

# STRIKING A BALANCE: WHY FEDERAL AND STATE LAWS SHOULD BE REVISED TO EFFECTIVELY DETER PUPPY MILLS

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*The Animal Welfare Act (AWA) was passed in 1966 with the purpose of ensuring the humane care and treatment of animals. The AWA delegates licensing responsibilities to the United States Department of Agriculture (USDA) and the Animal Plant and Health Inspection Services (APHIS), who have the authority to investigate violations of the AWA and penalize relevant organizations, such as puppy mills, when necessary. Unfortunately, the AWA sets forth minimum standards for the humane care and treatment of these animals and the USDA has exercised its own discretion in penalizing violations of the AWA. The AWA establishes standards for compliance, but such standards are minimal and inadequately enforced. The USDA has exercised its own discretion in penalizing violations of these minimal AWA standards, which has led to the continued licensing of puppy mills. This dynamic perpetuates the abuse and inhumane treatment of dogs and puppies. In response to the weak enforcement of the AWA by the USDA, many states have recently passed laws banning the sale of dogs from pet stores in hopes of eliminating the influx of dogs from puppy mills into the state. The disparity between these federal and state laws has resulted in minimal deterrence of puppy mill operations. Instead of taking polarized stances toward eliminating puppy mills, both federal and state legislation should meet in the middle and focus on better deterring the operation of puppy mills. This Article will analyze how the minimum standards and lackluster enforcement of the AWA has led to an extreme response from certain states who have taken action through their own legislative solutions. This Article will then propose legislation, on both the federal and state level, suggesting stronger regulations and more effective enforcement procedures to bridge the gap between the AWA and state laws in hopes of deterring and eliminating the operation of puppy mills.*

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## I. INTRODUCTION

Puppy mills have been a problem in the United States for decades. The practice of breeding dogs for profit gave rise to the creation of puppy mills in the post-World War II era, subjecting dogs and their puppies to horrible conditions and abuse.<sup>1</sup> In 1966, Congress passed the Animal Welfare Act (AWA) with the intention of setting standards under which these breeding facilities must operate.<sup>2</sup> The AWA authorized the United States Department of Agriculture (USDA) to investigate violations of these standards and issue citations as needed.<sup>3</sup>

Unfortunately, USDA enforcement of the AWA has been lackluster since its inception—allowing puppy mill operations to continue to abuse and neglect these animals.<sup>4</sup> In recent years, legislative attempts to limit the prevalence of puppy mills have taken many different approaches, from total bans of sales of dogs from puppy mills to more conservative laws. This Article will address the former type of state legislation throughout, and for the sake of clarity will refer to complete prohibitions of sales involving animals from puppy mills as “total ban legislation.” Total ban legislation describes states that have taken

<sup>1</sup> Melissa Towsey, *Something Stinks: The Need for Environmental Regulations of Puppy Mills*, 21 VILL. ENV'T L. J., 159, 161 (2010).

<sup>2</sup> Animal Welfare Act, 7 U.S.C. §§ 2131–2159 (1966).

<sup>3</sup> 7 U.S.C. § 2132; 7 U.S.C. § 2146.

<sup>4</sup> *Retail Pet Sale Bans: Stopping the Puppy Mill Pipeline*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/wp-content/uploads/2023/04/2023-Retail-Pet-Sale-Bans-Handout-Factsheet.pdf> (accessed Sept. 29, 2023) [hereinafter *Retail Pet Sale Bans*].

matters into their own hands and enacted aggressive legislation aimed at banning the sale of dogs in pet stores altogether.<sup>5</sup> Such state action could have the effect of merely turning residents' attention to a neighboring state that may not have as aggressive legislation. This potential consequence further contributes to the sale of potential puppy mill puppies. The tension between weak federal legislation and aggressive state legislation has provided for the continued operation of puppy mills. Furthermore, a lack of effective deterrence—due in large part to disparities between federal and state laws—has resulted in the chronic abusive conditions that these facilities promote.

Consequently, neither efforts by the federal nor state governments directly address the root problem of puppy mills: the abusive conditions that these animals endure. The USDA's weak enforcement of AWA violations along with states' recent trend of enacting complete bans on dog sales in pet stores are not effective means of eliminating puppy mills. Puppy mills continue to thrive with lenient federal regulations, perpetuating the abusive conditions these dogs are forced to live under. While states may enact laws beyond the federal minimum, this inconsistent legal standard leaves open alternative avenues for puppy mill owners to explore, rather than mandating an end to the practice altogether. Additionally, states that have enacted such aggressive legislation have received aggressive backlash from citizens, particularly those who are pet store owners.<sup>6</sup> This backlash may prevent other states from passing similar legislation. Therefore, both federal and state governments need to adjust their legislation toward a more effective middle ground. The federal government should make meaningful improvements to the AWA and the process for resolving and investigating violations. Meanwhile, states should pass laws and regulations mirroring suggested amendments to the AWA standards, while setting their own requirements and creating procedures for investigating violations thoroughly and consistently. Bolstering enforcement of violations of both the AWA and state regulations would act as a deterrence for puppy mill operations and would improve the conditions for dogs that are bred in these operations.<sup>7</sup> Such reform would need to be made at both the federal and state level due to jurisdictional issues that coincide with enforcement of such legislation. Legislation and how it is enforced differs greatly between the federal and the state level.<sup>8</sup> For example, a disparity in

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<sup>5</sup> *Id.*

<sup>6</sup> Greg Allen, *In More Cities, That Doggie in the Window is Not for Sale*, NPR (Oct. 21, 2014), <https://www.npr.org/2014/10/21/357830654/in-more-cities-that-doggie-in-the-window-is-not-for-sale> (accessed Sept. 22, 2023).

<sup>7</sup> *Puppy Mills*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/issue/fighting-to-end-puppy-mills/> (accessed Oct. 5, 2023).

<sup>8</sup> *Comparing Federal and State Courts*, U.S. COURTS, <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts> (accessed Oct. 27, 2023) (explaining the differences between federal and state court structure, judicial selection, and cases); see also *State and Local Government*, THE WHITE HOUSE, <https://www.whitehouse.gov/about-the-white-house/our-government/state-local-government/>

enforcing the AWA at the federal level will impact the efficacy of a similar state law aimed at protecting animals' well-being as federal laws apply universally, not just from state to state. Therefore, an ineffective law at the federal level will determine the well-being of animals in states that do not have strong animal protection laws. On the other hand, should Congress only reform the AWA, and the USDA strengthen its enforcement procedures, this reform at one level would not be as effective without similar state legislation acting as a safety net for violations and abuse the USDA may have missed.

This Article will explore the history of puppy mills and the current status of the AWA and state legislation. It will then propose a model of how Congress should reform the AWA and how states should reform legislation to eliminate puppy mills in the United States. Section II will provide a background on what a puppy mill is as well as the history and current status of puppy mills in the United States. Section III addresses the AWA and the USDA's enforcement of violations, along with recent improvements the USDA made in enforcing violations. Section IV will analyze states' reactions to the USDA's weak enforcement of the AWA and compare recent state laws passed to prevent the influx of puppy mill puppies into their state. This will include an analysis of states with aggressive legislation and the potential effects of these laws on puppy mill operations nationwide. Finally, Section V will demonstrate that a balance must be struck between federal and state laws to effectively deter puppy mills and then propose relevant reforms for the USDA and state legislation.

## II. BACKGROUND INFORMATION

### A. WHAT IS A PUPPY MILL?

There is no singular definition of a puppy mill. The term has not been defined statutorily or legally.<sup>9</sup> Instead, there are many definitions of what constitutes a puppy mill from various sources, mainly animal welfare organizations. Some define puppy mills as "high-volume dog breeding facilities that churn out puppies for profit,"<sup>10</sup> or a "breeding facility that produces puppies in large numbers."<sup>11</sup> Other definitions include "a commercial farming operation in which purebred dogs are

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(accessed Oct. 27, 2023) (discussing the difference between government branches, and the structure of local government).

<sup>9</sup> Robyn F. Katz, *What is a Puppy Mill?*, ANIMAL LEGAL & HIST. CTR. (2009), <https://www.animallaw.info/article/what-puppy-mill> (accessed Sept. 22, 2023) [hereinafter *What is a Puppy Mill?*].

<sup>10</sup> *Stopping Puppy Mills*, HUMANE SOC'Y U.S., <https://www.humanesociety.org/all-our-fights/stopping-puppy-mills> (accessed Sept. 22, 2023).

<sup>11</sup> PAUL FRISMAN, CONNECTICUT "PUPPY MILL" LAWS, OLR RSCH. REP. 1 (2007), <https://www.cga.ct.gov/2007/rpt/2007-R-0409.htm> (accessed Nov. 5, 2023).

raised in large numbers and often in substandard or poor conditions.”<sup>12</sup> In looking at these various definitions, there is a common theme where puppy mills are described as large-scale commercial breeding operations that sell a high number of dogs. In order to sell such a high number of dogs at quick rates, these facilities operate under unsanitary conditions that compromise the health and well-being of the animals living there.<sup>13</sup>

It is important to distinguish between commercial breeders and puppy mills. Essentially, a puppy mill is a commercial breeder that operates at a much larger scale in order to produce as many puppies as possible and maximize profits.<sup>14</sup> Unlike puppy mills, the term “commercial breeder” has in many instances been statutorily defined,<sup>15</sup> and most states have their own definition of a commercial breeder.<sup>16</sup> Usually, whether a facility or individual is classified as a commercial breeder hinges on the number of animals sold within one year and how many animals are used for breeding. For example, in Nebraska, a commercial breeder is a “person engaged in the business of breeding [dogs or cats] . . . who sells, exchanges, leases, or in any way transfers or offers to sell, exchange, lease, or transfer thirty-one or more [dogs or cats] in a twelve-month period.”<sup>17</sup> Further, if the person owns “four or more [dogs or cats], intended for breeding, in a twelve-month period,” they are a commercial breeder.<sup>18</sup> In Oklahoma, a commercial breeder is defined as an individual who “possesses eleven or more intact female animals for the use of breeding or dealing in animals for direct or indirect sale or for exchange in return for consideration.”<sup>19</sup> Notably, the AWA does not define commercial breeder. Rather, the AWA provides a definition for “dealer” which is defined as “any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of . . . any dog or

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<sup>12</sup> *Puppy Mill*, MERRIAM-WEBSTER, [www.merriam-webster.com/dictionary/puppy%20mill](http://www.merriam-webster.com/dictionary/puppy%20mill) (accessed Sept. 22, 2023).

<sup>13</sup> *What is a Puppy Mill?*, *supra* note 9.

<sup>14</sup> See *The Puppy Mill Pipeline*, AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, <https://www.aspca.org/barred-from-love/puppy-mills-101/puppy-pipeline> (accessed Sept. 19, 2023) [hereinafter *The Puppy Mill Pipeline*] (explaining “the puppy pipeline,” where puppies are transferred from breeders to brokers and eventually to pet stores, similar to a profitable good); see also *What is a Puppy Mill?*, *supra* note 9 (“The Humane Society of the United States (‘HSUS’) defines puppy mills as dog-breeding operations that put profit above the welfare of dogs.”).

<sup>15</sup> Rebecca F. Wisch, *Table of State Commercial Pet Breeders Laws*, ANIMAL LEGAL & HISTORICAL CTR. (2023), <https://www.animallaw.info/topic/table-state-commercial-pet-breeders-laws> (accessed Sept. 29, 2023).

