



Paw Review

ANIMAL LAW SECTION NEWSLETTER



Inside This Issue

COVID-19: The Harsh Impact on Farm Animals	1
Submit Article/Section Leadership.....	2
Animal Therapy Program Perseveres During Pandemic.....	4
The PAST Act: A Second Attempt at the Abolishment of Equine Soring	6
FOIA Denial as Ag-Gag: <i>Public Justice Foundation v. Farm Service Agency</i>	8
Animal Law Legislation: 2022 Update ..	10
Pet Spotlight	12
Member Spotlight.....	12
Animal Law Section in Action	13
The Rikki Doll	14
Nonnative Reptiles.....	16
Join the Section	21
Animal Law Writing Competition	23
Animal Law Section Swag	23

COVID-19: The Harsh Impact on Farm Animals

By: Mallory Umbehagen, J.D. Candidate December 2021, FSU College of Law

With their confined and unhygienic working conditions for employees, concentrated animal feeding operations, or CAFOs, have faced a multitude of COVID-19 outbreaks across the country. Over 450 animal agricultural facilities have reported COVID-19 cases, with over 41,000 workers testing positive.¹ CAFOs feed and house thousands of animals, usually for 45 days, until they are sent to slaughter.² Like many businesses in the United States, these facilities have laid off workers and shut down, resulting in extreme backlogs of animals both leaving and coming to the CAFOs. As a result, animals are being terminated by the thousands, while the animal agriculture industry attempts to recover lost time and money caused by the virus.³

“Culling” and “Depopulation”

The industry calls the livestock terminations at CAFOs either “culling” or “depopulation.”

“Culling” is defined as reducing by slaughter any number of individuals in a group deemed to be weak or sick.⁴ Similarly, “depopulation” is defined as greatly reducing a population.⁵ The CAFOs are performing these actions in two ways: water-based foam and ventilation shutdown.⁶ Water-based foam is used on domestic fowl, like chickens, ducks, and turkeys that are trapped in confined enclosures.⁷ Foam is pumped into the enclosure until the fowl are completely submerged and die from either drowning or suffocation.⁸ Just as inhumane, ventilation shutdown has been the preferred method of pig farms and involves shutting down all airflow in the enclosures for hours, leaving the animals to die from suffocation and heat stress.⁹ In its euthanasia guidelines, the American Veterinary Medical Association (AVMA) has declared water-based foam and ventilation shutdown to be (Continued on page 3.)

CALLING ALL AUTHORS!

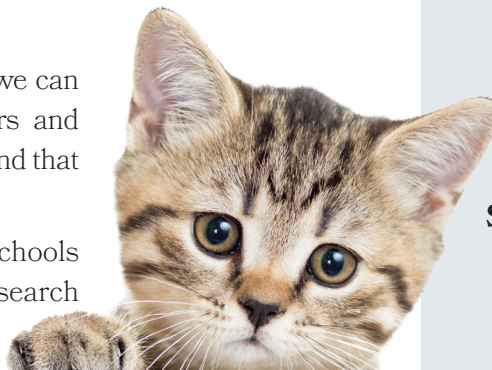
We Want Your Article for *The Florida Bar Journal*!

One of our goals for becoming a section was to increase the visibility of animal law issues. One of our primary vehicles for meeting that goal is *The Florida Bar Journal*. The *Journal* goes out monthly to over 90,000 members. We are pleased that during the 2016-2017 Bar year, the Section had five articles published on a variety of topics, including compliance with the Animal Welfare Act, changes to Florida's dangerous dog law, alligator hunting, animal hoarding, and the treatment of pets in custody disputes. We have received a lot of interest and positive feedback on the articles. You can access each of them, as well as content from the 2014 Special Issue on Animal Law, at our website.



We are currently seeking more authors so that we can use this powerful means of reaching members and educating them on animal law issues. Keep in mind that authors can qualify for CLE credit.

We have partnered with several Florida law schools where student volunteers have conducted research on behalf of authors.



Do you have an idea for an article?
Are you interested in writing on a topic with existing research?
Please contact Ralph DeMeo at Ralph@guildaylaw.com



Florida State University Animal Law Class

Chair Emeritus Ralph DeMeo brought in snakes to his FSU Animal Law class. He is holding an Indigo, and law student Sarah Mallory is holding a sand snake.

Animal Law Section Leadership

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CONTINUED FROM PAGE 1: COVID-19: THE HARSH IMPACT ON FARM ANIMALS

inhumane “depopulation” methods, and it recommends against them.¹⁰

Emergency Petition Filed with USDA

Congress has given the United States Department of Agriculture (USDA) authority over implementing the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) signed by President Trump in March of 2020.¹¹ The CARES Act enables the USDA “to prevent, prepare for, and respond to coronavirus by providing support for agricultural producers impacted by coronavirus, . . . including livestock producers.”¹² The Animal Legal Defense Fund (ALDF) teamed up with numerous other organizations and filed an emergency rulemaking petition with the USDA to combat the “depopulation” methods.¹³ The petition, filed on August 25, 2020, urges the USDA to take three specific steps. First, to withhold COVID-relief funds to any farms performing mass culling of animals through ventilation shutdown and water-based foam methods. Second, to establish a notice and comment rulemaking process to create a depopulation standard that is at least as protective as the AVMA guidelines for the euthanasia of animals. Third, to create an electronic searchable database that lists the animal agriculture recipients of USDA COVID-relief funds that have engaged in or permitted “depopulation.”¹⁴ The USDA has authority to grant this petition, as it is responsible for the protection and improvement of both human and animal health.¹⁵

Support for the Proposed Emergency Rules

Emergency rulemaking is governed by the Administrative Procedures Act (APA) and sometimes allows rules to be finalized out of the ordinary course, such as when emergency situations like global pandemics arise.¹⁶ By implementing ALDF’s proposed emergency rules, agencies can be made more accountable to the public. Further, with new humane euthanasia options, the negative psychological impact on animal farming workers—and the environmental consequences to the farms—can be reduced.¹⁷

Critics of the Proposed Emergency Rules

Unfortunately for ALDF’s request to have a ‘notice-and-comment rulemaking’ period implemented, Congress has already explicitly directed agencies to invoke what is known as the “good cause exception” when providing CARES Act relief.¹⁸ This allows agencies to surpass the notice-and-comment period in emergency situations¹⁹, like the one occasioned by COVID-19. This procedure is usually invoked whenever the comment period is deemed “impracticable, unnecessary, or contrary to public interest.”²⁰ Since the CARES Act, with all of its stipulations, has already been enacted, ALDF’s request that the USDA have a notice-and-comment period to help create a humane “depopulation” standard may possibly be seen as arbitrary by critics. Had suggestions for more humane farm practices been presented to the USDA sooner, the stipulations could have been implemented in advance of receiving funds.

Emergency Rulemaking

The USDA has not yet acknowledged ALDF’s emergency petition, despite the petition’s request that it be granted within seven days.²¹ The APA only requires agencies to respond to emergency petitions within a “reasonable time.”²² However, what qualifies as reasonable may be extended due to COVID-19. Judicial review can be sought if a petitioner claims there has been unreasonable delay in an agency’s response.²³ The APA also requires agencies to explain their reasons for denying petitions.²⁴

The worry is that the USDA will deny ALDF’s petition for an ordinary reason, like competing priorities. If the USDA denies its petition, ALDF’s only other option is to file suit.

¹ Before The United States Department of Agriculture Petition For Emergency Rulemaking, at 11. (Aug. 25, 2020).

² Carrie Hribar, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities*, CTRS. FOR DISEASE CONTROL AND PREVENTION at 8(2010). https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf.

³ Petition, *supra* note 1, at 12 and 13.

⁴ Cull, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/cull>.

⁵ Depopulate, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/depopulate>.

⁶ Petition, *supra* note 1, at 17.

⁷ AVMA Guidelines For The Depopulation Of Animals: 2019 EDITION 45 (2019), AM. VETERINARY MED. ASS’N, <https://www.avma.org/sites/default/files/resources/AVMA-Guidelines-for-the-Depopulation-of-Animals.pdf>.

⁸ A. B. M. Raj et al., *Novel method for killing poultry in houses with dry foam created using nitrogen*, 162 VETERINARY RECORD 722, 722 (2008), https://www.researchgate.net/publication/5334833_Novel_method_for_killing_poultry_in_houses_with_dry_foam_created_using_nitrogen.

⁹ Petition, *supra* note 1, at 18.

¹⁰ AVMA Guidelines, *supra* note 7, at 111–12.

¹¹ Pub. L. No. 116-136, 134 Stat. 281 (2020).

¹² *Id.* at 505.

¹³ Petition, *supra* note 1.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 27.

¹⁶ A Guide to the Rulemaking Process, FEDERAL REGISTER, at 8, https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf.

