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ANIMAL LAW FUNDAMENTALS

Standing to Protect and Advocate for Animals

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Introduction

As the Supreme Court long ago acknowledged, standing "is one of 'the most amorphous [concepts] in the entire domain of public law.'" *Flast v. Cohen*, 392 U.S. 83, 99 (1968) (internal citation omitted). Nevertheless, standing law is critical to the field of animal law. The question is who has standing to bring cases under federal and state law to assert the rights and protection of animals? This is an essential concept to understand because it determines who gets through the courthouse door to vindicate the laws enacted to protect animals from abuse, neglect, exploitation, and other forms of mistreatment. There can be an extremely egregious violation of law at stake, a demonstrably horrendous act of abuse or neglect, but no matter how strong the facts or law may be, without standing, the merits of that case will never be heard—i.e., the court will avoid reaching the merits by finding that the plaintiff before it lacks the necessary "standing" to invoke the court's jurisdiction to decide the case.

For many years, individuals and organizations have attempted to establish the principle that animals have standing in their own right to bring such cases, employing human beings only as their representatives to assert those rights or the laws that otherwise protect their interests. Unfortunately, to date, these efforts have not met with much success.[1] Therefore, for now, those

[1] *See, e.g.*, *Tilikum ex rel. PETA v. Sea World Parks & Entm't, Inc.*, 842 F. Supp. 2d 1259, 1263 (S.D. Cal. 2012) (dismissing case brought under Thirteenth Amendment to the Constitution by orca seeking to be released from captivity because "[t]he only reasonable interpretation of the Thirteenth Amendment's plain language is that it applies to persons, and not to non-persons such as orcas."); *Naruto v. Slater*, 888 F.3d 418, 426 (9th Cir. 2018) (affirming that Naruto, a crested macaque monkey, lacked standing to bring a copyright infringement claim against a British photographer, over a selfie taken by Naruto on the photographer's camera because the Copyright Act of 1976 "does not expressly authorize animals to file copyright infringement suits under the statute."); *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1179 (9th Cir. 2004) (ruling that the world's cetaceans lacked standing to sue over the U.S. Navy's proposed deployment of low-frequency active sonar because "if Congress and the President intended to take the extraordinary step of authorizing animals as well as people and legal entities to sue, they could, and should, have said so plainly" (internal citations omitted)); *Nonhuman Rights Project, Inc. ex rel. Happy v. Breheny*, 189 A.D.3d 583 (N.Y. App. Div. 2020), *leave to appeal granted sub nom. In re Nonhuman Rights Project, Inc. v. Breheny*, 36 N.Y.3d 912 (N.Y. 2021) (rejecting application of writ of habeas corpus to Happy, a female Asian elephant held in isolation at the Bronx Zoo, on the grounds that "the writ of habeas corpus is limited to human beings"); *Nonhuman Rights Project*, https://www.nonhumanrights.org/litigation/ (describing other unsuccessful habeas corpus cases brought in the name of particular animals); *Justice v. Vercher*, No. 18CV17601 (Or. Judicial Dep't, Wash. Cnty. Circuit Court, Twentieth Judicial Dist., Sept. 17, 2018), *appeal docketed*, No. A169933 (Or. Ct. App. Jan. 22, 2019) (dismissing complaint filed on behalf of Justice, an American quarter horse found to be severely neglected, on the theory that "a

who work in this field must rely on existing standing jurisprudence to establish that human plaintiffs have standing to bring cases to protect and advocate for the interests of non-human animals. This piece will discuss those efforts and their evolution.[2]

Standing Under Federal Law

There are many federal statutes which, if enforced, can be used to protect animals from abuse, neglect, exploitation, and other forms of mistreatment. These include, for example, the Animal Welfare Act, the Endangered Species Act, the National Environmental Policy Act, the Humane Slaughter Act, Marine Mammal Protection Act, Wild Free-Roaming Horses and Burros Act, and National Park Service Act. However, in order to enforce these statutes, either through use of a citizen suit provision (e.g., in the case of the ESA, *see* 16 U.S.C. § 1540(g)), or, where the statute does not contain a private right of action (e.g., the AWA and NEPA), via an action brought under the federal Administrative Procedure Act, 5 U.S.C. § 706(2), one must be able to invoke the jurisdiction of a federal court.

Article III of the Constitution—the Article that sets out the authority and power of the judicial branch of our government—provides that this power extends to "cases" and "controversies." This is the genesis of federal standing law. If a matter is neither a "case" nor a "controversy" within the meaning of this provision, the federal court lacks jurisdiction under the

non-human animal . . . lacks the legal status or qualifications necessary for the assertion of legal rights and duties in a court of law"); *but see Cmty. of Hippopotamuses Living in the Magdalena River v. Ministerio de Ambiente y Desarrollo Sostenible*, No. 1:21-mc-00023-TSB-KLL, 2021 WL 5025353 (S.D. Ohio. Oct. 15, 2021) (granting *ex parte* order allowing two experts in nonsurgical sterilization of wildlife to provide testimony supporting a Colombian lawsuit to stop a cull of hippopotamuses, pursuant to 28 U.S.C. § 1782, under the theory that, because the plaintiffs in the Colombian suit are the hippos themselves, the hippos qualify as "interested persons" under U.S. law).

[2] Two extremely interesting and useful discussions of the need for broader standing principles for the protection of animals and the environment in general can be found here: Stone, Christopher D. *Should Trees Have Standing? Law, Morality, and the Environment*. Oxford: Oxford University Press, 2010 (originally published in 1972); Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. Rev. 1333 (2000).

Constitution to hear and decide the merits of the claim. The basic idea behind standing is that the plaintiff who seeks to invoke the jurisdiction of the federal court must have a "personal stake in the outcome of the controversy" to warrant the court's intervention, *Baker v. Carr,* 369 U.S. 186, 204 (1962), to ensure that "the dispute sought to be adjudicated will be presented in an adversary context and in form historically viewed as capable of judicial resolution." *Flast v. Cohen*, 392 U.S. 83, 101 (1968). In other words, the federal courts are not to decide issues in the abstract, or provide advisory opinions on policy issues. To do so would not only exceed the court's constitutional authority, but arguably usurp the authority of the Executive and Legislative branches of government. Hence, standing doctrine is founded on Separation of Powers principles embedded in our Constitution.

Although, on their face, those critical words— "case" or "controversy"—seem broad in scope, unfortunately, the Supreme Court has construed those terms quite narrowly in extending jurisdiction to federal courts to hear cases other than those that were traditionally recognized by common law prior to establishment of our Constitution, for example, cases involving an individual's claim for monetary damages or other forms of economic damage, or to enjoin or remedy reputational or competitive harm. The term "case or controversy" has also been extended to protect and remedy a violation of an individual's Constitutional right, such as the infringement of the right to free speech. However, none of these traditional concepts of standing extend to the right to protect an animal from abuse, neglect, or other mistreatment. And so, the question becomes how one invokes the jurisdiction of a federal court to hear and decide such a case.

Before discussing the applicable law, it is important to stress that the plaintiff bears the burden of *alleging* at the Complaint stage, and then *proving* at the merits phase, the requisite Article III standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Moreover, because this is a prerequisite to the court exercising jurisdiction over the case, plaintiffs must do so *even if their opponents fail to raise standing in the litigation* –i.e., reviewing courts can, and often

do, raise standing on their own, *sua sponte,* at either the trial level or even in successive stages of appeal. Therefore, for example, if the plaintiffs have failed to prove standing at the trial level, but the appellate court raises this issue on appeal, the plaintiffs may lose the case without the court reaching the merits of the issue before it, and without granting plaintiffs an opportunity to supplement the record to demonstrate the requisite standing. *See, e.g.*, *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 894-898 (1990) (rejecting plaintiffs' attempts to supplement the record at an appellate level with additional information to establish standing). Therefore, understanding and implementing the rules that apply to standing is critical to being an effective advocate for animals.

Standing Based on Aesthetic Harm

DATA PROCESSING AND THE REQUIREMENT FOR AN "INJURY IN FACT"

Prior to 1970, the Supreme Court held that the only way to invoke the jurisdiction of a federal court was by alleging that the plaintiff had a *right recognized by law* that had been violated by the defendant. However, in *Association of Data Processing Services Organization v. Camp*, 397 U.S. 150 (1970), the Court held that, while this narrow group of controversies certainly qualifies to establish standing, this is not the only way to do so. That case involved a challenge to a rule issued by the Comptroller of the Currency allowing banks to offer data processing services to other banks and bank customers for the first time. Not surprisingly, existing data processing companies—whose businesses would be harmed competitively by the new rule—sued the Comptroller, arguing that the rule was arbitrary and capricious and an abuse of discretion within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2). However, the district court dismissed the case on the grounds that the data processing companies had no "legal right" or "legal interest" to assert—i.e., they had no *right* to be the only companies allowed to provide such services, and hence, the Comptroller's ruling did not violate

that right, and, accordingly, the companies lacked standing to invoke the jurisdiction of the federal court to decide their challenge. The Court of Appeals affirmed that decision, and the Supreme Court granted certiorari to decide the novel standing issue presented.

