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# The Elephant in the Room: Detrimental Effects of Animals' Property Status on Standing in Animal Protection Cases

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**THE ELEPHANT IN THE ROOM: DETRIMENTAL  
EFFECTS OF ANIMALS' PROPERTY STATUS ON  
STANDING IN ANIMAL PROTECTION CASES**

**Lisa Marie Morrish\***

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#### INTRODUCTION

Animals' long-standing status as property serves to hinder many attempts to secure rights and protections for animals in the legal arena. Even within the realm of property law, states vary on how animals are viewed and protected.<sup>1</sup> Because of these long-held views and inconsistencies, the rights of animals are not taken as seriously as is warranted. Moreover, a person's interest in animals has been trivialized, especially regarding the ability to obtain standing in a legal proceeding.<sup>2</sup> The interests of animals and their rights would be furthered if a greater significance were placed on people's interests in them.

This Comment will explore the different ways animals are viewed and treated in the legal world. It will focus on how these views affect the concept of people having a valid legal interest in animals and their rights, and whether or not that interest should create standing in courts. Part I of this Comment will lay a foundation describing how animals are viewed throughout the states as property and the different rights afforded to them.<sup>3</sup> It will explain legislation and cases that show the inconsistencies of the states and the courts. Part II will identify the legal problem that this uncertain and old-fashioned view has created in the current legal atmosphere.<sup>4</sup> Part III will analyze how the status of animals as property has affected the significance of a person's interest in animals and how that interest is treated in determining standing.<sup>5</sup> And Part IV will offer a proposal to help solve the problem and clarify inconsistencies.<sup>6</sup> This includes viewing

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1. See generally ANIMAL LEGAL DEFENSE FUND, ANIMAL PROTECTION LAWS OF THE USA & CANADA (7th ed. 2012), available at <http://aldf.org/article.php?id=259> (providing a list of animal protection laws for each state and Canada) (last visited Apr. 19, 2013).

2. See, e.g., *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (holding that the plaintiffs, who had an interest in seeing endangered species in a particular area in the future, lacked standing to sue because they did not show the required injury).

3. See *infra* Part I.

4. See *infra* Part II.

5. See *infra* Part III.

6. See *infra* Part IV.

animals as something greater than property, with their own protected rights, and allowing animals and the people who have an interest in them to have standing to sue in court.

### I. BACKGROUND

Currently, animals are legally regarded as property.<sup>7</sup> However, to many people, they are regarded as something more than a possession, even rising to the level of a family member.<sup>8</sup> This legal status has caused controversy in cases dealing with injuries or death of a family pet.<sup>9</sup> It has also brought into question what precisely constitutes legal standing in cases.<sup>10</sup> An animal's property status under the law affects the way people and the law treat them, and ultimately hinders the advancement of their rights as non-human animals.<sup>11</sup>

#### A. *Animals Regarded as Property*

Although the history of considering animals to be property is deeply rooted in the United States,<sup>12</sup> people's views of animals and their rights have changed over the years.<sup>13</sup> The value of a pet has become more culturally

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7. See generally Susan J. Hankin, *Not a Living Room Sofa: Changing the Legal Status of Companion Animals*, 4 RUTGERS J.L. & PUB. POL'Y 314 (2007) (discussing changes in the way people value their companion animals and advocating a change in the legal status of animals as property).

8. In *Nahrstedt v. Lakeside Village Condominium Ass'n*, 878 P.2d 1275 (Cal. 1994), the court ruled that a pet restriction at a condominium could be enforced against a condominium owner. Justice Arabian's dissent states that the pet restriction is unreasonable in light of the "cherished association with . . . household animals," and the "substantial benefits derived from pet ownership." *Id.* at 1292 (Arabian, J., dissenting). Justice Arabian discusses the "substantial pleasures of pet ownership," and how "[e]motionally, [pets] allow a connection full of sensation and delicacy of feeling," pointing to both the "well-established and long-standing historical and cultural relationship between human beings and their pets and the value they impart," and the "well-established place pets have found in our hearts and homes." *Id.* at 1293–95.

9. Hankin, *supra* note 7, at 321–40 (discussing how to value the damages an owner suffers as a result of an injury or death of a pet).

10. See generally *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

11. See generally Cass R. Sunstein, *Standing For Animals (With Notes on Animal Rights)*, 47 UCLA L. REV. 1333 (2000).

12. See Hankin, *supra* note 7, at 321–40.

13. See PETER SINGER, *ANIMAL LIBERATION* 215–19 (updated ed. 2009). A distinction between a direct duty and an indirect duty to animals can be made. Adam Kolber, Note, *Standing Upright: The Moral and Legal Standing of Humans and Other Apes*, 54 STAN. L. REV. 163, 177 (2001). A direct duty is one

relevant. Many people with pets spend great amounts of time, energy, and money on their animal family members, and would be outraged to find out that in some states their pet's value, if injured or killed, would remain merely at its market value.<sup>14</sup> Depending on the breed, age, and if the pet was adopted from a shelter, the value of a beloved family pet could be nominal.<sup>15</sup>

The injury or death of a companion animal is treated differently across the states.<sup>16</sup> Some states only allow damages up to the market value of the pet,<sup>17</sup> while others allow recovery for veterinary expenses, emotional distress, and the intrinsic value of the pet.<sup>18</sup> For example, in a case where a pet dog died from heat stroke while being stored in an airplane's baggage compartment,<sup>19</sup> the court found that the owner was not entitled to recover damages from emotional distress based merely on the loss of property in the form of his dog.<sup>20</sup> The law did not allow damages for the loss

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we, as people, have to animals because the animals have their own interests—interests which animal protection laws are enacted to protect. *See id.* An indirect duty is “one we have by virtue of our relationship to other humans.” *Id.* Such indirect duties aim to stop “perverse human sentiments” that “increase[] human suffering.” *Id.*

14. Hankin, *supra* note 7, at 323 (referencing one Alaska Supreme Court case).

15. *See id.* at 321–32 (discussing how different states have measured damages for the injury or death of a pet).

16. *Id.* at 322–41.

17. *Id.* at 322–23.