¹⁷ C. E. Fraser et al., *Farming and mental health problems and mental illness*, 51 INT’L J. OF SOCIAL PSYCHIATRY 340 (2005), <https://pubmed.ncbi.nlm.nih.gov/16400909/>.

¹⁸ *Administrative Responses to a Global Pandemic: Emergency Rulemaking and Other Mechanisms Agencies are Employing to Respond to COVID-19*, ROPES & GRAV, <https://www.ropesgray.com/en/newsroom/alerts/2020/05/Administrative-Responses-to-a-Global-Pandemic-Emergency-Rulemaking-and-Other-Mechanisms#:~:text=Federal%20Emergency%20Rulemaking,comment%20on%20the%20proposed%20rule>.

¹⁹ *Jifry v. Fed. Aviation Admin.*, 370 F.3d 1174, 1179 (D.C. Cir 2004).

²⁰ 5 U.S.C. § 553(b)(3)(B).

²¹ Petition, *supra* note 1, at 38.

²² 5 U.S.C. § 555(b).

²³ *Id.* at § 706(1).

²⁴ *Id.* at § 555(e).





Animal Therapy Program Perseveres During Pandemic

By Anne Munson

Animal Law Section members have supported the Tallahassee Memorial Hospital (TMH) Animal Therapy Department for over five years, comforting children through the Rikki SuperPup program. They have provided over 2000 plush toys to children experiencing trauma in the hospital and in dependency and abuse cases. This is just one of the ways the Animal Therapy Department is working in the community, thanks to the support of generous donors like the Animal Law Section. Below is the latest on Rikki SuperPup and other ways Animal Therapy volunteers have served, even during the pandemic.

Rikki SuperPup Goes to the Next Level

Due to hospital guidelines, the first Rikki doll funded by the Animal Law Section was cute and cuddly but nowhere near as fuzzy as the real Rikki, a golden retriever and TMH Animal Therapy pioneer who passed away in 2017.

We have since had the opportunity to provide a larger, cuddlier version of Rikki from the Vermont Teddy Bear Company. "It's so nice

to see a Rikki SuperPup that [children] can really cling to and bury their face in something resembling Rikki's beautiful golden fur," said Chuck Mitchell, Rikki's owner and a TMH Animal Therapy volunteer.

When given to children in the hospital, the "new and improved" Rikki SuperPup is used to teach them about the care they will receive. If a child needs a shot, for example, Rikki can get a shot first. Casting material can even be placed on Rikki to match a child's cast.

TMH Animal Therapy Director Stephanie Perkins reflects that during the pandemic, "The cuddly new Rikki [was] even more needed to encourage these kids. She comes with a letter reassuring them: *'I know you might be feeling a little icky right now, and you might be scared. Whenever you feel bad, just give me a tight squeeze. I'm soft and cuddly, and I love hugs. . . . Someone who knew that you would need a special friend in the hospital gave a gift through the TMH Foundation so that I could make my journey to Tallahassee and arrive safely in your arms.'*

We are so grateful that the Animal Law Section helps children feel better through Rikki SuperPups!"

Virtual Visits Take Off with Powerful Results

After COVID-19 hit, hospital visitor access—and in-person Animal Therapy visits—were severely restricted. The same phenomenon occurred in courthouses, nursing homes, schools, and other areas where TMH teams visit. Seeking effective new ways to help, Animal Therapy volunteers began training for virtual visits. Volunteers taught their animal partners to sit in front of a screen, helping them to interact with a client not physically in the room.

"When COVID-19 first began, we weren't sure whether virtual Animal Therapy would work," TMH's Perkins said, "but virtual visits are powerful." Perkins shared a moving story from one of the first virtual Animal Therapy appointments:

"Julie"* has an extreme, and sometimes debilitating, anxiety disorder. She also has

a condition that creates severe joint pain. Unless Julie receives injections in her hips and knees, she is in great discomfort. The problem is that going to the doctor creates so much anxiety for Julie that she often must cancel appointments.

Starla, my Cavalier King Charles Spaniel, and I “went” with Julie to her last doctor’s appointment virtually. As Julie prepared to receive injections in her knee, she put a blanket over her head and held her phone screen close to her face so that she could focus only on Starla and me. Starla nuzzled her furry face close to the screen, and I spoke to Julie in soothing tones to distract her while she received the injections.

Julie said that it felt like Starla was in the room with her and that Animal Therapy is “like an extra healthy pain killer!”

The impact doesn’t end there, said Perkins. “We’ve done virtual visits through Canopy Cove, an eating disorder treatment center.

Teams participated in virtual staff retreats with Florida State University libraries and Guardian ad Litem. Over 100 kids participate virtually in our R.E.A.D. program, which allows children who need a little extra help in reading to read to an animal.”

Preparing for the Future with Career Change Dogs

Becoming a service dog takes a special combination of health, skill, and behavioral soundness. Standards of organizations like Leader Dogs for the Blind are necessarily high, and not all dogs end up making the grade. Dogs who don’t graduate are still incredibly well trained; they are lovingly called “career change” dogs. These talented dogs can serve in the most difficult, stressful areas of all—areas such as the Tallahassee Memorial Children’s Center and the courthouse.

TMH is one of a few organizations to be called when a career change dog is available. The process starts early. Animal Therapy volunteers willing to adopt at a moment’s

notice join a waitlist. When Perkins gets the call, she has just ten days to: (1) pay the \$1000 fee to receive the dog (these dogs have had \$35,000 or more invested in their breeding, training, and care), and (2) travel to Michigan to get the dog.

Thanks to donors and volunteers, TMH Animal Therapy was recently able to accept two dogs—Dyna, a golden retriever, and Maru, a golden lab. In addition to their already extensive training, they received TMH Animal Therapy training with their volunteer owners to ready them for service in Tallahassee, helping people relax even in the midst of stressful circumstances. You can tell from the dogs’ wagging tails and the clients’ joyful smiles, that everyone enjoys doggone cuddling!

For more about TMH Animal Therapy news or Rikki SuperPup, contact the TMH Foundation at anne.munson@tmh.org or 850-431-5931.

*Name changed to protect privacy.



The Rikki Doll

By Chuck Mitchell & Sharon

For almost eleven years, I was fortunate enough to partner with Rikki, an extraordinary courthouse therapy dog. Every year the Animal Law Section (ALS) presents the Rikki Mitchell Memorial Award to a dog that provides exemplary service to the people of Florida. Past honorees have included Rikki; Sharazz, a cadaver detecting dog; and Titan, a police dog.

Rikki passed away in 2017, and the ALS was kind enough to commemorate her by commissioning small stuffed dog toys in her likeness. Tallahassee Memorial Healthcare gives them to pediatric patients, and the victim advocates in the 2nd Judicial Circuit likewise make them available to child victims of sexual violence. It's great to see the kids clutching the doll with one hand as they pet my new therapy dog, Sharon, with the other, and it always makes me smile. But recently I saw one of the Rikki dolls used during a capital child sexual battery case in a manner that took my breath away.

Sharon is a three-year-old female golden retriever; she's been my new courthouse therapy partner for the last two years. She is terrific at calming anxious child victims and witnesses, helping them feel safe and comfortable enough to find the voice to testify. One of our clients was "Anna," a child who was first sexually assaulted (and threatened with death if she talked) when she was five. She was eight when we were first called in to meet her, and we worked with her for nearly a year before we went to trial.

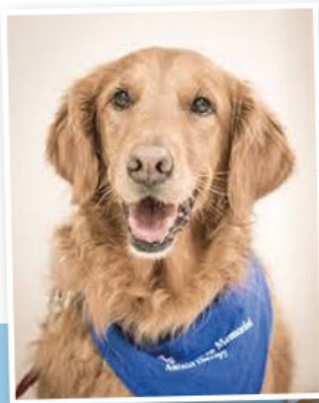
Anna was bright, but she was hyperactive and had attention-deficit disorder and other behavioral issues that made it difficult for her to calm down or focus. Her mother, a victim advocate (VA), the prosecutor, Sharon, and I met with the child many times over months, trying to help calm her fears and anxieties enough for her to tell her story. No matter what we tried, she could not talk about the



awful things that had happened. She would talk about anything and everything, but when the subject turned to "him," her hands would go over her ears, and she shut down. As the trial approached, we worked with her for hours the afternoon and evening before the trial, trying to get her comfortable enough to be able to testify.

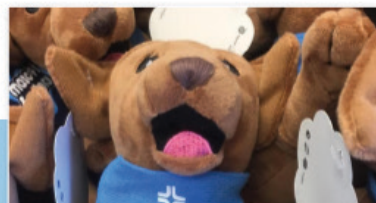
Anna was nervous and scared, and the only thing that made her smile (other than the knowledge that Sharon and I would be in the courtroom with her during her testimony) was when she picked a Rikki doll from all the toys on the kids' shelf in the VA's office, because she said it reminded her of Sharon and helped her "feel good." She held it close throughout the afternoon and evening as the VA and prosecutor gently asked questions to see if she could provide any meaningful testimony. The VA told her she could have the doll and to be sure to bring it with her the next day. Anna said she would.