Although Justice William O. Douglas began the opinion with the observation that "[g]eneralizations about standing to sue are largely worthless as such," 397 U.S. at 151—a statement that continues to ring true today—the Court issued a decision that revolutionized standing law, and became the focal point for the standing theories that are used today to vindicate the rights and interests of animals. The Court held that the "legal interest" test was no longer the only basis upon which one could demonstrate standing, and instead explained that the operative test for standing was whether the plaintiff has suffered an "*injury in fact, economic or otherwise*," regardless of whether they had a legal *right* that had been violated. 397 U.S. at 152. In other words, the initial question for standing is whether the alleged violation of the law has arguably caused the plaintiff *any kind of actual injury*. In *Data Processing,* the Court had no trouble answering this question in the affirmative, as the petitioner data processing companies had alleged not only that the national banks that were now allowed to offer data processing services would reduce their profits in this field, but also that at least one such bank—which they had named as an additional respondent in the case—was already performing such services for former customers of the petitioner companies. Because that case was brought under the Administrative Procedure Act, which grants a right of action to those "aggrieved by agency action," the Court noted that such interests, at times "may reflect '*aesthetic, conservational, and recreational*,' as well as economic values." 397 U.S. at 154 (emphasis added). Thus, *Data Processing* significantly broadened the *kinds* of injuries that would suffice for standing under Article III.

SIERRA CLUB V. MORTON AND JUSTICE DOUGLAS' POWERFUL DISSENT

The next important case for the evolution of animal law standing was decided two years later in *Sierra Club v. Morton*, 405 U.S. 727 (1972). In that case, an environmental group challenged the Department of Interior's decision to allow the Disney corporation to construct a massive ski resort and attendant highway in Mineral King Valley, a pristine area directly adjacent to Sequoia National Park in the Sierra Nevada Mountains of California. The majority opinion began the standing analysis by noting that, after *Data Processing,* the relevant test was no longer whether the plaintiff had suffered a "legal wrong," but whether the plaintiff was suffering some kind of injury caused by the challenged action. *Id.* at 732–33. The Court then acknowledged that in *Data Processing* the alleged injury was actually economic in general, and observed that such "palpable economic injuries have long been recognized as sufficient to lay the basis for standing," but then observed that existing standing law had yet to address "the question, which has arisen with increasing frequency in federal courts in recent years, as to what might be alleged by persons who claim injury of a *noneconomic nature* to interests that are widely shared." *Id.* at 733–34 (emphasis added).

The Court answered that question by acknowledging, for the first time, that the kinds of injuries alleged by Sierra Club—harm to the scenery, natural and historic objects *and wildlife* of the area, and impairment of the enjoyment of the land for future generations—were cognizable injuries for purposes of standing. As the Court explained, *"[a]esthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society*, and the fact that particular environmental interests are shared by the many rather than the few does not make the less deserving of legal protection through the judicial process." *Id.* at 734 (emphasis added).

However, the Court stressed that "the 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be *himself among the injured*."

405 U.S. at 734–35 (emphasis added). Thus, the standing problem identified by the majority was that "[t]he impacts of the proposed changes to the environment of Mineral King will not fall indiscriminately upon every citizen." *Id.* at 735. Rather, the "alleged injury will be felt directly *only by those who use Mineral King and the Sequoia National Park and for whom the aesthetic and recreational values of the area will be lessened by the highway and ski resort.*" *Id.* (emphasis added). Unfortunately, the Sierra Club had failed to allege in its Complaint that any of its members "would be affected in any of their activities or pastimes by the Disney development." *Id.* Thus, the Court held, a "mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself" to demonstrate the kind of personal, concrete injury required for standing. *Id.* at 739. The Court acknowledged that the Sierra Club "is a large and long-established organization, with a historic commitment to the cause of protecting our Nation's natural heritage from man's depredations." *Id.* However, it reasoned that if this "special interest" in an issue were all that was necessary for standing, "there would appear to be no objective basis upon which to disallow a suit by any other bona fide 'special interest' organization however small or short-lived," and that if any such organization had standing to invoke the jurisdiction of a federal court, "it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so." *Id.* at 739–40. Accordingly, the Court held that standing may only be asserted by those "who have a direct stake in the outcome" of the case, *id.*, and, because the Sierra Club had failed to allege that any of its members had such a stake, the Court ruled that it lacked jurisdiction to decide the merits of the challenge.

In an oft-celebrated dissent, Justice Douglas, observed that "[t]he critical question of 'standing' would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts *in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and*

bulldozers and where injury is the subject of public outrage." *Id.* at 741 (emphasis added). Thus, Justice Douglas succinctly explained—in reasoning that aptly applies in the animal law context as well— "[c]ontemporary public concern for protecting nature's ecological equilibrium should lead to the *conferral of standing upon environmental objects to sue for their own preservation*." *Id.* (emphasis added). To support this reasoning, he observed that:

> Inanimate objects are sometimes parties to litigation. A ship has a legal Personality, a fiction found useful for maritime purposes. The corporation sole—a creature of ecclesiastical law—is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a 'person' for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes.

Id. at 742–43. So, too, he reasoned, the objects of proposed environmental destruction should have the right to be parties to litigation challenging the actions that will lead to that destruction:

> The river, for example, is the living symbol of all the life it sustains or nourishes—fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sounds, or its life.

Id. at 743. Thus, he explained, "[t]he river as plaintiff speaks for the ecological unit of life that is part of it," and therefore, "[t]hose people who have a meaningful relation to that body of water—whether it be a fisherman, a canoeist, a zoologist, or a logger—must be able to speak for the values which the river represents and which are threatened with destruction." *Id.*

However, because the majority of the Court disagreed with this extremely forward-thinking rationale, the holding of *Sierra Club*–i.e., that plaintiffs seeking to challenge environmental destruction must demonstrate that they actually use the area at issue—remained the rule for standing in environmental cases for the succeeding twenty years. For example, in *Japan Whaling Association v. American Cetacean Society*, 478 U.S. 221 (1986), the Supreme Court noted that those who enjoy whale watching had demonstrated a sufficient "injury in fact" for purposes of standing to challenge the federal government's failure to enforce international

whaling quotas "in that the whale watching and studying of their members will be adversely affected by continued whale harvesting." 478 U.S. at 230, n.4.

LUJAN V. DEFENDERS OF WILDLIFE AND HELPFUL OBSERVATIONS FOR ANIMAL LAW STANDING

Then, in 1992, in a decision authored by Justice Antonin Scalia, the Supreme Court, issued *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). That case involved a challenge by an environmental group to a decision by the Fish and Wildlife Service (FWS) to change its regulations to make clear that the obligation federal agencies have under Section 7 of the ESA to consult with the FWS before undertaking any federal activity, to "insure" that such activity is "not likely to jeopardize the continued existence" of any species listed as "endangered" or "threatened" under the ESA, 16 U.S.C. § 1536(a)(2), no longer applied to actions taken or funded by such agencies in other countries. Relying on the reasoning of *Sierra Club* and *Japan Whaling,* Defenders of Wildlife asserted that it had standing because its members had traveled to countries in the past to view wildlife and that such wildlife was now threatened by several federally funded or approved activities that would impair their ability to observe and study this wildlife in the future. However, when the organization's members were deposed by the FWS, the members admitted that, while they had been to these countries in the past and intended to return there in the future, they had no *present* immediate plans to do so. On that basis, in an opinion that completely redefined what is required to demonstrate sufficient standing under Article III, the Court held that Defenders of Wildlife lacked standing.

The Court began by emphasizing the three main requirements of standing—what the Court called the "irreducible constitutional minimum" that is required to invoke federal jurisdiction. 504 U.S. at 560. First, the plaintiff must have suffered an "injury in fact" that is

"concrete and particularized." *Id.*[3] Moreover, that injury must be "actual or imminent," not "conjectural or hypothetical." *Id.* (citations omitted). The Court further explained that "a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws . . . does not state an Article III case or controversy." 504 U.S. at 573–74.

Second, the plaintiff must demonstrate *causation*—i.e., that its injury is "fairly traceable" to the challenged action of the defendant, and not the result of the "independent action of some third party not before the court." *Id.* And third, the plaintiff must demonstrate redressability—i.e., that it is "likely," as opposed to merely "speculative," that the injury will be redressed to some extent by a favorable decision by the court. 504 U.S. at 561; *see also Meese v. Keene,* 481 U.S. 465, 476-77 (1987) (plaintiffs need not show that their injuries will be completely redressed).

The Court then explained that each of these requirements must be supported in the same way as any other matter on which the plaintiff bears the burden of proof—i.e., with the manner and degree of evidence required at the successive stages of the litigation. Thus, while general allegations of harm, causation, and redressability, may suffice in the Complaint to defeat a motion to dismiss, at the motion for summary stage—or at trial if there are disputed material facts—the plaintiff must actually *prove* each of these elements. 504 U.S. at 561. In reversing the Court of Appeals on standing in a motion for summary judgment context, the Supreme Court held that Defenders of Wildlife had failed to make the necessary showing for both injury in fact and redressability.

[3] Although the Court in *Lujan* described the "injury in fact" as "an invasion of a legally protected interest," 504 U.S. at 560, this was not intended to revert to the rule of standing that applied prior to *Data Processing*, when all plaintiffs had to demonstrate a legal right that had been violated. Indeed, the Court relied on the standing discussion in *Warth v. Seldin,* 422 U.S. 490 (1975), which in turn cites *Data Processing*, 422 U.S. at 499. *See Lujan*, 504 U.S. at 560. Rather, the language used by the Court (and often quoted by other courts in subsequent standing decisions) provided an *example* of the kind of "injury in fact" that is cognizable.

As to the injury in fact inquiry, the Court held that because Defenders' members had no *immediate* plans to return to the countries where they had viewed wildlife in the past, they had failed to show a *present* or *imminent* injury, as required for standing. As the Court explained:

> To survive the [government's] summary judgment motion, respondents had to submit affidavits or other evidence showing, through specific facts, not only that listed species were in fact being threatened by funded activities abroad, but also that one or more of respondent's members *would thereby be 'directly' affected, apart from their 'special interest' in th[e] subject*.