18. *Id.* at 325–41. Different courts have treated this valuation differently, with some allowing for emotional distress to the family, some allowing those damages only for dogs and cats, and some allowing damages for only intentional conduct. *Id.* A California case, *Martinez v. Robledo*, 210 Cal. App. 4th 384 (Cal. Ct. App. 2012), held that pet owners of an injured pet may recover damages of reasonable costs of treatment, and are thus not limited to the market value of the pet. *Id.* The court noted that the law “already treats animals differently from other forms of personal property,” as the law “generally does not treat the abuse . . . of one's own property as a crime,” but does so for the abuse of animals. *Id.* at 391.

Given the Legislature's historical solicitude for the proper care and treatment of animals, and the array of criminal penalties for the mistreatment of animals, as well as the reality that animals are living creatures, the usual standard of recovery for damaged personal property—market value—is inadequate when applied to injured pets.

*Id.* at 392. This case demonstrates the shift in view allowing more rights and value for animals as pets, based on the special place they have grown to take in our home and society.

19. *Gluckman v. Am. Airlines, Inc.*, 844 F. Supp. 151, 154 (S.D.N.Y. 1994).

20. *Id.* at 157.

of companionship of an animal.<sup>21</sup> There was also no cause of action in that state for the pain and suffering of an animal.<sup>22</sup>

In other circumstances, however, courts have awarded non-economic damages, such as emotional distress, to the family of an injured or killed pet.<sup>23</sup> In one case, a plaintiff's dog was put to sleep at the veterinary office, and the plaintiff arranged an elaborate funeral for the dog, with the veterinary office to deliver the body in a casket.<sup>24</sup> The office wrongfully disposed of the body, and instead sent the body of a cat inside the casket.<sup>25</sup> This caused great mental distress to the plaintiff and deprived her of the right to have a proper funeral to bury her pet.<sup>26</sup> The court, in overruling prior precedent that an animal is merely personal property,<sup>27</sup> held that the plaintiff could recover damages for emotional distress because a "pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property."<sup>28</sup> These different views and court rulings establish little in the way of certainty about the value and status of an animal in any given jurisdiction. Although commentators have suggested that the status of animals should be something more than property,<sup>29</sup> no significant

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21. *Id.* at 158.

22. *Id.* at 159.

23. Hankin, *supra* note 7, at 332 (noting that such an award almost always involves intentional infliction of emotional distress).

24. *Corso v. Dog & Cat Hosp.*, 415 N.Y.S.2d 182, 182–83 (City Civ. Ct. 1979).

25. *Id.* at 183.

26. *Id.*

27. *Id.* However, other courts within the state have not accepted this ruling. See *Gluckman*, 844 F. Supp. 151 (1994). "In viewing a pet as more than property, however, the *Corso* opinion, and the few cases that follow it, are aberrations flying in the face of overwhelming authority to the contrary." *Id.* at 158.

28. *Corso*, 415 N.Y.S.2d at 183.

29. Hankin, *supra* note 7, at 341, 376–88, 410; see Thomas G. Kelch, *Toward a Non-Property Status for Animals*, 6 N.Y.U. ENVTL. L.J. 531 (1998) (arguing for a move away from the traditional view of animals as property and towards a new status as non-property). Although animals have, at one point in history, been put on trial and held responsible for crimes, the shift has been made away from this idea. See Kolber, *supra* note 13, at 179. This history of animal trials demonstrates that the concept of having animals in court and having their interests represented in one aspect in the legal system is not that far-fetched of an idea. Katie Sykes, *Human Drama, Animal Trials: What the Medieval Animal Trials Can Teach Us About Justice for Animals*, 17 ANIMAL L. 273, 273 (2011); see also Kolber, *supra* note 13, at 180. Animals being tried in their own cases "open[ed] up the possibility of thinking of animals as having a

action has been taken to change their property status.

### *B. Legal Advancements of Animal Protections*

The advancements of animals' legal rights have become more prevalent in both state and federal law.<sup>30</sup> Every state now has laws against cruelty to animals.<sup>31</sup> Federal statutes have been created to protect animals, endangered species, and the welfare of animals.<sup>32</sup> Even with these statutes, however, issues remain regarding who has standing to sue on behalf of an animal and how the laws are enforced.<sup>33</sup>

#### *1. State Anti-Cruelty Laws*

Each state has enacted its own animal protection laws to prevent and punish cruelty to animals.<sup>34</sup> The inconsistencies across the states, however, show a varying degree of animal protection, with some states having more comprehensive laws and harsher punishments than others.<sup>35</sup> While states are beginning to increase and expand their anti-cruelty laws and penalties, there are still obstacles regarding enforcement and coverage.<sup>36</sup>

States have broadened their animal protection laws by expanding the types of offenses and increasing penalties.<sup>37</sup> States have also imposed duties on people who own animals.<sup>38</sup> Some laws mandate that animal owners provide proper food,

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form of partial legal personhood." Sykes, *supra*, at 295. In the historic trials, "animals were imbued with sufficient legal personhood to permit the law to act upon them as it would upon similarly-situated humans." *Id.* at 296 (quoting Anila Srivastava, "Mean, Dangerous, and Uncontrollable Beasts": *Mediaeval Animal Trials*, 40 *MOSAIC* 127, 128 (2007)).

30. Sunstein, *supra* note 11, at 1333, 1337.

31. *Id.* at 1337.

32. *Id.* at 1339.

33. *Id.* at 1335.

34. See generally ANIMAL LEGAL DEFENSE FUND, 2011 U.S. ANIMAL PROTECTION LAWS RANKINGS (2011), available at <http://aldf.org/downloads/ALDF2011USRankingsReport.pdf> (providing a comparative analysis of the comprehensiveness and strength of each state's animal protection laws). For an example of a determination of what is a pet, see *People v. Garcia*, 812 N.Y.S.2d 66 (App. Div. 2006) (holding that pet goldfish are companion animals within the meaning of an anti-cruelty statute).

