



# A Void for Vagueness: Florida's Confinement Law

## *How Animal Welfare Litigators Can Seize upon a Semantic Loophole*

This article discusses the possibility of using state animal anti-confinement laws to mistreatment of animals on factory farms. It uses Florida's statute as a viable starting place because of its vagueness and lack of significant judicial interpretation. For this reason, Florida is the perfect jurisdiction for animal advocates to begin changing inhumane conditions for animals bound for slaughter.

### **Introduction**

The Supreme Court outcome in *National Meat Packers v. Harris* is indicative of a growing wave of anti-animal sentiment.<sup>[1]</sup> More troubling was that the court was unified rather than deciding on ideological lines.<sup>[2]</sup> While the power of animal protection laws could be declining, criminal law still largely persists as a powerful tool to redirect behavior. This article looks into a potential means for activists to fill in the void left by *National Meat Packers* and begin to change the abuse farmed animal face on a daily basis. While animals are given short shrift under hospices of proper legal analysis, new laws are not needed to effect change.

For example, Florida passed its first animal anti-cruelty statute in 1889.<sup>[3]</sup> Today, over a century later, Florida has several animal cruelty laws that create criminal liability for perpetrators of animal abuse.<sup>[4]</sup> Florida has been the subject of some interesting, if not conflicting, animal law news of late mainly pertaining to confinement of animals. For example, Florida is one of few states that permit greyhound racing.<sup>[5]</sup> Conversely, Florida is also one of the few states that prohibit cruel and inhumane confinement of pigs during pregnancy.<sup>[6]</sup> The paradox makes Florida a great testing ground for litigation. The problem of cruel confinement of farmed animals persists in Florida and other states regardless of the progressive and cutting edge laws that exist.<sup>[7]</sup> With state budgets tight for criminal prosecution, civil litigation is perhaps the best way to get at animal cruelty problems when state prosecution of crimes is not common.<sup>[8]</sup> Even

superior is the ability for an organization organized for the prevention of cruelty to animals to investigate and prosecute violators on behalf of the state in criminal courts, acting as District Attorney.

Animal cruelty laws are largely within the ambit of state control. Animal cruelty is a broad umbrella term that encompasses a wide variety of animal protection statutes. These statutes create criminal liability for perpetrators of crimes against animals.<sup>[9]</sup> These anti-cruelty statutes are enforced by local law enforcement agencies, generally the state police in conjunction with local district attorney offices.<sup>[10]</sup> Sometimes anti-cruelty statutes are enforced on a federal level, when federal jurisdiction over a case is proper. The U.S. Attorney's office will not get involved unless the crime involves major interstate crime organizations, which sometimes run animal fighting operations.<sup>[11]</sup>

One statute in Florida of particular interest for litigators pertaining to the provision of adequate care to animals is looked at in detail in this article. This statute, Florida Statute § 828.13 (the "confinement law") prohibits the confinement of animals without "sufficient" and "wholesome" water, food, exercise and change of air.<sup>[12]</sup> The law is comparable to many other states that have a "minimum care" requirement for animals. Unlike others states, the Florida statute is exploitable for strategic lawsuits because it is unusually vague. Only one published judicial opinion has analyzed the meaning of this statute in Florida. The language of the law is reproduced below, with emphasis added.

*Florida Statute § 828.13*

(1) As used in this section:

(a) "Abandon" means to forsake an animal entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner.

(b) "Owner" includes any owner, custodian, or other person in charge of an animal.

(2) Whoever:

(a) Impounds or confines any animal in any place and fails to supply the animal during such confinement with a sufficient quantity of good and *wholesome food and water*,

(b) Keeps any animals in any enclosure without *wholesome exercise and change of air*, or

(c) *Abandons* to die any animal that is *maimed, sick, infirm, or diseased*,

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$5,000, or by both imprisonment [*not over one year*] and a fine.

(3) Any person who is the owner or possessor, or has charge or custody, of any animal who abandons such animal to suffer injury or malnutrition or abandons any animal in a street, road, or public place without providing for the care, sustenance, protection, and shelter of such animal is

guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$5,000, or by both imprisonment [not over one year] and a fine.[\[13\]](#)

What is particularly interesting about the statute is that its language requires “wholesome exercise and change of air,” and a “sufficient quantity of good and wholesome food and water.” These terms within the statute indicate that a significant amount of discretion is left up to interpretation. This also seems to indicate that the understanding of these terms is more contextual rather than objective. As a result, it makes for a wonderful opportunity for litigators with a wealth of facts to convince a fact finder to convict an offender. The term “wholesome” would have a slightly different meaning to each juror or judge that was faced with the challenge of interpreting it. Because of the lack of case law, a litigator is poised to take advantage of innovative policy arguments.