<sup>16</sup> *Id.*, Robyn Katz, *Overview of Commercial Breeder Laws*, ANIMAL LEGAL & HISTORICAL CTR. (2008), <https://www.animallaw.info/article/overview-commercial-breeder-laws> (accessed Sept. 19, 2023).

<sup>17</sup> Commercial Dog and Cat Operator Inspection Act, NEB. REV. STAT. § 54-626 (2023).

<sup>18</sup> NEB. REV. STAT. § 54-626 (2023).

<sup>19</sup> Commercial Pet Breeders and Animal Shelter Licensing Act, OKLA. STAT. ANN. tit. 4, § 30.2 (West 2023).

other animal . . . [for] use as a pet.”<sup>20</sup> Additionally, this definition states that the term dealer does not apply to a “retail pet store, as defined in this section; and any retail outlet where dogs are sold for hunting, breeding, or security purposes.”<sup>21</sup> However, based on the AWA’s definition of a dealer, it may be implied that dealers include both breeders and commercial breeders.

A commercial breeder transforms into a puppy mill when it begins producing a large number of puppies under poor and unsanitary conditions.<sup>22</sup> As these operations become focused on maximizing profits by churning out as many puppies as they can, the likelihood of neglect increases.<sup>23</sup> In order to increase profit margins, breeders cut costs by utilizing abusive conditions such as cramped housing, lack of proper food, lack of veterinary care, and overbreeding.<sup>24</sup> There is not a set number of animals that must be bred in order to constitute a puppy mill, rather the defining characteristics of puppy mills are the conditions the animals live under and the poor health that results in these animals.<sup>25</sup> As such, not every commercial breeder will run a puppy mill, but every puppy mill begins as a commercial breeding operation.

Commercial breeders evolve into puppy mills when neglect and unsanitary conditions become defining features of the operation.<sup>26</sup> Puppies born into puppy mills—and dogs that remain there for breeding—are kept in tiny cages in poor conditions and receive minimal veterinary care.<sup>27</sup> Taken together, these conditions cause dogs kept in puppy mills to suffer from severe medical conditions such as constant ear infections,

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<sup>20</sup> Animal Welfare Act of 1966, 7 U.S.C. § 2132(f) (2023).

<sup>21</sup> 9 C.F.R. § 1.1 (2023).

<sup>22</sup> Kimberly Barnes, *Detailed Discussion of Commercial Breeders and Puppy Mills*, ANIMAL LEGAL & HIST. CTR. (2017), <https://www.animallaw.info/article/detailed-discussion-commercial-breeders-and-puppy-mills-0> (accessed Sept. 29, 2023).

<sup>23</sup> See FRISMAN, *supra* note 11 (demonstrating that puppy mills trade proper care for profit and production); see also *Retail Pet Sale Bans*, *supra* note 4 (reinforcing that puppy mills produce as many puppies as they can to maximize profits, which results in deplorable conditions for the puppies).

<sup>24</sup> FRISMAN, *supra* note 11.

<sup>25</sup> See *Puppy Mills*, NAT’L HUMANE EDUC. SOC’Y, <https://www.nhes.org/puppy-mills/> (accessed Sept. 23, 2023) (explaining that puppy mills may range in number from 50 to 1,000 puppies, but that unsanitary conditions and poor health define these facilities).

<sup>26</sup> See *Welfare of Dogs in Commercial Breeding Kennels*, PURDUE UNIV. COLL. OF VETERINARY MED., <https://vet.purdue.edu/discovery/croney/current-research-welfare-breeding-dogs.php> (accessed Sept. 23, 2023) (“While the term, ‘commercial dog breeding,’ is often used synonymously with ‘puppy mills,’ they are not the same. We define a puppy mill as a dog breeding facility where profit is clearly given priority over the well-being of the dogs, and where there is no interest in or effort toward supporting dog welfare”).

<sup>27</sup> *More Puppies, More Profits*, AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, <https://www.aspca.org/barred-from-love/puppy-mills-101/more-puppies-more-profits> (accessed Sept. 23, 2023) (describing that in addition to inadequate veterinary care, the poor conditions these animals are subject to include living in tiny, wire-floored cages that are often stacked on top of each other).

mange, parasites, and pneumonia.<sup>28</sup> Due to repetitive breeding, many puppies are also born with genetic defects.<sup>29</sup> The abuse does not end with these severe medical conditions; dogs are also not groomed or bathed.<sup>30</sup> As a result, their fur becomes matted and their nails overgrown, making it painful for them to stand or walk.<sup>31</sup> Puppies are transported immediately to the buyer when sold, which often causes anxiety and stress that can traumatize newborn puppies.<sup>32</sup> Dogs that are kept for breeding are not socialized and do not get any physical exercise, regularly suffering the worst of these conditions as they are confined in these unkept areas for most of their lives.<sup>33</sup> When they can no longer breed, they are often abandoned or killed.<sup>34</sup>

Profit drives commercial breeders to begin running puppy mill operations.<sup>35</sup> Puppy mill breeders profit both from sales to individual customers as well as pet stores,<sup>36</sup> and puppy mill operations owe much of their success to pet stores. Puppy mills often have transactional relationships with pet stores across the country and can ship their puppies to many pet stores throughout the United States.<sup>37</sup> Pet stores rely on the steady influx of puppies from these operations, and puppy mills rely on the profits they receive from pet stores to maintain their livelihood.<sup>38</sup> However, by strengthening regulations that both commercial breeders and pet stores must abide by, the relationship between these two businesses may evolve into one that does not result in the abuse of animals.

### B. HISTORY AND CURRENT STATUS OF PUPPY MILLS IN THE UNITED STATES

Before World War II, most people in the United States lived in rural areas.<sup>39</sup> Family farms were commonplace, and the booming agriculture industry fostered the demand for commodities grown on local farms.<sup>40</sup> However, as industrialization transformed the United States

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<sup>28</sup> *Puppy Mills*, PETA, <https://www.peta.org/issues/animal-companion-issues/pet-trade/puppy-mills/> (accessed Sept. 23, 2023).

<sup>29</sup> *Id.*

<sup>30</sup> *More Puppies, More Profits*, *supra* note 27.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Puppy Mill Dogs: Where Mill Pets Are Sold*, BEST FRIENDS ANIMAL SOC'Y, <https://resources.bestfriends.org/article/puppy-mill-dogs-where-mill-pets-are-sold> (accessed Sept. 21, 2023).

<sup>37</sup> *The Puppy Mill Pipeline*, *supra* note 14.

<sup>38</sup> Dr. Dawn Ruben, *Puppy Mills*, PETPLACE (Feb. 24, 2015), <https://www.petplace.com/article/dogs/pet-care/puppy-mills/> (accessed Oct. 5, 2023).

<sup>39</sup> Carolyn Dimitri et al., *The 20th Century Transformation of U.S. Agriculture and Farm Policy*, ERS ECON. INFO. BULL. NO. 3 (USDA June 2005), [https://www.ers.usda.gov/webdocs/publications/44197/13566\\_eib3\\_1\\_.pdf](https://www.ers.usda.gov/webdocs/publications/44197/13566_eib3_1_.pdf) (accessed Oct. 15, 2023).

<sup>40</sup> *Id.*

economy, the emergence of new technologies and factory production severely impacted farmers and their livelihoods.<sup>41</sup> The momentum of industrialization accelerated during World War II, precipitating an era of post-war urbanization where people moved in herds from rural farm areas to dense urban environments.<sup>42</sup> As a result, farmers found themselves in a desperate situation and were driven to search for new ways of increasing revenue. With more people moving to cities, there was a decline in the number of workers available for rural farms and demand for their products in rural areas.<sup>43</sup> At the same time, the demand for household pets, specifically purebred dogs, surged and spread across the nation.<sup>44</sup> Farmers soon realized puppies were becoming a cash crop and began breeding dogs to be sold to individuals who were looking for a companion to match their new homes and lifestyles.<sup>45</sup> In the beginning, most farmers would only have—on average—about four dogs they would use for breeding, which would produce a few litters collectively.<sup>46</sup> With few dogs and minimal litters being produced for private sales to individuals, farmers were likely able to care for these dogs in a humane way.

Greed soon changed this modest enterprise into a large-scale operation. As farmers realized dogs and puppies could be kept in rabbit hutches and chicken coops—and as pet stores began springing up to meet new demand for puppies—profit took priority over the well-being of these animals.<sup>47</sup> Farmers went from breeding four dogs to roughly tripling the number of dogs they were breeding, increasing the number of litters that were produced.<sup>48</sup> Farmers realized not only that they could use rabbit hutches and chicken coops to hold the dogs and puppies, but that they could also feed the animals at a lower cost by feeding them table scraps or other inexpensive food with low-quality ingredients.<sup>49</sup> New advancements in drugs and medicine made it cheaper for dogs to be housed in the same area, but farmers rarely sought veterinary care as they were often more concerned with profit margins than with the health of the dogs they were breeding and selling.<sup>50</sup> As farmers began housing more dogs, they began neglecting the cleaning of

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<sup>41</sup> *How Does Industrialization Lead to Urbanization?*, INVESTOPEDIA (June 23, 2021), <https://www.investopedia.com/ask/answers/041515/how-does-industrialization-lead-urbanization.asp> (accessed Oct. 1, 2023).

<sup>42</sup> Rory Kress, *THE DOGGIE IN THE WINDOW*, 138 (Sourcebooks Inc., 2018).

<sup>43</sup> *Id.*; Sunny Weber, *Puppy Mills 102 – The History of Puppy Mills*, (Mar. 27, 2015) <https://sunnyweber.com/puppy-mills-102-the-history-of-puppy-mills/> (accessed Oct. 5, 2023).

<sup>44</sup> Weber, *supra* note 43.

<sup>45</sup> *Id.*

<sup>46</sup> Ruben, *supra* note 38.

<sup>47</sup> Weber, *supra* note 43; Kress, *supra* note 42.

<sup>48</sup> Ruben, *supra* note 38.

<sup>49</sup> *Id.*; KRESS, *supra* note 47, at 138.

<sup>50</sup> KATHERINE C. GRIER, *PETS IN AMERICA: A HISTORY* 233 (Univ. N.C. Press, 2006); Ruben, *supra* note 38.



housing units and sanitation efforts decreased.<sup>51</sup> Farmers became very successful with these operations, as they were now able to sell larger amounts of puppies to two major markets—retail pet stores and private individuals.<sup>52</sup>

Thus, in order to evolve with the changing landscape in the United States, the puppy mill was born. Within a short period of time, this shift from breeding dogs as a modest enterprise to a large-scale operation caught the attention of animal welfare organizations, who became aware of the abuse and neglect that these animals were facing.<sup>53</sup> These organizations coined the term “puppy mill” in order to distinguish these large-scale breeding operations and better describe the conditions they forced animals to endure.<sup>54</sup> Because of their origin in agriculture and farming, many puppy mills were concentrated in the farm belt of the United States and became known as “backyard breeders.”<sup>55</sup> Consequently, the most prolific backyard breeder states tended to be located in the Midwest, and Kansas, Iowa, and Missouri remain among the worst offenders today when it comes to housing puppy mills.<sup>56</sup>

In 2012, the Humane Society of the United States (HSUS) reported that there were approximately ten thousand puppy mills in the United States, including those licensed by the USDA.<sup>57</sup> That same year, HSUS estimated that puppy mills sold two to four million puppies annually.<sup>58</sup> Unfortunately, this situation has not meaningfully improved in the decade since. The HSUS released its most recent annual findings in January 2023, which reported over three million puppies sold annually from approximately ten thousand puppy mills in the United States.<sup>59</sup> This statistic also suggests that the AWA and various anti-puppy mill state laws have not been successful in reaching this goal of eliminating—or even reducing—puppy mills in the United States.