After they left, the prosecutor, the VA, and I looked at each other with grim faces. Despite all of our work and effort and assurances, we were afraid Anna might not be able to find the strength to give her difficult testimony. I hated thinking this might be the first time



Rikki at TMH

First Therapy Dog in the Courtroom



Commemorative Rikki plushies made for the TMH Animal Therapy Program patients



my dog was not enough to help a child victim find her voice. Of course, I hardly slept that night, hoping and praying, and trying to think of what we could do differently the next day to help.

I should have known Rikki wouldn't let us down.

The morning of the trial was excruciating for Anna, as it is for every child victim or witness who has to testify. A couple of mini-meltdowns to start the day did not help nor make me optimistic. Anna's mom testified first. As she came out of the courtroom, she and her daughter began weeping in each other's arms as soon as they saw each other. Sharon wedged herself between them, trying to comfort someone, somehow.

Soon Anna and her mother separated and began petting Sharon, calming them both. Then it was time for Anna to enter the courtroom, and off we went. I had completely forgotten about the Rikki doll and didn't notice that Anna had taken it up to the witness stand. Sharon and I sat in the gallery, and the jury came back into the courtroom. The prosecutor asked Anna some of the easy and perfunctory questions about age, school, favorite activities, etc.

But then came the hard questions. Anna suddenly got very quiet and looked down for the longest time. When pressed to tell the court if "he" did anything to her that she did not want him to do, she barely looked up, holding the Rikki doll to her face as she faced the court. She whispered between the doll's paws, "Yes".

For another fifteen or twenty minutes, as the questions got tougher and more graphic, she clutched that doll to her face, rubbing it all over her face as she used it both to comfort her and shield her as she barely whispered her answers—always speaking between the paws. She had to be prompted to speak up several times, which—amazingly—she did. She answered every question from the prosecutor and defense. Then the jury was dismissed, and we helped lead Anna out of the courtroom.

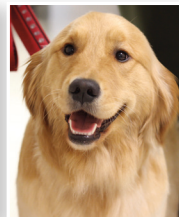
Anna had blown us all away—she was so much stronger and more

resilient than we thought she could be. When we came out of the courtroom, she and her mother burst into tears in each other's arms. She was still clutching that doll. Anna thanked Sharon for being there and the VA for giving her that great doll. It was the one thing that seemed to do the trick when nothing else—not even Sharon herself—could.

Earlier that morning I had not expected to leave the court with a positive attitude or outcome. I should have known better. "He" received four life sentences with no possibility of parole.

I am a huge believer in the power of therapy animals in general and courthouse therapy dogs in particular. I have seen them work wonders and enable children to do things they had not otherwise been able to do. But we never know what combination of things it will take to tip the scales for someone—and how grateful I was to see a Rikki doll used in this way.

How wonderful that so many of these Rikki dolls are out there helping kids who are hurting—physically, spiritually, and emotionally. Thanks to everyone associated with the Animal Law Section for your part in making these terrific dolls available to comfort kids who really need them. We will never know all of the times a Rikki doll will make a difference in someone's life, but it sure seemed to make all the difference that day!



Chuck Mitchell is a former Chair of the Tallahassee Memorial Healthcare Board of Directors, and helped TMH create its well-recognized Animal Therapy Program. He helped create the Florida Courthouse Therapy Dogs program and led the effort to create the first law in the nation that allows therapy dogs to accompany victims of assault into court to help them testify. His pioneering work with his exceptional therapy dog is documented in "Encounters With Rikki," by Julie Strauss Bettinger.





The PAST Act: A Second Attempt at the Abolishment of Equine Soring

By: Megan Clouden, FSU College of Law May 2022

The year 2020 marked the 50th anniversary of the Horse Protection Act (HPA) of 1970, a pivotal piece of legislation that attempted to abolish the cruel act of “soring” among certain breeds.¹ Soring is the practice of intentionally inflicting pain on the hooves and legs of gaited horses (most commonly Tennessee walking horses, racking horses, and spotted saddle horses) to force them to perform an artificially high-stepping gait.³ Soring includes many different tactics, such as burning a horse’s legs with caustic chemicals, using weighted shoes bolted onto the hooves in painful areas, chaining the horse’s legs to cause wounds, and sometimes cutting or slicing the legs.⁴ These methods cause the horses to lift their legs higher while walking, a step called the “big lick,” giving them a competitive advantage at horse shows.⁵

Not only do horses suffer a life filled with pain due to soring,⁶ but it often permanently cripples the horse or causes the animal to die at an extremely young age.⁷ Due to the pressure on the hoof, it is not uncommon for horses to lose their hooves entirely, become unable to walk, or refuse to eat and therefore starve⁸—all of which require the horse to be euthanized.⁹ Horses that suffer from soring are also much more likely to colic from severe stress, a gastrointestinal issue that is life threatening.¹⁰

Despite the HPA, soring remains a common practice due to industry corruption and loopholes in the legislation. In 2019, however, the U.S. House of Representatives passed

a new bill, the Prevent All Soring Tactics (PAST) Act, which had been proposed multiple times over the last decade and which seeks to amend the HPA in multiple ways to end soring for good.²

The PAST Act vs. the HPA

The most problematic issue with the HPA is that the USDA, charged with implementing it, allows the Tennessee walking horse industry to self-police its soring abusers. Horse industry organizations, such as the International Walking Horse Association and the Walking Horse Owners Association,¹¹ train their own inspectors, who are appointed as “designated qualified persons” (DQPs).¹² The DQPs inspect the horses at shows and can disqualify any horse that shows evidence of soring.

This system has proven widely ineffective, however, because DQPs are employees of the very organizations that run the shows.¹³ Some even participate as competitors. This conflict of interest leads to a massive amount of corruption; not only do DQPs excuse certain horses despite evidence of soring, but many participate in soring themselves, as no authority is double-checking horses owned by DQPs.¹⁴

The PAST Act would abolish self-regulation. Under the proposed legislation, the subsection of the HPA on appointment of inspectors would be replaced with a requirement that the USDA “license, train, and oversee” persons qualified to diagnose whether a horse is sore.¹⁵ It also includes a subsection requiring that licensed persons

be “free from conflicts of interest” and gives preference to licensed and accredited veterinarians to serve in this capacity.¹⁶

Corruption is not the only issue with the HPA that the PAST Act attempts to remedy. Other proposed changes involve adding new bans on certain common soring devices. This would include “action devices,” such as chains that cause friction and damage to the legs.¹⁷ All new targeted devices are those proven to intensify pain or conceal foreign objects being used for soring purposes.

The PAST Act also increases potential penalties for violations of the Act. Under the proposed bill, criminal penalties could include up to three years in prison, depending on the severity of the offense, and \$5,000 in fines per violation.¹⁸ After the third violation, violators would also face permanent disqualification from any show, exhibition, or sale.¹⁹ These penalties are a significant increase from those listed in the HPA, which caps fines at \$3,000 and allows no more than two years in prison for serious violations.²⁰ The HPA provides no avenue to permanently ban an offender.²¹

Support for the PAST Act

In a 2010 audit by the USDA, the Inspector General (IG) exposed the great lengths trainers in the industry go to evade detection under the law and their refusal to train horses with humane methods.²² In response, the IG recommended heightened penalties and the elimination of self-policing.²³

Considering that was a decade ago, many organizations conclude that a revision to the HPA is long overdue. Insiders in the industry affirm that current regulations are not enough to prevent soring.²⁴ The corruption between trainers and DQPs has been attested to repeatedly by veterinarians and even previous violators who want to shed light on industry abuses.²⁵ The Act is backed by the likes of the American Veterinary Medical Association, the American Horse Council, and the U.S. Equine Federation.³²

As further evidence that reform is needed, at the largest Tennessee walking horse show of the year, The Celebration, trainers are recognized with awards such as “Pleasure Horse Trainer of the Year” and “Performance Horse Trainer of the Year,”²⁶ but these trainers often have numerous HPA citations and federal cases against them.²⁷ Even more egregious, in 2016 a horse named “Honors” was given the title of World Grand Champion at The Celebration.²⁸ It later came to light that this horse had been allowed to compete only because the owners had sued the USDA, and a judge had issued a preliminary injunction that prevented the agency from disqualifying the horse.²⁹ The owners had previously been cited multiple times for violations of the HPA.³⁰

Overall, the consensus among supporters of PAST is that the industry rewards repeat violators and refuses to reform on its own. In fact, almost 90% of horses that showed at The Celebration in 2016 tested positive for prohibited substances like caustic chemicals on legs.³¹

Opposition to the PAST Act

While support for the PAST Act seems widespread and passed the House with nearly an 80% vote in favor, a few key obstacles lie in its way to becoming law. Foremost, the Tennessee walking horse industry is a high-stakes business, with many shows having hundreds of thousands of dollars in prize money. Lobbyists for the industry are often able to sway political figures in their favor. Particularly, former Senate Majority Leader Mitch McConnell (R.-KY) has received upwards of a million dollars in donations from “big lick” supporters and refused to allow a vote on the companion bill in the Senate.³³ A proposed compromise at the close of the last legislative session failed.

