



Animal Law Committee News

South Carolina Bar | January 2022

NATIONAL NEWS



Animal Personhood

In 2020, a lawsuit was brought against the Colombian government on behalf of a community of approximately 100 hippos living in the Magdalena River in Colombia, where the hippos have standing to bring suit. The U.S. District Court for the Southern District of Ohio in October granted an application to conduct discovery for use in a

foreign proceeding. The Court gave “interested persons” status to the hippos to enable the depositions of two Ohio experts in wildlife sterilization, marking this the first time that a U.S. court recognized personhood for a nonhuman animal. In another case brought by the Nonhuman Rights Project, New York’s highest court has agreed on appeal to hear a writ of habeas corpus on behalf of an elephant named Happy who has been held at the Bronx Zoo for over 40 years. The court is set to hear the writ in 2022.

Comfort Dogs for Witnesses

The American Bar Association House of Delegates in February passed a [Resolution](#) to support the passage of laws for the use of “facility dogs” for witnesses during testimony, citing that 15 states currently have laws permitting vulnerable witnesses to be accompanied by these specially trained dogs under certain circumstances.

Five entities in South Carolina currently have working facility dogs, according to [Courthouse Dogs Foundation](#).

Service, Emotional Support, and Therapy Animals



A revision to the Air Carrier Access Act became effective in January last year, limiting protections for flight access to service animals of the canine species. While the [Final Rule](#) does not include protections for emotional support dogs or other animals, it does not prevent individual airlines from adopting policies to treat emotional support animals with the same privileges

as service animals.

In August 2021, the [Puppies Assisting Wounded Service-members for Veterans Therapy Act](#) was passed, requiring the

Department of Veterans Affairs to begin a program on therapy dog training, wherein qualifying veterans may be provided with and even train their own therapy dogs.

In [C.L. v. Del Amo Hospital, Inc.](#), the Ninth Circuit Court of Appeals held that a dog personally trained by an individual with a disability is entitled to the same admission privileges of any service dog under the terms of the Americans with Disabilities Act. The Act prohibits certification requirements for service dogs for disabled individuals.



Ag Gag

Ag Gag laws are those that seek to restrict First Amendment activities within agricultural production facilities. Ag Gag laws have previously been struck down in full or in part in four other states, and currently, a decision regarding North Carolina’s Ag Gag law is pending in the Fourth Circuit.

In [ALDF v. Kelly](#), August 2021, the U.S. Court of Appeals for the Tenth Circuit affirmed a ruling by the lower court that Kansas’ Ag Gag law was unconstitutional, in violation of the First Amendment. The Court stated, “Simply put, the ‘harm’ Kansas seeks to avoid is the type of harm that is not only legally non-cognizable but legally protected: that arising out of true speech on a matter of public concern.”

In [ALDF v. Reynolds](#), Iowa’s second attempt at an Ag Gag law was also challenged in the Eighth Circuit Court of Appeals last year. This two-part law was upheld as to one provision that criminalized gaining access to an agricultural production facility based on false pretenses. However, the provision of the Iowa law criminalizing employment based on false pretenses was determined to be unconstitutional. Iowa’s first Ag Gag law was struck down in 2012.

Fur

The U.S. District Court for the Northern District of California dismissed a lawsuit by the International Fur Trade Federation which sought to strike down San Francisco’s fur ban as a violation of The Commerce Clause. California passed a statewide fur ban in 2019, after four cities within the state had already enacted their own local bans. Wellesley, Massachusetts and Ann Arbor, Michigan both previously passed their own fur bans, and several other states and municipalities across the country are considering fur bans.

Spotlight On South Carolina Rescue

[Pawmetto Lifeline](#), located on Bower Parkway in Columbia, was founded in 1999 as Project Pet. In 2012, the organization moved to its current location where it currently operates a no-kill shelter, provides spay/neuter and other medical services, and takes part in community outreach and education. Each year, Pawmetto Lifeline hosts the Fur Ball and Bark to the Park. Since opening the facility on Bower Parkway, Pawmetto Lifeline has helped give a second chance to over 15,000 companion animals. We're glad they're part of animal rescue in our state.