HSUS also produces an annual report known as the “Horrible Hundred,” which details the states with the most severe puppy mill

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<sup>51</sup> Ruben, *supra* note 38.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> GRIER, *supra* note 50 at 16; Kailey A. Burger, *Solving the Problem of Puppy Mills: Why the Animal Welfare Movement’s Bark is Stronger than its Bite*, 43 J. OF L. AND POLICY 259, 264, n. 33-34 (2014).

<sup>56</sup> See HSUS, THE HORRIBLE HUNDRED 2022, 2, 4 (2022), <https://www.humanesociety.org/horriblehundred> (accessed Nov. 5, 2023) [hereinafter HSUS HORRIBLE HUNDRED 2022] (explaining that Missouri, Iowa, and Kansas continue to have some of the largest number of puppy mills reported, while Arkansas does not have kennel inspection laws).

<sup>57</sup> HSUS, PUPPY MILLS THEN AND NOW: A DECADE OF PROGRESS, 1 (2012), <https://docplayer.net/46123828-Puppy-mills-then-and-now-a-decade-of-progress.html> (accessed Oct. 15, 2023).

<sup>58</sup> *Id.* at 2.

<sup>59</sup> HSUS, PUPPY MILLS: FACTS AND FIGURES, 1 (2023), [http://www.humanesociety.org/sites/default/files/docs/HSUS\\_puppy-mill-facts-figures.pdf](http://www.humanesociety.org/sites/default/files/docs/HSUS_puppy-mill-facts-figures.pdf) (accessed Oct. 5, 2023).

violations and lists specific serious offenders.<sup>60</sup> In 2022, HSUS reported that Missouri hosted twenty-six puppy mill operations; more than any other state for the tenth consecutive year.<sup>61</sup> Other top offenders are Iowa—with seventeen operations—and Kansas—with seven operations.<sup>62</sup> Notably, many farm belt states still rank high on the list.<sup>63</sup> Not only are the same states continuing to perpetuate their attitudes toward puppy mill operations year after year, but regulations are also failing to bridge the gap toward changing this pattern.

### III. THE ROLE OF THE ANIMAL WELFARE ACT (AWA)

The AWA is the primary federal law regulating puppy mills in the United States.<sup>64</sup> The AWA, passed in 1966, regulates the treatment of animals in research, teaching, testing, exhibition, transport, and by dealers.<sup>65</sup> One of the main purposes behind the AWA is to ensure the humane care and treatment of animals, including the humane treatment of animals during transportation in commerce.<sup>66</sup> Unfortunately, it has not been effective in the fight to regulate and deter puppy mills. A major reason for this lack of oversight is that the USDA has broad discretion in setting operational standards, as evidenced by its weak enforcement of the AWA.<sup>67</sup> The USDA has a history of lackluster investigations into puppy mill operations and minimal citations of violations.<sup>68</sup> Actions by the USDA, or lack thereof, have further cemented the need for a complete overhaul of the AWA and the processes the USDA uses to ensure the humane treatment of animals under the Act.

#### A. MINIMAL STANDARDS SET FORTH IN THE AWA

The AWA gives the USDA authority over standards for the humane care and treatment of animals, which it sets forth in the Code of Federal Regulations.<sup>69</sup> These standards include minimum requirements for heating, cooling, and ventilation of housing units.<sup>70</sup> Additionally, the

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 1, 4.

<sup>62</sup> *Id.* at 4.

<sup>63</sup> Ruben, *supra* note 38.

<sup>64</sup> GENEVIEVE CROFT, CONG. RSCH. SERV., R47179: THE ANIMAL WELFARE ACT: BACKGROUND AND SELECTED ISSUES 1 (2022) [hereinafter CRS R47179].

<sup>65</sup> 7 U.S.C. § 2131 (1966).

<sup>66</sup> 7 U.S.C. § 2143 (1966).

<sup>67</sup> *USDA Enforcement of Animal Welfare Act Hits a New Low*, AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS (Aug. 10, 2018), <https://www.aspc.org/news/usda-enforcement-animal-welfare-act-hits-new-low> (accessed Sept. 18, 2023) [hereinafter *USDA Enforcement Hits a New Low*]; see also 7 U.S.C. § 2143(A)(1) (1966).

<sup>68</sup> *USDA Enforcement Hits a New Low*, *supra* note 67.

<sup>69</sup> CRS R47179, *supra* note 64, at 5; See 9 C.F.R. § 3 (2023) (delineating the various standards in the Code of Federal Regulations).

<sup>70</sup> 9 C.F.R. § 3 (2023).

regulatory language uses fairly broad terms to describe satisfactory living conditions for dogs in these puppy mills, including “adequate cleaning,” “adequate inspection,” “sufficiently ventilated,” “sufficiently heated,” and “cleaned and sanitized when necessary.”<sup>71</sup> The AWA’s vague requirements, including “adequate,” “sufficiently,” and “when necessary,” allow the USDA to unilaterally determine their meaning and application—including with regard to investigations of alleged violations.<sup>72</sup>

A disturbing example of the minimal standards created by the AWA is the requirement that cages for dogs be only six inches higher and longer than the dog; just enough room for the dog to sit, stand, and turn around.<sup>73</sup> This is considered sufficient for dogs, yet it provides them with limited mobility. The regulations continue with this six-inch rule by providing that an enclosure must only be six inches higher than the tallest dog in the enclosure when that dog is in a normal standing position.<sup>74</sup> Additionally, these enclosures can contain as many as twelve adult dogs.<sup>75</sup> Because puppy mills house so many dogs and puppies, these animals are usually kept in enclosures for a majority of the day or the entire day as it would be difficult to move and control such a large amount of dogs and puppies anywhere outside of a cage.<sup>76</sup> Regarding exercise, the AWA merely states that a dealer must “develop, document, and follow an appropriate plan to provide dogs with the opportunity for exercise.”<sup>77</sup> However, the ambiguity of what constitutes an “appropriate plan” leaves a great deal of deference to the dealer to create a meager plan and have the ability to argue that such a plan is still appropriate.

Adult dogs should not spend more than six to eight hours in a cage, and puppies should spend a maximum of four to five hours in a cage per day.<sup>78</sup> If left in cages much longer than these time frames, these dogs begin suffering physical and psychological effects including depression and anxiety, and may develop bone and muscle conditions from lack of movement.<sup>79</sup> *United States v. Envigo RMS, LLC* provides a particularly

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *USDA Enforcement Hits a New Low*, *supra* note 67.

<sup>74</sup> 9 C.F.R. § 3.6(c)(1)(iii) (2023).

<sup>75</sup> 9 C.F.R. § 3.6(c)(2).

<sup>76</sup> *Buyer Beware: The Problem with Puppy Mills and Backyard Breeders*, PAWS, <https://www.paws.org/resources/puppy-mills/> (accessed Sep. 29, 2023) [hereinafter *Buyer Beware*].

<sup>77</sup> 9 C.F.R. § 3.8 (current as of Oct. 2023).

<sup>78</sup> Tamara Peco, *Crate Training a Dog or Puppy While at Work*, PETFEED (2017), <https://petcube.com/blog/dog-crate-leaving/> (accessed Sep. 25, 2023).

<sup>79</sup> *Id.*; Michael W. Fox, *All-Day Caging of Dogs is Heartless and Harmful*, WASH. POST (Nov. 11, 2015), [https://www.washingtonpost.com/local/animal-doctor-prolonged-caging-of-dogs-is-cruel-and-harmful/2015/11/05/b7c8432a-828f-11e5-8ba6-cec48b74b2a7\\_story.html](https://www.washingtonpost.com/local/animal-doctor-prolonged-caging-of-dogs-is-cruel-and-harmful/2015/11/05/b7c8432a-828f-11e5-8ba6-cec48b74b2a7_story.html) (accessed Sep. 29, 2023);

*Animal Rights Uncompromised: Crating Dogs and Puppies*, PETA, <https://www.peta.org/about-peta/why-peta/crating-dogs> (accessed Sep. 29, 2023).

tragic example of the consequences that can result from these caging practices, and the effects of failure to comply with the AWA.<sup>80</sup> The facility at issue in this case housed beagle puppies who were hosed down in cages during cold conditions, resulting in twenty-five of the puppies dying from cold exposure.<sup>81</sup> Further, there was evidence of overcrowded housing and euthanization of hundreds of dogs with easily treatable conditions.<sup>82</sup> These conditions were the result of non-compliant AWA enclosures.<sup>83</sup> More importantly, this case further demonstrates the consequences of overcrowding and minimal enforcement of the AWA, since hundreds of dogs died as the result of what would have otherwise been treatable conditions.<sup>84</sup> Another way the AWA's standards fall flat is the amount of food puppy mills must provide for dogs and puppies. The AWA states that owners must feed dogs at least once a day, and feed puppies every twelve hours.<sup>85</sup> However, many professional veterinary organizations recommend that dogs—whether puppy or adult—eat at least two meals a day, in twelve hour intervals.<sup>86</sup> If dogs are fed less than twice a day their health can suffer, and where feedings are separated by more than twelve hours a dog's stomach may become hyper acidic, causing nausea.<sup>87</sup> Further, these standards do not require food to be sanitary and free from dirt and other debris. An example of the effects of this failure to address a sanitary food requirement is demonstrated in *United States v. Envigo RMS, LLC* where food provided to the dogs contained mold, feces, and maggots.<sup>88</sup>

Despite the AWA's requirement that puppies only be fed at least once every twelve hours, younger dogs require more regular feeding, and veterinary experts generally recommend four times per day.<sup>89</sup> This results in two feedings a day, which is half of what puppies are supposed to receive. Being fed regularly and adequately is essential for puppies

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<sup>80</sup> *United States v. Envigo RMS, LLC*, No. 6:22-CV-00028, 2022 WL 1607840, at 3 (W.D. Va. May 21, 2022).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> 9 C.F.R. § 3.17(a) (2020).

<sup>86</sup> Ollie Pets, Inc., *How Often Should Dogs Eat?*, AM. KENNEL CLUB (Jul. 20, 2022), <https://www.akc.org/expert-advice/nutrition/how-many-times-a-day-should-a-dog-eat/> (accessed Sept. 24, 2023); Ryan Llera & Robin Downing, *Feeding Times and Frequency for your Dog*, VCA ANIMAL HOSP., <https://vcahospitals.com/know-your-pet/feeding-times-and-frequency-for-your-dog> (accessed Sept. 24, 2023).

<sup>87</sup> Andrew Garf, *Why Does My Dog Only Eat Once a Day (7 Common Reasons)*, TRAIN YOUR GSD, <https://trainyourgsd.com/why-does-my-dog-only-eat-once-a-day/#:~:text=It%E2%80%99s%20not%20recommended%20to%20feed%20your%20dog%20only,cause%20muscle%20weakness%2C%20organ%20damage%2C%20and%20other%20impairments> (accessed Oct. 1, 2023); Liera & Downing, *supra* note 86.