Beyond this, there have been multiple logistical arguments made in opposition to the PAST Act. For example, those in the

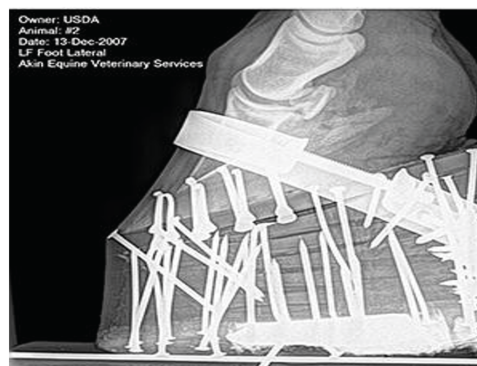
industry often state that having the USDA send licensed inspectors to every horse show would be impractical.³⁴ Concerns over budgeting and resource allocation have also been raised, despite the Congressional Budget Office stating that the PAST Act would not affect direct spending.³⁵

In opposition to the PAST Act, Tennessee walking horse owners additionally argue that the value of their horses would decrease substantially.³⁶ Without the use of chains and wedged pads—these owners claim—their horses will be worthless in the industry, which will result in “dumping” the horses at auction for slaughter.³⁷ Multiple organizations, including Horse Plus Humane Society, have contested this statement and have indicated that they would be willing to take in as many abandoned horses as possible. These organizations also point to the fact that sore horses often end up in slaughterhouses anyway when their wounds become too obvious to pass inspections at shows or when they are too crippled to perform.³⁸

Conclusion

Soring has been outlawed for half a century by the HPA, yet the practice continues today with little to no repercussions. The PAST Act targets the HPA’s shortcomings and seeks to close its loopholes. While soring is most certainly an issue in the broader equine world, the Tennessee walking horse industry would be most impacted by the PAST Act. Multiple other breed-specific show organizations, such as the American Paint Horse Association, have certified that the PAST Act would not negatively impact other aspects of the horse industry or horse showing in general.³⁹

It took six years and many reintroductions for the PAST Act to pass the House and it may take equally as long for it to make it into law, but the Act undeniably would go a long way toward ensuring that equine soring does not continue for another fifty years.



X-Ray of a common wedged pad which is nailed to the hoof causing extreme soreness when stepping. (Picture taken from: Frank Lessiter, “Pressure Mounts to End Soring,” American Farriers Journal (September 1, 2008).)

⁷ Video, *Tennessee Walking Horse Abuse*, THE HUMANE Soc’y OF THE U.S. (Aug. 28, 2012), <https://www.humanesociety.org/news/hsus-releases-exclusive-video-interview-convicted-horse-abuser#:~:text=The%20HSUS%27%20undercover%20investigation%20of%20well-known%20trainer%20Jackie,to%20public%20outrage%20over%20the%20practice%20of%20soring>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ U.S.D.A., HORSE PROTECTION ACT, LIST OF CERTIFIED HORSE INDUSTRY ORGANIZATIONS (May 1, 2020), https://www.aphis.usda.gov/animal_welfare/hp/downloads/hio/certified-horse-industry-organizations.pdf.

¹² Factsheet, *supra* note 4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ U.S. Senator Joseph D. Tydings Memorial Prevent All Soring Tactics (PAST) Act of 2019. H.R.693 –116th Congress (2019-2020).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Horse Protection Act. 15 U.S.C. § 1825 (1970).

²¹ *Id.*

²² Factsheet, *supra* note 4.

²³ *Id.*

²⁴ Press Release, *supra* note 6.

²⁵ Putting the Horse First: Veterinary Recommendations for Ending the Soring of Tennessee Walking Horses, AM. ASSOC. OF EQUINE PRACTITIONERS (Aug. 2008), <https://aaep.org/sites/default/files/2016-11/AAEP%20White%20Paper%20on%20TWH%20Soring.pdf>.

²⁶ Wayne Pacelle, *Trainer of Winning Horse at National Tennessee Walking Horse Show Suspended from Competition for Illegal Activity*, THE HUMANE Soc’y OF THE U.S.: A HUMANE WORLD (Sept. 12, 2017), https://blog.humanesociety.org/2017/09/trainer-winning-horse-national-tennessee-walking-horse-show-suspended-competition-illegal-activity.html?credit=blog_post_091217_id9260.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Factsheet, *supra* note 4.

³³ Clant Seay, *Citizens Protest Against U.S. Senate Majority Leader Mitch McConnell for Not Allowing Vote on Tydings Memorial PAST Act*, D.C. PRESSWIRE (Sept. 3, 2020), <https://www.dcpreswire.com/2020/09/03/citizens-protest-against-u-s-senate-majority-leader-mitch-mcconnell-for-not-allowing-vote-on-tydings-memorial-past-act/>.

³⁴ *Id.*

³⁵ Factsheet, *supra* note 4.

³⁶ Ariana Sawyer, *USDA Announces Rule Change to End Horse ‘Soring’*, THE TENNESSEAN (Jan. 13, 2017), <https://www.usatoday.com/story/news/nation-now/2017/01/13/usda-announces-rule-changes-end-horse-soring/96566330/>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Factsheet, *supra* note 4.

FOIA Denial as Ag-Gag: *Public Justice Foundation v. Farm Service Agency*

By Thomas Aiello, Valdosta State University

The Relationship Between CAFOs and the FOIA

Concentrated Animal Feeding Operations (CAFOs), also known as factory farms, magnified the structure of agricultural animal abuse beginning in the 1960s, facilitated in part by the deregulatory policies of Ezra Taft Benton, who served as Secretary of Agriculture in the administration of Dwight Eisenhower.¹ Such farms include thousands, and even millions, of animals crammed in tight spaces, diminishing their quality of life before sending them to their deaths. Feedlots and warehouses provide no access to vegetation and serve a particularly violent carceral function for a variety of farmed animals, particularly cows, pigs, and chickens.² A separate but related problem with factory farms is that the waste products from such facilities, including animal fecal matter, are among the leading causes of environmental degradation, the runoff creating a specific subset of viral pathogens and regularly polluting nearby waterways.³ Such operations are also the leading cause of carbon dioxide gas emissions that have helped accelerate climate change.⁴

Both the abuse that factory farms inflict upon animals and the harm that they impose on the environment have led a variety of groups to expose the practices at such facilities through unauthorized video and photo documentation, a strategy that various states have sought to end through a series of statutes colloquially known as “ag-gag” laws.⁵ Governmental advocates argue that the laws serve to protect farmers from propagandistic displays, while citizen opponents argue that the laws shield animal abuse and environmental abuse from public exposure.⁶

While such laws particularly target footage gained by criminal trespass, the federal Department of Agriculture has played a role in limiting public knowledge of the machinations at factory farms by abrogating its responsibilities under the Freedom of Information Act (FOIA)⁷ to comply with document requests that could potentially lay bare governmental knowledge of the systemic nature of the abuses shown in individual

videos and photographs.⁸ Among the animal advocacy and environmental groups making such FOIA requests are the corporate watchdog group Public Justice Foundation, the Animal Legal Defense Fund, the Center for Biological Diversity, the Center for Food Safety, and Food and Water Watch.⁹

Public Justice Foundation v. Farm Service Agency

Frustrated with years of what they considered intentional delay and obfuscation, the aforementioned advocacy groups filed a final FOIA request with the Farm Service Agency (FSA), a division of the Department of Agriculture, in April 2019. The FSA is responsible for providing direct loans to farmers and large-scale agricultural producers and loan guarantees to lenders who engage in similar private loans.¹⁰ The FOIA request sought “all records mentioning or containing FSA’s directives and/or policies for responding to and/or processing FOIA requests and appeals,” to which the FSA responded with copies of two brief emails containing seven total pages.¹¹ In February 2020, the advocacy groups filed suit against the FSA for failing to comply with FOIA requests.