This document principally looks at how litigators representing animal anti-cruelty organizations, such as the Farm Sanctuary or the Humane Society, could utilize the Florida confinement law to improve the welfare of farmed animals. First, I consider how Florida law has defined an animal, and if the definition could cover farm animals. Next, I analyze the legislative history and prior judicial interpretation. I then argue for the applicability to farmed animals and compare the statute to other jurisdictions in which confinement statutes exist.

## **What Is an Animal in Florida?**

It is first important to get an idea of the scope of the Florida confinement law by examining what types of animals it governs. The definitional statute states that animals include “every living dumb creature.”[\[14\]](#) There is some indication that this referred to animals that could not speak.[\[15\]](#) Such definitions are not uncommon among states with similar law, however such phrases are uncommonly dumb because they do not assist in ascertaining plain meaning.[\[16\]](#) There are two problems from making a determination about the intelligence of animals. First, the term “dumb animal” is problematically over-inclusive, in that it may include humans when legislators did not intend.[\[17\]](#) It is also under-inclusive because many nonhuman animals are extremely intelligent.[\[18\]](#) Essentially the task of determining who is dumb or smart is not necessarily a question of law or fact, but one of false judgment. In any case, Florida seems to be broadly interpreting “dumb animal” to include almost anything one might reasonably consider an animal.[\[19\]](#) Case law in Massachusetts would indicate that a reading of “animal” would be interpreted broadly.[\[20\]](#) It is safe to assume that “dumb animal” probably meant nonhuman animals.

In practicality an “animal” is not really defined in Florida by statute. But, it is a commonly known canon of construction that the plainly accepted and commonplace meaning of a word will be applied when a word is not explicitly defined.[\[21\]](#) The Oxford English Dictionary states that an “animal” is “any living creature which feeds on organic matter” and secondly, “any living creature, including man.”[\[22\]](#) Certainly the legislature did not intend for it to cover humans. Judges would be hard-pressed to look to the plain meaning of the word in order to interpret the law because the definition seems to be in contravention with the legislative intent.

Animals are commonly defined as nonhumans.[23] Although this definition is certainly deficient from a biological perspective, more problematically it is legally unstable.[24] For example, while most people do not consider insects to be animals they would consider their own pets – cats, dogs and snakes to be animals.[25] Cladistics finds this to be curious, since all “animals” for biological purposes are related to humans at some point in the tree of life.[26] There is no difference between a mouse and a human on a larger scale, and the basic genetic differences are fairly negligible in light of the overlap.[27]

Finally, there is nothing to indicate farmed animals are affirmatively excluded from the Florida’s definition of animals.[28] A court could consider the U.S Congress’ intent to have farmed animals covered under the Humane Methods of Slaughter Act.[29] The act refers to farmed animals as animals.[30] Therefore, farmed animals will most likely be deemed animals for the purposes of the Florida confinement law.

## **Interpreting the Confinement Law**

### *Legislative history*

The original confinement law grew out of the 1889 statute mentioned earlier. In 1971, the penalties for violations increased and in 1981 the law was amended to include the abandonment provision.[31] However, at one point it explicitly applied to cows and the feeding of them for milk production.[32] There is no indication that the legislature intended to remove from the Florida confinement law farmed animals such as cows when it removed that phrase. The legislature also did not affirmatively state that cows were exempted from the law. Because there is no exemption for cows, there is no need to believe that any other animals are excluded.

The legislative intent of the law was to ensure applicability to farmed animals, especially cows.[33] However, this intent has arguably changed now that the words pertaining to cows have been eliminated.[34] Certainly, a defendant in an action would argue that the new law is not intended to govern cows. However, there is a good argument to be made that the law’s purpose is to govern all animals because the phrasing of the law does not seek to exclude any type of animal, so long as it is considered “dumb.” Because there is nothing to counter this in Florida’s statutes, seizing upon the law’s applicability to farmed animals is possible.