35. See ANIMAL LEGAL DEFENSE FUND, *supra* note 34.

36. Hankin, *supra* note 7, at 365-70.

37. *Id.*

38. *Id.* at 368. See generally ANIMAL LEGAL DEFENSE FUND, *supra* note 34 (comparing animal protection laws of the states, including laws regulating cruelty, neglect, and basic standards of care).

water, and shelter, as well as veterinary care.<sup>39</sup> However, these laws vary greatly in their coverage and penalties across the states,<sup>40</sup> creating inconsistencies and possible confusion about the importance of these animal protection laws. Although these laws and protections vary by jurisdiction, there has been a general movement among the states towards offering greater protection for animals and greater penalties when animals are subject to cruelty or neglect.<sup>41</sup>

There are two major complications with state anti-cruelty laws regarding their enforcement. First, the laws are often not adequately enforced in practice.<sup>42</sup> Enforcement is unreliable and greatly depends on the willingness of the prosecution to try the case.<sup>43</sup> Animal cruelty and neglect cases are a low priority for over-worked prosecutors.<sup>44</sup> Prosecutions are generally only seen in the most reprehensible cases,<sup>45</sup> while other violations go unprosecuted and unpunished.<sup>46</sup>

Secondly, state anti-cruelty laws do not generally apply when the animal is used on a farm, in a factory for the production of food, or in a laboratory for medical or scientific purposes.<sup>47</sup> Animal exploitation in these areas often goes unregulated,<sup>48</sup> and cruelty against the animals there is common practice.<sup>49</sup> This distinction between animals kept as companions and those used for consumer goods clouds the overall concept of what animal protection and animal rights mean to people and the legislature.

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39. Hankin, *supra* note 7, at 368.

40. *Id.*

41. *Id.* at 365–68.

42. See Sunstein, *supra* note 11, at 1337–40.

43. See *id.*

44. See *id.* at 1339.

45. *Id.*

46. *Id.*

47. *Id.* at 1339, 1363; see *Taub v. State*, 296 Md. 439, 444 (Md. 1983) (holding that because “there are certain normal human activities to which the infliction of pain to an animal is purely incidental and unavoidable,” the anti-cruelty law did not apply to researchers conducting medical and scientific research).

48. Sunstein, *supra* note 11, at 1339.

49. See Taimie L. Bryant, *Trauma, Law, and Advocacy for Animals*, 1 J. ANIMAL L. & ETHICS 63, 72 (2006) (discussing the problems animal advocates face against the exploitation of animals at institutions using them for consumer goods).

## 2. Federal Legislative Action

Progress has also been made in protecting animal welfare on the federal level.<sup>50</sup> A number of federal statutes have been passed to protect animals, endangered species, and to control other areas affecting animals, such as humane slaughter and conservation efforts.<sup>51</sup> Although the enactment of such statutes puts animal protection laws on the map, there are still obstacles in the enforcement of the laws.<sup>52</sup> These hurdles include the lack of resources to enforce the laws and the limited ability to procure standing before courts.<sup>53</sup>

### i. The Animal Welfare Act

One of the most important of the federal animal law statutes is the Animal Welfare Act of 1970, which was amended in 1976.<sup>54</sup> The Animal Welfare Act (AWA) aims to ensure humane handling and treatment of animals, with minimum requirements of care regarding food, water, housing, transportation, shelter, sanitation, and animal well-being.<sup>55</sup> The United States Department of Agriculture (USDA) is designated to enforce the statute, which has been criticized as being ineffective and underenforced.<sup>56</sup>

One limitation to the enforcement of the AWA is the USDA's lack of resources.<sup>57</sup> Because the AWA is only subject to public enforcement, private actors must rely on the USDA to use its limited budget to bring an action.<sup>58</sup> This has proved to be unreliable.<sup>59</sup> Private citizens and the affected animals do not have the ability to sue for wrongdoings.<sup>60</sup> Courts have held that the AWA "does not create a private cause of action and that Congress intended that only the Secretary of

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50. Sunstein, *supra* note 11, at 1339.

51. Kelch, *supra* note 29, at 542–44.

52. *Id.* at 532, 543.

53. *Id.*

54. 7 U.S.C. §§ 2131–2156 (2006). See generally Michael Hill, *The Animal Enterprise Terrorism Act: The Need for a Whistleblower Exception*, 61 CASE W. RES. L. REV. 651, 658–61 (2010).

55. Hill, *supra* note 54, at 660; Kelch, *supra* note 29, at 542; Sunstein, *supra* note 11, at 1341.

56. Hill, *supra* note 54, at 661; Kelch, *supra* note 29, at 543; Sunstein, *supra* note 11, at 1363–64, 1366.

57. Sunstein, *supra* note 11, at 1364, 1366.

58. See *id.*

59. See *id.*

60. Sunstein, *supra* note 11, at 1342.

Agriculture be able to enforce the law.”<sup>61</sup> The claims of private citizen alleging violations of the AWA often go unanswered.<sup>62</sup>

Another restriction of the AWA is the narrow scope of its application. The sections governing animal research only apply to a select number of warm-blooded animals, excluding many others.<sup>63</sup> Animals used for food and clothing production on farms are left unprotected under the AWA, as well as in many states where they are not subject to state anti-cruelty laws.<sup>64</sup> Though important, the AWA by no means offers fail proof protection for America’s animals.

*ii. The Endangered Species Act*

Another federal statute aimed at protecting the rights of animals is the Endangered Species Act of 1973.<sup>65</sup> The statute was created to offer protection against extinction to endangered or threatened species.<sup>66</sup> The Endangered Species Act (ESA) differs from the AWA in enforcement because it allows for a citizen-suit—in other words, it authorizes an individual person to sue for a violation of the Act.<sup>67</sup> This gives people more power to ensure the enforcement of an animal protection law, but it comes with its own obstacles. Even though a citizen may bring suit, acquiring standing before a court still remains a challenge.<sup>68</sup>

*C. What Constitutes Standing*

A major controversy in enforcement of animal protection laws is that it is often difficult to obtain standing in courts under the federal statutes.<sup>69</sup> There is confusion as to when

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61. *Zimmerman v. Wolff*, 622 F. Supp. 2d 240, 243–44 (E.D. Pa. 2008) (holding that the AWA does not provide a private cause of action).

62. *See id.*

63. 7 U.S.C. § 2132(g) (2006); Hankin, *supra* note 7, at 366; Sunstein, *supra* note 11, at 1342. The AWA only applies to certain animals, and excludes birds, rats and mice, horses not for research, and farm animals. *See* 7 U.S.C. § 2132(g).

