of taking an issue through the lengthy process (from initial regular order legislative attempts in the form of introducing bills before the legislature to the polling, drafting, signature-gathering stages and then ultimately the expense of a statewide media campaign), is usually not enough. Retaining reserves for a defensive legislative battle must be considered a crucial element of efforts that will be unshielded from legislative mischief.

Even when the legislature is able to chip away or fully undermine the ballot measure's result, all has not been lost. In many localities, animal advocates have never had the experience of banding together for a finite period to achieve a measured goal. Better yet, they have rarely had the opportunity to evade the entrenched theaters of control for the industries they rail against. The collaboration and networking necessary for a successful signature gathering effort combined with the training and resulting empowerment leave any state far more organized and sophisticated in the advocacy realm. When Oregon passed Measure 18 in 1994, the legislature was so impressed that it suddenly woke to the larger cause, passing the nation's toughest anti-cruelty law to date in its very next session.⁴¹ Similarly in California, on the heels of the Proposition 2 victory, a 2009 effort to ban tail docking of cows through the state legislature was successful.⁴² Advocates realized they had statewide reach and organized accordingly, no longer ceding

³⁸ OREGON BLUE BOOK, *supra* note 22, at 17–18.

³⁹ NATIONAL CONFERENCE OF STATE LEGISLATURES, INITIATIVE AND REFERENDUM IN THE 21ST CENTURY: FINAL REPORT AND RECOMMENDATIONS OF THE NCSL I&R TASK FORCE 10–11 (July 2002), http://www.ncsl.org/Portals/1/documents/legismgt/irtaskfc/landR_report.pdf [<https://perma.cc/P9QV-J4PB>] (accessed Feb. 19, 2019).

⁴⁰ *Id.*

⁴¹ *Oregon's Felony Animal Cruelty Law – the “Kittles Bill”*, ANIMAL LEGAL DEF. FUND. <https://aldf.org/article/oregons-felony-animal-cruelty-law-the-kittles-bill/> [<https://perma.cc/4JJQ-6GV4>] (accessed Apr. 19, 2019).

⁴² *California Bans Cow Tail Docking*, AMERICAN VETERINARY MED. ASS'N (Nov. 18, 2009), <https://www.avma.org/News/JAVMANews/Pages/0912011.aspx> [<https://perma.cc/N6YY-DLP7>] (accessed Apr. 16, 2019).

some districts to those who assumed no constituents cared. Opponents recognized the credible threat of a ballot measure led by animal advocates and the fact that it affords them no input relative to the legislative process. The confidence and reassurance of a victory at the state level, especially one codified by the entire electorate, not just the whims of lawmakers, resonates deeply for those who hold on to hope that the arc of the moral universe does indeed bend toward justice, as the Reverend Martin Luther King Jr. so famously declared.⁴³ In California, following the 2008 enactment of Proposition 2, a decade's worth of consistent animal advocacy at the Capitol yielded dozens of positive legislative outcomes⁴⁴—which can in part be seen as additional return on the investment in the ballot effort.

Additionally, the mere exposure to the issue for every voter can be enough to spur other changes. While difficult to verify, when footage of industrial farming practices is visible in major media markets and voters are confronted with ethical questions so directly in the ballot box, many individuals might start to shift their thinking and their consumer behavior well beyond the subject matter of the ballot measure.

Ultimately, however, our movement cannot rely on advancing our cause in less than half of the states where this tool is available. We must be able to overcome the obstacles of committee capture, apathy and inertia at the state and federal level. Imprinting animal protection in our laws cannot be confined to the ballot and initiative process. The evolution of the ballot campaigns for animals has demonstrated that codification in bell weather and tipping point locations can serve as momentum for larger, albeit less ideal, reforms that impact larger geographies and more animals overall.

II. FROM FRYING PAN TO FIRE - LEGISLATIVE GAINS AT STATE AND FEDERAL LEVELS

In the last quarter century, the animal protection movement has become more sophisticated in identifying winnable issues, recognizing the value of the right legislative author, employing discipline in avoiding party capture, and finding opportunities for forward motion. As a result, we have seen more success at both the federal and state levels. Taking a page from the campaign trail, it was helpful to be able to articulate public support in a manner meaningful to politicians. Polling outcomes will determine whether a ballot campaign is viable and that lesson has now translated to the more conventional legislative forums. Federal and state legislative efforts are increasingly formulated

⁴³ Martin Luther King Jr., Sermon at the Temple of Israel Hollywood (Feb. 26, 1965), *at* AMERICAN RHETORIC, <https://www.americanrhetoric.com/speeches/mlktempleisraelhollywood.htm> [<https://perma.cc/M3R3-PEAN>] (accessed Feb. 19, 2019).

⁴⁴ *See California Statutes*, MICH. STATE UNIV.: ANIMAL LEGAL & HIST, CTR. (2019), <https://www.animallaw.info/statutes/us/california?page=2> [<https://perma.cc/6DRG-B4N5>] (accessed Apr. 16, 2019) (listing all animal welfare related statutes in California).

with campaign mindsets and tools, improving chances for passage and an ability to issue spot.