### *Void for vagueness rejected*

It is important to see how Florida courts have applied the confinement law because it affects how litigators should choose and frame their arguments. As noted above, the Florida confinement law has garnered only one written opinion in its judicial history. Some animal protection statutes get broad interpretation and others get eviscerated through judicial interpretation.[35] At the onset, it is important to note that the confinement law is under Title XLVI of the Florida Code, which is the section for Crimes.[36] The statute is criminal in nature and provides for a misdemeanor punishment in addition to up to five thousand dollars in fines.[37] There is no indication that the confinement law is differentially treated as other first-degree misdemeanor. *It would be important to obtain statistical evidence about how often the law is used by prosecutors and a conviction rate obtained.*

Prohibitions under § 828.13 against depriving an animal of sufficient food, water, air, and exercise, when measured by common understanding and practice, were deemed by a Florida Court of Appeals as not unconstitutionally vague.[38] The court noted in *State v. Wilson* that the presumption in the state was to assume that statutes are constitutional when a statute contains “sufficiently definite warning of the proscribed conduct,” which is further measured by “common understanding and practice.”[39] In *Wilson*, appellee animal abuser obtained a favorable ruling on a void for vagueness argument at the trial level.[40] She had seventy-seven poodles cooped up in a van without food, water or air.[41] The refusal of Florida appeals courts to strike down the statute as unconstitutionally vague was affirmed in another animal cruelty case, albeit in dicta, *Brinkley v. County of Flager*. [42] In *Brinkley*, the abusers had carcasses of dogs and other animals in cages cramped with hundreds of live dogs confined with trash, rats, roaches and feces.[43] There was no specific indication of what was meant by the word “wholesome,” and no other case has taken pause to give meaning to the word. However the frustrated court held that the abusers should have known about their conduct and therefore were forewarned that their conduct was proscribed.[44]

### *A void for vagueness?*

*Wilson* asserted vagueness in her defense because the statute relies largely on commonplace understanding of the terms “sufficient quantity of good and wholesome air,” “...in any enclosure without wholesome exercise and change of air.”[45] The judge in *Wilson* never defined “wholesome” and it is the only case on record with a written opinion applying the Florida law. Because it is still unclear as to what “wholesome” means, it leaves a lot of room to argue about its meaning and perhaps a favorable judge or jury would be sympathetic to the claims brought against a defendant. For example, if a greyhound is placed in a cage for twenty hours at a time in Florida, has it been provided with a *wholesome* change of air if it resides primarily in the front of the cage where the bars are open to air?[46] That exact scenario is very compelling because it shows how trivial the cost of providing air may be to a putative defendant who may argue that animals confined in small areas with a breathing hole are provided change of air.

The plain meaning of the word “wholesome” leaves much to be desired, in that Oxford English Dictionary defines it as, “conducive to well-being, especially in mind and character.”[47] That is not particularly helpful when working with animals because it is extremely difficult to understand what improves the well being of a nonhuman animal. Most nonhuman animals are treated in a poorer fashion than humans. In fact, it is hard to determine how to benefit another human’s well being. To add even more enigma, the dictionary goes on to mention a second definition for word, “promoting or conducive to health; health giving or health-preserving.”[48] Yet these official, definitional answers may not be analogous to the plain meanings of the word “wholesome.” Suffice it to say that “wholesome” is probably not going to be interpreted as “detrimental to health” or that which is spurious in its benefits to the animal. The word is up to interpretation but at least will not be seen as too vague. That then brings us to farmed animals.

### **Applicability to Farmed Animals**

If Florida's confinement law applies to farmed animals then a whole world of litigation opportunities is open for impact litigation. Florida's confinement law may provide a vehicle for litigating larger offenses that have applicability to multiple animals on a single farm. Justiciability issues must first be considered because such issues, such as standing, are fatal to legal claims. Then any indication that the law has applicability to farmed animals is considered. Then, a special focus on the most mistreated animals, downed farm animals shows the extent of the confinement law's applicability.

### ***Standing for citizen prosecution***

Standing is essential threshold issue to consider before litigation. Standing is the ability of the litigant to bring and sustain a case in court.[\[49\]](#) Too often animal law cases are dismissed for lack of standing.[\[50\]](#) The law at issue here is a criminal law. Presumptively only government prosecutors, vis-à-vis district attorneys and U.S. attorney offices pursuant to proper jurisdiction, may bring criminal proceedings against a putative defendant.[\[51\]](#) However, a legislature is generally permitted to confer standing upon a class of litigants.[\[52\]](#) Standing is not inferred in a criminal law for civil prosecution.[\[53\]](#) There is a provision contained within Chapter 828, which provides that associations for the prevention of cruelty to animals have the right to prosecute violators of animal laws in Florida.[\[54\]](#) There may be a question of fact as to what organizations are organized for the prevention of cruelty to animals, but presumably most nonprofits organized with a goal of furthering animal welfare or rights would qualify. However, before investigation, the organization must be given approval from the local government.[\[55\]](#)

### ***Other justiciability requirements***

Generally, other standing requirements include injury in fact, causation and redressibility.[\[56\]](#) These aspects must be satisfied for the case to be considered on the merits.