The complaint in *Public Justice Foundation v. Farm Service Agency* was filed in the San Francisco Division of the United States District Court for the Northern District of California, alleging that the FSA repeatedly failed to comply with a variety of FOIA requests from each of the aforementioned advocacy organizations from 2016 to 2020.¹² All of the requests dealt in some manner with the administration of loans and loan guarantees to “industrial animal production operations” with regard to “specific agricultural operations or geographical areas.”¹³ Their goal was “uncovering whether FSA considers environmental impacts before awarding federal farm loans to an applicant” as required by the National Environmental Policy Act (NEPA).¹⁴ Enacted in 1970, NEPA “encourage[s] productive and enjoyable harmony between man and his environment,”¹⁵ sets environmental standards for various industries, and provides enforcement provisions to ensure

compliance.¹⁶

FOIA Exemption Claims by the FSA

In denying the FOIA requests or failing to comply fully with them, the FSA cited several authorities but emphasized exemptions 3 and 6 of the FOIA, the former concerning “information that is prohibited from disclosure by another federal law.”¹⁷ The federal law cited by the FSA was the Food, Conservation, and Energy Act (FCEA),¹⁸ which exempts from FOIA disclosure any information that FSA obtained from “agricultural producer[s] or . . . landowner[s] that concerns their farming or agricultural operation[s], including . . . farming practices, conservation practices, or the land itself.”¹⁹

The plaintiffs countered by arguing that FCEA’s withholding requirements exempt only “information ‘provided by’ these entities ‘in order to participate in [FSA’s] programs.’” The plaintiffs also claimed that the law does not protect all information regarding land and operations; it protects only “geospatial information” for which “agricultural producers or landowners provided information for funding purposes.”²⁰

Exemption 6 prohibits the dissemination of “information that, if disclosed, would invade another individual’s personal privacy,” and the FSA continually argued in its denial of requests that loan information for animal agricultural facilities would disclose the financial records of individual applicants.²¹ The plaintiffs countered by arguing that the records they requested were not part of an individual privacy interest and that the data should have been segregated from private information, aggregated, and the tallied nonexempt information released.²²

Case Management

In a case management conference following the original complaint, the FSA agreed to perform a records search again, which this time produced tens of thousands of pages, many of which were publicly available and none of which pertained to “FSA’s farm loan programs and resulting environmental review or groups such as Plaintiffs, despite the fact that FSA’s practices in responding

to FOIA requests about said programs and from said groups are the central issue in this dispute.”²³ The plaintiffs also argued that the new search “failed to uncover documents that Plaintiffs have confirmed exist and explained to FSA are highly responsive material.”²⁴

The FSA responded by interpreting the complaint narrowly, engaging only on the grounds of the final FOIA request and its negotiated attempt at a revised responsive search, claiming that thirty-thousand pages of material represented an adequate attempt and that any omissions of information were the result of a failure on the part of the plaintiffs to specifically request information directly related to processing requests about farm loans or environmental reviews.²⁵

Analysis

The case is pending, but both parties have made tactical errors in the litigation.

The plaintiffs filled dozens of pages describing various FOIA requests to which the FSA failed to respond, building a case that the agency's failure was willful and intentional, if not systemic—a modified form of ag-gag in which the Department of Agriculture served as a proxy for factory farms in hiding their behavior from public scrutiny. In conference, however, the plaintiffs limited the scope of their pursuit to the final request concerning departmental FOIA policies. The limited scope allowed the FSA to argue narrowly on the merits of the final request rather than defend the agency's history of refusing good faith attempts to respond to concerned groups with requested documentation. The FSAs collation of more than thirty-thousand pages in its second effort was a clear demonstration of its earlier abrogation of responsibility under FOIA; but because plaintiffs emphasized the April 2019 request, even though the bulk of their complaint catalogued a history of nonresponsive behavior, attorneys for the FSA had grounds to defend the agency as responsive after the post-complaint conference without having to defend years of dereliction of its FOIA duty.

A ruling in favor of the plaintiffs could result in a new search that produces documents that prove the FSAs attempt at a proxy

version of ag-gag, while a ruling in favor of the defendant would force the advocacy groups to refile, this time emphasizing the series of FOIA denials from 2016 included in the original complaint. In either outcome, the effort to uncover the Department of Agriculture's secrecy surrounding public access to information about concentrated animal feeding operations will of necessity result in further litigation, the case built either on documents from FSA's valid FOIA response or on its continued failure to produce requested information.

Thomas Aiello is a professor of anthrozoology, history, and Africana studies at Valdosta State University. He is the author of more than twenty books and dozens of peer-reviewed journal articles. His work helped amend the Louisiana Constitution to make nonunanimous juries illegal and was cited in the United States Supreme Court as part of its decision ruling them unconstitutional. He holds PhDs in history and anthrozoology.

¹ EZRA TAFT BENSON, FREEDOM TO FARM 13, 202-204, 216-217 (1960); EZRA TAFT BENSON, CROSS FIRE: THE EIGHT YEARS WITH EISENHOWER 90-91, 297-299, 444 (1962); Gary James Bergera, 'Rising Above Principle': Ezra Taft Benson As Us Secretary Of Agriculture, 1953-1961, Part 1, 41 DIALOGUE: A J. OF MORMON THOUGHT 95 (2008); Brian Q. Cannon, *Ezra Taft Benson And The Family Farm*, in THUNDER FROM THE RIGHT: EZRA TAFT BENSON IN MORMONISM AND POLITICS 23-52 (Matthew L. Harris Ed., 2019); Edward L. Schapsmeier And Frederick H. Schapsmeier, Eisenhower And Ezra Taft Benson: Farm Policy In The 1950s, 44 Agric. Hist. 369 (1970); EDWARD L. SCHAPSMIEER AND FREDERICK H. SCHAPSMIEER, EZRA TAFT BENSON AND THE POLITICS OF AGRICULTURE: THE EISENHOWER YEARS, 1953-1961 190, 194, 211-214 (1975); BRETT MIZELLE, Pig 77 (2012).

² DAVID KIRBY, ANIMAL FACTORY: THE LOOMING THREAT OF INDUSTRIAL PIG, DAIRY, AND POULTRY FARMS TO HUMANS AND THE ENVIRONMENT (2010); PHILIP LYMBERY, FARMAGEDDON: THE TRUE COST OF CHEAP MEAT (2014); DEBRA A. MILLER, FACTORY FARMING (2010); JACY REESE, THE END OF ANIMAL FARMING: HOW SCIENTISTS, ENTREPRENEURS, AND ACTIVISTS ARE BUILDING AN ANIMAL-FREE FOOD SYSTEM (2018); RUTH HARRISON, ANIMAL MACHINES: THE NEW FACTORY FARMING INDUSTRY (1966); ELLEN K. SILBERGELD, CHICKENIZING FARMS AND FOOD: HOW INDUSTRIAL MEAT PRODUCTION ENDANGERS WORKERS, ANIMALS, AND CONSUMERS (2016).

³ JACKY TURNER, FACTORY FARMING AND THE ENVIRONMENT: A REPORT FOR COMPASSION IN WORLD FARMING TRUST (1999); Michael W. Fox, Manure, Minerals, and Methane: How Factory Farms Threaten the Environment, 18 THE ANIMALS' AGENDA 30 (1998).

⁴ Melanie J. Wender, Goodbye Family Farms and Hello Agribusiness: The Story of How Agricultural Policy is Destroying the Family Farm and the Environment, 22 VILL. ENVTL. L.J. 141 (2011); David N. Cassuto, Environment, Ethics, and the Factory Farm, 54 S. TEX. L. REV. 579 (2013); Cathy B. Glenn, Constructing Consumables and Consent: A Critical Analysis of Factory Farm Industry Discourse, 28 J. OF COMM. INQUIRY 63 (2004).

⁵ Matthew Shea, Punishing Animal Rights Activists for Animal Abuse: Rapid Reporting and the New Wave of Ag-Gag Laws, 48 COLUM. J.L. & SOC. PROBS. 337 (2015); Jessalee Landfried, Bound & Gagged: Potential First Amendment Challenges to Ag-Gag Laws, 23 DUKE ENVTL. L. & POL'Y F. 377 (2013); Larissa Wilson, Ag-Gag Laws: A Shift in the Wrong Direction for Animal Welfare on Farms, 44 GOLDEN GATE U. L. REV. 311 (2014).

⁶ Larissa U. Liebmann, Fraud and First Amendment Protections of False Speech: How *United States v. Alvarez* Impacts Constitutional Challenges to Ag-Gag Laws, 31 PACE ENVTL. L. REV. 565 (2014); Sara Lacy, Hard to Watch: How Ag-Gag Laws Demonstrate the Need for Federal Meat and Poultry Industry Whistleblower Protections, 65 ADMIN. L. REV. 127 (2013); Justin F. Marceau, Ag Gag Past, Present, and Future, 38 SEATTLE U. L. REV. 1317 (2015).

⁷ 5 U.S.C. § 552(a)-(m) (2018).

⁸ Lotte E. Feinberg, FOIA, Federal Information Policy, and Information Availability in a Post-9/11 World, 21 GOV'T INFO. Q. 439 (2004); B. Taylor Bennett, Andrew D. Cardon, and Matthew R. Bailey, Use of FOIA by Animal Rights Activists, 45 *Lab Animal* 55 (2016).

⁹ Complaint for Declaratory and Injunctive Relief, *Public Justice Foundation v. Farm Service Agency*, No. 3:20-cv-1103 (2020).

¹⁰ *Id.* at 1-3.

¹¹ *Id.* at 29.

¹² *Id.*

¹³ *Id.* at 3.