High profile conventional legislative efforts in the late 1990s and early 2000s were, for the most part, dismal tug of war battles and yielded few true victories. Rigorous and entrenched work around wild-life protection at the federal level (for example, CAMPFIRE funding under USAID) rarely emerged victorious.⁴⁵

That period showcased the employment of more sophisticated tactics, demonstrating a growing understanding of the mechanics and dynamics of the political times. Animal protection legislation was increasingly introduced as bipartisan with both a republican and democratic author (or a quartet, equally balanced by party).⁴⁶ This standard practice was unique to the animal welfare sphere, distinguishing it from the larger environmental community's approach and enabling humane organizations to remain influential where others were vilified. Despite this tact, very few federal reforms were enacted. Traditionally embraced issues, such as animal fighting and animal cruelty, were ripe for reform. Congress advanced several important enhancements to the Animal Welfare Act provisions on animal fighting⁴⁷ while states improved their bonding and forfeiture, paraphernalia, spectator, and pet protective order laws.⁴⁸ Some states enacted pet trusts during this period,⁴⁹ suggesting a greater societal comfort with elevating the status of animals at least in the less controversial context of codifying and clarifying a relatively well accepted common law practice. Rhode Island passed a new law recognizing pet owners as "guardians" to some fanfare. However, the law resulted in no discernable change, for better or worse, in the treatment or appreciation of animals.⁵⁰

⁴⁵ *USAid Ends Funding of CAMPFIRE Projects*, INDEPENDENT IN POLITICS (June 10, 2005), <https://www.theindependent.co.zw/2005/06/10/usaids-ends-funding-of-campfire-projects/> [<https://perma.cc/2HKR-2XAN>] (accessed Feb. 19, 2019).

⁴⁶ Erin Kelly, *Congress Finds Bipartisanship on Animal Protection Issues*, USA TODAY (April 13, 2017), <https://www.usatoday.com/story/news/politics/2017/04/13/congress-finds-bipartisanship-animal-protection-issues/100386846/> [<https://perma.cc/D4MX-DEJH>] (accessed Feb. 17, 2019).

⁴⁷ TADLOCK COWAN, CONGR. RESEARCH SERV. THE ANIMAL WELFARE ACT: BACKGROUND AND SELECTED ANIMAL WELFARE LEGISLATION 5 (2016), <https://fas.org/sgp/crs/misc/RS22493.pdf> [<https://perma.cc/B63P-CH4M>] (accessed Feb. 19, 2019).

⁴⁸ ALLIE PHILLIPS & RANDALL LOCKWOOD, NAT'L DIST. ATTORNEY ASS'N, INVESTIGATING & PROSECUTING ANIMAL ABUSE (2013), <https://www.sheriffs.org/publications/NDAA-Link-Monograph.pdf> [<https://perma.cc/FNH7-3FVM>] (accessed Feb. 19, 2019).

⁴⁹ *See, e.g.*, Or. Rev. Stat. §130.185 (2018); *see also* NEV. REV. STAT. §163.0075 (2018); *see also* WASH. REV. CODE. §11.118.030 (2018).

⁵⁰ Gary Block, *Guardianship Revisited, Rhode Island Law Passes 10-Year Mark*, HSVMA (Oct. 11, 2011), https://www.hsvma.org/guardianship_rilaw [<https://perma.cc/Z4AU-DYQA>] (accessed Feb. 19, 2019); R. Scott Nolan, *After More Than a Decade, Has Pet Guardianship Changed Anything*, AVMA (March 18, 2011), <https://www.avma.org/News/JAVMANews/Pages/110401a.aspx> [<https://perma.cc/H276-NTC5>] (accessed Feb. 19, 2019).

By the early 2000s, Congressional offices started assigning ‘animal welfare’ or ‘animal protection’ issues to particular staffers.⁵¹ Becoming an official category for staffing seemed to indicate that these issues were seen as significant enough in content and in resource requirements for offices to designate a point person. Over the years, higher level staff are taking on these issues, rather than the entry level legislative correspondents.⁵² Additionally, some members have even identified animal welfare as a special interest area and created newsletters focused on issues related to animals.⁵³ Some enable constituents to self-identify as an animal welfare interested citizen and others have entire segments of their websites devoted to animal issues.⁵⁴ The Congressional Animal Protection Caucus emerged during that decade, billing itself as a bipartisan body.⁵⁵ With almost 200 members in recent congresses, this caucus has achieved more mainstream status and has been holding active briefings and whipping votes since its current leadership, Representatives Earl Blumenauer (D-Or.) and Vern Buchanan (R-Fla.) took the helm.⁵⁶ The fact that Congressman Blumenauer is a Lewis & Clark Law School alum, who has key noted at the Animal Law Conference in recent years, reminds us how important the program has been in raising up these issues and supporting leadership around them.⁵⁷

Interestingly, there was some glimmer of hope that the tide was turning for animals when on October 4, 2001 the U.S. House of Representatives passed four amendments to its Farm Bill, resulting in some declaring it “the single most productive day for animal protection in history.”⁵⁸ Similar amendments passed in the U.S. Senate in early 2002, but ultimately the only amendment to make it to the final version of the Farm Bill closed a loophole that had allowed the interstate transport and export of animals to localities where animal fighting re-

⁵¹ By the early 2000s, I began working with particular staffers assigned ‘animal welfare’ or ‘animal protection’ issues by Congressional offices.