Injury in fact must be to a human, not an animal.[\[57\]](#) However, "injuries" need not be limited to economic or physical harms. They can be emotional ones as well.[\[58\]](#) In *Glickman*, the injury asserted was emotional, but the characterized this as an "aesthetic interest."[\[59\]](#)

Confined animals are rarely visible to the public and therefore it would require creative evidence preparation in order to satisfy this requirement. The standing provision permits organizations to appoint "agents" to investigate violations.[\[60\]](#) It is these people who probably could assert an "aesthetic interest." However, it is easy to see how a defendant would argue that these agents do not have a long term interest in the animals but merely one limited to their litigation goals. Perhaps generating two classes of injured parties would be beneficial to overcome this type of problem.

Causation is relatively straightforward. It requires that the injury plead be the result of the conduct of the actor being sued.[\[61\]](#) An organization would argue that the defendant confines the animals and that only the defendant and its agents have control over the animals' livelihood. Only the defendant could be responsible for the confinement.



The redressibility aspect is unlike that of *Lujan*, where the petitioners were seeking relief against individuals not a party to the case.<sup>[62]</sup> The court was unable to mete out justice as the plaintiffs wanted, at least in the court's view, and therefore the case was not justiciable. In farmed animal impact cases, the offending farm could be enjoined from further confinement. This directly resolves the harm because the animals would no longer be confined in violation of the state law.

### ***Agricultural exemptions nonexistent***

Agricultural exemptions also pose a bar if they exist.<sup>[63]</sup> There have been no agricultural exemptions discovered through research. In fact, the Attorney General of Florida in 2002 requested the Supreme Court of Florida issue an advisory opinion on the legality of the then pending pig gestation crate ban.<sup>[64]</sup> The Supreme Court of Florida found that the amendment to the Florida Constitution was not unconstitutional.<sup>[65]</sup> The *per curiam* court stated:

On and after the effective date of this section, law enforcement officers in the state are authorized to enforce the provisions of this section in the same manner and authority as if a violation of this section constituted a violation of Section 828.13, Florida Statutes (1999). The confinement or tethering of each pig shall constitute a separate offense. The knowledge or acts of agents and employees of a person in regard to a pig owned, farmed, or in the custody of a person, shall be held to be the knowledge or act of such person.<sup>[66]</sup>

This statement provides an exceptionally clear grant by the state court of highest authority that Section 828.13 does indeed apply to farmed animals, especially in light of the gestation crate ban passage. At the same time, there has been no development of case law or interpretation of the confinement provision. Perhaps this is because not all state criminal proceedings end in a written opinion, especially trial level judgments.

### ***Deprivation of "wholesome food, water, exercise..."***

Factory farms are perfect targets for challenges under the Florida confinement law. Factory farms never provide "wholesome" anything to the animals they harbor.<sup>[67]</sup> Over eleven billion animals are slaughtered in the United States annually and the Animal Welfare Act protects none of them.<sup>[68]</sup> Because factory farms are geared toward highest profit possible, they must by virtue of that goal also provide lowest quality food, water, and living space for their inmates. And indeed they do, the conditions are objectively beyond atrocious.<sup>[69]</sup>

These farms are large in scale, which gives ample opportunity for a prosecutor to charge violations of Florida's anti-confinement statute. In fact there is a great potential for multiple count violations as the *per curiam* Supreme Court of Florida noted. The criminal intent can be assigned to the factory farm owners who act in their directorial capacity to deprive the necessities that are required under the Florida confinement law.

### ***Application to "Downed Animals"***

Downed animals are those animals which are sick, maimed and otherwise cannot enter the food supply at the time of slaughter.<sup>[70]</sup> They present an interesting case because many of them are

often seriously ill and mistreated.[71] These animals were subject of national news after the *National Meat Packers* opinion involved a California law regulating downed pigs for slaughter.[72] Downed, or non-ambulatory animals, are unfortunately ripe candidates for evidence that factory farms are abusing their animals in violation of the confinement and abandonment provisions of the Florida confinement law.

The abandonment provision of the law requires that individuals not abandon animals that are maimed, sick, infirm, or diseased.[73] Although any single element would suffice to meet the prosecutorial burden (note the “or”), downed animals are uniquely subjected to all those characteristics on the farm. It is easily foreseeable that a single factory farm could be convicted for several counts of violating this law just for abandonment. A prosecutor would seek more.

### ***Strategies and drawbacks to litigation***

In a single prosecution, several counts for violating the confinement law itself would be plead. Providing ancillary counts for a prosecutor to charge factory defendants also permits them to work a favorable plea. Prosecutors can use the favorable pleas of a few defendants to compel noncomplying farms into following the law. Organizations that conduct research to prosecute farm confinement crime can utilize positive media attention to instill fear into factory farms nationwide.