Standing

In [Friends of the Earth v. Sanderson Farms](#), the Ninth Circuit Court of Appeals found that Friends of the Earth lacked standing. Allocation of resources to counteract the challenged activity may qualify an organization to have standing. However, the resources must have been spent in the normal course of business as opposed to an altered allocation of resources, as in this case.



Plant Based Foods

On August 11, 2021, the U.S. District Court for the Northern District of California ruled in favor of Plaintiff Miyoko's Kitchen, seller of plant-based products like butter and cream cheese, allowing the company to use terms like "butter" (with qualifiers as "vegan" or "made with plants," "lactose-free" and "cruelty-free.") The Court held

that such censorship in the case of plant-based products which would prohibit the use of terms like "butter" was an unconstitutional violation of the First Amendment.

In further news, the company Eat Just received regulatory approval to sell lab-based chicken in Singapore, making it the first country where lab-based meat will be available for consumer purchase.

Qualified Immunity for Animal Injuries

The U.S. District Court for the District of Minnesota denied a motion to dismiss based on a qualified immunity defense in [Le-May v. City of Minneapolis](#). An officer for the City of Minneapolis responded to a security check and seriously injured two dogs who had approached him in a non-threatening manner. The Eighth Circuit Court of Appeals determined that the responding officer did not act in a reasonable manner to preclude the plaintiff's claim of unreasonable seizure.

Animal Testing

In March of last year, Virginia became the fourth state to pass a law prohibiting cosmetics manufacturers from conducting or contracting for animal testing within the state, joining California, New Jersey, and New York. In November, New Jersey became the eighth state to take it a step further, banning the sale of cosmetics that were tested on animals, joining California, Nevada, Illinois, Maryland, Virginia, Hawaii, and Maine, the last four having been passed just in 2021. Several other states are considering humane cosmetics acts. Passage of the state laws

may encourage movement of the federal [Humane Cosmetics Act](#), which was reintroduced in the House in December 2021.

Additionally, in December, South Carolina Rep. Nancy Mace (First Congressional District) introduced the [Preventing Animal Abuse and Waste Act](#) to prohibit the National Institute of Allergy and Infectious Diseases from conducting or supporting harmful research on dogs. The institute currently conducts taxpayer-funded experiments on beagle puppies.

Entertainment Animals

At the federal level, [The Big Cat Public Safety Act](#), if passed, would ban possession of big cats by individuals and make it illegal for exhibitors to allow direct contact with cubs. Treatment of big cats has gained public attention after the release of the Netflix Docuseries "Tiger King" and the three-part sequel of which tells the story of Doc Antle, the operator of Myrtle Beach Safari, previously T.I.G.E.R.S. in Myrtle Beach. Antle currently faces charges in Virginia for felony wildlife trafficking, misdemeanor animal cruelty, and violations of the Endangered Species Act. A trial is set for July 2022.

In May last year, Colorado enacted the Traveling Animal Protection Act, banning the use of wild animals, such as big cats, bears, primates, and elephants in circuses and traveling shows. Colorado becomes the seventh state to have some degree of restriction on the use of wild animals for entertainment.

SOUTH CAROLINA UPDATES

In South Carolina, House Bill 4099 was signed into law on April 16, 2021. This law established a list of Restricted Nonnative Wildlife to be regulated by the Department of Natural Resources to include potentially harmful species. The Department's regulation implements restrictions on possession, sale, release, and importation of species identified in the list. At this time, the Black and White Tegú, a lizard species, is the first and only animal added to DNR's list.

LOCAL HAPPENINGS

In November 2021, Horry County passed a comprehensive animal welfare ordinance which addresses sheltering standards, breeding operations, animal sales, community cats, and transporting dogs in truck beds.

A Lexington County tethering ordinance was approved by the Lexington County Council on a second reading in December 2021. When passed, Lexington County will become the 16th county in South Carolina with some degree of tethering restrictions.

And here are some of the animal-related bills currently in the South Carolina Legislature:

H3056–Venomous reptile bill

H3066, S378–Penalties for cruelty to police dogs or horses

H3067–Animal ownership restrictions due to cruelty convictions

H3727, H4246–Relating to animal control officers

H4094–Licensing and spay/neuter requirements for bulldog breeds

S46–Amendments to custody and care after arrest for animal cruelty

S184–Sea turtle protection act

S186–Exceptions to cruelty laws for hunting dogs