¹⁴ *Id.* at 13.

¹⁵ National Environmental Policy Act of 1969, 42 USC §§ 4321-47m (2018).

¹⁶ *Id.*

¹⁷ *Id.* at 13. Plaintiffs' arguments centered on FOIA's demand for transparency and accountability, *Dep't of Air Force v. Rose*, 425 U.S. 352, 360-61 (1976), and one for narrow construction of requests, *Milner v. Dep't of Navy*, 562 U.S. 562, 566 (2011). Agencies had a responsibility to make reasonable searches in all places that might contain responsive documents, *Zemansky v. EPA*, 767 F.2d 569, 571 (9th Cir. 1985); *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 327 (D.C. Cir. 1999); *Our Children's Earth Found. v. Nat'l Marine Fisheries Serv.*, 85 F. Supp. 3d 1074, 1083 (N.D. Cal. 2015); *Yagman v. Pompeo*, 868 F.3d 1075, 1079 (9th Cir. 2017); *Law. Comm. for Civ. Rights of S.F. Bay Area v. Dep't of Treasury*, 534 F. Supp. 2d 1126, 1130-31 (N.D. Cal. 2008).

¹⁸ 7 U.S.C. § 8791(b).

¹⁹ Complaint for Declaratory and Injunctive Relief, *Public Justice Foundation et. al v. Farm Service Agency*, No. 3:20-cv-1103 (2020) at 14; National Environmental Policy Act, 42 USC §§ 4321-47m (2018).

²⁰ Complaint for Declaratory and Injunctive Relief at 35, *Public Justice Foundation et. al v. Farm Service Agency*, No. 3:20-cv-1103 (2020). See *CIA v. Sims*, 471 U.S. 159, 168-69 (1985); *Carlson v. U.S. Postal Serv.*, 504 F.3d 1123, 1127 (9th Cir. 2007).

²¹ FOIA exemptions, <https://www.foia.gov/faq.html> (last visited Sept. 2020); Complaint for Declaratory and Injunctive Relief at 13-17, 20, *Public Justice Foundation v. Farm Service Agency*, No. 3:20-cv-1103 (2020).

²² Complaint for Declaratory and Injunctive Relief at 43, *Public Justice Foundation et. al v. Farm Service Agency*, No. 3:20-cv-1103 (2020). See *Rojas v. FAA*, 941 F.3d 392, 404-07 (9th Cir. 2019); *Kowack v. U.S. Forest Serv.*, 766 F.3d 1130, 1133 (9th Cir. 2014); *Gordon v. FBI*, 390 F. Supp. 2d 897, 902 (N.D. Cal. 2004).

²³ Plaintiffs' Notice of Motion and Motion Challenging Deficiencies in FSA's Revised Search and Production; Memorandum of Points and Authorities in Support at 4, *Public Justice Foundation v. Farm Service Agency*, No. 3:20-cv-1103 (2020).

²⁴ *Id.*

²⁵ Defendant's Opposition to Motion Challenging Deficiencies in FSA's Revised Search and Production at 1-2, *Public Justice Foundation v. Farm Service Agency*, No. 3:20-cv-1103 (2020). The FSA's argument rested on the requirement for a reasonable expectation of an adequate search, *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990); *Lahr v. NTSB*, 569 F.3d 964, 986 (9th Cir. 2009); *Citizens Comm'n on Human Rights v. Food & Drug Admin.*, 45 F.3d 1325, 1328 (9th Cir. 1995); *Garcia v. U.S. Dep't of Justice*, 181 F. Supp. 2d 356, 366 (S.D.N.Y. 2002). It also argued that just because requesters assume other responsive documents might exist, agency searches are not undermined by failing to produce them. *Wilbur v. CIA*, 355 F.3d 675, 678 (D.C. Cir. 2004).



Animal Law Legislation: 2022 Update

By Ralph A. DeMeo and Macie Codina, Guilday Law

As the 2022 Florida Legislative Session came to a close, attention turned to watching the animal law bills that passed which may become law, and to reflecting upon the bills that died. As always, several animal-related bills were filed, but very few made it through the rigorous legislative process. As of the writing of this article, the bills that passed await the signature or veto of the Governor.

As for those bills that survived the session, HB 494: "Fish and Wildlife Conservation Commission," was ordered enrolled and sent to the Governor's office on March 10th. The proposed bill was introduced for the purpose of alleviating the geographical and capacity constraints on current available gopher tortoise recipient sites due to the extreme migration and development in Florida. Under the bill, each lead land managing agency is encouraged to consider the feasibility of using a portion of state land greater than 40 contiguous acres for tortoise recipient sites. The Florida Fish and Wildlife Conservation Commission ("FWC") will further determine feasibility by looking at the site's compliance with the primary management objectives of the lands, the land management plan, and economic feasibility of establishing the recipient site.

Furthermore, owners of lands where a conservation easement or other less-than-fee interest have been acquired may apply to become a recipient site if the operation does not interfere with the land's management plan or state or federal permitting requirements. Under this bill, the FWC shall establish an ongoing effort to encourage the establishment of new recipient sites on private lands and update the online permitting system to assist with the efficient allocation of tortoises by December 31st, 2022. All requests for additional information regarding the establishment of a recipient site must be received by the applicant within 45 days. The FWC also must submit a report to the head of the House and Senate regarding the progress made, the average time to approve or deny an application, any federal action taken to modify the species' endangered species status, and any other relevant information by February 1st, 2023. Another bill currently awaiting the Governor's approval is SB 226: "Care for Retired Police Dogs." The bill was introduced with the

purpose of protecting police dogs who are an integral part of the law enforcement and correctional efforts statewide and acknowledges that the service of police dogs is often dangerous. The proposed bill will create a program to provide stable funding for the veterinary care for retired police dogs through a nonprofit organization dedicated for that purpose. Under the bill, funds may only be disbursed to a former handler or adopter of a retired police dog that served at least 5 years and may not exceed \$1,500 per dog. Furthermore, a former handler or adapter may not accumulate unused funds to use in future years. A sum of \$300,000 in recurring funds was appropriated from the 2022-2023 fiscal year, and each fiscal year thereafter, for the purposes of implementing and administering the program.

As for significant bills that did not pass, the "Water Resource Management" and "Pet Protection" bills died in committee. The Pet Protection bills, SB 994 and HB 849, were brought before the Legislature with the purpose of regulating and inspecting retail pet stores and their animals. The bill proposed requirements for acquiring pets from third parties, and included required documentation, and medical and enclosure standards for pets living within retail pet stores. The bill also proposed a yearly licensing of all retail pet stores and an accompanying fine for any violations of the bill. Proponents of the bill emphasize that, before this bill, there were no regulations or licenses required of pet stores. Under the proposed bill, retail pet stores will be restricted as to where they can acquire animals and would be required to provide weekly veterinary visits.

Although the bill appeared to protect animal rights, opponents of the bill argued that these bills were misleading and were actually pro-puppy mill given the broad and unenforceable language, the bare-minimum standards, and the bill's preemption clause. The Humane Society of the United States and other animal advocacy groups have been fighting to end puppy mills by supporting local governments that prohibit pet stores that sell animals from mills. Over 80 local governments in Florida prohibit sales from puppy mills. Under the bill's preemption clause, local governments would not have

been able to ban pet stores which obtain animals from mills. Those against the bill argued that, instead of protecting animals, the bill's broad language and loose standards would have allowed puppy mill pet stores to continue their operations while blocking local governments from further regulating or banning these stores. Manatee and Orange Counties have recently passed ordinances that stop pet stores from selling puppy mill puppies. Under the proposed bill, the recently passed ordinances would have been reversed. Unfortunately, with the potential passing of Senate Bill 620, the Local Business Protection Act, local governments could be liable for damages if they create or adopt an ordinance banning puppy mill pet stores. Both Pet Protection bills died in committee on March 14th.

The last notable animal law bill is SB 198, "Water Resources Management," which died in committee on March 14th. The purpose of the bill was to allow permitting to develop seabeds while also allowing seagrass mitigation banks to operate. Although the bill appears to increase seagrass mitigation banks, the loose standards regulating the banks would have actually depleted seagrasses, is main food source of manatees. Those in opposition of the bill successfully argued that allowing the development of a seabed before a mitigation bank proves viable would allow developers to get mitigation credits without showing actual results. Opponents also argued that, even if grass was successfully planted, it would take years for the ecosystem to recover. With over 432 manatee deaths in 2021, most resulting from starvation, the survival of Florida's seagrasses is more important than ever.

It should be noted that another bill that could have a chilling effect on local government ordinances that prohibit puppy mill sales is SB620/HB 569, the so-called "business damages" bill, which would create a new tort allowing businesses to sue local governments if their ordinances interfere with the business. The bill would potentially subject local governments to damages from businesses, including pet stores, which wish to purchase puppies from mills.