<sup>88</sup> 9 C.F.R. § 3.17 (2020); *Envigo*, 2022 WL 1607840, at 3.

<sup>89</sup> Ollie Pets, *supra* note 88; Erika Mansourian, *Puppy Feeding Fundamentals*, AM. KENNEL CLUB (Aug. 15, 2021), <https://www.akc.org/expert-advice/health/puppy-feeding-fundamentals/> (accessed Oct. 16, 2023).; 9 C.F.R. § 3.17(a) (2020).

to receive the requisite nutrients to grow.<sup>90</sup> Many puppies and dogs that live in puppy mills have adverse health conditions that come from a lack of food, and are often found to be severely emaciated.<sup>91</sup> In *People for the Ethical Treatment of Animals v. USDA*, People for the Ethical Treatment of Animals (PETA) noted in their complaint that USDA licensed breeders were allowed to keep their license despite the discovery of dogs “whose ribs, vertebrae and hip bones were protruding.”<sup>92</sup> Additionally, in *United States v. Envigo RMS, LLC*, USDA inspectors found nursing dogs who were denied adequate food and one nursing dog who was found to be severely emaciated.<sup>93</sup> Dogs require more food than normal while nursing and should be fed above the average dog, yet the AWA sets out no standards to require this.<sup>94</sup> Breeders who underfeed nursing dogs malnourish both the mother and her puppies.<sup>95</sup>

The USDA amended the AWA in 2020 using statistics and recommendations provided to the agency by the Humane Society of the United States.<sup>96</sup> However, these amendments still have not provided more than minimal standards for these breeders to abide by. Without more stringent requirements, the animals bred and kept in these facilities will continue to struggle to survive.

### B. USDA PROCEDURES FOR INVESTIGATING AND ENFORCING THE AWA

The USDA has policies and procedures regarding investigations into potential AWA violations and enforcement.<sup>97</sup> The USDA delegates the responsibility for administering the AWA to the Animal Plant and Health Inspection Services (APHIS), and requires that all individuals and businesses exhibiting or dealing in animals under the jurisdiction of the AWA must be licensed under AWA provisions.<sup>98</sup> This delegation

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<sup>90</sup> Ollie Pets, Inc., *supra* note 89.

<sup>91</sup> *Buyer Beware*, *supra* note 76.

<sup>92</sup> *People for the Ethical Treatment of Animals v. U.S. Dep’t of Agric.*, 861 F.3d 502, 505 (4th Cir. 2017).

<sup>93</sup> *Envigo*, 2022 WL 1607840, at 3.

<sup>94</sup> Malcolm Weir & Robin Downing, *Feeding the Nursing Dog*, VCA ANIMAL HOSP., <https://vcahospitals.com/know-your-pet/feeding-the-nursing-dog> (accessed Sept. 24, 2023); see 9 C.F.R. § 3.17(a) (setting minimum food requirements for puppies and adult dogs generally, but not for nursing dogs specifically).

<sup>95</sup> Weir & Downing, *supra* note 94.

<sup>96</sup> Sara Amundson & Kitty Block, *Breaking News: USDA Finalizes Reforms for Animals in Puppy Mills, Roadside Zoos and Research Labs, But Will It Enforce Them?*, HUMANE SOC’Y LEGIS. FUND (May 12, 2020), <https://hslf.org/blog/2020/05/breaking-news-usda-finalizes-reforms-animals-puppy-mills-roadside-zoos-and-research> (accessed Sept. 24, 2023).

<sup>97</sup> ANIMAL & PLANT HEALTH INSPECTION SERV., *Animal Welfare Act Inspection*, USDA (Nov. 18, 2020), [https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/awa/ct\\_awa\\_inspections](https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/awa/ct_awa_inspections) (accessed Sept. 26, 2023) [hereinafter *Animal Welfare Act Inspections*].

<sup>98</sup> *Id.*; ANIMAL & PLANT HEALTH INSPECTION SERV., *Apply for a License or Registration*, USDA (Jul. 20, 2023), <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/>

provides APHIS' Animal Care Program (AC) with the responsibility of inspecting licensed facilities, conducting investigations, and citing violations of the AWA.<sup>99</sup>

To ensure compliance with the AWA, AC conducts a pre-licensing inspection of each facility before issuing a license.<sup>100</sup> If the facility passes the pre-licensing inspection and obtains a license, AC begins conducting unannounced inspections to ensure continued compliance.<sup>101</sup> AC inspects facilities in the following situations: pre-licensing inspections, unannounced inspections of currently licensed facilities, and in response to complaints alleging AWA violations.<sup>102</sup> Upon the occurrence of one of these situations, inspectors “review the premises, facilities, husbandry practices, program of veterinary care, records, and animal handling procedures.”<sup>103</sup> The frequency of unannounced inspections depends on the facility and is determined using AC's Risk Based Inspection System (RBIS).<sup>104</sup> The purpose of RBIS is to conduct more frequent in-depth inspections at facilities with a higher risk of animal welfare concerns—and fewer at those that are consistently in compliance.<sup>105</sup>

When inspecting facilities, inspectors generally follow guidelines and procedures listed in the USDA's Animal Welfare Inspection Guide but are encouraged to use professional judgment as well.<sup>106</sup> This guide provides information for required inspections, general inspections, confiscation of animals, veterinary care requirements, and other criteria.<sup>107</sup> If inspectors find that a licensed facility is not complying with AWA standards, they will provide the facility with a deadline to resolve these issues.<sup>108</sup> Within forty-five days, inspectors are then required to

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SA\_Regulated\_Businesses (accessed Sept. 25, 2023) [hereinafter *Apply for a License or Registration*].

<sup>99</sup> ANIMAL AND PLANT HEALTH INSPECTION SERV., *Animal Welfare Enforcement*, USDA (June 2, 2020) [https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/ct\\_awa\\_enforcements](https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/ct_awa_enforcements) (accessed Oct. 8, 2023) [hereinafter *Animal Welfare Act Enforcement*]; *Animal Welfare Act Inspections*, *supra* note 97.

<sup>100</sup> *Animal Welfare Act Inspections*, *supra* note 97; *Apply for a License or Registration*, *supra* note 98.

<sup>101</sup> *Animal Welfare Act Inspections*, *supra* note 97.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> ANIMAL & PLANT HEALTH INSPECTION SERV. *Risk Based Inspection System*, USDA (Nov. 18, 2020), [https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/awa/ct\\_awa\\_risk\\_based\\_inspection\\_system](https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/awa/ct_awa_risk_based_inspection_system) (accessed Sept. 26, 2023) [hereinafter *Risk Based Inspection System*].

<sup>105</sup> *Id.*

<sup>106</sup> ANIMAL & PLANT HEALTH INSPECTION SERV., *Animal Welfare Inspection Guide*, USDA (June 23, 2023), [https://www.aphis.usda.gov/animal\\_welfare/downloads/Animal-Care-Inspection-Guide.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf) (accessed Sept. 26, 2023) [hereinafter *Animal Welfare Inspection Guide*].

<sup>107</sup> *See id.* (detailing in-depth best practices for required, general, and specialty inspections as well as confiscation of animals and other care requirements).

<sup>108</sup> *Risk Based Inspection System*, *supra* note 104.

reinspect any facilities where AWA violations were found.<sup>109</sup> APHIS' Investigative and Enforcement Services (IES) is the team that investigates alleged violations such as failure to take corrective measures, operating without a license, or when noncompliance “presents a direct risk to the health and well-being of the animals involved”.<sup>110</sup> IES investigations may result in a demand for regulatory compliance or enforcement measures.<sup>111</sup> AC may also require IES to conduct an investigation at their discretion.<sup>112</sup>

If a case is designated as “high priority,” formal prosecution may occur.<sup>113</sup> A case is deemed high priority when there are “chronic and serious violations, severe animal abuse or injury, abusive or potentially violent nature of a licensee or registrant, and potential public or animal health or safety concerns.”<sup>114</sup> When a case is designated as high priority, there is a concerted attempt to prioritize such cases to ensure a speedy resolution.<sup>115</sup>

### C. WEAK ENFORCEMENT BY THE USDA

The USDA has set procedures for inspecting facilities, investigating potential violations of the AWA, and enforcing such violations.<sup>116</sup> However, the USDA has a history of not following these procedures as closely as needed and has a tendency to “rubber-stamp” facilities that possess AWA licenses.<sup>117</sup> Rubber-stamping is the “approving, endorsing or disposing of as a matter of routine.”<sup>118</sup> As the definition suggests, the USDA renews licenses for dog breeding operations by automatically approving and endorsing these operations with a signature—without checking if the operation complies with AWA standards.<sup>119</sup> Consequently,

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<sup>109</sup> *Id.*

<sup>110</sup> ANIMAL & PLANT HEALTH INSPECTION SERV., *Animal Welfare Act*, USDA (Jan. 12, 2022), <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/awa> (accessed Sept. 26, 2023) [hereinafter *APHIS Animal Welfare Act*].

<sup>111</sup> *Id.*

<sup>112</sup> ANIMAL & PLANT HEALTH INSPECTION SERV., *Investigative and Enforcement Processes*, USDA (June 2, 2020), [https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/ies\\_processes](https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/ies_processes) (accessed Sept. 26, 2023).

<sup>113</sup> *Animal Welfare Act Enforcement*, *supra* note 99.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *APHIS Animal Welfare Act*, *supra* note 110.

<sup>117</sup> *USDA Fails to Fix Problematic Rubber-Stamping Policy for Animal Businesses*, ASPCA (May 18, 2020), <https://www.aspc.org/news/usda-fails-fix-problematic-rubber-stamping-policy-animal-businesses> (accessed Sept. 23, 2023) [hereinafter *USDA Fails to Fix Problematic Rubber-Stamping*].

<sup>118</sup> *Rubber-stamp*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/rubber-stamp> (accessed Sept. 23, 2023).

<sup>119</sup> *Urging the USDA to Stop Rubber-Stamping Animal Welfare Act Licenses*, ANIMAL LEGAL DEF. FUND (updated Sept. 26, 2019), <https://aldf.org/case/urging-the-usda-to-stop-rubber-stamping-animal-welfare-act-licenses/> (accessed Sept. 23, 2023) [hereinafter *Urging the USDA to Stop Rubber-Stamping*]; *USDA Fails to Fix Problematic Rubber-Stamping* *supra* note 117.

the USDA does not require puppy mill owners to provide proof of compliance with AWA standards.<sup>120</sup>

Actions have been brought against the USDA regarding its rubber-stamping policies.<sup>121</sup> Some were initiated by advocacy organizations concerned that the blind renewal of USDA licenses perpetuates the abuse of dogs and puppies in puppy mill operations.<sup>122</sup>

Unfortunately, cases brought against the USDA for its rubber-stamping methods are usually unsuccessful, as courts tend to uphold the USDA's broad discretion over licensing such operations. In *Animal Legal Defense Fund v. USDA*, the Animal Legal Defense Fund (ALDF) challenged the USDA's rubber-stamping of an aquarium's license despite evidence of AWA violations.<sup>123</sup> The Eleventh Circuit held that the USDA retains the authority to suspend or revoke licenses for noncompliance.<sup>124</sup> The court further held that "it [was] 'unrealistic and counterproductive' to risk the stressful release or transfer of animals by making license renewal contingent on demonstrated compliance."<sup>125</sup> Rubber-stamping was again upheld in 2017 in *PETA v. USDA*.<sup>126</sup> In its complaint, PETA "alleged that the USDA has a 'policy, pattern, and practice of rubber-stamping . . . license renewal applications' of applicants that the USDA cites for violating the AWA, some only days before renewing their licenses."<sup>127</sup> PETA included examples of facilities whose licenses were continually renewed despite being found to have engaged in abusive animal care practices.<sup>128</sup> Among the examples provided was a USDA-licensed puppy mill which was cited for "having a dog with no teeth, his or her jawbone partially missing with the bone exposed.... [and] seven dead puppies scattered on the ground at the facility."<sup>129</sup> Also included in PETA's allegations was a dog kennel that continuously passed inspection despite having over one hundred pages of violations.<sup>130</sup>

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<sup>120</sup> *Urging the USDA to Stop Rubber-Stamping supra* note 119; *USDA Fails to Fix Problematic Rubber-Stamping supra* note 117.