64. Sunstein, *supra* note 11, at 1342.

65. 16 U.S.C. §§ 1531–1543 (2006).

66. Sunstein, *supra* note 11, at 1339.

67. Hill, *supra* note 54, at 665.

68. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (holding that plaintiffs lacked standing to sue because they did not show a sufficiently imminent injury).

69. *See* Sunstein, *supra* note 11, at 1334.

standing is available and when it is lacking.<sup>70</sup> A person suing under a federal statute must sufficiently meet each standing requirement, and if one is missing, that person may not bring the suit.<sup>71</sup> Animals on the other hand, have generally not been able to acquire standing in their own right.<sup>72</sup> These restrictions place a burden on the enforcement of the statutes, and ultimately, on the rights of animals.<sup>73</sup>

### 1. *Constitutional Requirements of Standing*

For a person to have standing to bring suit in a federal jurisdiction, they must sufficiently satisfy three requirements<sup>74</sup>: (1) the complaining party must have an injury in fact, (2) there must be a causal connection between the conduct and the claimed injury, and (3) the injury must be redressable by the courts.<sup>75</sup> The first requirement is that the party suing must have an injury in fact, necessitating a “concrete and particularized” harm to that individual, and an “actual or imminent” violation of a legally protected interest.<sup>76</sup> The alleged injury may not be “conjectural” or “hypothetical.”<sup>77</sup> The second causal connection requirement means that the injury must be traceable to the alleged misconduct.<sup>78</sup> The third requirement dictates that it must be “likely” that the injury will be redressed by a favorable outcome by the courts.<sup>79</sup> These requirements, however, have presented difficulties when trying to assert standing based on

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70. *Id.*

71. See Kelch, *supra* note 29, at 535; see also *Sierra Club v. Morton*, 405 U.S. 727 (1972). Justice Douglas’ dissent in *Sierra Club* stated that inanimate objects are sometimes parties to litigation, that “[t]he voice of the inanimate object . . . should not be stilled,” that people should be able to speak on their behalf, and that “all of the forms of life . . . [should be able to] stand before the court—the pileated woodpecker as well as the coyote and bear, the lemmings as well as the trout in the streams.” *Id.* at 742, 749, 752 (Douglas, J., dissenting).

72. Hill, *supra* note 54, at 664; see *Tilikum ex rel. People for the Ethical Treatment of Animals, Inc. v. Sea World Parks & Entm’t, Inc.*, 842 F. Supp. 2d 1259 (S.D. Cal. 2012) (finding that the named orca whales in the suit lacked standing to sue because they did not have a legally protected right based on statutory interpretation).

73. See Hill, *supra* note 54, at 665.

74. Kelch, *supra* note 29, at 535.

75. *Id.*

76. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

77. *Id.*

78. *Id.*

79. *Id.* at 561.

an interest in animals.<sup>80</sup>

## 2. *Standing for Persons Suing Under Federal Statutes*

When suing under a federal statute, the complaining party must assert an injury to a legally protected interest in order to bring the suit in court.<sup>81</sup> This interest may be aesthetic, recreational, or ecological.<sup>82</sup> Some statutes, like the ESA, give private citizens a right to sue through a citizen-suit provision.<sup>83</sup> Others, like the AWA, do not have such an avenue for private enforcement and it is up to the government to protect the interest outlined in the statute.<sup>84</sup>

In animal protection suits, courts differ in allowing standing based on the circumstances surrounding the plaintiffs' stated interests in the animals.<sup>85</sup> In one case, a plaintiff had standing under the AWA because he sufficiently fulfilled the three standing requirements.<sup>86</sup> His alleged injury was to his aesthetic interest in observing animals in humane conditions at a zoo he frequented.<sup>87</sup> He was also involved in several animal organizations.<sup>88</sup> The court held that the plaintiff had standing, as "people have a cognizable interest" in viewing animals being humanely treated.<sup>89</sup>

In another case, however, an organization lacked standing for failing to allege the required injury.<sup>90</sup> The organization claimed that the Navy's shooting of goats on their own land negatively affected the organization's cause.<sup>91</sup> The court held that the organization did not have standing

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80. *Id.* at 562–64.

81. *Id.* at 560.

82. Kelch, *supra* note 29, at 535; Sunstein, *supra* note 11, at 1348.

83. 16 U.S.C. § 1540(g)(1) (2006).

84. 7 U.S.C. § 2146 (2006).

85. *Compare* Animal Prot. Inst. of Am. v. Hodel, 860 F.2d 920 (9th Cir. 1988) (holding that an association did have standing because they had a special interest in the animals that are protected by the statute), *with* Sierra Club v. Morton, 405 U.S. 727 (1972) (holding that plaintiffs lacked standing because they did not sufficiently allege that their corporation or its members would be injured by the alleged misconduct).

86. Animal Legal Def. Fund, Inc., v. Glickman, 154 F.3d 426 (D.C. Cir. 1998).

87. *Id.* at 429.

88. *Id.*

89. *Id.* at 433.

90. Animal Lover's Volunteer Ass'n v. Weinberger, 765 F.2d 937 (9th Cir. 1985).

91. *Id.* at 938.

because it did not show that its members would suffer injury.<sup>92</sup> The court stated that “[a] mere association of organizational interest in a problem” was not enough to allege the required injury for standing.<sup>93</sup> “A general contention that because of their dedication to preventing inhumane treatment of animals, . . . members will suffer distress if the goats are shot d[id] not constitute an allegation of individual injury.”<sup>94</sup> Thus, the court did not find that the harm caused by shooting the goats created the injury needed, even though the members had a special interest in the humane treatment of the goats.<sup>95</sup>

In *Lujan v. Defenders of Wildlife*,<sup>96</sup> the United States Supreme Court held that the plaintiffs did not have standing to sue because they did not show a sufficiently imminent injury and did not claim that the injury would be redressable by the Court’s decision.<sup>97</sup> The plaintiffs sued under the ESA, alleging that they would one day want to travel to see the endangered species in the wild, and the federally funded activities in foreign countries would likely increase the animals’ rate of extinction.<sup>98</sup> The Court was not swayed.<sup>99</sup> The injury was not sufficiently applicable to the plaintiffs directly.<sup>100</sup> The Court held that the injury to the plaintiffs was not imminent.<sup>101</sup> The “some day” intentions to travel were inadequate for standing purposes.<sup>102</sup> The Court needed a more specific and concrete plan from the plaintiffs to show the imminence and actual injury required for standing.<sup>103</sup>

The Court also held that the plaintiffs lacked standing due to their failure to show redressability.<sup>104</sup> The injury would not be remedied by the Court’s decision because the agencies funding the alleged misconduct were not parties to the action, therefore, the Court’s ruling would not affect their

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92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. 504 U.S. 555 (1992).