2022 ANIMAL LAW SECTION ACHIEVEMENT AWARDS



The Animal Law Section continued its tradition in 2022 of recognizing those human and non-human animals who have made an exceptional contribution to animal law and welfare in Florida. This year's recipients were indeed exceptional:

NON-ATTORNEY:

Nikki Rupp, Animal Advocate
TALLAHASSEE

LAWYER:

Dave Aronberg, State Attorney
15TH JUDICIAL CIRCUIT, PALM BEACH COUNTY

LAW STUDENT:

Macie Codina
FSU LAW SCHOOL

ANIMAL:

Tillie the Greyhound
AS ACCOMPANIED BY ATTORNEY JOHN WILLIAMS, TALLAHASSEE

LAWMAKER:

Florida Senator Lauren Book
BROWARD COUNTY

CONGRATULATIONS

to our award recipients, and THANK YOU for your contributions.

Recipients will be recognized at the ALS Annual Meeting in Orlando in June with a plaque, a Rikki Doll, and a Pawtographed copy of *Tales of Tillie*.

ANIMALS OF THE FLORIDA BAR

Pet Spotlight: Tillie

Tillie is a 13-year-old rescue greyhound who once raced at the now-defunct Jefferson County Kennel Club in Monticello, Florida. Due to Tillie's small size, and even though she had won more than half her races, she was facing possible euthanasia at the age of two. Thankfully, a local greyhound rescue group picked her up, and she was soon adopted to her current family.

She is now the unofficial therapy dog at John Williams' Tallahassee law office, where he practices as a Board Certified family lawyer, mediator, and parent coordinator. According to John, Tillie has been invaluable to his clients, who naturally face stress in the midst of court case preparation. John says Tillie's therapy is sometimes by design, sometimes by accident, but that her empathetic and calm presence helps his clients to focus and to think about the situation at hand.

At home, Tillie spent the past two years giving comfort to a sick neighbor. She would walk next door and stand there until he let her in, and Tillie was his faithful daily companion until he passed away this summer.

Tillie is now receiving recognition for *Tales of Tillie*, a beautiful coffee table book about her sunrise walks with John, as she observes the joy of nature and the humans she loves. Full of photos, wisdom, and witticisms, the book benefits Tallahassee Memorial Hospital's (TMH) Animal Therapy Program. In recognition of the therapy she provides to John and others every day and the joy she hopes her book brings to readers, this spring Tillie was designated an Honorary Animal Therapist by TMH Animal Therapy.

Tillie has been interviewed for TV, public radio, Pets Ad Litem and The Florida Bar Animal Law Section. She is currently working to gather nationally known pet-owning celebrities to read a copy of her book to their favorite animal, to create a National Animal Therapy Day celebrity montage that will bring awareness to animal therapy programs across the nation.

Tillie is the recipient of the Animal Law Section 2022 Animal Achievement Award.



SAVE THE DATE

FLORIDA BAR ANIMAL LAW SECTION 2022 Annual Meeting

"Manatees, Turtles, and Panthers, Oh My!"

ANNUAL MEETING CLE | JUNE 24, 2022 | ORLANDO, FL

Sub-titled "Surf and Turf," the ALS CLE Seminar features presentations by some of the most knowledgeable experts in their fields, including updates on the status of threatened and endangered terrestrial and marine wildlife. Also included is the latest on local government preemption laws, and the popular legislative update.

Animal Law Section in Action

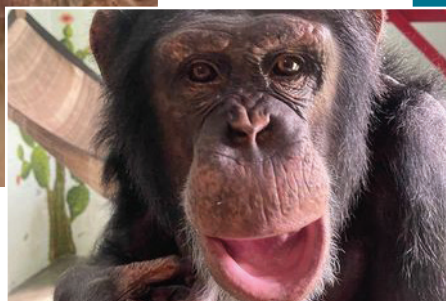
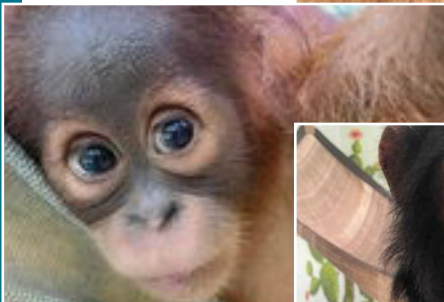
JOINT FUNDRAISER WITH THE ADMINISTRATIVE LAW SECTION AT PROOF BREWING CO.

Thanks to everyone who came out to our joint fundraiser with the Administrative Law Section to raise donations for the Animal Shelter Foundation. Special thanks to our sponsors the FDLA, Phipps Reporting and Stearns Weaver Miller!



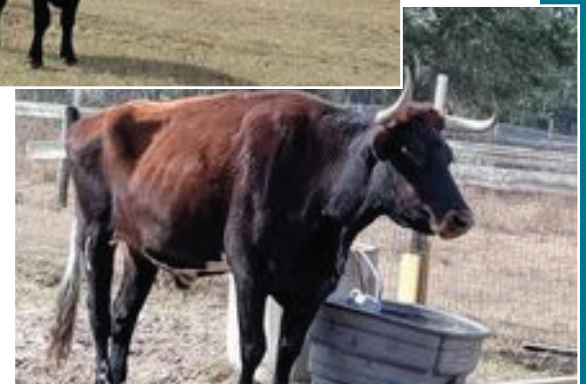
CLEAN UP AT THE CENTER FOR GREAT APES IN WACHULA, FLORIDA

The Animal Law Section of The Florida Bar went to Center for Great Apes in Wachula, Florida to volunteer to clean up. We also took a tour of the sanctuary. Join the Animal Law Section today to come on our amazing sanctuary tours! Thank you so much Center for Great Apes for having us! We so enjoyed our time, and we will be back again! If you were not able to come, but you would like to make a wish list donation, visit www.centerforgreatapes.org/wishlist.



VISIT TO KINDRED SPIRITS SANCTUARY

Some photos from our trip to Kindred Spirits Sanctuary. Thank you for allowing us to come see the animals. We had so much fun. Join the Animal Law Section so you can come to our sanctuary trips. We have another sanctuary trip scheduled next month!



Nonnative Reptiles

By Kate MacFall, Florida State Director, The Humane Society of the United States

Keenly aware of the challenges that invasive species pose and the costs required for appropriate management, in February 2021 the Florida Fish and Wildlife Conservation Commission (FWC) passed updated rules on the breeding, selling, importing, and exporting of nonnative reptiles.

With over 500 nonnative fish and wildlife species having been observed in Florida, it is not surprising that in 2020 the legislature placed additional restrictions on the ownership of nonnative reptiles. After the legislation was passed and signed into law by Governor Ron DeSantis, the reptile industry sued the State of Florida and won. The court found the law unconstitutional because the FWC has constitutional authority over wildlife in Florida, one of the many aspects of wildlife regulation that is unique to the Sunshine State. The judge essentially told the legislature to stay in its lane.

In the months that followed, the FWC hosted countless public meetings, providing opportunities for the public to weigh in on the proposed changes that would address the importation, breeding, and possession of high-risk invasive reptiles including tegus, green iguanas, and pythons. Florida wildlife and environmental advocates were some of the stakeholders supporting the recent changes in an effort to solve the worst invasive species problem in the world. Nonnative reptiles bring an ecological risk to our native wildlife, as iguanas and tegus are known to consume eggs of protected birds and other species and damage critical plant life. They are also known to damage seawalls, dams, and other water control structures.

Exotic reptiles and other species are often marketed as low-maintenance pets, but owners eventually become overwhelmed by the level of care required. Many animals suffer because of substandard care, inappropriate housing, and poor diet provided by owners lacking the knowledge to provide adequate care. Some pets will be turned loose, where they may die from vehicle strikes, starvation, exposure, and predation; those who survive compete with native wildlife for food and habitat and, when established, can wreak havoc on the delicate ecosystem balance and cause problems for property owners. While green iguanas have been established in south Florida for decades, tegus are known to have

four established colonies in Florida and can survive as far north as West Virginia.

The updated rules include increased restrictions for Burmese pythons, reticulated pythons, amethystine pythons, scrub pythons, Northern African pythons, Southern African pythons, as well as green anacondas, Nile monitor lizards, and all species of tegus and green iguanas. These high-risk, invasive reptiles pose a threat to our environment, native wildlife, and human health and safety and therefore come with a hefty cost to our state. According to “The FWC’s Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5,” the FWC alone spends more than \$3,000,000 annually on efforts directly related to regulation, prevention, control, and removal statewide. Most of these funds are directed to tegus, iguanas, pythons, lionfish, and Nile monitor lizards. According to the Statement of Estimated Regulatory Costs, the FWC spent over \$770,000 in 2019–2020 just on python management and control.

Under the new rules, persons who had one of these species as a pet prior to the listing changes may apply for a no-cost permit for the life of that animal. Changing the listings from “conditional” to “prohibited” means the importation and breeding of these species, including pythons, is prohibited unless special authorization is obtained from the FWC for public exhibition, for research, or for control or management.