⁵² *Id.*

⁵³ Former Representative James Moran (D-Va.) surveyed his constituents for interest areas and provided tailored newsletters, including one focused on animal protection issues.

⁵⁴ *Animal Rights*, CONGRESSMAN TONY CARDENAS, <https://cardenas.house.gov/issues/animal-rights> [<https://perma.cc/6UNM-KBR3>](accessed Mar. 4, 2019); *Animal Welfare*, CONGRESSMAN EARL BLUMENAUER, <https://blumenauer.house.gov/issues/animal-welfare> [<https://perma.cc/4U3R-LNCA>] (accessed Apr. 16, 2019).

⁵⁵ *Congressional Animal Protection Caucus*, CONGRESSMAN EARL BLUMENAUER <https://blumenauer.house.gov/congressional-animal-protection-caucus> [<https://perma.cc/4U3R-LNCA>] (accessed Feb. 15, 2019).

⁵⁶ *Congressional Animal Protection Caucus Members*, CONGRESSMAN EARL BLUMENAUER <https://blumenauer.house.gov/congressional-animal-protection-caucus/congressional-animal-protection-caucus-members> [<https://perma.cc/VHF3-2PFE>] (accessed Mar. 4, 2019).

⁵⁷ *Congressman Earl Blumenaur*, ANIMAL LAW CONFERENCE, <https://animallaw-conference.org/earl-blumenauer/> [<https://perma.cc/L5ZK-MRXS>] (accessed Feb. 15, 2019).

⁵⁸ Laurie Fulkerson, 2001 *Legislative Review*, 8 ANIMAL L., 259, 272–73 (2002).

mained legal.⁵⁹ This stinging lesson demonstrated just how powerful transparency is for animal welfare issues. Conference committees are intended to be for the purpose of harmonizing the House and Senate versions of legislation. Their composition is frequently unknown until the final hour and their time and locations for meeting are not made public. Deliberations are, therefore, intended to be backroom wheeling and dealing sessions where staff and sometimes members of Congress sit across tables, practicing poker faces as they chop and reshape provisions of the final bill. Without an advocate at that table, animals were left on the floor despite the clear support for their protection. Progress does not always take a straight path and these setbacks are indicators that tenacity and determination are critical qualities in the policy world.

In 2002, another shocking defeat came for animal advocates at the hands of Senator Jesse Helms. After two decades of litigation to force the United States Department of Agriculture to include birds, rats, and mice in its definition of covered species under the Animal Welfare Act—just as the plaintiffs secured standing, which then prompted a settlement⁶⁰—Senator Helms successfully offered an amendment to exempt these species for research purposes.⁶¹ While the battle was lost for millions of animals who stood to receive some minimal protections under the AWA, the war for standing was still won and that precedent remains a critical one for courtroom advocates to move beyond standing and secure a ruling on the merits.⁶²

Meanwhile, state legislative fronts were successful in increasing penalties for animal cruelty, enhancing protections for service animals, and even for banning the force-feeding of ducks and geese to produce foie gras in California in 2004.⁶³ The fairly recent passage of

⁵⁹ Emilie Keturakis, *2002 Legislative Review*, 9 ANIMAL L., 331, 333 (2003).

⁶⁰ See *Alts Research & Dev. Found. v. Glickman*, 101 F.Supp.2d 8 (D.D.C. 2000) (finding that plaintiff met the requirements of Article III standing); see also Sue A. Leary, *The Exclusion of Mice, Rats, and Birds*, AV MAGAZINE, 2017, https://aavs.org/assets/uploads/2017/08/2017-1_av-magazine_exclusion-mice-rats-birds.pdf?x82509 [<https://perma.cc/KN24-E7ZR>] (accessed Apr. 28, 2019) (explaining the consequence of the settlement between Alternative Research and Development Fund and USDA)

⁶¹ Keturakis, *supra* note 59, at 337.

⁶² See 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, 146 (2009) (discussing the consequences of the *Glickman* case on standing in cases relating to animal protection).