There is no “citizen suit” provision in the Florida statute that permits individuals to have standing to sue a factory farm or other business such as puppy mill that may be in violation of the confinement law. The standing provision is limited to organizations for the prevention of cruelty to animals.[74] This should not be a major hurdle for organizations such as Farm Sanctuary or Humane Society, but may stand in the way for smaller organizations. These organizations must not only be organized under Florida law as required in the statute, but must also get government approval.[75]

Another drawback is rogue trial judges. Many judges will not find that the evidence of animal cruelty in a farm should warrant criminal sanctions. Evidence of this can be seen in the way the so-called *McLibel* case was handled in England.[76] It is understandable that judges are not sympathetic to claims against factory farms because many (if not most) of these judges have a personal affinity to the animal products factory farms produce. It is hard for these judges to say that what 96% of America consumes can be criminal, regardless of how it is produced.[77] This is a major drawback to utilizing the judicial system to remedy the confinement problem.

Another serious problem is the potential of breeding bad precedent. A poor trial or appellate ruling in a Florida court could hurt the animal welfare movement. Litigators should be wary of setting bad precedent which can set confusing standards or make matters worse. Defendants will argue that imposing fines for confinement would ruin a multi-billion dollar industry that feeds America. The success of the industry has the potential to kill off the confinement statute as a means for promoting animal welfare for decades.

### **Florida Confinement Law Compared to Other States**



Most states actively sanction affirmative acts of cruelty to animals.<sup>[78]</sup> These acts are generally actionable because they are related to ancient concepts of animal cruelty.<sup>[79]</sup> However, only few states have robust laws that protect the confinement of animals. Animal cruelty laws have historically been limited to the purview of states.<sup>[80]</sup> Apart from few notable exceptions such as the Animal Welfare Act and the Humane Slaughter Act, almost all sanctioning of animal cruelty is done via state law.<sup>[81]</sup> As a result, it is important to compare the quality and extent of Florida's law with that of other progressive states in America. This allows for litigators to obtain some guidance from written opinions of other states, which is important in a field with little case law.

Some of the most progressive states for animal cruelty laws include Maine, Michigan, Oregon and California.<sup>[82]</sup> These states have similar provisions to Florida and so the possibility of litigation on these laws is opened to a wider breadth of forum states. This would not only allow for litigation possibilities in other states, but also open up the door to major lawsuits against institutional violators of confinement laws.

Having case law generated in other states can assist litigation under the Florida law because animal law as a whole is such a new field. Having favorable case precedent (or even distinguishable poor precedent) in other states is persuasive for judges deciding Florida law, especially if cases are brought in federal court.<sup>[83]</sup>

### ***California***

California has animal confinement laws that have been interpreted in state courts. The California Penal Code § 597(t) pertains to animals requiring "adequate exercise area."<sup>[84]</sup> It also requires "adequate shelter, food and water."<sup>[85]</sup> Unfortunately, there is no organizational standing provision and a private right of action was denied to an organizational plaintiff.<sup>[86]</sup> The main concern of the court in *Animal Legal Defense Fund* was that the legislature did not intend to confer standing upon organizations.<sup>[87]</sup>

California voters passed Proposition 2 through a ballot initiative (Farm Animal Cruelty Act) in 2008.<sup>[88]</sup> This act is specifically applicable to farm animals but mostly is a confinement provision. The law states that animals may not be tethered or confined in a way that prevents them from freely moving and extending their limbs.<sup>[89]</sup> The act covers a broad range of farm animals, from hens to pigs and calves raised for veal.<sup>[90]</sup> No case law has been generated on the law because it does not take effect until 2015.<sup>[91]</sup>

### ***Oregon***

Oregon has "minimum care" requirements for animals in confinement, but they are not as demanding as Florida's. First of all, Oregon delineates clearly between "domestic animals" and "livestock."<sup>[92]</sup> It also only requires that adequate space for exercise necessary for the health of the animal be provided.<sup>[93]</sup> This is dissimilar to an affirmative requirement of "wholesome exercise." However, so called "good" animal husbandry practices are considered an exception to animal abuse in Oregon.<sup>[94]</sup> A case can be made out against farms for animal neglect involving the failure to provide "minimum care."<sup>[95]</sup> Oregon has a law similar to Florida's ban on

gestation crates for pigs.[\[96\]](#) The wording of the law is very similar to that of Proposition 2 in California but the language is directed only toward pigs.[\[97\]](#) It was signed into law in 2008.[\[98\]](#) There has been little discussion or application of this law outside of scholarly articles.[\[99\]](#) In any case, the indication is that Oregon's "minimum care" law would apply to farmed animals as well.