97. *Id.*

98. *Id.* at 562.

99. *Id.*

100. *Id.*

101. *Id.* at 564.

102. *Id.*

103. *Id.*

104. *Id.* at 568.

actions.<sup>105</sup>

Additionally, the Court discredited the plaintiffs' "animal nexus" theory, by which "anyone who has an interest in studying or seeing the endangered animals anywhere on the globe has standing."<sup>106</sup> The Court stated that it was unacceptable that anyone who observes an endangered species anywhere in the world "is appreciably harmed by a single project affecting some portion of that species with which he has no more specific connection."<sup>107</sup> The Court rejected the notion that a "person with an interest in an animal automatically has standing to enjoin federal threats to that species of animal, anywhere in the world."<sup>108</sup> Further, the Court did not see why "such an interest in animals should be different from such an interest in anything else that is the subject of a lawsuit."<sup>109</sup> Thus, the plaintiffs' interest in the animals and their general intention of seeing them in the future was not enough for the Court to confer standing in that case.<sup>110</sup>

However, in another case under the ESA, a plaintiff obtained standing because he demonstrated that the alleged injury was imminent and established redressability.<sup>111</sup> The plaintiff previously worked with the elephants of the Ringling Brothers and Barnum and Bailey Circus, where he developed a "strong, personal attachment to the animals."<sup>112</sup> His alleged injury was that he was prevented from visiting the elephants, now showing signs of mistreatment, because he would suffer "aesthetic and emotional injury" from seeing the elephants in that condition.<sup>113</sup> Because of the plaintiff's personal attachment to the elephants and his desire to visit them, the court held that his aesthetic injury was therefore sufficiently imminent.<sup>114</sup> Thus, in that case, the plaintiff acquired standing because of his close connection to the animals and

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105. *Id.*

106. *Id.* at 566.

107. *Id.*

108. *Id.* at 567.

109. *Id.*

110. *Id.* at 564.

111. *Am. Soc'y for the Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus*, 317 F.3d 334 (D.C. Cir. 2003).

112. *Id.* at 335.

113. *Id.*

114. *Id.* at 338.

his imminent intent to visit them.<sup>115</sup>

### 3. *Standing for Animals to Sue in Their Own Name*

Animals themselves generally do not have standing to sue in their own right.<sup>116</sup> Legally considered to be property, animals do not have a legally protected interest under which to sue.<sup>117</sup> States may vary on the issue of animal owners' rights and bystanders' rights, but this Comment focuses on federal animal protection rights. Because Congress confers standing upon persons, animals lack standing to sue because they are not considered persons under the law (unlike minors or corporations).<sup>118</sup> No statute currently confers standing upon animals on their own behalf.<sup>119</sup> Although some courts have held that animals cannot bring suits as named plaintiffs, in an increasing number of cases, animals are doing just that.<sup>120</sup>

In one such case under the ESA, *Palila v. Hawaii Department of Land and Natural Resources*,<sup>121</sup> an endangered species of bird was a named plaintiff.<sup>122</sup> The court stated that the Palila, "a party to this proceeding" who was represented by attorneys, "has a legal status and wings its way into federal court as a plaintiff in its own right."<sup>123</sup>

Courts' contrasting views regarding precisely what circumstances afford standing and who can invoke it leave the enforcement of animal protection laws unclear.<sup>124</sup> The

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115. *Id.*

116. Hill, *supra* note 54, at 664.

117. *Id.* at 665.

118. Sunstein, *supra* note 11, at 1335, 1359. Inanimate objects being right-holders is seen in current law, and it may not be that far off of an idea for animals to have certain rights—although at first glance the idea of giving animals rights like corporations may seem scary or dangerous. See Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 452–53, 455, 464 (1972). Rights for animals do not need to encompass every right, or even the same rights as humans, because they are different; but they can share some degree of protection and rights. See *id.* at 457. Human animals should work together with non-human animals, compromising for the betterment of both. See *id.* at 481. This would be a step in the right direction in light of the value animals have in our society and in our homes.

119. Sunstein, *supra* note 11, at 1359.

120. *Id.*

121. 852 F.2d 1106 (9th Cir. 1988).

122. *Id.*

123. *Id.* at 1107.

124. For an example where standing for an animal was denied, see *Citizens*

inconsistency and obscurity of the standing issue only make the enforcement and seriousness of animal laws more puzzling.

## II. LEGAL ISSUES CREATED

The status of animals as property affects how they are treated under the law,<sup>125</sup> and how their value and rights are perceived, by limiting their ability to have the protections that are created for them enforced and to have their interests be taken seriously. Designated as property, animals have no legally cognizable right, and thus cannot have standing to sue to enforce the laws designed to protect them.<sup>126</sup> This, in effect, minimizes the ability for enforcement of animal protection laws, leaving more animals unprotected.

Individuals also face obstacles when attempting to sue on behalf of animals and their own interests in animals.<sup>127</sup> Often, they cannot sufficiently prove standing under the statute, and the statute goes unenforced, or enforced with severe inconsistencies and unreliability across courts.<sup>128</sup>

Animal protections are not taken seriously because animals are viewed as property, and as such, their rights will always fall behind human interests.<sup>129</sup> “Thus the game is rigged to render a result unfavorable to animals.”<sup>130</sup> Even a changing view in the value and interests in companion animals is not enough, without further legislative action and changes to current laws, to give animals the status and protections that they, and the people with an interest in them, deserve.

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to *End Animal Suffering & Exploitation, Inc. v. New England Aquarium*, 836 F. Supp. 45 (D. Mass. 1993) (holding that dolphins lacked standing to sue).