⁶³ See, e.g., John A. DeFrancisco, *State Senate Passes Package of Animal Protection Bills*, THE N.Y. ST. SENATE (June 6, 2017), <https://www.nysenate.gov/newsroom/press-releases/john-defrancisco/state-senate-passes-package-animal-protection-bills> [<https://perma.cc/8AEP-RL72>] (accessed Feb. 19, 2019) (“The New York State Senate . . . took up measures that bolster protections for animals and their owners from harm and abuse . . . The bills passed . . . include . . . [i]ncreasing the penalty for multiple convictions of animal cruelty: Bill S299 [and] . . . [e]stablishing an income tax credit for owners of service dogs: Bill S5938A.”); City News Service, *California Foie Gras Ban Goes Into Effect After Supreme Court Rejects Challenge*, L.A. TIMES (Jan. 07, 2019), <https://www.latimes.com/business/la-fi-foie-gras-prohibition-court-ruling-20190107-story.html>

confinement bans by ballot campaigns emboldened advocates to raise the example of the diseased liver product resulting from egregious suffering.⁶⁴

The decade following Proposition 2's passage in California saw exceptional progress. Dozens of legislative and regulatory efforts were successful, including bans on the trade in rhinoceros horn⁶⁵ and shark fins,⁶⁶ closure of a loophole in the state's long-standing ivory trade ban,⁶⁷ a phase out of lead-based ammunition used to shoot wild animals⁶⁸ and of so-called "drift gillnets" (mile-long nets used to catch swordfish that also kill high numbers of marine mammals, sea turtles and other "bycatch"),⁶⁹ a ban on bobcat trapping and on the use of hounds to pursue bobcats and bears,⁷⁰ approval for citizens to pull animals from hot vehicles without fear of civil liability,⁷¹ and many other upgraded animal protections. Defensive efforts were also often successful during this time period: efforts to repeal the state's ban on the sale of products made from the force-feeding of ducks or geese (e.g., foie gras)⁷² and the ban on trade in kangaroo parts failed.⁷³ During this time, the first state legislative animal protection caucus formed, with bipartisan membership of nearly a third of the legislature.⁷⁴ An an-

[<https://perma.cc/A4U8-XX6Y>] (accessed Feb. 19, 2019) ("The state law went into effect in 2012 banning the sale of foie gras.").

⁶⁴ *Farm Animal Confinement Bans by State*, ASPCA (2019), <http://www.aspc.org/animal-protection/public-policy/farm-animal-confinement-bans> [<https://perma.cc/V6TP-DBJ2>] (accessed Feb. 19, 2019) ("In recent years, some states have taken steps to protect farm animals by passing laws that ban the use of battery cages for laying hens, gestation crates for sows and veal crates for calves.").

⁶⁵ CAL. FISH & GAME CODE § 2022 (West, 2019).

⁶⁶ CAL. FISH & GAME CODE § 2021.

⁶⁷ Sharon Bernstein, *California Closes Loophole in Ivory Trade*, REUTERS (Oct. 5, 2015), <https://www.reuters.com/article/us-usa-california-ivory/california-closes-loop-hole-in-ivory-trade-idUSKCN0RZ2LS20151005> [<https://perma.cc/4S6J-LPE9>] (accessed Apr. 28, 2019).

⁶⁸ CAL. CODE REGS. Tit. 14 § 250.1 (2018).

⁶⁹ CAL. FISH & GAME CODE § 8583.

⁷⁰ CAL. FISH & GAME CODE §§ 3960–3960.6.

⁷¹ CAL. CIV. CODE § 43.100 (2018).

⁷² *Ass'n des Éleveurs de Canards et d'Oies du Québec v. Harris*, 729 F.3d 937 (9th Cir. 2013), *cert denied*, 135 S. Ct. 398 (2014) (holding that California's ban of foie gras was not unconstitutional); *see also* *Ass'n des Éleveurs de Canards et d'Oies du Québec v. Becerra*, 870 F.3d 1140 (9th Cir. 2017), *cert. denied sub nom.*, 139 S. Ct. 862, (2019) (holding that California's foie gras ban is not preempted by federal statute).

⁷³ *See* Oliver Milman, *California Set to Ban Kangaroo Imports Despite Lobbying Efforts by Australia*, GUARDIAN (Sep. 14, 2015), <https://www.theguardian.com/us-news/2015/sep/14-california-set-to-ban-kangaroo-imports-despite-lobbying-efforts-by-australia> [<https://perma.cc/9NKM-3NJ9>] (accessed Apr. 28, 2019) (discussing the unsuccessful attempt to continue a moratorium on a ban of kangaroo parts passed in California in 1971).