<sup>121</sup> *See, e.g., Urging the USDA to Stop Rubber-Stamping, supra* note 119 (mentioning the Animal Legal Defense Fund's litigation challenging USDA's rubber-stamp license policy); *People for the Ethical Treatment of Animals v. U.S. Dep't of Agric.*, 194 F.Supp.3d 404, 408-09 (E.D.N.C. 2016).

<sup>122</sup> *See USDA Fails to Fix Problematic Rubber-Stamping, supra* note 117 (mentioning USDA's practice of rubber-stamping licenses for puppy mills and that it encourages "bad breeders."); *see also ASPCA Sues USDA for its Non-Enforcement Policy on the Animal Welfare Act*, ASPCA (June 14, 2021), <https://www.aspc.org/about-us/press-releases/aspc-sues-usda-its-non-enforcement-policy-animal-welfare-act> (accessed Sept. 23, 2023) (discussing ASPCA's suit against the USDA for non-enforcement of the AWA specifically in the context of commercial dog breeders and dealers).

<sup>123</sup> *Animal Legal Def. Fund v. U.S. Dep't of Agric.*, 789 F.3d 1206, 1209 (11th Cir. 2015).

<sup>124</sup> *Id.* at 1224.

<sup>125</sup> *Id.*

<sup>126</sup> *People for the Ethical Treatment of Animals*, 861 F.3d at 506.

<sup>127</sup> *Id.* at 505.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at n.4.

<sup>130</sup> *Id.*



Despite evidence of abuse, the court held that deference is afforded to reasonable judgments of agencies with regard to the meaning of ambiguous terms or silence in the statutes they are administering.<sup>131</sup>

In order to improve the treatment of animals in puppy mill operations and strengthen the effectiveness of the AWA, rubber-stamping should be eliminated. The historic lack of inspections of alleged violations and absence of serious consequences only further enables puppy mill operations to continue to exist and proliferate. Instead, the USDA and APHIS—through AC—should conduct routine inspections to ensure compliance with the AWA. By not following inspection procedures and rubber-stamping licensed facilities, these operations are not being held accountable for AWA compliance, allowing facilities to continue to neglect these animals.

Not only has the USDA's rubber-stamping process been ineffective, but the number of investigations conducted has been inadequate as well. Courts have consistently held that the legislative history and intent of the AWA indicate an “apparent intent to authorize the USDA to develop licensing procedures as it sees fit” and to interpret the AWA regarding the standards and regulations set forth in the Act.<sup>132</sup>

In 2010, USDA's Office of Inspector General (OIG) issued a report criticizing the USDA and APHIS for their inadequate enforcement of the AWA.<sup>133</sup> The report found that APHIS was not “aggressively pursuing enforcement actions against violators of the AWA” and where violations were cited there were “minimal monetary penalties” against violators.<sup>134</sup> Unfortunately, the USDA and APHIS continued these weak enforcement practices, conducting minimal investigations with even fewer cited violations over the following decade.<sup>135</sup> In 2015, the USDA released a five-year plan to ensure the humane treatment of animals and better enforcement of the AWA.<sup>136</sup> Among the provisions in the plan were the objectives to strengthen collaboration with registered facilities and minimize costs for violations.<sup>137</sup> Instead, the opposite occurred, and rather than improving the treatment of animals and enforcement of the AWA, both continued to deteriorate.<sup>138</sup>

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<sup>131</sup> *Id.* at 506.

<sup>132</sup> *See, e.g., id.* at 510 (holding that the USDA has broad discretion to implement the AWA).

<sup>133</sup> *USDA Enforcement Hits a New Low*, *supra* note 67.

<sup>134</sup> GIL HARDEN, U.S. DEPT. OF AGRIC. OFF. OF INSPECTOR GEN., AUDIT REPORT 33002-4-SF, APHIS ANIMAL CARE PROGRAM INSPECTIONS OF PROBLEMATIC DEALERS 1 (2010) [hereinafter 2010 OIG Report].

<sup>135</sup> *USDA Enforcement Hits a New Low*, *supra* note 67.

<sup>136</sup> Rachel Fobar, *USDA Accused of Ignoring Animal Welfare Violations in Favor of Business Interests*, NAT. GEOGRAPHIC (Oct. 13, 2021), <https://www.nationalgeographic.com/animals/article/usda-accused-of-ignoring-animal-welfare-for-business-interests> (accessed Sept. 24, 2023).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

In 2021, OIG followed up on its 2010 report and again found inadequate enforcement of the AWA by the USDA and APHIS, this time with a focus on the investigation and complaint process for AWA violations.<sup>139</sup> The report recommended that APHIS have a clear complaint process which details steps taken after a reported violation of the AWA.<sup>140</sup> APHIS agreed with both of these recommendations and stated they would incorporate them into an updated AC Inspection Guide.<sup>141</sup> The AC Inspection Guide was last revised in June 2023, and discusses required and general inspection procedures, as well as special inspection procedures and checklists.<sup>142</sup>

Changing presidential administrations have also yielded differing AWA interpretations and enforcement practices.<sup>143</sup> In 2016, during the Obama Administration, the USDA assisted with creating and publishing relaxed guidelines.<sup>144</sup> Guidelines regarding things such as euthanasia and plans for veterinary care were considerably weakened, which further propagated the abuse of animals in breeding facilities.<sup>145</sup> After taking office in 2017, the Trump Administration narrowly interpreted the AWA to allow citations only for violations explicitly labelled as such in the statutory language, restricting investigator authority and causing investigations to further decrease.<sup>146</sup>

The USDA's inability to consistently investigate and enforce the AWA has disastrous consequences for dogs and puppies who are part of puppy mill operations. The HSUS noted that forty-four dealers in its 2022 "Horrible Hundred" report had appeared in two or more prior HSUS reports, and eight dealers had been listed in these reports five or more times.<sup>147</sup> The existence of such repeat offenders is likely a direct result of the lack of enforcement by the USDA, and has led to the brutal and inhumane deaths of dogs and puppies.<sup>148</sup> By allowing repeat offenders to evade being cited with violations and allowing them to be

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<sup>139</sup> GIL HARDEN, U.S. DEPT. OF AGRIC. OFF. OF INSPECTOR GEN., AUDIT REPORT 33601-0002-31, ANIMAL CARE PROGRAM OVERSIGHT OF DOG BREEDERS 1, 2 (2021) [hereinafter 2021 OIG Report].

<sup>140</sup> *Id.* at 7.

<sup>141</sup> *Id.* at 7–8.

<sup>142</sup> See *Animal Welfare Inspection Guide*, *supra* note 106, at 2–3 (providing detailed steps for different types of inspection as well as templates and forms that should be utilized when conducting on-site inspections).

<sup>143</sup> See Fobar, *supra* note 136 (explaining that the Obama and Trump Administrations had widely different forms of interpretations and enforcement of the AWA).

<sup>144</sup> See *id.* (“[U]nder President Barack Obama, the USDA appointed Bernadette Juarez as the deputy administrator of Animal Care . . . [who] weakened welfare guidelines, causing animals to ‘suffer immensely.’”).

<sup>145</sup> *Id.*

<sup>146</sup> See *id.* (“an inspector was stopped from issuing a citation after an animal exhibitor left a gate open, allowing an exotic cat to escape, because ‘there was nothing in the [regulations] that said employees can’t leave gates open.’”).

<sup>147</sup> HSUS HORRIBLE HUNDRED 2022, *supra* note 56, at 1–2.

<sup>148</sup> See *id.*, at 1–3 (discussing the problems with lack of enforcement).

rubber-stamped into renewed licensing, the USDA has allowed for the continued operation of puppy mills.

#### D. RECENT IMPROVEMENTS BY THE USDA

In 2015, the USDA reported that it conducted an average of 400 to 600 investigations into violations of the AWA per year.<sup>149</sup> These figures dropped dramatically in the years following, and between 2015 and 2020 enforcement of the AWA fell by 90%.<sup>150</sup> Between October 2015 and September 2016, 239 cases were initiated regarding violations of the AWA.<sup>151</sup> A dramatic decrease occurred from October 2017 through June 2018, when only fifteen cases were initiated.<sup>152</sup> However, from 2021 up to the writing of this article in 2023, the USDA has seemingly increased its investigation and enforcement efforts. In 2022, IES initiated “262 cases for alleged violations of the AWA, issued 204 official warnings, obtained 17 administrative orders resulting in the assessment of \$133,000 in civil penalties, and suspended or revoked 7 licenses.”<sup>153</sup> Further, since 2021, the USDA shut down several facilities after finding significant violations. For example, in 2021, the USDA shut down a puppy mill operation in Iowa, which marked the USDA’s first revocation of a breeder’s license in approximately four years.<sup>154</sup> More recently, the USDA ordered an injunction against a large-scale operation of a research facility that was breeding and conducting testing on beagles.<sup>155</sup> This injunction compelled the owner of the research facility to take remedial measures regarding the abusive conditions within the facility. The USDA’s actions in enforcing the AWA in recent matters saved the lives of hundreds of animals and demonstrated to similarly run operations that the USDA is taking enforcement more seriously.<sup>156</sup>

In addition to improving overall enforcement, the USDA has also taken steps to close loopholes in its treatment of AWA violations, such as the “teachable moments” policy. On July 28, 2022, the USDA announced it would stop providing “teachable moments” as an enforcement tool when inspecting AWA violations.<sup>157</sup> “Teachable moments” was

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<sup>149</sup> Fobar, *supra* note 136.

<sup>150</sup> PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS FOUND., LETTER TO THE USDA 5 (2021).

<sup>151</sup> *USDA Enforcement Hits a New Low*, *supra* note 67.

<sup>152</sup> *Id.*

<sup>153</sup> *Enforcement Summaries*, ANIMAL & PLANT HEALTH INSPECTION SERV. (Feb. 14, 2023), [https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/ies\\_performance\\_metrics/ies-panels/enforcement-summaries](https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/ies_performance_metrics/ies-panels/enforcement-summaries) (accessed Sept. 25, 2023).

<sup>154</sup> HSUS HORRIBLE HUNDRED 2022, *supra* note 56, at 3.

<sup>155</sup> *United States v. Envigo RMS, LLC*, No. 6:22-CV-00028, 2022 WL 1607840, at \*2, \*10 (W.D. Va. May 21, 2022).

<sup>156</sup> *See id.* at \*3 (Envigo failed “to make efforts to learn from hundreds of premature deaths to ensure other litters’ health and safety” indicating that the government’s preliminary injunction may have saved hundreds of animals).