125. Kelch, *supra* note 29, at 535.

126. *Id.*

127. *Id.*; *see, e.g.*, *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (holding that mere interest in an animal is not enough to satisfy the standing requirement); *Sierra Club v. Morton*, 405 U.S. 727 (1972) (holding that plaintiffs lacked standing because they did not sufficiently allege injury).

128. Kelch, *supra* note 29, at 535.

129. *Id.*

130. *Id.* at 537. The rights of animals should be expanded legally, but also must be put “to work with empathy, in a way that strives (despite the inevitable limitations of a human justice system in this respect) to incorporate the animals’ own interests and own point of view.” Sykes, *supra* note 29, at 273.

### III. EFFECTS OF ANIMALS' PROPERTY STATUS ON STANDING REQUIREMENTS

The current state of animal law is riddled with inconsistencies, ineffectiveness, and confusion. The status of animals as property leads to many problems concerning the seriousness and understanding of their interests, enforcement of protection laws, and standing in court. These dilemmas leave animals at a disadvantage. The current laws regarding the status of animals and their protection are insufficient due to the inconsistencies caused by a lack of understanding of where animal law stands.

#### *A. Problems Resulting from Keeping Animals' Status as Property*

The status of animals as property is based on long-held tradition. The recent conflict and shift in the laws and perceptions of animals is derived from the increased awareness of animals' rights and people's changing view of animals by placing greater value on their companion animals.<sup>131</sup> Animals have grown in significance in the daily lives of people who have them as pets.<sup>132</sup> This changes the views and conceptions of animals. Because pet owners place more value on their companion animals, they view animals as deserving of more value, and ultimately more rights and protections.<sup>133</sup>

Inanimate property and animals vary in significant ways. However, they are labeled the same under the law. This creates problems when trying to apply a law to animals that is intended for inanimate property. Animals are different than other property—they have the capacity to suffer<sup>134</sup> and to give love. People form attachments with animals that they cannot have with other inanimate property. This automatically sets them apart.

The conflict arises when we are told that under the law, animals and other inanimate property should be treated the same. An animal's capacity to suffer distinguishes it from other property, which justifies giving animals protections and

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131. Hankin, *supra* note 7, at 316.

132. *Id.*

133. *See id.* at 316–19.

134. Sunstein, *supra* note 11, at 1335, 1363–66.

other rights not afforded to property.<sup>135</sup> These difficult concepts within animal law cause doubt and inactivity, not only for citizens attempting to sue on behalf of animals, but also for the courts.

The protections that would actually be afforded to animals through properly enforced laws are insufficient and not taken seriously in practice. This is because the property status of animals does not accurately reflect how many people feel about animals.<sup>136</sup> Laws with valid intentions go unenforced, thus creating unsettled confusion and inhibiting clarity in animal law.

One reason for the lack of seriousness is the failure to have a cohesive method throughout the states of applying value to injured or killed pets and of the coverage of anti-cruelty laws, which in effect prohibits the legal world from seeing the laws and animals' rights as important.<sup>137</sup> Because there is no connection between the states, the ability to have a comprehensive application of equal and consistent law is shattered.

At the federal level, confusion arises because the status of property is applied differently to different animals.<sup>138</sup> For companion animals, laws vary on what damages are recoverable for their injury or death,<sup>139</sup> however, further conflict surfaces when comparing them to farm or experiment animals.<sup>140</sup> The same laws do not apply to animals used for food, consumer production, or experiments.<sup>141</sup> This categorizes animals differently without an acceptable reason and widens the gap in understanding how animals should be treated under the law.

It is difficult to justify and comprehend that while some animals are protected from cruelty and afforded certain rights, other animals, because of their use, generally have no protection against abuse and death.<sup>142</sup> These animals, used on farms or for experiments, are simply a means to an end for a human interest, which outweighs any other interest

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135. *Id.* at 1363–65.

136. Hankin, *supra* note 7, at 319.

137. *See id.* at 368–70.

138. Sunstein, *supra* note 11, at 1339–42.

139. Kelch, *supra* note 29, at 537–39.

140. Sunstein, *supra* note 11, at 1339.

141. *Id.*

142. *See id.* at 1334–39.

because as property, these animals have virtually no rights.<sup>143</sup> This view has kept animals in an unstable world of unjustified categorizations. Continuing to allow animals to be exploited under inhumane conditions, solely for economic efficiency, perpetuates the confusion between how different animals are viewed and treated.<sup>144</sup> This uncertainty is holding back needed advancements in animal law.

Because human preference will always outweigh any animal interest, it is hard to move away from the concept of animals as property.<sup>145</sup> The interests of animals do not have much weight when there is a human interest at stake, and animals will continue to serve human interests, as they always have.<sup>146</sup> If the trend develops where animal interests are put before our own, those interests will be taken more seriously, and we will be able to more clearly see animals for what they are—something more than mere property.<sup>147</sup>

Courts have not been able to sufficiently articulate a reason why an interest in animals is different than an interest in anything else.<sup>148</sup> This makes it even more challenging for a plaintiff to explain why his or her interest should matter. Thus, many laws are ineffective and do not serve their intended purpose.<sup>149</sup> Not being able to effectively combat animal mistreatment only dampens the current status of animals, preventing animal rights from being taken seriously and advancing.<sup>150</sup>

### *B. The Obstacle of Standing in Enforcing Animal Protection Laws*

Because animals are not granted standing in their own right in any statute, they must rely on a designated entity or a private citizen to speak on their behalf.<sup>151</sup> If the entity chooses not to enforce the statute, a prosecutor does not prosecute a case, or a citizen cannot show sufficient injury to gain standing, then the animal is left unprotected. It would

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143. *Id.* at 1339.

144. *See Kelch, supra* note 29, at 531–32.

145. SINGER, *supra* note 13, at 212.

146. *See id.*

147. *See Kelch, supra* note 29, at 533.

148. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 567 (1992).

149. *See Kelch, supra* note 29, at 532.

150. *See Bryant, supra* note 49, at 72.

151. Hill, *supra* note 54, at 664–65.

seem that because an animal may not sue for itself, that it would be simple for a person to sue on the animal's behalf.<sup>152</sup> However, this is not the case.<sup>153</sup>

Currently, mere interest in an animal is not enough to satisfy the standing requirement.<sup>154</sup> There must be something more.<sup>155</sup> This is where the conflict lies—in deciding under what circumstances an interest in an animal rises to the level needed to gain standing in an animal law case. This has proved to produce inconsistencies and confusion among the courts.