⁷⁴ Barbara Hodges, *Getting to Know the Animal Protection and Veterinary Medicine Legislative Caucuses*, HSVMA (Jan. 27, 2014), https://www.hsvma.org/getting_to-know_legislative_caucuses?utm_source=fs012914&utm_medium=hsvmaweb&utm_campaign=advocacy#.XMVy9uhKjZs [<https://perma.cc/B2HG-AXCZ>] (accessed Apr. 28, 2019) (discussing various state and federal Animal Protection Caucuses).

nual humane legislation scorecard assisted with accountability and provided guidance to citizen advocates and voters. Some legislators began sponsoring animal adoption drives—partnering with shelters in their districts and personally paying the adoption fees for up to a hundred homeless animals who got adopted during weekend blitzes.⁷⁵ And California Governor Gavin Newsom included in his campaign platform a section called “protecting animals and wildlife” that included a comprehensive description of his record in support of humane laws and a set of issues he would support if elected.⁷⁶

In Congress, it was increasingly clear that legislation was not likely to move through regular order—free-standing bills were no longer advanced through committee and passed on the floor very often. Some exceptions were noteworthy, including the string of victories resulting from the excellent leadership of Chairman Rahall and his Chief of Staff, Jim Zoia, when they heard and passed eleven wildlife protection bills through the House Natural Resources Committee in a single year and then moved those bills on for floor passage.⁷⁷ The U.S. Senate, the intentionally deliberative body, grew increasingly deliberative and less likely to pass legislation, regardless of topic area. Hitchhiking, by finding a moving vehicle and attaching legislation via amendment, became and continues to be the only route to enactment.

A. *The Power of the Purse*

Perhaps building on the adage that necessity is the mother of invention, sometimes innovation results from a crisis. There are no requirements that authorizing legislation be heard or even considered in Congress, but there is great pressure on lawmakers to advance twelve appropriations bills every year that fund the operation of the federal government.⁷⁸ As has become apparent in recent years, when these funding bills are not passed, the government must shut down at the

⁷⁵ *The ASPCA Brings Adoptable Pets Directly to California Legislature for Paws for Celebration*, ASPCA (May 21, 2015), <https://www.aspc.org/news/aspc-brings-adoptable-pets-directly-california-legislature-paws-celebration> [https://perma.cc/S5JT-88YB] (accessed Apr. 30, 2019); *Adoptable Pets Mingle with California Lawmakers at ASPCA's Annual Paws for Celebration*, ASPCA (May 3, 2016), <https://www.aspc.org/news/adoptable-pets-mingle-california-lawmakers-aspcas-annual-paws-celebration> [https://perma.cc/U68T-Q7EH] (accessed Apr. 30, 2019); *San Diego Comes Together to Help Pets in Need*, ASPCA (Dec. 18, 2018) <https://www.aspc.org/-news/san-diego-comes-together-help-pets-need> [https://perma.cc/ZQP7-M6V5] (accessed Apr. 30, 2019).

⁷⁶ Interview with Jennifer Fearing, President, Fearless Advocacy (Mar. 3, 2019); see also Gavin Newsom, *BALLOTEDIA*, https://ballotpedia.org/Gavin_Newsom [https://perma.cc/ZDS5-PMHM] (accessed Apr. 30, 2019) (showing text from Newsom's 2018 campaign website discussing his commitment to “Protect[ing] Animals and Wildlife”).

⁷⁷ *Our Congressional Year in Review for Animals*, HUMANE SOC'Y LEGIS. FUND (Dec. 23, 2009), https://blog.hslf.org/political_animal/2009/12/2009-humane-scorecard.html [https://perma.cc/2BW5-T5KZ] (accessed Feb. 19, 2019) (“Thanks to the strong leadership of House Natural Resources Committee Chairman Nick Rahall . . . the House of Representatives passed eleven wildlife measures this year.”).

⁷⁸ *A Brief Guide to the Federal Budget and Appropriations Process*, AMERICAN COUNCIL ON EDUCATION, <https://www.acenet.edu/news-room/Pages/A-Brief-Guide-to-the-Fed->

end of the fiscal year, barring the use of a temporary extension of prior appropriations through a Continuing Resolution (CR).⁷⁹ This tool has become a common stopgap way to govern as partisan sentiments have overshadowed past civilities. The animal protection community adapted to this new reality more than a decade ago, resulting in several spikes in activity on appropriations-related topics at the federal level.

This strategy was employed in response to the notoriously controversial backroom deal to gut the Wild Free-Roaming Horses and Burros Act when Senator Conrad Burns (R-Mont.) attached a rider overnight to a massive appropriations package in late 2004 that would guarantee the sale of thousands of wild horses for slaughter for human consumption.⁸⁰ In the spring of 2005, after news reports that forty-one federally protected wild mustangs were butchered at a slaughterhouse located in Illinois,⁸¹ Representatives Nick Rahall (D-W. Va.) and Ed Whitfield (R-Ky.) offered an amendment, disallowing any funding for the implementation of the Burns Rider, to the House Interior Appropriations Bill on the House floor.⁸² Their bipartisan amendment passed with a comfortable 90 vote margin and robust bipartisan support in the House.⁸³ Unfortunately it was not offered in the Senate and was subsequently omitted from the final spending bill, leaving the Burns rider in operation and thousands of wild horses in jeopardy.⁸⁴

The question of sending American horses to slaughter has been a key issue before Congress for nearly two decades and in 2005, the anti-slaughter Rahall-Whitfield Amendment received a massive vote of support in the House.⁸⁵ Representative John Sweeney (R-N.Y.), joined by Rep. John Spratt (D-S.C.), Rep. Rahall and Rep. Whitfield, took to the floor during the debate over the House Agriculture Appropriations bill in June of 2005 and offered an amendment to bar funding for legally required inspections of horses for slaughter for human consump-

eral-Budget-and-Appropriations-Process.aspx [https://perma.cc/7ZXT-BFAZ] (accessed Apr. 30, 2019).