504 U.S. at 563 (emphasis added). In finding that the members had failed to prove that they were currently or imminently being injured by the challenged action, the Court stressed that "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." 504 U.S. at 564. And, the Court further reasoned, the expression of a mere "intent" to return to these places, "where, [the individuals] will presumably, this time, be deprived of the opportunity to observe animals of the endangered species—is simply not enough." Thus, the Court ruled, "such 'some day' intentions—without any description of concrete plans or indeed even any specification of *when* the some day will be—do not support a finding of the 'actual or imminent' injury that our cases require." 504 U.S. at 564 (emphasis in original) (citations omitted). This ruling, which at the time sent shock waves through the public interest legal community, is often referred to as requiring a plaintiff to have actually *bought an airplane ticket* to the place where the environmental injury will occur in order to demonstrate the requisite present or imminent injury required for standing.

As to redressability, a plurality of the Court held that Defenders had also failed to demonstrate this element of standing, because (a) the actual agencies that were providing the funding for the foreign projects at issue were not defendants in the case, and hence a ruling that the new FWS regulation was illegal would not necessarily mean these agencies would abide by the prior version of the regulation because the agencies did not believe they were bound by that statutory interpretation; and (b) much of the funding for the projects at issue was being

contributed by the other countries involved, and therefore those projects could continue without any funding from federal agencies. 504 U.S. at 570–71.

Therefore, after *Lujan*, it became clear that environmental plaintiffs must allege, and then prove, that their injury is present, imminent, or continuing in order to demonstrate the necessary "injury in fact"—i.e., it was no longer enough to simply aver that members had used environmentally sensitive areas in the past and wished to do so in the future, and that their ability to do so would be impaired by the challenged action. Rather, such plaintiffs must demonstrate that they have actual *concrete* plans to use the area, and that their effort to view natural places or wildlife free from despoliation will be impaired by the challenged action and thereby reduce their ability to enjoy and study them.

However, despite this adverse ruling, in the course of rejecting several alternative bases asserted by Defenders of Wildlife for standing, the Court made certain observations that have become extremely helpful to the cause of establishing standing to advocate for and protect animals. First, citing *Sierra Club v. Norton*, *supra,* the Court made the extremely helpful observation that "[o]f course, *the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purposes of standing*." 504 U.S. at 562–63 (emphasis added). Second, the Court acknowledged that "[it is clear that *the person who observes or works with a particular animal threatened by a federal decision is facing perceptible harm*, since the very subject of his interest will no longer exist." 504 U.S. at 566 (emphasis added). Citing *Japan Whaling*, *supra,* the Court further observed that "[i]t is even plausible" that "a person who observes or works with animals of a particular species in the very area of the world where that species is threatened by a federal decision is facing such harm, since some animals that might been the subject of this interest will no longer exist." 504 U.S. at 566.

HUMANE SOCIETY OF THE UNITED STATES V. BABBITT

Humane Society of the United States v. Babbitt, 46 F.3d 93 (D.C. Cir. 1995), involved a challenge by an animal protection organization to a decision by the FWS not to require the Milwaukee Zoo to obtain a permit under the Endangered Species Act in order to transfer an endangered Asian elephant named Lota across state lines to the Hawthorne Corporation which was in the business of breeding and training elephants for use in entertainment and other activities. Despite the fact that Hawthorne was a commercial entity that planned on making money from breeding Lota, the FWS had determined that, because of the way it had further defined the relevant statutory language, the exchange was not done "in the course of a commercial activity," which would require an ESA permit. *See* 16 U.S.C. §1532(2) (The term "commercial activity" is broadly defined by the statute to mean "all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling"); but see 50 C.F.R. §17.3 (FWS defines the terms " industry or trade" in the definition of "commercial activity" to mean *the actual or intended transfer of wildlife* or plants from one person to another person *in the pursuit of gain or profit*") (emphasis added).

For standing, HSUS relied on one member who stated that Lota's transfer caused her injury because she had lost the opportunity to study Asian elephants generally, and relied on other members who said they were harmed by not being able to visit Lota at the Milwaukee Zoo any more. In denying standing, citing both *Sierra Club* and *Lujan*, the Court of Appeals acknowledged that "[i]t is true that aesthetic interests such as the observation and study of endangered animals may in some circumstances state cognizable grounds to support Article III standing." 46 F.3d at 97. However, as to the member who alleged she was harmed in her ability to study elephants in general, the Court noted that she did not claim that Lota was the only Asian elephant at the zoo, and that, in fact, there were three other Asian elephants at that zoo

that she could continue to observe and study. The Court also noted that this individual had failed to assert that she had any plans to return to the Milwaukee Zoo to observe elephants. *Id.* Therefore, the Court held that, like the plaintiffs in *Lujan*, she had failed to demonstrate the requisite present or imminent harm required for standing. *Id.* at 97–98.

As to the other members' basis for standing—i.e., their alleged severe emotional injury and distress about Lota's transfer to the Hawthorne Corp.—the Court noted that "general emotional 'harm,' no matter how deeply felt, cannot suffice for injury-in-fact for standing purposes. 46 F.3d at 98. In making this observation, the Court relied on cases that stand for the proposition that simply reading about something with which one disagrees and that causes the person distress, cannot supply the king of direct, concrete injury in fact required for standing. *See id.* (citing *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464 (1982) (individuals upset upon reading newspaper article about the transfer of government property to a religious organization lacked standing to challenge the transfer as a violation of the Establishment Clause of the First Amendment); *Animal Lovers Volunteer Ass'n v. Weinberger*, 765 F.2d 937, 938–39 (9th Cir. 1985) (psychological distress from hearing that goats would be shot at a Navy base is not a cognizable injury in fact)).

However, in an observation that later become extremely helpful to establishing standing to bring animal law cases, *see infra* at 22–26, the Court noted that "no court has yet considered *whether an emotional attachment to a particular animal (not owned by the plaintiff) based upon the animal being housed in a particular location could from the predicate of a claim of injury*." 46 F.3d at 98. Nevertheless, because HSUS did not provide any evidence that any of its members had formed such a relationship with Lota—and, in fact, none had even produced any evidence that they had ever *visited* her at the Milwaukee Zoo—the Court held that HSUS had failed to establish the necessary injury in fact, and dismissed the case. *See* 46 F.3d at 98 ("In light of *Defenders of Wildlife*'s teaching that '[i]n response to a summary judgment motion . . . the plaintiff can no longer rest on . . . mere allegations, but must set forth by affidavit or other

evidence specific facts' supporting his claim of injury, it is difficult to conclude that [HSUS's] assertions can suffice to show injury-in-fact.") (citing *Lujan v. Defs. of Wildlife*).

ALDF V. GLICKMAN AND STANDING TO PROTECT ANIMALS IN CAPTIVITY

Several years later, the Animal Legal Defense Fund and several individuals were successful in bringing the first case to establish standing to protect animals in captivity, versus those in the wild. The case, *Animal Legal Defense Fund v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998) (*en banc*), involved a challenge to a regulation issued by the United States Department of Agriculture (USDA) to implement a requirement in the 1985 amendments to the Animal Welfare Act requiring that the agency promulgate a standard "for a physical environment adequate to promote the psychological well-being of primates" used in exhibition or by research facilities. 7 U.S.C. § 2143(a)(2)(B). That requirement was added to the statute because of evolving scientific evidence concerning the particular abilities and needs of nonhuman primates, and to reflect Congress' finding that the "[c]urrent standards leave too much room for shoddy care and inhumane treatment." 131 Cong. Rec. 22257 (Aug. 1, 1985).

However, when the USDA finally promulgated the regulation in 1991, it allowed each regulated entity to develop its own "environmental enrichment plan" for the primates under its care "in accordance with the currently accepted professional standards as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian." 9 C.F.R. § 3.81. Thus, the regulation contained few actual requirements mandated by the agency itself, and instead allowed the regulated industry to decide what environmental enrichment would "promote the psychological well-being" of the primates in its care. Moreover, the USDA did not require any of the regulated entities to submit their plans to the agency for pre-approval, and made clear that each facility need not even send its enrichment plan into the USDA, but should simply maintain the plan on site—thereby immunizing those documents from public

scrutiny under the Freedom of Information Act. *See Forsham v. Harris*, 445 U.S. 169 (1980) (holding that FOIA only applies to records in the *possession* of a federal agency).

The individual plaintiffs asserted that they suffered emotional and aesthetic injury from observing primates at roadside zoos housed in isolation, with nothing to do, and engaging in stereotypic behavior, as a result of the inadequate standard that failed to require each regulated entity to socially house their primates and provide them with actual tools for enrichment. In a divided panel decision, the D.C. Circuit held that, even assuming these injuries were sufficient for standing, the plaintiffs had failed to demonstrate the requisite causation and redressability, because the asserted injuries were caused not by the USDA, but by the zoos that were not before the Court (and could not be, as the challenge was brought only against the agency under the Administrative Procedure Act), and because the relief requested by the plaintiffs—vacatur of the final, inadequate rule—would not redress their injuries. 130 F.3d 464 (D.C. Cir. 1997).[4]

Rehearing *en banc* was granted, and, in a 7-4 ruling, the D.C. Circuit rejected the panel's standing analysis. 154 F.3d 426. In an opinion written by Judge Patricia Wald, the Court held that Plaintiff Marc Jurnove had standing, and, because only one plaintiff need show standing for each claim to invoke a federal court's jurisdiction,[5] this was sufficient to reverse the panel decision. *Id.*

Mr. Jurnove had submitted a sworn declaration in support of the Plaintiffs' motion for summary judgment explaining that he was an animal control officer who had been asked to visit a zoo in Long Island to check on the conditions of the horses kept there, when he saw several primates being maintained in inhumane conditions, including a male chimpanzee named

[4] In contrast to some of the environmental statutes, like the ESA, the AWA does not contain a private right of action. This means that the only entity that can enforce the requirements of that statute is the USDA. *See* 7 U.S.C. §2146. Therefore, organizations cannot sue regulated companies for violating the Act, and, although the USDA is notorious for *not* enforcing the AWA, *see, e.g.*, D. Winders, "Administrative Law Enforcement Warnings, and Transparency," Ohio State Law Rev., Vol. 73:3 at 481-87 (2018), it is also well established that agencies may not be sued for declining to enforce statutes under their jurisdiction. *See Heckler v. Chaney*, 470 U.S. 821 (1985) (Supreme Court rules that it lacks jurisdiction to review discretionary enforcement decisions by federal agencies).