<sup>157</sup> Dr. Betty Goldentyer, *Letter to Animal Care Stakeholders Regarding Teachable Moments*, USDA APHIS (July 28, 2022), <https://www.aphis.usda.gov/aphis/newsroom/>

a policy the USDA often used, which stated that if an inspector found a violation they deemed to be a “teachable moment” the inspector would not issue a citation or warning.<sup>158</sup> However, whether a violation was a “teachable moment” was at the investigator’s discretion.<sup>159</sup> This decision to eradicate the “teachable moments” policy signaled a step in the right direction to bolster enforcement of the AWA and demonstrated the USDA’s efforts to improve its investigation of potential AWA violations.

As a result of the investigations, reports, and recommendations issued by the OIG, the USDA has implemented more specific, in-depth procedures for inspections and investigations.<sup>160</sup> The USDA has also been more receptive to animal welfare organization work, and has implemented changes to the AWA that the HSUS suggested through its reports and investigations.<sup>161</sup> Although the USDA has more work to do to improve the regulations and enforcement of the AWA, the actions taken by the USDA in the last year are signs of progress. This progress is likely also a result of increased pressure from Congress. In July 2022, the Congressional Research Service (CRS) released a report calling attention to the decrease in investigations and violations by the USDA.<sup>162</sup> The report notes that “APHIS Animal Care’s enforcement process was ineffective against dealers with repeated violations.”<sup>163</sup> The report then calls for the creation of better procedures in order to respond more effectively to animal welfare complaints and to improve training of AWA investigators.<sup>164</sup> Hopefully, with this continued pressure from animal advocacy groups, the public, and now Congress, the USDA and APHIS will build on the progress they have made and continue making more meaningful and effective reforms.

#### IV. STATES’ RESPONSES TO WEAK ENFORCEMENT OF THE AWA

Recently, several states have passed laws banning the sale of dogs in pet stores.<sup>165</sup> The common goal in passing these laws is to stop the

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stakeholder-info/stakeholder-messages/animal-care-news/ac-teachable-moments (accessed Nov. 5, 2023).

<sup>158</sup> HSUS HORRIBLE HUNDRED 2022, *supra* note 56, at 3, 76–77.

<sup>159</sup> *See id.* at 76 (stating that investigators found violations and a cleanliness issue but marked the cleanliness issue as a “teachable moment” instead of documenting it).

<sup>160</sup> *See Animal Welfare Inspection Guide*, *supra* note 106 (providing new guidance on procedures for investigations).

<sup>161</sup> *See Amundson & Block*, *supra* note 96 (stating that the USDA has announced reforms for licensing among puppy breeders).

<sup>162</sup> *See* CRS R47179, *supra* note 64, at 10 (noting that dog breeders have been subject to audits that showed ineffective enforcement processes).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *See, e.g.*, Assemb. B. 2152, 2020 Cal. Leg. Serv. (Cal. 2020) (California law prohibiting retail sale of dogs, cats, and rabbits); *see also* H.B. 2915, 82d Leg. Sess. (Or. 2023) (Oregon law prohibiting retail sales of dogs or cats).

influx of puppy mill puppies into the state by cutting off an opportunity for these puppies to be sold to consumers and presenting consumers with more humane options when purchasing a puppy.<sup>166</sup> States that have passed legislation focused on a complete ban of the sale of puppies at pet stores believe that by doing so consumers will become more conscious of where they buy their animals.<sup>167</sup> Further, such states have argued that by disallowing the sale of puppies through a major retail option, a pet store, it cuts out the puppy mill which is essentially a middleman between the pet store and the consumer.<sup>168</sup> States believe that consumers will instead go to local breeders where they can see directly where their puppies are coming from and can ensure their potential companion was raised in a healthy and safe environment.<sup>169</sup> However, this belief puts a great deal of faith and emphasis on the consumer. It assumes that every consumer, or a majority of consumers, will put significant time, effort, and research into purchasing a dog and will take the aforementioned steps legislators are predicting. The idea that this law will make consumers more conscious of where they purchase their dogs from may be more of a fallacy than a reality.

States view pet stores as the gateway for puppy mill puppies to enter their state.<sup>170</sup> By closing the gateway for puppy mill puppies to enter the state, states are attempting to deter and eliminate puppy mills. However, the notion that by restricting the sale of puppies in pet stores, puppy mill puppies will not enter that specific state is an unrealistic one. There are many other ways puppies born in puppy mills can enter a state with a complete ban on the sale of puppies in pet stores. Puppy mill operations can place advertisements in local newspapers, sell puppies online, or residents may simply leave the state and buy a puppy from another pet store. Ideally, puppy mills should be shut down altogether, but a complete ban on the sale of puppies through legislation may not be the answer. States where such complete bans have

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<sup>166</sup> See, e.g., Chris M. Lehman, *Pet Stores Couldn't Sell Cats or Dogs Under Bill Moving Forward in Oregon Legislature*, OPB (Mar. 10, 2023), <https://www.opb.org/article/2023/03/10/oregon-pet-stores-cats-dogs-pets-animal-breeders-house-bill-2915/> (accessed Oct. 18, 2023) (commenting that the law would make it harder for puppy mills to enter the market).

<sup>167</sup> Mayssoon Khan, *New York Bans Pet Stores From Selling Cats, Dogs, Rabbits*, A.P. NEWS (Dec. 16, 2022), <https://apnews.com/article/business-new-york-animals-cats-e60750e407bbbc8680dd1dd5bc099d49> (accessed Nov. 5, 2023).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> Matt Bershadker, *Matt's Blog: A Major Victory for Dogs, Cats, and Rabbits in New York*, ASPCA (Dec. 15, 2022), <https://www.aspc.org/blog/matts-blog-major-victory-dogs-cats-and-rabbits-new-york> (accessed Nov. 5, 2023) (the New York Puppy Mill Pipeline Bill was signed into law, with the objective of shutting down the puppy mill pipeline into New York); Matt Bershadker, *Landmark California Pet Store Ban Treats Animals as Pets, Not Products*, ASPCA (Oct. 17, 2017), <https://www.aspc.org/blog/under-landmark-law-california-would-treat-animals-pets-not-products> (accessed Nov. 5, 2023) (California passed The Pet Rescue and Adoption Act to cut off the connection between out-of-state puppy mills and California consumers).

been enacted have faced major backlash from the public—specifically, pet store owners who have litigated the issue.<sup>171</sup> For example, several pet store owners in Maryland have brought suit arguing that such a law banning the sale of dogs in pet stores unfairly harms pet store owners and merely drives people toward purchasing dogs from unregulated sources.<sup>172</sup> These cases have been appealed, further driving the matters through the litigation process.<sup>173</sup> In New York where the most recent legislation has been enacted, members of the public have urged Governor Kathy Hochul to “consider legislative remedies to some of the pitfalls of the bill.”<sup>174</sup>

The fear of this kind of backlash—and the litigation costs associated with it—may deter more states from passing this kind of legislation. This may be particularly true where commercial breeding operations are a staple of the state’s economy. States like Missouri and Iowa are major puppy mill offenders, meaning they are the states with the highest number of puppy mills. Since these states are home to a great deal of puppy mill operations, these areas may hesitate or refuse to pass such legislation out of fear of public discontent.<sup>175</sup> Because many states may not want to follow suit in enacting total ban legislation, puppy mills will likely market toward those states with more relaxed laws. As a result, puppies that would have been sold to states that have prohibited their retail sale, such as California<sup>176</sup> and New York,<sup>177</sup> will instead be sold to those without such restrictive legislation. Because most states do not have complete prohibitions on the sale of dogs from puppy mills and are often reluctant to pass laws doing so, puppy mill operations still have many opportunities to proliferate and a large market to sell their

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<sup>171</sup> *Circumventing California’s Puppy Mill Ban*, ANIMAL LEGAL DEF. FUND (Mar. 13, 2023), <https://aldf.org/case/challenging-multistate-puppy-laundering-scheme-circumventing-california-puppy-mill-ban/#:~:text=On%20December%2016%2C%202021%2C%20the,owners%20Jolyn%20Noethe%20and%20Kimberly> (accessed Sept. 29, 2023) (describing a lawsuit filed against outfits “laundering” puppies—claiming that they are rescues when they are not).

<sup>172</sup> Michael Kunzelman, *Maryland Pet Stores Sue to Block State Ban on Dog, Cat Sales*, A.P. NEWS (Aug. 26, 2019), <https://apnews.com/article/7e2db92ce2724051b80bf12ad2682067> (accessed Nov. 5, 2023).

<sup>173</sup> *Just Puppies, Inc. v. Frosh*, No. 20-1631, 2021 WL 4452349, at \*1 (4th Cir. Apr. 29, 2021).

<sup>174</sup> Khan, *supra* note 167.

<sup>175</sup> See HSUS HORRIBLE HUNDRED 2022, *supra* note 56, at 4 (naming Missouri and Iowa as states with a high number of offenders).

<sup>176</sup> *Ahead of National Puppy Mill Awareness Day, Governor Newsom Signs Legislation Protecting Animal Welfare*, OFF. GOVERNOR NEWSOM (Sept. 18, 2020), <https://www.gov.ca.gov/2020/09/18/ahead-of-national-puppy-mill-awareness-day-governor-newsom-signs-legislation-protecting-animal-welfare/> (accessed Sept. 29, 2023); CAL. HEALTH & SAFETY CODE § 122354.5 (2017).

<sup>177</sup> *Governor Hochul Signs Legislation to end the Puppy Mill Pipeline*, N.Y. STATE (Dec. 15, 2022), <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-end-puppy-mill-pipeline> (accessed Sept. 29, 2023); S.B. 1130, 2021 Gen. Assemb., Reg. Sess. (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/S1130> (accessed Sept. 29, 2023).

dogs.<sup>178</sup> Therefore, total ban legislation may not be the most effective way to shut down puppy mills as some states may view such legislation as too hard to implement and enforce. Instead, strengthening the regulation of commercial breeding operations while setting standards for pet store owners that guide from whom they receive their animals may be a better solution—and one that is practical enough for states to implement and enforce.

#### A. TREND TOWARD MORE AGGRESSIVE REGULATION

The past decade has signaled the beginning of states' involvement in the reform of puppy mill regulation. The public demand for puppies contributed to puppy mills springing up throughout the United States and the emergence of pet stores.<sup>179</sup> Pet stores enjoyed success throughout the twentieth and twenty-first centuries until recently, when select states began strengthening their animal welfare laws.<sup>180</sup> States have varied in their legislation from not changing their laws at all, to providing more guidelines and standards, to eliminating the sale of puppies in pet stores altogether.<sup>181</sup>

As animal advocacy groups such as the HSUS, ALDF, and the American Society for the Prevention of Cruelty to Animals (ASPCA) publicize the abuse that occurs in puppy mills throughout the United States, puppy mills have received significantly more public attention in recent years.<sup>182</sup> Additionally, states have caught on to the USDA's pattern of avoiding enforcement against these operations, taking action themselves through state legislation that prohibits pet stores from selling puppies from commercial breeders.<sup>183</sup> Instead, pet stores in these states are limited to selling animals obtained exclusively from local animal shelters or rescue organizations.<sup>184</sup> States that have enacted total

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<sup>178</sup> See *States with Humane Pet Sales Laws*, BEST FRIENDS ANIMAL SOC'Y, <https://best-friends.org/advocacy/ending-puppy-mills/states-humane-pet-sales-laws#California> (accessed Oct. 18, 2023) (listing the states with puppy mill bans, 45 states do not have comprehensive pet sales laws).