⁷⁹ Drew DeSilver, *Congress Has Long Struggled to Pass Spending Bills on Time*, PEW RES. CTR. (Jan. 16, 2018), <http://pewrsr.ch/2mKMwKA> [https://perma.cc/3A6B-5ASH] (accessed Feb. 19, 2019) (“Congress increasingly has bought more time by relying on continuing resolutions, or CRs. CRs typically extend previous funding levels but only for existing programs.”).

⁸⁰ *Fact Sheet: Protect America’s Wild Horses—Support H.R. 249*, HUMANE SOC’Y U.S., http://www.humanesociety.org/sites/default/files/archive/assets/pdfs/legislation/110_wildhorses_HR249.pdf [https://perma.cc/4M4T-C2B3] (accessed Feb. 13, 2019).

⁸¹ John Heilprin, *More Wild Horses Slaughtered at Cavel as Interior Department, Ford United to Save 52*, DAILY CHRON., <https://www.daily-chronicle.com/2005/04/26/more-wild-horses-slaughtered-at-cavel-as-interior-department-ford-unite-to-save-52/aqriqs/news04.txt> [https://perma.cc/5CHJ-8Z3L] (accessed Feb. 13, 2019).

⁸² *Fact Sheet: Protect America’s Wild Horses—Support H.R. 249*, *supra* note 800.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ GEOFFREY S. BECKER, CONG. RESEARCH SERV., HORSE SLAUGHTER PREVENTION BILLS AND ISSUES 3 (2007).

tion.⁸⁶ They won with a vote of 269–158.⁸⁷ The fight then moved to the Senate, where Sen. John Ensign (R-Nev.) teamed with Sen. Robert Byrd (D-W. Va.) and eight other cosponsors to offer identical language to the Senate Agriculture Appropriations amendment, prevailing with a 69–28 vote.⁸⁸ Without that funding in place, the final three foreign-owned horse slaughter plants operating in the United States could not legally sell horsemeat for human consumption via interstate commerce, forcing their closure.⁸⁹ Even with identical bills passed in both chambers, powerful conference committee voices intimated that the language would be stripped, and American citizens raised such an outcry that call numbers rivaled historic levels for citizen communications.⁹⁰ Phone lines in the Senate were shut down entirely, halting business as Senators were educated on the issue and its widespread and intense public support. Ultimately, a loophole was discovered in the bill's language, allowing the United States Department of Agriculture an opportunity to institute a private funding option and bypass the will of Congress.⁹¹ Litigation ensued, resulting in a delay in enforcement until 2007 when action by Texas and Illinois—where the remaining plants were located—finally led to the closure of these abattoirs.⁹² Work to continue this prohibition, annually, has kept those plants closed and increased pressure for a complete and permanent ban preventing the export of American horses as well.⁹³ The saga of the federal and state efforts to end horse slaughter in this country and to prevent our horses from the cruelty of transport elsewhere for such purposes continues to this day and deserves separate consideration for all of the lessons learned along that path. The primary lesson of note here is that identifying any federal funding related to the underlying abuse targeted by legislation creates another opportunity to raise the profile of an issue and to force a vote, requiring members to lay their cards on the table for the public to view and then forcing their ownership of that stance going forward.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ I was contacted at the time by Senate offices relaying that the high volume of calls had shut down phone lines.

⁹¹ Christen Wisner, *Detailed Discussion of Horse Slaughter for Human Consumption*, MICH. STATE UNIV.: ANIMAL LEGAL & HIST. CTR (2013), <https://www.animallaw.info/article/detailed-discussion-horse-slaughter-human-consumption#id-15> [<https://perma.cc/E5Z6-CE8U>] (accessed Apr. 18, 2019); 9 C.F.R. § 352.2 (2017).

⁹² *HSUS v. Johanns*, 520 F.Supp.2d 8 (D.D.C. 2007); Vickery Eckhoff, *Grand Opening of Horse Slaughter Plants Foiled Again*, FORBES (Nov. 6, 2013), <https://www.forbes.com/sites/vickery-eckhoff/ZO13/11/06/grand-opening-of-horse-slaughter-plants-foiled-again/#42ec41c63eb8> [<https://perma.cc/P295-6K4S>] (accessed Feb. 22, 2019).