[5] *See, e.g., Horne v. Flores,* 557 U.S. 433, 445 (2009).

Barney who was housed by himself with nothing to do. Knowing that chimpanzees are extremely social animals, Mr. Jurnove became extremely upset by what he saw and spent several hours observing Barney in the hope that he could bring him some solace. The next day, Mr. Jurnove contacted the USDA to complain that Barney and the other primates were being kept in inhumane conditions, and to request the agency to do something about it. However, when the USDA inspected the zoo, it determined that the facility complied with all applicable AWA standards, including the standard promulgated to "promote the psychological welfare" of primates. Finding this hard to believe, Mr. Jurnove returned to the zoo on many more occasions to visit Barney and to report on his conditions, but the USDA continued to insist that the zoo was following all applicable standards. Hence, Mr. Jurnove, along with ALDF and the other individual plaintiffs, sued the agency under the APA, for failing to comply with Congress' mandate that the agency issue a "standard" to promote the psychological welfare of these animals.[6]

Relying heavily on the standing principles that had, by then, been well-established in the environmental context, the Court's majority observed that "[t]he Supreme Court has repeatedly made clear that injury to an aesthetic interest in the observation of animals is sufficient to satisfy the demands of Article III standing." 154 F.3d at 432. The Court then explained that:

> Mr. Jurnove has made clear that he has an aesthetic interest in seeing exotic animals living in a nurturing habitat, and that he has attempted to exercise this interest by repeatedly visiting a particular animal exhibition to observe particular animals there. This interest was allegedly injured, however, when Mr. Jurnove witnessed the actual living conditions of the primates described and named in his affidavit.

154 F.3d at 432. The Court's emphasis on the fact that Mr. Jurnove had "developed an interest . . . in seeing *these particular animals living under humane treatment*," 154 F.3d at 431–32 (emphasis added), was crucial to the decision. Had his interest been simply in seeing

[6] As mentioned, the AWA does not contain a private right of action. Accordingly, challenges to agency regulations may only be brought pursuant to the arbitrary and capricious, abuse of discretion, and otherwise not in accordance with law standard of review contained in the APA, 5 U.S.C. § 706(2).

any primates treated humanely in zoos, like the unsuccessful plaintiff in *Humane Society*, *supra*, he could have easily satisfied that interest by visiting another exhibition, and hence, there would be no injury for the Court to redress. As to the argument that "emotional" harm was insufficient, the Court explained that the injuries inserted were *aesthetic* harms—just like those that are suffered by individuals who see a despoiled landscape in a favorite national park. Thus, the Court explained:

> The key requirement, one that Mr. Jurnove clearly satisfies, is that the plaintiff have suffered his injury in a personal and individual way—for instance, *by seeing with his own eyes the particular animals whose condition caused him aesthetic injury*.

154 F.3d at 433 (emphasis added); *see also id.* at 432 (stressing that "[a]s he explained, "[w]hat I saw was an assault on my senses and greatly impaired by ability to observe and enjoy *these particular captive animals*") (emphasis in original). Mr. Jurnove could also demonstrate that his aesthetic injuries were present and imminent—as required by *Lujan*—because he was able to demonstrate that, because of his strong bond with Barney, he kept going back to the zoo to see this animal to provide him some solace and to see if his conditions were improving at all because of Mr. Jurnove's advocacy efforts on his behalf. *See, Lujan*, 504 U.S. at 564 (noting that "[p]ast exposure to illegal conduct does not itself show a present case or controversy regarding injunctive relief . . . *if unaccompanied by any continuing, present adverse effects*") (citations omitted) (emphasis added).

In response to the USDA's argument that standing to complain about the condition of an animal only exists if the challenged action threatens to reduce or eliminate the entire species—as had been the basis for standing in some of the prior wildlife cases, *see*, *e.g.*, *Japan Whaling*—the Court explained that those cases were "brought under conservation statutes whose mission is to preserve the number of animals in existence." 154 F.3d at 437. In contrast, the Court noted, this case was brought to enforce the requirements of the Animal Welfare Act—a statute "explicitly concerned with the quality of animal life, rather than the number of animals in existence"—and

further noted that the AWA expressly seeks "to promote the psychological *well-being* of primates." *Id.* at 438 (emphasis in original). Hence, the Court had no difficulty finding that Mr. Jurnove had established the requisite injury in fact required for standing.

As to the causation element of standing, the Court held that causation exists when the defendant agency *authorizes* the conditions that cause the aesthetic injury. Indeed, in *Glickman,* the plaintiffs were able to demonstrate that time and again when Mr. Jurnove complained about the conditions in which the primates were being kept, he was informed by the USDA that the zoo was in full compliance with the psychological standard. Thus, the Court explained:

> Supreme Court precedent establishes that *the causation requirement for constitutional standing is met when a plaintiff demonstrates that the challenged agency action authorizes the conduct that allegedly caused the plaintiff's injuries*, if that conduct would allegedly be illegal otherwise.

154 F.3d at 440 (emphasis added).

The Court further emphasized a *critical rule for standing jurisdiction*: that to determine standing—which simply allows the plaintiff to invoke a court's jurisdiction—the plaintiff need not demonstrate that they will succeed on the merits. *Id.* at 441. Thus, in that case, to establish the threshold requirement of standing, it was not necessary for the plaintiffs to prove that the challenged regulation did in fact violate the AWA, or was otherwise arbitrary, capricious, or an abuse of discretion under the APA. Rather, as the Court explained, in determining whether a plaintiff has standing, the court is to accept the legal theory of the case proffered by the plaintiff. *See id.* at 442 (noting that "[u]nder the plaintiffs' legal theory in this case, which we accept for purposes of determining their standing to sue, the AWA itself prohibits the allegedly inhumane conditions that injured Mr. Jurnove . . . [t]hus here, the plaintiffs are also contending that the USDA's decision to permit the conditions that allegedly injured Mr. Jurnove violated the agency's statutory mandate."); *see also id.* at 439 ("[w]hatever the ultimate merits of the plaintiffs' case, they most definitely assert that the AWA requires minimum standards to

prohibit or more rigidly restrict the occasions on which such allegedly inhumane treatment can occur.").[7]

The *en banc* Court also found that the plaintiffs had demonstrated sufficient redressability, particularly because Mr. Jurnove had explained in his sworn affidavit that he would continue returning to visit the primates at this zoo in the future. Thus, the majority reasoned:

> [a]s the plaintiffs' complaint argues, more stringent regulations, which prohibit the inhumane conditions that have consistently caused Mr. Jurnove aesthetic injury in the past, would necessarily alleviate Mr. Jurnove's aesthetic injury during his planned, future trips to the Game Farm. . .. *Tougher regulations would either allow Mr. Jurnove to visit a more humane Game Farm or, if the Game Farm's owners decide to close rather than comply with higher legal standards, to possibly visit the animals he has come to know in their new homes within exhibitions that comply with the more exacting regulations.*

Id. at 443 (emphasis added).

Finally, the Court addressed what is considered a "prudential" concern for standing purposes—i.e., whether the plaintiff's injuries *arguably* fall within the "zone of interests" protected by the statute that gives rise to the claim. 154 F.3d at 444; *see also Nat'l Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 492 (1998). In other words, the zone of interest gloss on standing would preclude judicial review of administrative action if the particular interest asserted is "so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Clarke v. Sec. Indus. Ass'n,* 479 U.S. 388, 399 (1987). In *Glickman*, the Court had no trouble finding that the plaintiffs' concerns fall well within the zone of interests of the AWA. The Court noted:

> The very purpose of animal exhibitions is, necessarily, to entertain and educate people; exhibitions make no so sense unless one takes the interests of their human visitors into account. The legislative history of both the

[7] Of course, the plaintiffs' theory, and the facts upon which they rely for that theory, must be "warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law," Fed. R. Civ. P. 11(b)(2), and must also be "plausible." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 555 (2007).

> 1985 amendments to the Animal Welfare Act and the 1970 act that first included animal exhibitions within the AWA confirms that Congress acted with the public's interests in mind.

154 F.3d at 444; *see also id.* at 444–45 (citing Senator Robert Dole's explanation that "we need to ensure *the public* that adequate safeguards are in place to prevent the unnecessary abuses to animals" and additional legislative history demonstrating that "Congress had placed animal exhibitions within the scope of the AWA after hearings documenting how inhumane conditions at these exhibitions affected the people who came and watched the animals there") (emphasis in original). Thus, the Court concluded, "Mr. Jurnove, a regular viewer of animal exhibitions regulated under the AWA, clearly falls within the zone of interests the statute protects." 154 F.3d at 445.