<sup>179</sup> See GRIER, *supra* note 50, at 232 (discussing American consumers increasing demand for commercially bred dogs).

<sup>180</sup> Natasha Daly, *States Across U.S. Are Taking Bold Steps Toward Protecting Animals*, NAT'L GEOGRAPHIC (July 10, 2019), <https://www.nationalgeographic.com/animals/article/first-time-animal-welfare-laws-in-us-states> (accessed Sept. 23, 2023).

<sup>181</sup> *Retail Pet Sale Bans*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/protecting-animals-through-local-legislation/retail-pet-sale-bans/> (accessed Sept. 23, 2023); See also *States with Humane Pet Sales Laws*, *supra* note 178 (listing the different levels of legislation each state has).

<sup>182</sup> *Legally Brief: Neuter Puppy Mills*, ANIMAL LEGAL DEF. FUND (April 5, 2016), <https://aldf.org/article/legally-brief-neuter-the-puppy-mills/> (accessed Sept. 23, 2023); *Missouri's Dirty Dozen*, HUMANE SOC'Y U.S. (2010), <https://www.humanesociety.org/sites/default/files/docs/2010-missouri-dirty-dozen-report.pdf> (accessed Sept. 23, 2023); *More Puppies, More Profits*, *supra* note 27.

<sup>183</sup> *States With Humane Pet Sales Laws*, *supra* note 178.

<sup>184</sup> See N.Y. GEN. BUS. LAW § 753-f (Consol. 2023) (prohibiting retail sale of animals unless from rescue organization); MD. CODE ANN. GEN. BUS. LAW §19-703 (LexisNexis 2023)

ban legislation include California, Maryland, and New York.<sup>185</sup> While New York's law has just recently passed, California and Maryland have faced backlash for their laws.<sup>186</sup> Further, California and Maryland have made amendments in response to loopholes in their laws that have been exposed by puppy mill owners.<sup>187</sup>

## B. RECENT LAWS REGULATING PUPPY MILLS

### i. California

California is the number one importer of dogs and cats in the country.<sup>188</sup> In 2017, California became the first state in the United States to ban the sale of commercially raised dogs, cats, and rabbits in pet stores unless they were obtained from a rescue organization.<sup>189</sup> The law, which took effect in 2019, was passed with the purpose of cutting off the supply of puppy mill dogs into California in order to break the supply chain and prevent puppy mill operations from profiting off their abusive practices.<sup>190</sup>

However, California quickly realized that some breeders had found a loophole in the 2017 law. In order to continue selling their dogs to pet stores in California, breeders were posing as rescue groups and utilizing laundering schemes under the guise of non-profit rescue groups.<sup>191</sup> To put a stop to this workaroud, California passed AB 2152, also known

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(prohibiting retail pet stores from selling animals except in collaboration with animal welfare organizations); CAL. HEALTH & SAFETY CODE § 122354.5 (Deering, 2023) (prohibiting sale of animals in pet stores unless from rescue group).

<sup>185</sup> See N.Y. GEN. BUS. LAW § 753-f (Consol. 2023) (prohibiting retail sale of animals unless from rescue organization); MD. CODE ANN. GEN. BUS. LAW §19-703 (LexisNexis 2023) (prohibiting retail pet stores from selling animals except in collaboration with animal welfare organizations); CAL. HEALTH & SAFETY CODE § 122354.5 (Deering, 2023) (prohibiting sale of animals in pet stores unless from rescue group).

<sup>186</sup> Gloria Hillard, *Fears of a Black Market After Calif. Bans Some Commercial Breeding*, NPR (Nov. 1, 2017, 1:35 PM), <https://www.npr.org/2017/11/01/560933215/fears-of-a-black-market-after-calif-bans-some-commercial-breeding> (accessed Sept. 23, 2023).

<sup>187</sup> *Id.*

<sup>188</sup> *Press Release: Consumer Protection Law will Prohibit Financing of Puppies and Kittens in California*, ANIMAL LEGAL DEF. FUND (Sept. 26, 2022), <https://aldf.org/article/consumer-protection-law-will-prohibit-financing-of-puppies-and-kittens-in-california/> (accessed Sept. 23, 2023) [hereinafter ALDF Press Release].

<sup>189</sup> *Press Release: California Becomes First State in U.S. to Ban Sale of Puppy Mill Dogs in Pet Stores*, ASPCA (Oct. 14, 2017), <https://www.aspc.org/about-us/press-releases/california-becomes-first-state-us-ban-sale-puppy-mill-dogs-pet-stores> (accessed Sept. 23, 2023); CAL. HEALTH & SAFETY CODE § 122354.5.

<sup>190</sup> Hillard, *supra* note 186.

<sup>191</sup> Mark Saunders, *Bill to End Retail Sale of Dogs, Cats, Rabbits in California Advances*, 10 NEWS SAN DIEGO (Aug. 8, 2020, 6:08 PM), <https://www.10news.com/news/local-news/bill-to-end-retail-sale-of-dogs-cats-rabbits-in-california-advances> (accessed Sept. 23, 2023).



as “Bella’s Act,” on September 18, 2020, completely banning the retail sale of dogs, cats, and rabbits regardless of where they were obtained.<sup>192</sup>

Following California’s lead, a few states have since enacted similarly comprehensive laws. Many of these have been met by public backlash, generally on the premise that such bans limit the options available for prospective dog purchasers, but some pet stores have gone as far as claiming such laws are unconstitutional.<sup>193</sup>

## ii. Maryland

In 2018, Maryland became the second state to pass a law banning the retail sale of commercially bred dogs and cats from pet stores.<sup>194</sup> As California’s law originally permitted, Maryland’s law allows for the sale of animals from rescue groups.<sup>195</sup> The state cited that one of its interests in enacting the law was to reduce financial support for puppy mill breeders, a purpose likely shared by other states that have passed similar laws.<sup>196</sup> However, Maryland still allows the sale of dogs obtained from rescue groups, which risks exploitation through a loophole similar to that experienced in California—when breeders disguised themselves as rescue groups in order to continue selling animals to pet stores. With this cautionary tale in mind, it is difficult to say how much this will financially impact puppy mill breeders, as they may not lose as much profit in Maryland as anticipated while there is a potential workaround.

The Maryland puppy mill legislation faced immediate backlash from pet store owners. After the bill was passed, four pet stores brought suit against Maryland, challenging the law as unconstitutional in *Just*

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<sup>192</sup> *Strengthening the State’s Retail Pet Sale Ban (California)*, ANIMAL LEGAL DEF. FUND (Sept. 19, 2020), <https://aldf.org/project/strengthening-the-states-retail-pet-sale-ban-california/> (accessed Oct. 7, 2023); CAL. HEALTH & SAFETY CODE § 122354.5.

<sup>193</sup> *Why Pet Shop Laws Affect You*, AM. KENNEL CLUB (Oct. 23, 2015), <https://www.akc.org/clubs-delegates/government-relations/government-relations-blogs/pet-shop-laws-affect/> (accessed Sept. 23, 2023); Eliana Block, *Puppy Shops Sue Maryland Attorney General, Says New Laws are ‘Unconstitutional,’ Prevent Competition from Out-of-State Breeders*, WUSA9 (Aug. 27, 2019), <https://www.wusa9.com/article/news/puppy-shops-sue-maryland-attorney-general-says-new-laws-are-unconstitutional-prevent-competition-from-out-of-state-breeders/65-b40a3ff2-8903-4cc2-9c28-463b6e89be90> (accessed Sept. 25, 2023).

<sup>194</sup> Nicole Pallotta, *Maryland Becomes Second State to Ban Retail Sales of Animals Sourced from Puppy and Kitten Mills*, ANIMAL LEGAL DEF. FUND (Aug. 15, 2018), <https://aldf.org/article/maryland-becomes-second-state-to-ban-retail-sales-of-animals-sourced-from-puppy-and-kitten-mills/> (accessed Sept. 22, 2023); MD. CODE ANN., BUS. REG. §§ 19–703 (LexisNexis 2018).

<sup>195</sup> See MD. CODE ANN., BUS. REG. §19–703(b) (LexisNexis 2018) (“This section may not be construed to prohibit a retail pet store from collaborating with an animal welfare organization or animal control unit to offer space for these entities to showcase cats or dogs for adoption.”).

<sup>196</sup> Aris Folley, *Maryland Officially Bans Pet Stores from Selling Dogs from Puppy Mills*, THE HILL (Jan. 2, 2020, 2:37 PM), <https://thehill.com/homenews/state-watch/476562-maryland-officially-bans-pet-stores-from-selling-dogs-from-puppy-mills/> (accessed Sept. 22, 2023).

*Puppies, Inc v. Frosh*.<sup>197</sup> Although the law survived this constitutional challenge, pet stores are still refusing to comply, and the case has been appealed to the Fourth Circuit Court of Appeals.<sup>198</sup> Pet store owners continue to argue the law is “unfairly shutting them out of the market.”<sup>199</sup> The plaintiffs’ claim on appeal follows this line of reasoning, arguing the statute violates the Commerce Clause of the Constitution by banning only the sale of puppies from out-of-state breeders while allowing sales from in-state breeders if the dogs are born on the seller’s premises.<sup>200</sup> Additionally, this in-state breeder exception still perpetuates the risk that puppies will continue to suffer abuse and neglect if these breeders are large-scale operations.<sup>201</sup> However, despite the continued backlash, Maryland continues to enforce this legislation and fight to justify its necessity.

### iii. New York

New York is one of the most recent states to follow the trend of eliminating the sale of dogs in pet stores.<sup>202</sup> On December 15, 2022, Governor Kathy Hochul signed into law the Puppy Mill Pipeline Bill, which takes effect in 2024 and will end the sale of dogs, cats, and rabbits in pet stores across the state.<sup>203</sup> Akin to other state laws aimed at dog sales, the main purpose of this bill is to prevent the sale of puppy mill puppies in New York, which has become one of the top offenders for obtaining puppies born in puppy mills.<sup>204</sup>

New York pet store owners have also vehemently opposed this legislation, arguing that the law “will do nothing to shut down out-of-state breeders or increase their standards of care.”<sup>205</sup> They instead

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<sup>197</sup> *Just Puppies, Inc. v. Frosh*, 438 F. Supp. 3d 448, 465–66 (D. Md. 2020).

<sup>198</sup> Madeleine O’Neill, *Maryland Reaches Settlement with Puppy Seller as Ban on Retail Dog Sales Faces Federal Appeal*, DAILY REC. (Aug. 5, 2022), <https://thedailyrecord.com/2022/08/05/md-reaches-settlement-with-puppy-seller-as-ban-on-retail-dog-sales-faces-federal-appeal/> (accessed Sept. 22, 2023).

<sup>199</sup> Rachel Weiner, *Pet Stores and Breeders Still Fighting Maryland ‘Puppy Mill’ Ban*, WASH. POST (Nov. 11, 2022, 6:00 AM), <https://www.washingtonpost.com/dc-md-va/2022/11/11/maryland-puppy-mill-ban/> (accessed Sept. 22, 2023).

<sup>200</sup> O’Neill, *supra* note 198; Weiner, *supra* note 199.