What does this mean for tegus and iguanas? Breeding and importation are not permitted unless special authorization is given by the FWC. Additionally, FWC authorization is required to possess tegus and iguanas for public exhibition, for research, or for control or management. There are limited exemptions given to businesses with documented inventory in their 2019 commercial use applications. However, the new rules allow for tegus and iguanas to be sold out of state.

The Humane Society of the United States and many other wildlife and environmental groups are urging the FWC to go one step further and prohibit the sales of tegus and iguanas to states outside of Florida as many are already dealing with overpopulation of invasive reptiles. In 2020 the Alabama Department of Conservation and Natural

Resources adopted a rule that prohibits personal ownership of many non-native reptiles including all species of tegu lizards. In June 2020 the Louisiana legislature passed HCR61, which instructs the Louisiana Department of Wildlife and Fisheries to review the restrictions on possession of exotic and invasive species. And Georgia is struggling to deal with growing tegu populations in two southern counties.

At the end of the day, Floridians are left to clean up the mess ecologically, environmentally, and financially. With significant costs typically falling on the government agencies—and ultimately the taxpayers—the negative impacts to our state should not be the prerogative of a handful of people who are benefitting financially from breeding and selling these animals. Society, science, and business practices are constantly changing. Greyhound racing, for example, was popular many decades ago, and now is long gone after Floridians voted to phase it out by the end of 2020. Change is warranted when we know better.

At the Humane Society of the United States, we are committed to the humane treatment of all animals and believe most Floridians are partial to that sentiment. However, the stories we have all heard about the horrible treatment of the iguanas by business owners and homeowners, as well as golf course personnel, is heartbreaking. These reptiles did not ask to be here, and like all animals, should be treated humanely. We applaud the FWC for making this a priority and for its strong stance in passing the new rules in February 2021. Floridians appreciate the agency’s recent rule updates and efforts to help stop the problem from getting worse and allow FWC staff to refocus efforts on humanely managing the current populations.



Photo Source: Florida Fish and Wildlife Conservation Commission

ATTENTION!

The Animal Law Section (ALS) is currently seeking new members so that it can remain a vibrant new section of the The Florida Bar. You do not need to practice animal law or even be a lawyer to join.

Join the Animal Law Section of The Florida Bar Today!

We are now halfway through our third year as a section. During our short time in existence, the ALS has explored animal-related legal issues and worked to educate, manage, and solve problems in animal law. We need your help and ideas as members to continue our success!

Membership is an opportunity to get involved in the animal law community and stay informed on developments in animal law with our eUpdate, newsletter, and legislative updates. Members also enjoy discounts on section-sponsored CLE seminars.

1. Regular members of The Florida Bar can join here:
www.bit.ly/JoinAnimalLawSection
2. Affiliates (non-Florida Bar members) can join by following the instructions on our website or calling the Bar directly at (850) 561-5825:
www.flabaranimals.org/join
3. Young Lawyers and law students can currently join for free. See details and applications at our website.
www.flabaranimals.org/join

We also count on our active members to recruit new members and spread the word about ALS's existence to interested people. We constantly are approached by people who are just now hearing about ALS for the first time, so please share this newsletter, membership information, and application with others.

Here are some additional reasons to join ALS:

1. You will become a member of a new and historic section.
2. Two-thirds of Americans live with companion animals, and they increasingly take legal issues involving those animals seriously and spend time and money to protect their interests.
3. Animal law is becoming increasingly relevant as new attorneys enter the field. There are now over 151 law schools in the U.S. and Canada offering animal law courses.
4. Animal law overlaps with all of the traditional areas of law, and members of the section will be able to learn how to add an animal law component to their current practice to increase their marketability.
5. The section covers a diverse range of issues. Members with different backgrounds and interests join their expertise and are united in a common desire to pioneer this new field of law.
6. The section provides members the opportunity to explore animal-related problems and legal issues in novel ways discover new ways to define, manage, and and solve them.
7. Members will have the chance to participate as much or as little as they like by joining the section's various committees.
8. By joining now, members can help lay the groundwork for the section's direction going forward and network with other attorneys who share their interests.
9. Members enjoy discounts on section sponsored CLE seminars and other materials exclusive to the section.
10. Non-lawyers can join the section and participate in the section as affiliate members.

With the recent changes to The Florida Bar's website and changes in the way the sections deliver CLEs to members, **our CLE materials have moved**. However, you can still access a complete list of everything that we have that is either being webcast or available online aftermarket at <https://bit.ly/2r0r97r>

For CD/DVD sales, members need to log in to the member portal and click the CLE tab at the top right. It can be sorted by section to just show Animal Law Section products. Keep in mind that section members are entitled to a discount on our programs!



THE FLORIDA BAR - ANIMAL LAW SECTION

Student Membership Application

2022 - 2023

The Animal Law Section is proud to sponsor the membership dues for 3rd year law students who are interested in the Section.

To join and participate, please complete the application and submit to The Florida Bar through one of the options at the bottom of the application.

Name: _____

Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____

Email: _____

Law School: _____

Comments: _____

Submission Methods:

<u>Email</u>	<u>Mail</u>	<u>Fax</u>
Ricky Libbert, Bar Liaison rllibbert@flabar.org	The Florida Bar Animal Law Section 651 E. Jefferson St. Tallahassee, FL 32399	850-561-9427

Note: Your section membership will be valid through the 2022-23 fiscal year (June 30, 2023).
Please contact Ricky Libbert at 850-561-5631 with any questions.

2022-2023 Annual Animal Law Writing Competition

Presented by **The Florida State University Student Animal Legal Defense Fund Chapter**
and sponsored by **The Florida Bar Animal Law Section & Pets Ad Litem**

The FSU College of Law's Student Animal Legal Defense Fund Chapter is very pleased to announce the Sixth Annual Animal Law Writing Competition. The purpose of this competition is to generate interest and recognition of this rapidly growing field. All articles must be submitted no later than July 18, 2022.

The Student Animal Legal Defense Fund (SALDF) was established to provide information and awareness on a wide array of animal legal issues. This competition seeks to foster legal scholarship among those in the legal field in the area of animals and the law. This competition provides law students with an incentive and opportunity to learn more about this growing field.

Florida law students and recent Florida law school graduates are invited to submit an article concerning any area of animal law. All submissions will be reviewed by a panel of attorneys and other professionals practicing or otherwise involved in the field of animal law. The first place winner will receive \$1,000 and a Certificate of Achievement. The winner may also be selected to contribute his/her article for publication. The second place winner will receive a Certificate of Achievement.

This competition could not take place without the generous sponsorship of Pets Ad Litem and The Florida Bar Animal Law Section. SALDF sincerely thanks Pets Ad Litem for its unwavering support. Pets Ad Litem is a Tallahassee-based not-for-profit alliance of advocates and other professionals providing a legal voice for animals. See: www.petsadlitem.com. In addition, SALDF is grateful to The Florida Bar Animal Law Section for its generous support and commitment to animal legal issues.



RULES

Topic: Any topic on Animal Law

Eligibility: The submission must be written by a student currently enrolled in a Florida law school or an attorney who has graduated within the last year from a Florida law school.

Deadline: Papers must be emailed no later than July 18, 2019.

Award Criteria: Written submissions will be judged based on quality, clarity, originality, and organization. All essays must also meet the following criteria:

Length: Type written, double-spaced, no less than 12-point Times New Roman font, on 8 1/2 x 11 paper, with 1-inch margins. We will consider articles of any length. However, the document must not exceed 50 pages, including footnotes. Footnotes should be single-spaced, and no less than 10-point font.

Format: Please email your submission to fsusaldf@gmail.com and cc: dkirklan@law.fsu.edu. In the subject line, please insert: "Animal Law Writing Competition." If the document is in a PDF format, please also save it as a Microsoft Word document.

Cover Page: Each entrant must submit a cover page indicating the entrant's name, law school, expected year of graduation or actual graduation date, current employer (if applicable), mailing address, email address, and telephone number.

Prize Awarded:

1st Place: \$1,000 and a Certificate of Achievement
Honorable Mention: Certificate of Achievement

Based on the number and quality of submissions, the winner may also be selected to contribute his/her article for publication.

Check our site for more updates!

FLABARANIMALS.ORG



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Section T-Shirts, Hoodies, and Much More!

Would you like to show your support for the section, while looking incredibly fashionable and fabulous? You can order one of our unique section t-shirts, hoodies, or other great pieces of section-branded merchandise today! They are a great way to advertise your membership in the section and talk about what we do. As a bonus, all the profits earned support our section functions!

Merch with our standard section logo is available here:

www.cafepress.com/thefloridabar/17187206

And check out items with our wildlife logo here:

www.cafepress.com/thefloridabar/17205640



Views and conclusions expressed in articles herein are those of the authors and not necessarily those of the editors, committees, members, or executive council of the Animal Law Section of The Florida Bar.

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