FRIENDS OF THE EARTH, INC. V. LAIDLAW ENVIRONMENTAL SERVICES, INC., 528 U.S. 167 (2000)

On January 12, 2000, the Supreme Court issued a standing decision that has had important implications for bringing animal law cases, *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167 (2000). That case involved a challenge by Friends of the Earth and several other environmental organizations under the Clean Water Act alleging violations of that statute by a wastewater treatment plant ("Laidlaw"), which, the plaintiffs alleged, was discharging mercury into a river in excess of what was permitted by its CWA permit. Laidlaw challenged the organizations' standing on the grounds that the organizations failed to show that any of their members had sustained any actual injury in fact from Laidlaw's activities, based largely on the fact that the district court found that the permit violations at issue "did not result in any health risk or environmental harm." 528 U.S. at 181. Although the district court found that the plaintiffs had standing, the Fourth Circuit Court of Appeals reversed that decision, and the Supreme Court granted certiorari to decide the standing issue, and several other issues.

In a split decision authored by Justice Ruth Bader Ginsburg, the Court held that plaintiff Friends of the Earth had established the requisite standing by demonstrating that its members were avoiding use of the river because they were concerned that it was polluted with mercury. In this regard, the record demonstrated that after Friends of the Earth initiated the suit, but before the district court rendered judgment, Laidlaw had violated the mercury discharge limitation in its permit 13 times. 528 U.S. at 178. As noted above in the discussion of *Sierra Club v. Morton,* and discussed more fully below, an organization may establish what is called "representational" or "associational" standing on behalf of its members, if one or more members would have standing in their own right to commence the action.

In rejecting Laidlaw's argument that none of the members had demonstrated any actual harm to the environment from its mercury discharges, the Court stressed that "[t]he relevant showing for purposes of Article III standing . . . is not injury to the environment but *injury to the plaintiff*." 528 U.S. at 181 (emphasis added). Thus, the Court again explained that to insist on a showing of harm to the environment simply to establish standing to bring the case in the first place was far too high a burden, and that this showing was more properly confined to the merits phase of the litigation. *Id.*

In finding that FOE had established a cognizable injury in fact, the Court noted that the organization had relied on affidavits and deposition testimony from its members demonstrating that in the past they had used the river for recreational and aesthetic enjoyment, and that they would very much like to use the river again for such purposes but were refraining from doing so to avoid being contaminated with mercury. *See* 528 U.S. at 182–83 (one member testified that "he would like to fish in the river at a specific spot he used as a boy, but [] would not do so now because of his concerns about Laidlaw's discharges"); *id.* (another member presented evidence that she had picnicked, walked, birdwatched, and waded in and along the river because of its natural beauty, but "she no longer engaged in those activities in or near the river because she was concerned about harmful effects from discharged pollutants"); *id.* (another member

testified that he had canoed 40 miles downstream from the Laidlaw plant and would like to canoe in the river closer to where the Laidlaw facility was located "but did not do so because he was concerned that the water contained harmful pollutants.")

Citing *Sierra Club v. Morton*, *supra,* the Court observed that it has "held that environmental plaintiffs adequately allege injury in fact when they aver they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." 528 U.S. at 183 (quoting *Sierra Club,* 405 U.S. at 735). Thus, the Court concluded, these members' "reasonable concerns about the effects of [the] discharges" directly affected their recreational and aesthetic interests. *Id.* at 183–84.

In so ruling, the Court rejected the argument that the members' averments that they would like to use the river again could be equated with the "some day" intentions to visit endangered species halfway around the world that the Court had held insufficient for a present or imminent injury in *Lujan v. Defenders of Wildlife*. 528 U.S. at 185. Rather, the Court found that the members' injuries were present and continuing—i.e., they were actively refraining from using a river they would otherwise use in order to avoid being contaminated by pollutants. In so ruling, the Court stated, "we see nothing 'improbable' about the proposition that a company's continuous and pervasive illegal discharges of pollutants into a river would cause nearby residents to *curtail their recreational use of that waterway and would subject them to other economic and aesthetic harms*." *Id.* (emphasis added).

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS V. RINGLING BROS. AND BARNUM & BAILEY CIRCUS, 317 F.3D 334 (D.C. CIR. 2003)

A few months after *Laidlaw* was issued, several individuals and organizations filed a lawsuit in federal district court in the District of Columbia against the Ringling Bros. Circus, alleging that the circus was violating the "take" prohibition of the Endangered Species Act by keeping Asian elephants on chains for many hours a day and striking the elephants with sharp

bull hooks to make them perform tricks in the circus. The term "take" in the ESA is defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct," 16 U.S.C. § 1532(19), and it is clear that the prohibitions of the Act apply to listed species in captivity as well as the wild. *See*, *e.g.*, 16 U.S.C. § 1538(b) (providing an exception from certain prohibitions in the statute—but not the take prohibition—for listed species held in captivity prior to the statute's enactment). The Asian elephants used in the Circus have been listed as "endangered" under the ESA since 1976.

Relying on the holdings of both *Glickman* and *Laidlaw*, the plaintiffs asserted that they had standing because one of the individual plaintiffs, Tom Rider, had worked at the Ringling Bros. Circus for several years as a caretaker for the elephants, had formed a strong bond with them, and was aesthetically harmed by seeing them constantly kept on chains and hit with bull hooks. Although Mr. Rider had since left the circus, he further alleged that he would very much like to visit the elephants again, but had to refrain from doing so in order to avoid experiencing more aesthetic harm from seeing the elephants exhibit the adverse effects of their mistreatment.

On a motion to dismiss, the district court ruled that the plaintiffs had failed to allege sufficient standing. It reasoned that Mr. Rider's aesthetic injuries had already occurred, and hence were *past* injuries precluded by the standing decision in *Lujan,* and, because Mr. Rider was not continuing to visit the elephants, the court also ruled that the reasoning of *Glickman* did not apply—i.e., Mr. Rider was not suffering any *present* or *imminent* injury. *Performing Animal Welfare Soc'y v. Ringling Bros. Circus*, No. 1:00-cv-01641-EGS, 2001 U.S. Dist. LEXIS 12203 (D.D.C. June 29, 2001). The district court further ruled that *Laidlaw* did not apply because, unlike the river at issue in that case, the elephants in the Ringling Bros. Circus were not a "public resource" that was available to be used by Mr. Rider, and hence he could not be injured by avoiding observing animals he has no right or ability to observe. *ASPCA v. Ringling Bros. Circus*, No. 1:00-cv-01641-EGS (D.D.C. Sept. 5, 2001) (Order denying Motion for Reconsideration).

On appeal, the D.C. Circuit unanimously reversed the district court. *ASPCA v. Ringling Bros. Circus*, 317 F.3d 334 (D.C. Cir. 2003). It began by stating, "[t]o generalize from *Glickman* and *Laidlaw*, an injury in fact can be found when a defendant adversely affects a plaintiff's enjoyment of flora or fauna, which the plaintiff wishes to enjoy again upon the cessation of the defendant's actions." 317 F.3d at 337. The Court then observed that "Rider says he became attached to the elephants when he worked with them and would like to 'visit' the again 'so that he can continue his personal relationship with them, and enjoy observing them." *Id.* As to how Mr. Rider would "visit" the elephants again, the Court reasoned:

> we believe a fair construction of his allegation encompasses Rider's attending the circus as any member of the public would, by purchasing a ticket and viewing the show from the audience. From this vantage point he might observe either direct physical manifestations of the alleged mistreatment of the elephants, such as lesions, or detect negative effects on the animals' behavior, which he claims he would recognize based on his experience working at Ringling Bros.

Id. Thus, the Court explained, "[t]his takes his claim out of the category of a generalized interest in ensuring the enforcement of the law, which would be insufficient to establish Article III standing." *Id.* (citation omitted).

In its ruling, the Court made a point of distinguishing *Humane Society of the United States v. Babbitt*, 46 F.3d 93 (D.C. Cir. 1995), *supra*, in which it found that the plaintiffs lacked standing, because "[u]nlike the plaintiff in *Babbitt*, *Rider alleged a strong personal attachment to the elephants*." 317 F.3d at 337 (emphasis added). Thus, the Court explained, "[i]n *Babbitt*, we left open the question whether 'emotional attachment to a particular animal . . . could form the predicate of a claim of injury," and that "[w]e answer that question in the affirmative today." *Id.* Citing *Laidlaw,* the Court further explained, "[a] person may derive great pleasure from visiting a certain river; the pleasure may be described as an emotional attachment stemming from the river's pristine beauty." 317 F.3d at 337–38. The Court went on to explain:

> *We can see no principled distinction between the injury that person suffers when discharges begin polluting the river and the injury Rider allegedly suffers from the mistreatment of the elephants to which he became emotionally attached during his tenure at Ringling Bros.*—both are part of the aesthetic

injury.

Id. at 338 (emphasis added). The Court further observed that Mr. Rider's personal relationship with the elephants "eliminates the concern, expressed in *Babbitt* . . . that a plaintiff who could continue to observe several animals of a particular species might not be injured if one of the animals was removed." *Id.*

The Court also had no trouble finding the necessary causation, since this citizen suit was filed directly against the Circus whose practices were challenged as violating the ESA, *id.*, and it ruled that plaintiffs had also alleged sufficient redressability because a favorable ruling would end the mistreatment of the Asian elephants that was the source of Mr. Rider's aesthetic injuries. *Id.* [8]

Thus, after *Glickman* and *ASPCA v. Ringling Bros. Circus,* plaintiffs have been able to demonstrate standing under Article III to advocate for and protect animals based on an individual's close relationship to a particular animal that is adversely affected by the challenged action. *See, e.g.*, *Hill v. Coggins*, 867 F.3d 499 (4th Cir. 2017) (individuals who visit zoo to enjoy observing bears had standing to challenge treatment of grizzly bears kept in "bear pits"; *Kuehl v. Sellner*, 887 F.3d 845 (8th Cir. 2018) (individuals who visited zoo and observed animals in inhumane conditions and who said they would return to visit the animals if those conditions improved had Article III standing.)