<sup>201</sup> See Stephanie Ramirez, *New for 2020: Maryland Pet Shops No Longer Allowed to Sell Cats and Dogs*, Fox5 Wash. DC (Jan. 30, 2020), <https://www.fox5dc.com/news/new-for-2020-maryland-pet-shops-no-longer-allowed-to-sell-cats-and-dogs> (accessed Oct. 18, 2023) (stating the new Maryland law does not apply to private breeders); see MD. CODE ANN. §§13–108 (2021) (demonstrating minimal requirements for breeders within Maryland).

<sup>202</sup> *Governor Hochul Signs Legislation to End the Puppy Mill Pipeline*, N.Y. STATE (Dec. 15, 2022), <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-end-puppy-mill-pipeline> (accessed Sept. 25, 2023).

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *New York Bans Pet Stores from Selling Cats, Dogs and Rabbits*, NPR (Dec. 16, 2022, 9:10 AM), <https://www.npr.org/2022/12/16/1143365678/new-york-bans-pet-stores-cats-dogs-and-rabbits> (accessed Sept. 25, 2023) [hereinafter *New York Bans Pet Stores*].

claim that the law will result in the closure of pet stores throughout the state.<sup>206</sup> Many pet store owners consider this total ban legislation unfair to businesses that obtain puppies from responsible breeders, arguing that they are being punished for others' bad behavior.<sup>207</sup> One pet store owner went as far as to say the law has major pitfalls and is "counterproductive."<sup>208</sup> On the other hand, at-home breeders who sell animals born and raised on their property will not be affected by the law—similar to the Maryland legislation—and some have shown support for it.<sup>209</sup> Despite the legislature's intent and its attempt to protect independent in-state breeders, some argue that these local breeders could easily run as abusive an operation as puppy mills currently do.<sup>210</sup> After all, puppy mills originated on farms where farmers lived and worked.<sup>211</sup> Dogs being bred at someone's home does not automatically ensure that they are being well cared for and that standards are being followed. The exemption created by New York's current law could potentially create yet another loophole for at-home breeders who operate under abusive conditions. Akin to the experience of legislation in California and Maryland, this could mean New York will have complications with clever breeders seeking to avoid compliance—and may have to similarly amend the law.

## V. STRIKING A BALANCE

Puppy mills are essentially commercial breeders who have prioritized profits over the health of the animals they are harboring and breeding.<sup>212</sup> In order to effectively deter puppy mills, the AWA and state laws must be amended to force puppy mills back into ethically operating commercial breeders. With effective regulations and enforcement procedures at both the federal and state level, the lucrative allure of puppy mills will cease to exist. As a result, owners of puppy mills will lose the profit motive that incentivizes them to churn out large numbers of puppies through cheap, abusive conditions. Instead, it will become more beneficial to comply with the AWA and state laws than risking the consequences associated with being caught trying to avoid compliance.

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<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *New York Bans Pet Stores*, *supra* note 205; Victoria Bekiempis, *Animal Welfare Advocates Hail New York Law Banning Sale of Pets at Retail Stores*, THE GUARDIAN (Dec. 25, 2022), <https://www.theguardian.com/us-news/2022/dec/25/new-york-law-bans-pet-sale-dogs-cats-rabbits> (accessed Sept. 25, 2023).

<sup>211</sup> Ivy Collier, *The History of Puppy Mills And Why You Should Care*, FAUNALYTICS (Jan. 1, 2014), <https://faunalytics.org/the-history-of-puppy-mills-and-why-you-should-care/> (accessed Sept. 23, 2023).

<sup>212</sup> *Stopping Puppy Mills*, *supra* note 10; FRISMAN, *supra* note 11.

In order to create a balance between federal and state legislation—as well as their enforcement—the following three steps should be taken. The first step is amending the language of the AWA. Currently, there are no set definitions for the pertinent language found in section three of the AWA, which governs the humane treatment of dogs and cats.<sup>213</sup> Terms such as “adequate”, “sufficient”, and “when necessary” leave a great deal of discretion and uncertainty in deciding what is needed to ensure the health of these animals.<sup>214</sup> Therefore, to eliminate this ambiguity and do away with such deferential language, these terms should be clearly defined such that breeders are put on notice and made aware of exactly what is required for compliance with the applicable legal standards.

The second step is to create stronger enforcement procedures for the AWA. The USDA has made some progress in this area recently by ending their policy of providing “teachable moments” while issuing more citations for violations as well.<sup>215</sup> However, clearer steps should be outlined as to when a warning versus a citation or official complaint must be administered.

Lastly, the third step is that states should both strengthen regulations for the humane treatment of animals and set enforcement procedures for commercial breeders. States should also enact laws governing standards for the breeding operations that pet store owners receive dogs from. States should then pass statutes creating legal ramifications and guidelines for enforcing and following these regulations. Improving regulations and enforcement at the state level, rather than enacting a comprehensive ban of the sale of dogs in pet stores, would likely be more effective and less prone to backlash. Moreover, this approach would be less susceptible to criticism from pet store owners as narrowly tailored laws would not pose as much of a threat to their business as a complete ban of dog sales.

#### A. WHY BALANCE IS BETTER

Historically, the USDA has not cited or investigated AWA violations to the extent necessary to effectively deter puppy mills. Although the USDA’s recent improvements show a glimmer of hope for stronger enforcement of the AWA, more progress must be made to eliminate puppy mills. While recent state legislative efforts have aimed to compensate for the federal government’s failure to adequately deter puppy mills, these laws are localized both in effect and purpose.<sup>216</sup> Though

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<sup>213</sup> See generally 9 C.F.R. § 1.1 (2020) (regulations do not provide definitions for adequate, sufficient, or when necessary).

<sup>214</sup> See 9 C.F.R. § 3.1 (2020) (using undefined words such as adequate, sufficient, and when necessary repeatedly in the regulation).

<sup>215</sup> *Enforcement Summaries*, *supra* note 153; Goldentyer, *supra* note 157.

<sup>216</sup> Nisha Gopalan, Puppies in Peril: The Ongoing Fight Against Craigslist Scams, *THE WILDEST* (Dec. 12, 2022), <https://www.thewildest.com/dog-lifestyle/craigslist-puppy-scams> (accessed Sept. 24, 2023).

state legislation may prevent puppy mills from operating successfully in select states, it does not inhibit puppy mills from selling to other states with weaker laws.<sup>217</sup> Further, experience has shown that on the one hand, state laws that are too comprehensive are often met with backlash and public resistance, causing other states to grow hesitant to follow suit. On the other hand, those with more relaxed laws—and even some with complete bans—may see loopholes emerge that can be exploited, allowing abusive practices to continue regardless of legal efforts. As a result, there is still a multitude of potential avenues for puppy mills to proliferate. Not only do these puppy mills have the option to sell their puppies to another state, but they may also try to circumvent enforcement by posing as animal rescue groups where state laws limit pet store sales to rescue animals.<sup>218</sup> Furthermore, as the digital marketplace continues to expand there is still little in the way of legislation aimed at preventing these breeders from selling dogs online.<sup>219</sup> There are a plethora of avenues available for puppy mill operators to market and sell dogs online, whether by creating their own website or utilizing already existing platforms like Craigslist, Instagram, or even X (formerly known as Twitter), to name just a few.<sup>220</sup>

Changes on both the federal and state level are critical for improving the condition puppies live in. Amending the AWA at the federal level, by itself, would not solve the issues posed by puppy mills. Similarly, while strict state laws that completely ban the retail sale of dogs in pet stores may be a step in the right direction, this will only disperse the problem if enough states decide against legislation. The lack of widespread, uniform legislation among a majority of states would allow the market to survive and breeders to sell to states without legal consequences. Further, through technological advances, these breeders may find other channels such as websites and various applications to sell these dogs to unsuspecting consumers.

Rather, if both federal and state governments collaborate to enact laws that complement each other, it would hold puppy mill owners accountable and deter breeders from maintaining such abusive operations. Additionally, by strengthening state regulations and their enforcement, states can dictate procedures for pet stores to follow when purchasing animals from breeders. States should also pass laws that hold pet stores accountable for how they source their animals. Legislation geared toward pet store owners creates a stronger incentive for

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<sup>217</sup> *Id.*

<sup>218</sup> See Elizabeth Claire Alberts, This New Scam Is Tricking People Into Buying Puppy Mill Dogs, DAILY DODO (July 25, 2023, 10:51 AM), <https://www.thedodo.com/close-to-home/puppy-mill-dogs-sold-as-rescues> (accessed Sept. 24, 2023) (discussing a puppy mill that claimed to be a rescue in order to sell dogs in states with commercial bans).

<sup>219</sup> ALDF Press Release, *supra* note 188.

<sup>220</sup> Karen Fine, Puppy Mills Have Now Gone Digital. What a Vet Wants You to Know, TIME (April 13, 2023, 7:00 AM), <https://time.com/6270736/online-puppy-mills-misleading/> (accessed Sept. 24, 2023); Gopalan, *supra* note 215.

breeders to comply with the amended AWA and state laws. Failure to comply would mean losing business from pet store owners who are held to standards that prevent the purchase of animals from inhumane operations.

Hopefully, the proposed improvements to the AWA coupled with proposed state legislation will create a landscape without puppy mills. One of the defining characteristics of a puppy mill is the abuse and neglect under which these animals must live.<sup>221</sup> If legislation and enforcement efforts are able to take away the extreme profitability of puppy mills, the attention of these breeders may be shifted from a focus on money to that of providing proper care to these animals.

## VI. CONCLUSION

Puppy mills have been a major, ongoing, issue in the United States since their inception in the post-World War II era. Since then, federal and state laws that have been enacted to deter puppy mills have had minimal success. This is partly due to weak enforcement of the AWA by the USDA. Such efficacy is further impacted by the recent enactment of strict state laws that attempt to deter puppy mills by eliminating the possibility of these animals from entering that individual state.

The most useful solution to eliminate puppy mills is for both the federal government and state governments to come together and enact effective legislation aimed at eliminating puppy mills. The USDA must improve and strengthen AWA standards for the humane treatment of animals in puppy mills and create a strict structure for enforcement and discipline of any violations. From there, state governments should enact legislation that coincides with the AWA and act as a check and balance to the USDA's investigation and enforcement procedures. Instead of enacting all-or-nothing bans on the sale of puppies in pet stores, states should pass legislation setting standards for facilities, prohibiting pet stores from purchasing puppies from breeders who have two or more AWA violations, and conducting their own local investigations of these breeders to ensure compliance with both state legislation and AWA standards. The elimination of puppy mills can most effectively be accomplished through the USDA and state governments strengthening standards and enforcement efforts with both levels of government keeping each other accountable.

If there are concerted efforts made on both the federal and state level, pressure will begin to be placed on these puppy mills. If the USDA creates better standards, and investigates and enforces those standards, puppy mills will realize they have to answer to the USDA for any neglect or lose their business. Further pressure on these puppy mills will come from the state level, ensuring pet stores are not buying from breeders with AWA violations and conducting their own investigations

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<sup>221</sup> *What is a Puppy Mill?*, *supra* note 9.

of facilities. Facing the potential for sanctions and punishment from both the federal and state level, puppy mill owners will have nowhere to run. With limited other options, the hope is that these puppy mill owners will begin to comply with set standards and treat these animals with care and respect. Therefore, puppy mills can only be effectively eliminated through balance and enforcement on both levels.