This conflict can be seen in the different opinions in *Lujan v. Defenders of Wildlife*.<sup>156</sup> While the majority opinion rejected the animal nexus approach, instead focusing on the imminence of the injury to the plaintiffs, the concurring and dissenting opinions struggled more with the interest in the animal and when it confers standing.<sup>157</sup> The majority opinion, in rejecting the theory which would allow plaintiffs with an interest in studying or seeing endangered animals to gain standing, was not able to distinguish between what a genuine interest was and what was not.<sup>158</sup>

Justice Stevens' concurring opinion offered a response to assist the understanding of the interest at issue.<sup>159</sup> The distinction was offered that only a genuine interest should be sufficient.<sup>160</sup> The majority however was unwilling to accept this distinction.<sup>161</sup> The concurring opinion analyzed the imminence requirement to standing differently from the majority opinion.<sup>162</sup> While the majority focused on the timing of the injury to the plaintiffs to assess imminence,<sup>163</sup> Justice Stevens emphasized the timing that the actual destruction of the endangered animals would occur.<sup>164</sup>

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152. *See id.* at 666.

153. *See, e.g., Lujan*, 504 U.S. 555.

154. *Id.*

155. *Id.* at 560, 563.

156. *See generally Lujan*, 504 U.S. 555.

157. *See id.*

158. *Id.* at 566–67.

159. *Id.* at 583–84 (Stevens, J., concurring).

160. *Id.* at 583.

161. *Id.* at 567 (majority opinion).

162. *Id.*

163. *Id.*

164. *Id.* at 583 (Stevens, J., concurring).

The dissenting opinion discussed how the distance of the injury should not mitigate the harm done.<sup>165</sup> Less emphasis was placed on the proximity of the harm in geographical terms.<sup>166</sup> The dissenting opinion also did not find it necessary to prove specifically concrete plans in order to gain standing.<sup>167</sup> Requiring such a description might eliminate standing in a variety of scenarios. The standard may be perched too high, especially for a plaintiff attempting to gain status on behalf of an animal by showing an injury to the his or her interest in that animal.

The variation in these opinions highlights the confusion, even among the Court, in determining what circumstances authorize standing. Because members of the Court cannot agree on what situations grant standing, it is challenging and complicated for a plaintiff to even attempt to understand when standing is warranted in an animal protection case.

The Ringling Brother's elephants case<sup>168</sup> referenced above could illustrate a progression in allowing standing for plaintiffs by focusing more on the personal connection and attachment to the animal, and the availability and opportunity to see or visit them. However, this could also cause even more confusion in the parameters of what constitutes close enough in distance and what will be regarded as a sufficiently close personal relationship.

This seems to be an underexplored topic, most likely because of its complexity and its tendency for arbitrary line drawing. It has the potential to be disputed among opposing parties in animal law cases, with judges unsure of where to settle because it is a relatively new concept for courts to navigate. Striving for ease in acquiring standing—currently, a seemingly difficult and intricate process—is necessary to ensure the proper and complete enforcement of animal protection laws.

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165. *Id.* at 594 (Blackmun, J., dissenting).

166. *Id.* at 595.

167. *Id.* at 592.

168. *Am. Soc'y for the Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus*, 317 F.3d 334 (D.C. Cir. 2003) (holding that the plaintiff had standing because of the aesthetic and emotional injury due to his close relationship with the animals).

*C. Inadequate Progression of Animal Protection Under the Law*

Given the inadequate enforcement and difficulties associated with obtaining standing in animal protection cases, the progression of animal rights is severely hindered.<sup>169</sup> The historical, as well as current, notion of animals as property has led to the perception that animals do not have many rights, that those rights are not to be taken seriously, and that enforcement of any of those rights carries little priority.<sup>170</sup> With such little weight afforded to an animal's rights, enforcement by people on the behalf of an animal should be more easily accessible and uniformly enforced. That, unfortunately, is not how these cases transpire.<sup>171</sup>

The insufficient enforcement of the laws further leads to the misconception that the rights of animals, if they exist, are unimportant. The rights and preferences of humans will always surpass those of an animal.<sup>172</sup> Although there have been changes and some advancements in animal law, stronger enforcement of the laws and greater access to standing is necessary.<sup>173</sup> Currently, the slow and shifting progression of protections for animals is not enough to ensure that the rights animals deserve will be upheld and adequately defended. A new concept of animals is necessary, one that moves beyond mere property. A status that more accurately reflects the place animals hold in our changing world is overdue.

## IV. PROPOSAL

In order for animal rights to be adequately protected, they must fully be understood, by both the courts and the people. As many different circumstances involve animals and their use, the law is not black and white on what rights are afforded and when. Different circumstances may call for different protections. Although there is a slippery slope argument when giving animals rights, allowing protections does not need to be an all or nothing scenario in every case—

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169. See Sunstein, *supra* note 11, at 1333–38.

170. See *id.*

171. See *Lujan*, 504 U.S. 555.

172. See SINGER, *supra* note 13, at 212.

173. See Hankin, *supra* note 7, at 316–19.

some rights may be afforded to some animals in particular situations depending on the circumstances involved for certain reasons (not arbitrary and confusing line-drawing). Several changes in the law should occur so that this understanding becomes more apparent and cohesive. Changes in the status of animals, as well as changes regarding standing, will help to clarify animal rights and will allow people to begin to take those rights seriously, while providing well-deserved protection to animals.

*A. Changes in Property Status*

A movement away from the traditionally accepted view of animals as property is the first essential modification.<sup>174</sup> A new status with legal rights above those of property would help to align our currently held views of animals with the rights animals should enjoy.<sup>175</sup> If an animal's status was considered something more than property, the animal would be given more rights and more significance would be placed on its interests. This would help promote the seriousness and understandability of animal rights and the need for protections.