[8] On remand, after many years of discovery, and a lengthy trial on the merits, the same district court judge who initially held that Mr. Rider lacked standing at the motion to dismiss stage, and who was unanimously reversed by the D.C. Circuit, issued a final decision denying that any of the plaintiffs had adequately *proved* standing, including a credibility determination that he did not believe that Mr. Rider truly loved the elephants. That decision, along with his reasoning as to why the organizational plaintiffs also lacked standing, was subsequently upheld by the D.C. Circuit. 659 F.3d 13 (D.C. Cir. 2011). However, in the wake of the lawsuit, and voluminous evidence produced through discovery and trial concerning the *merits* of the Plaintiffs' claims about how the elephants were mistreated, in May 2015 the Ringling Bros. Circus stopped using elephants in its circus, and, in 2017 stopped touring altogether after more than 145 years.

Standing Based on Informational Injury

The injury in fact required by Article III can also be supplied by a right to information that has been denied—referred to as "informational injury." The classic example is the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., which provides that all federal agencies "shall" make requested information promptly available "to any person." 5 U.S.C. § 552(a)(3). The Supreme Court long ago acknowledged that a violation of this provision provides the necessary Article III standing, *without a showing of any additional harm to the plaintiff caused by the denial of that information*. *Pub. Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 449 (1989).

Therefore, FOIA can be an extremely useful tool in obtaining information collected or maintained by the federal government that is helpful to animal advocacy. *See*, *e.g*., *In Def. of Animals v. USDA,* 656 F. Supp. 2d 68 (D.D. C. 2009) (requiring disclosure of information demonstrating multiple violations of Animal Welfare Act requirements by animal research lab); *PETA v. USDA*, No. Civ. 03-C-195-SBC, 2005 WL 1241141 (D.D.C. May 24, 2005) (ruling that information regarding USDA loan guarantee to a notorious puppy mill operator is not exempt under FOIA); *Humane Soc'y Int'l v. United States Fish & Wildlife Serv.*, No. 16-720-TJK, 2021 WL 1197726 (D.D.C. Mar. 29, 2021) (*appeal pending)* (requiring Fish and Wildlife Service to release information about wildlife imports and exports maintained in the agency's Law Enforcement Management Information System); *In Def. of Animals v. Nat'l Insts. of Health*, 543 F. Supp. 2d 83 (D.D.C. 2008) (records related to care and maintenance of chimpanzees at Alamogordo Primate Facility must be released).

Informational injury has been extended to other contexts where a statute or regulation expressly provides that certain information must be provided to the public. For example, in *Fed. Election Comm'n v. Akins*, 524 U.S. 11 (1998), the Supreme Court held that voters had standing to challenge a legal opinion by the Federal Election Commission concluding that a particular entity, the American Israel Public Affairs Committee (AIPAC), was not a "political committee"

within the meaning of the Federal Election Campaign, Act, 2 U.S.C. §§ 431 *et seq*. In reasoning that the plaintiffs had standing, the Court noted that, accepting the plaintiffs' theory of the case—as courts are required to do, *see supra*—that AIPAC *was* in fact a political committee, AIPAC would be required to file certain reports regarding its activities that would be required by statute to be made available to the public, e.g., AIPAC would have to register and make public information about members, contributions, and expenditures. Thus, the Court explained:

> The "injury in fact" that respondents have suffered consists of *their inability to obtain information*—lists of AIPAC donors (who are, according to AIPAC, its members), and campaign-related contributions and expenditures—that, on respondents' view of the law, the statute requires that AIPAC make public.

524 U.S. at 21 (emphasis added). The Court further noted that the plaintiffs' informational injury in that case fell squarely within the zone of interest of the FECA, because voters were precisely the class of individuals that Congress intended to have access to such information. *Id.*

In another case, relying on the informational injury tenet of Article III jurisprudence, individuals and animal protection groups brought a lawsuit against the Fish and Wildlife Service, challenging that agency's promulgation of a regulation that allowed the continuation of "canned-hunting" operations in Texas with regard to three antelope species, *after* those species were listed as "endangered" under the Endangered Species Act. *Friends of Animals v. Salazar,* 626 F. Supp. 2d 102 (D.D.C. 2008). As discussed above, the ESA strictly prohibits the "take" of any endangered species, which includes killing or hunting them, and, as also explained, the "take" prohibition applies to animals in both the wild and captivity. Canned hunting operations breed exotic species in captive settings in the United States, and then charge hefty sums to allow hunters to come to their private ranches—enclosed by fencing so the animals cannot escape—to shoot and kill the animals and thereby collect "trophies" of these exotic animals. *See generally*, *Friends of Animals v. Salazar,* 626 F. Supp. 2d at 107.

Establishing standing was a challenging hurdle in the case because none of the Plaintiffs were using the canned-hunting ranches for recreational purposes and had no opportunity to

form a bond with any of the antelopes at risk of being killed. However, Section 10 of the ESA provides that any one who wishes to legally "take" an endangered species must apply for and receive a permit from the FWS to do so, and demonstrate that the proposed activity will somehow "enhance the propagation or survival" of the species at issue. 16 U.S.C. § 1539(a)(1)(A). The statute further provides that "[i]nformation received by the [FWS] as a part of any application *shall be available to the public as a matter of public record at every stage of the proceeding*." 16 U.S.C. § 1539(c) (emphasis added). Thus, the Plaintiffs argued that because the FWS had unlawfully exempted the canned hunting ranches from the requirements of Section 10, the Plaintiff organizations were being denied the information that the statute otherwise mandated be provided to them "at every stage of the proceeding," and hence, relying on *Public Citizen* and *Akins*, argued that such informational injury was sufficient for standing.

Relying on an earlier case involving the same issue that had been decided by the district court for the Northern District of California, before that case was transferred to D.C., *Cary v. Hall*, No. C 05-4363 VRW, 2006 WL 6198319 (N.D. Cal. 2006), the district court agreed. It explained that:

> Plaintiffs suffer an informational injury that is specific and concrete because *they regularly use information from the section 10 permitting process to participate in the subsection 10(c) process and to inform their members.*

626 F. Supp. 2d at 112 (emphasis added). The Court further held that "[t]he injury is actual and imminent because plaintiffs regularly participate in and comment during the subsection 10(c) process." *Id.*

Significantly, the Court rejected the additional argument that Section 10(d) of the statute also provided informational injury standing. *See* 626 F. Supp. 2d at 112–13. That provision of the statute provides that when the FWS grants a Section 10 permit to "take" a listed animal, it must make and publish in the Federal Register certain findings—e.g., that granting the permit "will not operate to the disadvantage of" the species at issue, and will be "consistent" with the

conservation policies of the ESA. 16 U.S.C. § 1539(d). In rejecting this additional informational injury argument, the Court stressed that "importantly, the information provided in subsection 10(c) *is necessary for plaintiffs to meaningfully participate in the section 10 process*"—which allows the plaintiffs to submit information and evidence in an effort to persuade the FWS not to issue the requested permit. 626 F. Supp. 2d at 113 (emphasis added). By contrast, the Court reasoned, the findings that must be made and published in the Federal Register by the FWS occur "at the *conclusion* of the section 10 process following the mandated public process." *Id.* (emphasis added). Thus, the Court concluded, that injury is not concrete and particularized, but rather falls under the rubric of "a more general interest in the law being followed," which is not cognizable for purposes of standing. *Id.* (citing *Judicial Watch, Inc. v. Fed. Election Comm'n*, 180 F.3d 277, 278 (D.C. Cir. 1999); *see also Lujan*, *supra*, 504 U.S. at 573–74 (explaining that plaintiffs who raise only a "generally available grievance" about the government's failure to comply with the law do not "state an Article III case or controversy").

A similar rationale has been applied to deny standing to plaintiffs asserting informational injury when a federal agency violates the notice and comment requirements of the APA, 5 U.S.C. § 553 – i.e., this is *not* regarded as sufficient for establishing the necessary injury in fact required for standing. *See, e.g.*, *Summers v. Earth Island Inst.*, 555 U.S. 488 (2009) (holding that the mere right to comment on an agency's proceeding is not sufficient to establish Article III standing). It is also clear that, apart from complaining about a violation of the Freedom of Information Act—which provides a right to information *regardless of who is requesting it and how it will be used*—to adequately assert informational injury, the plaintiff must show (1) not only that it was deprived of information to which it is entitled, but (2) that the plaintiff "suffers, by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure." *Friends of Animals v. Jewell*, 828 F.3d 989, 992 (D.C. Cir. 2016).

The Supreme Court has recently reaffirmed this particular tenet of standing law. In *TransUnion L.L.C. v. Ramirez*, 594 U.S. ___, 141 S. Ct. 2190 (2021), the Court held that individuals challenging violations of the Fair Credit Reporting Act lacked standing to do so unless they could demonstrate that the information they were required to receive—and that was not disclosed—harmed them in a concrete and particularized way. The Court stressed that:

> the concrete-harm requirement is essential to the Constitution's separation of powers. To be sure, the concrete-harm requirement can be difficult to apply in some cases. Some advocate that the concrete-harm requirement be ditched altogether, on the theory that it would be more efficient or convenient to simply say that a statutory violation and a cause of action suffice to afford a plaintiff standing. But as the Court has often stated, "the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution."