### ***Michigan, Maine***

Michigan's confinement law seems broad, and defines all the words, but has an explicit exemption for livestock and farming.[\[100\]](#) Maine's confinement law speaks nothing of food or water but demands appropriate temperature and ventilation for all animals, including livestock.[\[101\]](#)

Both Michigan and Maine have banned the use of gestation and veal crates.[\[102\]](#) These provisions are substantially identical to each other and provide for similar exceptions for rodeo, transport, fairs and scientific research. A defendant in a confinement prosecution may argue that the gestation crate ban is the extent of animal protection in Michigan or Maine.

One important distinction is that the laws passed in various states prohibit certain types of confinement situations, not confinement generally. The Florida confinement law prohibits confinement without basic provisions and does not exempt farmed animals. None of the states other than Florida have a law requiring that animal owners provide confined animals the ability to obtain decent exercise.

### **Conclusion**

As the move to limit factory farms continues through legislative and consumer activism, it is certainly a plus to employ litigation strategies to force farms into compliance with basic animal anti-cruelty laws.[\[103\]](#) While it is a disgrace that these laws are not being followed, or enforced, the flip side is that industry will do whatever it can to increase profits. The fact that perpetrators of institutionalized animal abuse are going unpunished means they are committing crimes in Florida with impunity. If litigators take the first step by successfully bringing a few farms to court, then perhaps there is a chance that it will ensure further compliance with the law.

Florida is a perfect place for this to begin. The Florida animal confinement law is vague and lacks substantial judicial interpretation. In light of the Florida Supreme Court opinion, it should be valid for farmed animals. However, a litigator should be careful in developing a case to ensure there are no surprises or negative outcomes. Litigators should not get carried away; it is highly doubtful that a judge would incarcerate farm owners for their actions, although fines are the likely outcome of any successful suit. A well-vetted case should yield more than just media attention on the issue and time is of the essence.

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[1] See *National Meat Packers v. Harris*, 565 U.S. \_\_\_\_ (2012); The Agricultural Appropriations Bill for 2012 removed the ban on inspecting horse slaughter facilities. See Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55 (2011); *United States v. Stevens*, 559 U.S. \_\_\_\_ (2010).

[2] See *Id.*

[3] See Emily S. Leavitt & Diane Halverson, *The Evolution of Anti-Cruelty Laws in the United States, in Animals and Their Legal Rights: A Survey of American Laws From 1641-1990* 1, 4 (Animal Welfare Institute, 4th ed. 1990); Many of the original colonies had anti-cruelty laws. Of course, Florida was not one of the original colonies, and was granted membership into the union in 1845.

[4] See Fla. Stat. § 828 *et seq* (2010).

[5] See Grey2K USA – Florida, <http://grey2kusa.org/action/states/fl.html>.

[6] Fla. Const. Art. X, § 21.

[7] See *e.g.*, Animal Rights Foundation of Florida – Florida’s Cruel Egg Industry, <http://www.animalrightsflorida.org/egg.htm>

[8] Craig I. Scheiner, *Crimes Against Nonhuman Animals and Florida's Courts 1889 - 2001*, Fla. B.J., 52 (2001).

[9] See Sonja A. Soehnel, Annotation, *What constitutes cruelty to animals – modern cases*, 6 A.L.R.5th 733 (1992).

[10] Implicit in criminal laws is the ability for the state to investigate and bring forth criminal proceedings against violators.

[11] See 7 U.S.C. § 2156 (2010).

[12] Fla. Stat. § 828.13 (2010).

[13] Fla. Stat. § 828.13 (2010).

[14] Fla. Stat. § 828.02 (2010); See Craig I. Scheiner, *Crimes Against Nonhuman Animals and Florida's Courts 1889 - 2001*, Fla. B.J. 56 (2001).

[15] Oxford English Dictionary – "dumb, adj. and n.", <http://www.oed.com/view/Entry/58378>.

[16] For a worse offender, See Tenn. Code § 39-3-101 (1939) which stated that “the words animal or dumb animal shall be held to include every living creature.”

[17]The IQ of President George W. Bush was apparently 91 by some reports, but it may have been substantially higher. See John Tierney, *Secret Weapon for Bush?*, N.Y. Times, Oct. 24, 2004, <http://www.nytimes.com/2004/10/24/politics/campaign/24points.html>.