Animals are different than property in many respects, and that should be reflected in the law, as it is already being reflected in our lives.<sup>176</sup> Animals are capable of returning love and of forming strong bonds with humans.<sup>177</sup> Non-animal property cannot do these things. Animals also have the capacity to suffer, while inanimate objects do not.<sup>178</sup> This capacity separates animals from other property, and calls for laws protecting animals from undue suffering.<sup>179</sup> A piece of property can be damaged or destroyed, while an animal can be injured or killed. A piece of property can be replaced, whereas an animal is irreplaceable as each one is truly different. These concepts are different and should be reflected in the law through a status for animals that is above property and affords animals more rights.

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174. See Kelch, *supra* note 29, at 531–37.

175. See Hankin, *supra* note 7, at 316–19.

176. *Id.*

177. *Id.* at 346, 376, 379–80, 387.

178. Sunstein, *supra* note 11, at 1335, 1363–66.

179. *Id.* at 1363–65.

Although this proposition will help bring awareness and seriousness to animal rights, it may be hard to implement. Turning away from the historically accepted principle of animals as property would be a confusing and difficult task. It would be hard to determine exactly what the status of an animal is and in what ways exactly it differs from mere property. However, this is a necessary change for the progression of animal rights. Animal rights will not be taken seriously or grow if animals are incorrectly labeled as property by the law.

Another necessary change to help the advancement of animal rights is a unifying set of rules regarding animal care and cruelty to be used throughout all of the states.<sup>180</sup> A federal law that offers standing more easily should be enacted to unite the conflicting state laws that tend to diminish the impact and importance of animal rights by being so diverse and inconsistent among the states.<sup>181</sup>

Because the status of property fails to accurately convey the value animals have or their rights that deserve to be recognized, more needs to be done in making people, the legislature, and courts aware of these rights. This way, the rights will be better understood and taken more seriously, and therefore better applied, and the animals will be better protected.

A step in the right direction is allowing an animal to be a named party in a case—as in *Palila*,<sup>182</sup> discussed above, where a bird was a named plaintiff.<sup>183</sup> This gives the animal, and therefore its cause, greater significance. If more animals were named as plaintiffs in animal protection suits, and it became more common to recognize animals in lawsuits, then animal rights would deservedly gain greater ground. The prominence and recognition in the legal community would give animal law the push it needs to continue to progress and serve animals.

Maybe if more people saw animals named as parties in lawsuits, they would not think of animals as merely property anymore because property cannot sue. There is no clear

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180. See Hankin, *supra* note 7, at 368–70.

181. See *id.*

182. *Palila v. Haw. Dep't of Land & Natural Res.*, 852 F.2d 1106 (9th Cir. 1988).

183. See *id.*

negative implication of allowing an animal to be a named party in a suit. The interests asserted could be the interest of the animal itself or what would be best for people's interests in that animal. Naming an animal as a party only clarifies in the minds of the people what interests are at stake—a necessary component if animal law should continue to progress forward.

*B. A Shift in Standing*

The issue of insufficient avenues to acquire standing for animals and those with interests in animals creates problems with the enforcement of animal protection laws, and thus lessens their significance in the legal world.<sup>184</sup> There are many inconsistencies regarding standing among the courts that need clarification.

Greater protection for animals is needed because they cannot protect themselves. This will come from greater enforcement of the laws and by allowing standing in more circumstances. If these cases are given a greater priority, animal protection will have greater significance. More people will pay attention to the rights of animals and take them more seriously. Increasing enforcement and awareness will push animal law to co-exist with other valid laws and provide animals with the protections they need.

People's interests in animals must also be better protected. If a person has a genuine interest in an animal, that interest should be protected and enforceable in the courts. If a law violator can choose to break the law by harming an animal, a plaintiff should have the right to enforce the protection of that animal's rights. It is not logical to allow someone's interest to harm the animal take precedence over another person's interest to preserve the welfare of that same animal, which is protected by law, especially when that animal cannot protect its own rights.<sup>185</sup> Even interests in the protection of animals used in farming and experiments should be recognized. These animals should not go without protection when there are people who care about their rights and the animals are without the ability to obtain any sort of significant rights in such an

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184. See Sunstein, *supra* note 11, at 1334–35.

185. See *id.*

environment.<sup>186</sup>

A re-evaluation of the distinction between animals used on farms or in laboratories and all other animals needs to occur. It does not make sense to afford some animals protection and not others, based on the type of animal and what purpose they are intended to serve. This furthers the confusion surrounding what rights animals have, which in turn, slows down the progression of animal rights.

Finally, Congress must expressly confer standing upon animals under certain statutes.<sup>187</sup> Private causes of action should also be given to those statutes without a citizen-suit provision so that an animal's rights can be brought to court directly through a private citizen.<sup>188</sup> This will allow for another avenue of enforcement, thereby ensuring more animals' rights are preserved.

The legislature can combat the obstacle of standing by allowing animals to sue in their own name on behalf of their violated rights. The legislature must give a legally cognizable right to animals in order for them to have standing.<sup>189</sup> Although Congress generally gives standing to persons, nothing limits its power to give it to something else, such as animals.<sup>190</sup> Congress can, and should, allow animals to pursue standing in cases where their rights are violated.<sup>191</sup> Congress already authorizes standing for minors and corporations, and should create a right to have standing for animals too, who also have protected rights.<sup>192</sup> This will allow for animals and those that care about them to have a more easily accessible avenue through which to enforce the animals' designated rights.

#### CONCLUSION

The property status of animals severely hinders their rights through creating confusion, inconsistencies, inadequate

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186. *See id.* at 1339. The current federal and state laws are not sufficient to provide this protection to animals—they simply fall short of the goals that they were set out to accomplish. *See supra* Part II.

187. *See* Sunstein, *supra* note 11, at 1336.

188. *See id.*

189. *See id.* at 1362.

190. *Id.* at 1360–61.

191. *Id.*

192. *Id.*

enforcement, and obstacles in gaining standing to sue.<sup>193</sup> Because animals are considered property and standing in animal protection cases is so difficult to obtain, animal rights are going unenforced and animals are needlessly suffering. Awareness needs to be spread to and through the people, the legislature, and the courts in order to highlight the importance of and the obstacles within animal laws.<sup>194</sup> Ultimately, designating animals as something more than property, and allowing animals and people with interests in animals greater access to standing, will advance the progression of animal rights so that they more accurately depict the significance animals hold in our current world and give them the protections they deserve.

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193. *Id.* at 1334–39.

194. Bryant, *supra* note 49, at 119.