⁹³ Erin Kelly, *Horse Slaughter Ban Extended in Spending Deal Signed by Trump*, USA TODAY (Mar. 26, 2018), <https://www.usatoday.com/story/news/politics/2018/03/26/ban-slaughtering-horses-meat-gets-last-minute-renewal-spending-law-trump-signed/459076002/> [<https://perma.cc/64VU-MDJB>] (accessed Feb. 22, 2019).

Some noteworthy federal victories in the wildlife realm, including a federal fur labelling enhancement,⁹⁴ a prohibition on the import of polar bear trophies,⁹⁵ and two federal reforms aimed at ending the horrific practice of shark finning⁹⁶ all demonstrate a continued appetite for these topics but with limited bandwidth. The U.S. House of Representatives passed the Restore Our American Mustangs Act (ROAM)⁹⁷ in 2009 but the Senate failed to bring it to the floor for a vote.⁹⁸

At the state level, more innovative and thoughtful approaches to addressing animal cruelty are emerging. This includes the trend toward rejection of simplistic analysis in favor of data-driven and pragmatic policy reforms. For example, some well-intentioned advocates have pressed for the enactment of “abuser registry” legislation that would publicly expose those with animal cruelty convictions.⁹⁹ This concept fell into vogue without much exploration of the implications of these laws. As they have been enacted at the local level, primarily, they have been increasingly exposed as anemic and even harmful for the stated goal of deterring harm to animals.¹⁰⁰ Most registries are local and list very few individuals.¹⁰¹ Some argue that they will have the opposite impact, leading judges to impose less stringent penalties in reaction.¹⁰² Instead, law makers are turning to “no contact” orders for those convicted of cruelty to ensure they do not harm other animals.¹⁰³

An exciting trend in recent years has been seen in the variety of ways advocates are challenging the puppy mill industry. For more than two decades, legislation has been introduced to raise federal standards, to make state laws tougher, and to prevent pet stores from providing a sales opportunity for these abusive breeders. Very few state laws have prevailed and no federal laws have passed, although the USDA under the Obama Administration did make a critical policy adjustment by finally bringing internet sales under their regulatory

⁹⁴ 15 USCA § 69b (2018).

⁹⁵ 16 USCA § 1423a (2018).

⁹⁶ 16 USCA § 1857 (2018); 16 USCA § 1822 (2018).

⁹⁷ Restore our American Mustangs Act, H.R. 1018, 111th Cong. (2009).

⁹⁸ *Id.*

⁹⁹ See *State Animal Abuser Registries Proposed in 2018*, NAVS, <https://www.navs.org/state-animal-abuser-registries-proposed-2018/#.XGymNs9KiT8> [<https://perma.cc/VC4K-EW4U>] (accessed Apr. 5, 2019) (describing proposed state animal abuser registry bills in 2018).

¹⁰⁰ *Animal Abuse Registry Policy Statement*, ASPCA, <https://www.aspc.org/about-us/aspc-policy-and-position-statements/position-statement-animal-abuser-registries> [<https://perma.cc/RJ7E-2QZX>] (accessed Apr. 5, 2019) (describing the problems and concerns with state animal abuse registries).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ See *Brinkley v. County of Flagler*, 769 So. 2d 468 (Fla. 2000) (upholding the constitutionality of a statute granting the state power to enjoin individuals from possessing animals).

framework.¹⁰⁴ A particularly lucrative and predatory tool of the puppy mill industry, pet leasing, was unearthed recently, leading to California, Nevada, and New York to prohibit such arrangements.¹⁰⁵ As local communities increasingly ban all sales from pet stores and states prohibit leasing, the industry is under renewed scrutiny.

As noted above, regulatory agencies provide another key area of reform and this avenue for animal protection remains a promising new horizon for many issues. What is perhaps most interesting in recent years is the combination of legislative, regulatory, appropriation, and litigation strategies. All of these levels were employed in the work to ensure that internet sales of dogs from puppy mills were finally covered by USDA.¹⁰⁶

When Congress passed federal reforms to the AWA enhancing the law on animal fighting, despite tough new language on increased penalties, convictions were not yet utilizing those penalties. The ASPCA learned that the U.S. Sentencing Commission, a quasi-regulatory arm of the federal government, had not yet adjusted its sentencing guidelines for animal fighting to conform to federal law.¹⁰⁷ After a prolonged campaign, working with the Commission's standard policy protocols, we were able to influence it to institute higher guidelines and are just now seeing the results of that more comprehensive policy work.¹⁰⁸

III. ANY GOOD OFFENSE DEPENDS ON GOOD DEFENSE

Finally, a word about defense. The result of any successful offense will inevitably be the need for vigorous defense as well. We cannot dismiss the importance of this need and we have seen an ability to bring down even well-financed, industry-backed trends. We saw this when Florida, Arizona, California and Massachusetts passed ballot measures protecting farm animals from intensive confinement and the agriculture industry responded by attempting to undo those protections by preempting state authority in this area via Rep. Steve King (R-Iowa)'s amendment to the Farm Bill, which failed, along with his free-standing legislation.¹⁰⁹

¹⁰⁴ 9 C.F.R. § 1.1 (2018); Animal Welfare; Retail Pet Stores and Licensing Exemptions, 77 Fed. Reg. 28,799 (May 16, 2012) (to be codified at 9 C.F.R. pts. 1 and 2).