[18]Chimps are considered extremely advanced, and so are whales, dolphins and dogs. See Jennifer Viegas, *Dolphins: The Second-Smartest Animals?*, Discovery News, Jan. 22, 2010, <http://news.discovery.com/animals/dolphins-smarter-brain-function.html>; Also, what does incapable of speech really mean? For example, parrots are well known talkers. See *Alex the African Grey, Science's best known parrot died on September 6<sup>th</sup>, age 31*, The Economist, Sep. 20, 2007, [http://www.economist.com/node/9828615?story\\_id=9828615](http://www.economist.com/node/9828615?story_id=9828615).

[19]See *Wilkerson v. State*, 401 So.2d 1110, 1111 (Fla. 1981) (finding that the term “dumb animal” is not vague).

[20]See *Knox v. Massachusetts Soc’y for the Prevention of Cruelty to Animals*, 425 N.E.2d 393 (Mass. App. Ct. 1981) (indicating that goldfish are animals).

[21]See e.g., *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253 (1992).

[22]Oxford English Dictionary – “animal, n.”, <http://www.oed.com/view/Entry/273779>.

[23]See e.g., Mo. Ann. Stat. § 578.005 (2010).

[24]Taimie Bryant, *Animals Unmodified: Defining Animals/Defining Human Obligations to Animals*, Paper presented at the annual meeting of the The Law and Society Association (Jul. 6, 2006) available at [http://www.allacademic.com/meta/p95397\\_index.html](http://www.allacademic.com/meta/p95397_index.html).

[25]See What is an Insect – <http://www.uky.edu/Ag/Entomology/ythfacts/4h/unit1/intro.htm>.

[26]All are members of Kingdom *Animalia*. See Neil Campbell et al., *Biology* (9<sup>th</sup> Ed. 2010).

[27]Marsha Walton, *Mice, men share 99 percent of genes*, CNN, Dec. 4, 2002, [http://articles.cnn.com/2002-12-04/tech/coolsc.coolsc.mousegenome\\_1\\_human-genome-new-human-genes-genes-that-cause-disease](http://articles.cnn.com/2002-12-04/tech/coolsc.coolsc.mousegenome_1_human-genome-new-human-genes-genes-that-cause-disease).

[28]*Generalia specialibus non derogant* is the applicable canon that is applied for this logic; that is to say, implied repeal will not be read.

[29]7 U.S.C. § 1902 (2010).

[30]*Id.* at § 1902(b) (2010).

[31]1981 Fla. Laws. 81-17, § 1.

[32]1982 Fla. Laws 82-116, § 2.

[33]*Id.*

[34]The wording was amended in 1982 Fla. Laws 82-116, § 2.

[35]Judicial interpretation can ruin a written phrase in law. *See e.g.*, Kimberly C. Shankman, *Reviving the Privileges or Immunities Clause to Redress Balance Among States, Individuals, and the Federal Government*, CATO Institute, Policy Analysis, Nov. 23, 1998, <http://www.cato.org/pubs/pas/pa326.pdf>.

[36]Fla. Stat. § 828.13 (2010).

[37]Fla. Stat. § 828.13(2)(c) (2010).

[38]*State v. Wilson*, 464 So.2d 667 (Fla. Dist. Ct. App. 1985).

[39]*Id.* at 668.

[40]*Id.*

[41]*Id.*

[42]*Brinkley v. County of Flagler*, 769 So.2d 468, 473 (Fla. Dist. Ct. App. 2000).

[43]*Id.* at 470.

[44]*Id.* at 473.

[45]*See Wilson*, *supra* note 30.

[46]*See Grey2K USA – About Dog Racing*, <http://www.grey2kusa.org/about/index.html>.

[47]Oxford English Dictionary – "wholesome, adj. and n.", <http://www.oed.com/view/Entry/228734>.

[48]*Id.*

[49]*Warth v. Seldin*, 422 U.S. 490, 498 (1975).

[50]*See Farm Sanctuary, Inc. v. Veneman*, 212 F.Supp.2d 280 (S.D.N.Y. 2002).

[51]Individuals are not generally permitted to prosecute criminal cases.

[52]*See Warth supra* note 39 at 500.

[53]*See Mezullo v. Maletz*, 118 N.E.2d 356, 359 (1954) (no civil action allowed under statute containing criminal penalties unless legislature expressly so provided). Also there is a common

law maxim “*expressio unius est exclusio alterius*” which is applied (“expression of one thing is the exclusion of another”).

[54] Fla. Stat. § 828.03(1) (2010).

[55] Fla. Stat. § 828.03(2) (2010).

[56] See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

[57] See *Am. Soc’y For Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus*, 317 F.3d 334, 335 (D.C. Cir. 2003).