141 S. Ct. at 2207 (citation omitted). In language that is even ominous for FOIA standing, the Court further stated that "[a]n '*asserted informational injury that causes no adverse effects cannot satisfy Article III*.'" *Id.* at 2214 (citation omitted) (emphasis added). However, in most cases, it will not be difficult for those seeking information from federal agencies under FOIA to demonstrate how the lack of such information harms their ability to protect and advocate for animals.[9]

Finally, the Court also explained that Congress cannot necessarily create the necessary injury in fact for standing simply by passing legislation establishing mandatory conduct by third persons or rights granted to individuals —in that case the obligation to accurately report and information about a person's creditworthiness under the Fair Cred Reporting Act and to disclose errors that have been made about such reporting. It stressed that "Congress's creation of a statutory prohibition or obligation and a cause of action does not relieve courts of their

[9] However, in language that also does not bode well for those who wish to establish that non-human animals have standing in their own right, the Court in *Transunion* stated that "under Article III, a federal court may resolve only 'a real controversy with real impact on *real persons*.'" *Id.* at 2203 (citation omitted) (emphasis added); *see also* note 1*infra* (cases rejecting the argument that non-human animals are "persons").

responsibility to independently decide whether a plaintiff has suffered a concrete harm under Article III any more than, for example, Congress's enactment of a law regulating speech relieves courts of their responsibility to independently decide whether the law violates the First Amendment." 141 S. Ct. at 2205.[10]

Organizational Standing

There are two basic ways an organization, as opposed to an individual, can establish Article III standing: (1) representational or associational standing; and (2) organizational resource drain standing.

REPRESENTATIONAL/ASSOCIATIONAL STANDING

Representational or associational standing can be asserted by an organization *on behalf of* one or more of its members—i.e., the organization may bring a case as a representative of its members. *Warth v. Seldin*, 422 U.S. 490, 511 (1975). The leading case for such standing is *Hunt v. Washington State Apple Advertising Commission,* 432 U.S. 333, 342–43 (1977). The Supreme Court ruled that an organization may establish standing on behalf of its members where (1) at least one member of the organization would have standing in their own right; (2) the interests the organization seeks to assert are germane to the organization's purpose; and (3) neither the claim asserted, nor the relief requested requires that an individual member of the association participate in the action. *Hunt*, 432 U.S. at 343.

[10] This particular observation, along with others made in this decision, *see* note 10 *supra*, raises concerns about whether Congress can enact legislation that creates a basis for asserting standing directly for animals, as at least one court has previously suggested could be done. *See, e.g., Cetacean Community v. Bush*, *supra* at note 1, 386 F.3d 11169, 1176 (9th Cir. 2004) (noting that "we see no reason why Article III prevents Congress from authorizing a suit in the name of an animal, any more than it prevents suits brought in the name of artificial persons such as corporations, partnerships or trusts, and even ships, or of juridically incompetent persons such as infants, juveniles, and mental incompetents").

Thus, to assert such standing, the organization must allege—and then eventually prove at the merits stage—that it in fact has one or more members who have sufficient standing, applying all the same principles that apply to individual standing discussed above. The organization must also allege and then prove that the asserted interests of that member are germane to the organization's purpose (i.e., an organization cannot use a member to assert an injury that has nothing to do with the organization's own interests).

For example, in *Laidlaw* and *Japan Whaling*, discussed above, the environmental organization plaintiffs were found to have standing based on the injuries to their members. By contrast, in *Sierra Club v. Morton*, and *Lujan v. Defenders of Wildlife,* also discussed above, the Court found the organizational plaintiffs *lacked standing* because none of their members had demonstrated sufficient standing.

A demonstration of some indicia of membership is crucial to establishing this kind of standing—i.e., simply alleging that an organization has "supporters" or "coalition members" will not suffice. Rather, the organization must be able to demonstrate that it has actual *members* who have some input on the issues on which the organization works. Indicia of membership include such factors as whether the members (1) have a say in the election of the organization's leadership; (2) participate in choosing the issues on which the organization focuses; or (3) finance the organization's activities. *Hunt*, 432 U.S. at 345–46. Most courts do not require the organization to actually name in the Complaint the members on whose behalf they assert standing, *see*, *e.g.*, *Bldg. & Const. Trades Council of Buffalo v. Downtown Dev., Inc.*, 448 F.3d 138, 145 (2d Cir. 2006), but other courts have recently held that such identification is required. *See*, *e.g.*, *Prairie Rivers Network v. Dnyegy Midwest Generation, L.L.C.*, 2 F. 4th 1002 (7th Cir. 2021). However, at the time the plaintiff organization must *prove* standing, it will need to identify those members and provide sworn declarations or testimony (if the case goes to trial), demonstrating that those members can meet all of the requirements of standing—i.e., injury in fact, causation, and redressability, and the organization will also have to demonstrate that the

member's interests are germane to the organization's purpose, and fall within the zone of interest of any statute that forms the basis for the claim.

RESOURCE DRAIN STANDING, *HAVENS REALTY CORP. V. COLEMAN,* 455 U.S. 363 (1982)

It is also axiomatic that "[a]n organizational plaintiff may establish standing to bring suit on its own behalf when it seeks redress for an injury suffered *by the organization itself*." *Warth v. Seldin,* 422 U.S. 490, 511 (1975). In such cases, the reviewing court must decide whether the plaintiff organization has "alleged such a personal stake in the outcome of the controversy as to warrant [the] invocation of federal-court jurisdiction." *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 378–79 (1982) (internal quotations and citations omitted).

In *Havens,* the Supreme Court held that if the challenged action impairs an organization's activities, resulting in a diversion of the organization's resources to counteract the effects of the unlawful activity, this is sufficient to establish the requisite injury-in-fact. *Id.* at 379. That case involved an organization that advised minorities or their right to equal housing opportunities under the Fair Housing Act, 42 U.S.C. § 804. The organization, Housing Opportunities Made Equal (HOME) argued that the challenged illegal steering practices—whereby landlords told black renters looking for housing that there were no vacancies, while offering rental units in the same building to white renters—frustrated the organization's counseling and referral services, because HOME had to divert resources from other activities to counteract the effects of these illegal practices.

The Supreme Court agreed, finding that the unlawful steering practices "have perceptibly impaired HOME's ability to provide counseling and referral services for low and moderate-income homeseekers," and that "[s]uch concrete and demonstrable injury to the organization's activities—*with the consequent drain on the organization's resources*—constitutes far more than simply a setback to the organization's abstract social interests," and hence the organization

had standing to challenge these practices. 455 U.S. at 379 (emphasis added). In essence, the Court found that the organization was suffering *financial injuries* as a result of the challenged actions—a well-entrenched basis for Article III standing.

Havens resource injury has increasingly become a successful basis upon which animal protection groups have been able to demonstrate standing. *See, e.g.*, *Humane Soc'y of the U.S. v. U.S. Postal Serv.*, 609 F. Supp. 2d 85 (D.D.C. 2009) (Humane Society of the United States had standing to challenge United States Postal Service's denial of petition to declare that periodical advertising animal fighting was non-mailable under the Animal Welfare Act, because that denial caused HSUS to shift resources to rescuing and caring for animals used in illegal fighting); *PETA v. USDA,* 797 F.3d 1087 (D.C. Cir. 2015) (organization had *Havens* standing to challenge USDA's failure to regulate birds under the Animal Welfare Act); *Am. Anti-Vivisection Soc. v. USDA*, 946 F.3d 615 (D.C. Cir. 2020) (same); *PETA v. Miami Seaquarium*, 189 F. Supp. 3d 1327 (S.D. Fla. 2016) (diversion of resources by organization to address conditions of confinement constituted actual injury, as required for organizational standing); *PETA v. Tri-State Zoological Park of W. Maryland., Inc.*, 424 F. Supp. 3d 404 (D. Md. 2019), *aff'd*, 843 F. App'x. 493 (4th Cir. 2021), *cert. denied*, 141 S. Ct. 2854 (2021) (PETA had *Havens* standing to challenge zoo's mistreatment of animals under the Endangered Species Act) ; *PETA v. Wildlife in Need & Wildlife in Deed*, 476 F. Supp. 3d 765 (S.D. Ind. 2020) (PETA had organizational standing to challenge the declawing of lions and tigers and premature separation of young cats for use in public encounters); *New England Anti-Vivisection Soc'y v. Goldentyer*, No. 8:20-cv-02004 (D. Md. Sept. 29, 2021) (organizations had standing to challenge under Animal Welfare Act USDA's denial of petition to improve standards for the psychological well-being of primates used in research); *Farm Sanctuary v. USDA*, 2021 WL 2644068 (W.D.N.Y. June 28, 2021) (organizations have standing to challenge under Humane Slaughter Act USDA regulation that failed to ban the slaughter of non-ambulatory pigs); *Animal Welfare Soc'y v. Vilsack,* No. 6:20-cv-06595 (W.D.N.Y. Oct. 13, 2021) (animal welfare organizations had *Havens* standing to

challenge USDA's denial of rulemaking petition to ban inhumane handling of poultry under Poultry Products Inspection Act).

However, presently there is a divergence among the Circuits as to what precisely must be alleged—and then proved—to establish standing on this basis, and therefore this principle of standing law is currently in a state of undeniable flux. It is absolutely clear under this line of standing law that merely spending money on the litigation itself or in anticipation of litigation will *not* establish the requisite injury in fact, since that is considered a *voluntary* budgetary choice that is self-imposed—i.e., the organization can easily avoid incurring that expense by simply declining to spend such resources. *See*, *e.g.*, *Nat'l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995 ("[t]he mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization"); *Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012) (an organization's diversion of resources to litigation or to investigation in anticipation of litigation is considered a "self-inflicted" budgetary choice that cannot qualify as an injury in fact for purposes of standing.).