¹⁰⁵ *New York Is the Latest State to Reject Pet Leasing*, ASPCA (Sept. 25, 2018), <http://www.asPCA.org/news/new-york-latest-state-reject-pet-leasing> [https://perma.cc/2JYT-N8WH] (accessed Feb. 14, 2019).

¹⁰⁶ *Associated Dog Clubs of N.Y. St., Inc., et al. v. Vilsack*, 75 F. Supp. 3d 83, 86–87 (D.D.C 2014).

¹⁰⁷ Matt Bershadker, *Make Animal Fighters Do More Time for Their Crimes*, HUFFINGTON POST (Feb. 16, 2017), http://www.huffingtonpost.com/matt-bershadker/make-animal-fighters-do-m_b_9246650.html [https://perma.cc/8FHN-K53Z] (accessed Feb. 14, 2019).

¹⁰⁸ U.S. SENTENCING GUIDELINES MANUAL § 2E3.1 (U.S. SENTENCING COMM'N 2018); Press Release, U.S. Sentencing Comm'n, U.S. Sentencing Commission Approves Significant Changes to the Federal Sentencing Guidelines (Apr. 15, 2016).

¹⁰⁹ *See generally Farm Animal Anti-Confinement Legislation*, ANIMAL WELFARE INST., <https://awionline.org/content/farm-animal-anti-confinement-legislation> [https://

Rep. King's nefarious power grab was just a mutation of state ag-gag bills introduced as a trend over the last decade. Looking back now at the mostly successful trend of fending off "ag-gag" legislation, aimed to attack and thwart whistle-blowers who proffer evidence of animal abuse in industrial agricultural settings,¹¹⁰ it seems that these bills helped bring together advocates from a variety of social justice realms, including civil rights, labor, elder and child protection interests, and food safety advocates. Most ag-gag bills failed and the resulting challenges to those that passed are bearing out favorably for animal protection interests.¹¹¹ In fact, high profile ballot victories, like California's Proposition 2, inspired a host of states to pass their own confinement bans via regular legislative avenues, demonstrating again the influence of our movement when we move boldly, pick issues that enjoy mainstream support, and band together with other social justice causes to overpower hostile industry aggression. In fact, California animal welfare, labor, environmental and consumer advocates came together again in 2018¹¹² to pass Proposition 12, another farm animal confinement measure that added specificity and sales requirements to the code, winning in another landslide with 63% voter support. Such collaboration and earnest recognition of the need for intersectional values and support will be essential if we hope to succeed in inspiring major policy reforms for animals. It provides the best blueprint for our future as a credible and effective movement for social change.

IV. CONCLUSION

While no roots can be ever deep enough to create the kind of permanence a small group of committed individuals at Lewis and Clark Law School once yearned for, the foundation of animal law at Lewis & Clark Law School and beyond has been solid enough to inspire real change and to support new generations as they establish their own

perma.cc/YM8X-863K] (accessed Feb. 19, 2019) (listing states that restrict or prohibit intensive confinement); Christina Cooke, *Rep. Steve King Wants to Undo State Laws Protecting Animals and the Environment*, CIVIL EATS (Apr. 3, 2018), <https://civileats.com/2018/04/03/rep-steve-king-wants-to-undo-state-laws-that-protect-animals-and-the-environment/> [<https://perma.cc/AU87-XDYX>] (accessed Feb. 19, 2019) (discussing the King Amendment to the 2018 Farm Bill).

¹¹⁰ See generally Kelsey Piper, "Ag-Gag Laws" Hide the Cruelty of Factory Farms from the Public. Courts are Striking Them Down., VOX (Jan. 11, 2019), <https://www.vox.com/future-perfect/2019/1/11/18176551/ag-gag-laws-factory-farms-explained> [<https://perma.cc/BJT9-VQQT>] (accessed Feb. 19, 2019) (discussing aim of "ag-gag" laws and the resulting challenges to them in federal courts).

¹¹¹ See generally Michael McFadden, *Exposing Ag-Gag*, FARMFORWARD (Aug. 30, 2015), <https://www.farmforward.com/#!/blog?site=farm-forward&blogid=exposing-ag-gag> [<https://perma.cc/77T8-UY4Y>] (accessed Feb. 19, 2019) (discussing failed "ag-gag" bills).

¹¹² See *Endorsements of Prop 12, YES ON 12*, <https://preventcrueltyca.com/endorsements-prop-12> [<https://perma.cc/AQ9V-AN6N>] (accessed Apr. 28, 2019) (listing organizations that endorsed California's Prop 12).

vision of a world where animal protection is reflexively embraced in our culture, viewed as a serious element of social justice, and codified in our laws.