[58] *Animal Legal Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 431 (D.C. Cir. 1998).

[59] *Id.*

[60] Fla. Stat. § 828.03(1) (2010).

[61] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

[62] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

[63] For example, the Animal Welfare Act specifically exempts animals for slaughter. 7 U.S.C. § 2132(g) (2010).

[64] *In re Advisory Opinion to Atty. Gen. ex rel. Limiting Cruel & Inhumane Confinement of Pigs During Pregnancy*, 815 So. 2d 597 (Fla. 2002)

[65] *Id.* at 600.

[66] *Id.* at 598.

[67] See An HSUS Report: The Welfare of Animals in the Meat, Eggs, and Dairy Industries 1 (2010), [http://www.humanesociety.org/assets/pdfs/farm/welfare\\_overview.pdf](http://www.humanesociety.org/assets/pdfs/farm/welfare_overview.pdf).

[68] *Id.*

[69] *Id.*

[70] See *Requirement for the Disposition of Cattle that Become Non-Ambulatory Disabled Following Ante-Mortem Inspection*, 73 Fed. Reg. 50889 (Aug. 29, 2008) (to be codified at 9 C.F.R. pt. 309).

[71] See *Legislative Fact Sheet, the Downed Animals and Food Safety Protection Act*, H.R. 661 and S.394, The Farm Sanctuary, [http://www.farmsanctuary.org/get\\_involved/assets/pdf/fs\\_110th\\_downers\\_factsheet.pdf](http://www.farmsanctuary.org/get_involved/assets/pdf/fs_110th_downers_factsheet.pdf).



[72] *National Meat Packers v. Harris*, 565 U.S. \_\_\_\_ (2012).

[73] Fla. Stat. § 828.03(2)(c) (2010).

[74] Fla. Stat. § 828.03(1) (2010).

[75] *Id.*

[76] *See McDonald's Corporation, McDonald's Restaurants Limited v Helen Marie Steel and David Morris* [1997] EWHC (QB) 366 (Eng).

[77] Vegetarian Times – Vegetarianism in America, [http://www.vegetariantimes.com/features/archive\\_of\\_editorial/667](http://www.vegetariantimes.com/features/archive_of_editorial/667) (vegetarians make up less than 3.5% of the United States population according to their research).

[78] *See A.L.R. supra* note 7.

[79] *People v. Dunn*, 39 Cal. App. 3d 418, 420 (Cal. App. Ct. 1974)

[80] ASPCA – State Animal Cruelty Laws, <http://www.aspca.org/Fight-Animal-Cruelty/Advocacy-Center/state-animal-cruelty-laws.aspx>.

[81] *See A.L.R. supra* note 7.

[82] Animal Legal Defense Fund – 2010 State Animal Protection Laws Rankings, <http://www.aldf.org/article.php?id=1548>.

[83] Judges in federal court are more inclined to look at laws from other states especially when the prevailing law of that state is in conformity with the state in which the conduct being adjudicated took place.

[84] Cal. Penal Code § 597t (2010).

[85] *Id.*

[86] *Animal Legal Def. Fund v. Mendes*, 160 Cal. App. 4th 136, 139 (Cal. Ct. App. 2008).

[87] *Id.* at 142.

[88] Cal. Health & Safety Code § 25990 (2010).

[89] Cal. Health & Safety Code § 25990(a)-(b) (2010).

[90] Cal. Health & Safety Code § 25991 (2010).

[91] Cal. Health & Safety Code § 25994 (2010).

[92]Or. Rev. Stat. § 167.310(1)-(2) (2010).

[93]Or. Rev. Stat. § 167.310 (2010).

[94]Or. Rev. Stat. §§ 167.315-167.320 (2010).

[95]Or. Rev. Stat. § 167.325 (2010).

[96]Oregon, SB 694, 74th Leg. Assembly, Reg. Sess. (2007).

[97]Or. Rev. Stat. § 600.150 (2010).

[98]*Id.*

[99]Elizabeth R. Springsteen, *A Proposal to Regulate Farm Animal Confinement in the United States and an Overview of Current and Proposed Laws on the Subject*, 14 Drake J. Agric. L. 437 (2009).

[100]Mich. Comp. Laws. § 750.50(11) (2010).

[101]Me. Rev. Stat. tit. 17, § 1037 (2010).

[102]See Mich. Comp. Laws. § 287.746 (6)-(7); Me. Rev. Stat. tit. 17, § 1039 (2010).

[103]Erik Eckholm, *Farmers Lean to Truce on Animals' Close Quarters*, N.Y. Times, Aug. 11, 2010 at A18.

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