There is presently a split in the Circuits regarding the applicability of *Havens* standing outside the context of unlawful racial steering practices, and the Supreme Court has yet to wade into this recent expansion of standing law. The Second, Fourth, Seventh, Ninth, Eleventh, and D.C. Circuits currently uphold standing on this basis when the organization alleges—and then proves—that it has to spend resources on efforts to counteract adverse actions or policies that frustrate or impede its ability to carry out is organizational mission. *See*, *e.g.*, *Mova v. U.S. Dep't of Homeland Sec.*, 975 F.3d 120 (2d Cir. 2020); *Lane v. Holder*, 703 F.3d 668 (4th Cir. 2012); *Common Law Ind. v. Lawson*, 937 F.3d 944 (7th Cir. 2019); *East Bay Sanctuary Covenant v. Barr*, 964 F.3d 832 (9th Cir. 2020); *Jacobson v. Fla. Sec'y of State*, 974 F. 3d 1236 (11th Cir. 2020); *Am. Anti-Vivisection Soc'y v. USDA*, 964 F.3d 615 (D.C. Cir. 2020).

However, even in these Circuits, there have been vigorous dissents by judges who view such expenditures as purely voluntary, and therefore not sufficient to establish the requisite injury in fact. *See*, *e.g.*, *PETA v. USDA*, 797 F.3d at 235 (Judge Millett's dubitante dissent on the grounds that the majority's ruling "is hard to reconcile with the general rule that a plaintiff's voluntary expenditure of resources to counteract governmental action that only indirectly affects the plaintiff does not support standing," and suggesting that "[i]f circuit precedent has brought us to the point where organizations get standing on terms that the Supreme Court has said individuals cannot, then it may be time, in an appropriate case, to revisit the proper metes and bounds of 'organizational standing.'") (citation omitted).

The Sixth Circuit has held that an organization's efforts to combat adverse policies do *not* constitute the kind of frustration of the organization's mission that involves an injury in fact, because such work is *already* part of the organization's overall mission. *Shelby Advocates for Valid Elections v. Hargett*, 947 F.3d 977, 982 (6th Cir. 2020) (ruling that having to spend resources to address voting inequities and irregularities throughout the county "do not divert resources from its mission. *That is its mission*") (emphasis added). Hence, in that Circuit, such expenditures of additional resources are regarded as *voluntary* expenditures that do not constitute the necessary injury in fact caused by the challenge action. *Id.*

Procedural Standing

A final basis for standing in animal law cases is what is known as "procedural standing"—e.g., where the plaintiff challenges a federal agency's failure to comply with a procedure required by law, such as notice and comment rulemaking or compliance with the requirements of the National Environmental Policy Act. In such cases, the Supreme Court has made clear that, in addition to showing that the agency failed to comply with such procedures, the plaintiff must demonstrate that this violation of the law also caused that particular plaintiff some underlying concrete injury. *See Lujan v. Defs. of Wildlife*, 504 U.S. at 572, n.7. However, notably, in such

cases the requirements to demonstrate causation and redressability are necessarily relaxed—i.e., the plaintiff is not required to demonstrate that if the agency *had* complied with the necessary process, it would have reached a result that the plaintiff wants.

The classic example was provided by the Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. at 572, n.7, where the Court explained that:

> There is this much truth to the assertion that "procedural rights" are special: The person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy. Thus, under our case law, one living adjacent to the site for a proposed construction of a federally licensed dam has standing to challenge the licensing agency's failure to prepare an environmental impact statement, *even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered, and even though the dam will not be completed for many years.*

504 U.S. at 572, n.7 (emphasis added); *see also, e.g., Or. Nat. Desert Ass'n v. Dombeck*, 172 F.3d 1092, 1094 (9th Cir. 1998) (plaintiffs challenging the Forest Service's grant of a grazing permit without obtaining requisite certification from the state that the activity would not violate water quality standards need not prove that the state would have denied such certification to satisfy the redressability requirement); *Fed. Election Comm'n v. Akins*, 524 U.S. at 25 (explaining that the redressability standard is also minimal where plaintiffs complain that an agency based its decision on an improper legal ground, because "[i]f a reviewing court agrees that the agency misinterpreted the law, it will set aside the agency's action and remand the case—even though the agency (like a new jury after a mistrial) might later, in the exercise of its lawful discretion, reach the same result for a different reason").

Standing Under State Law

The rules that apply to standing to bring cases to protect animals under state law vary state by state. Some states have state constitutional provisions that mirror the jurisdictional requirements in the federal Constitution; others have established standing law based on the

development of common law in that state. The rules vary so widely that it is incumbent upon animal law advocates to familiarize themselves with the applicable law before bringing such cases.

State animal cruelty codes—which exist in all fifty states and the District of Columbia—are generally enforceable only by local district attorneys who seek criminal penalties after the prohibited abuse and neglect of the animal has already occurred. However, some state animal cruelty codes have special provisions that confer standing on individuals to bring cases on behalf of animals, and to seek *injunctive* relief for violations of those laws.

For example, North Carolina's cruelty code provides "a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available," and further provides that "[a] real party in interest as plaintiff shall be held to include *any person* even though the person does not have a possessory or ownership right in an animal." N.C. GEN. STAT. ANN. § 19A-2 (emphasis added); *see also*, *e.g.*, *Animal Legal Def. Fund v. Woodley*, 640 S.E.2d 777 (N.C. Ct. App. 2007) (animal protection group had standing to seek preliminary and permanent injunctions against hoarder of dogs); *Ray, et al., v. Jambbas Ranch Tours, Inc.,* 12 CVD 669 (N.C. Dist. Ct. Div.) (Aug. 2012) (Consent Decree entered requiring zoo to relinquish possession of a bear named Ben, and permanently enjoining the zoo from ever acquiring, owning, or possessing any bears in the future, base on it cruel treatment of Ben by keeping him confined in a small barren cage and denying him much needed veterinary care); *Ackerman, et al., v. Staley,* 04 Civ. 883 (N.C. Dist. Ct. Div.) (June 2006 (granting injunction to North Caroline Equine Rescue League to restrain further acts of cruelty to horses); *City of Durham et al. v. Wilson*, 01 CVS 0443 (N.C. Sup.Ct. Div.) (July 2002) (consent judgment entered enjoining further acts of cruelty toward pit bulls and awarding costs to the plaintiff for their care).

Pennsylvania's anti-cruelty code provides that "an agent of any society or association for the prevention of cruelty to animals," incorporated in Pennsylvania "shall have standing to request a court of competent jurisdiction to enjoin any violation" of that statute. 18 PA. CONS.

STAT. ANN. § 5511(i) (repealed 2017) (current version at 18 PA. CONS. STAT. ANN. § 5551 (2017)). That provision was relied on to bring an end to the infamous annual Hegins "pigeon shoot" where, for fifty years, thousands of captive birds were wounded and killed by gunshot every year in the name of "entertainment." *See Hulsizer v. Labor Day Comm.*, 734 A.2d 848 (Pa. 1999). Although that case dealt only with the standing issue, after the Pennsylvania Supreme Court ruled that Mr. Hulsizer had the requisite standing to seek the requested injunction, and in light of the fact that the Supreme Court's opinion referred to the annual event as "cruel and moronic," 734 A.2d at 850, the sponsors of the event cancelled it.

In addition, two states—Connecticut and Maine—have established programs that allow volunteer lawyers and law students to represent the interests of animals in cases brought by prosecutors under the states' anti-cruelty codes, referred to as a Courtroom Animal Advocate Program or "CAAP." *See* CONN. GEN. STAT. § 54-86n (2017) (called "Desmond's Law"); Me. Rev. Stat. Ann. tit. 17, § 1031(3-C) (2021) (criminal statute); Me. Rev. Stat. Ann. tit. 7, § 4016(1-A) (2021) (civil violation) (referred to as "Franky's Law").

And, in both the federal and state context, courts sometimes appoint a guardian ad litem to represent the interests of the animal at issue in various proceedings. *See, e.g., United States v. Approximately 53 Pit Bull Dogs*, No. 3:07CV397, 2007 WL 9836352 (E.D. Va. Oct. 16, 2007) (appointing a "guardian/special master" to consider appropriate options for a final disposition of the remaining dogs abused in Michael Vick's felonious dog-fighting operation); *In re Fla. Chimpanzee Care Trust*, No. CP-02-1333-IY (Prob. Div. Palm Beach County Cir. Ct., Apr. 1, 2002) (appointing guardian ad litem for chimpanzees for the purpose of protecting the animals' interest in a trust);*In re Estate of Ronald W. Callan, Jr.*, No. D-2252 (Shelby County, TN Probate Court 2007) (appointing guardian ad litem for decedent's dog); *State v. Talley*, No. H17BCR160063782S, 2017 WL 2803205 (Conn. Super. Ct. May 31, 2017) (appointing guardian ad litem for animals abused by defendant who ran an animal rescue facility); *Sarah v. Primarily*

Primates, Inc., 255 S.W.3d 132 (Tex. App. 2008) (discussing appointment of "Master in Chancery" on behalf of chimpanzees and monkeys, who were the focus of a disputed contract).

Conclusion

As demonstrated by the preceding discussion, establishing the requisite standing to bring cases to protect or advocate for the interests of animals is not a simple task. However, understanding the rules that apply to establishing standing, relying on the cases that have already been successful in this regard, and borrowing jurisprudence from other contexts to make innovate arguments to support standing for such cases, has yielded fruitful results in the effort to vindicate the rights and interests of animals, and hopefully will continue to do so.