

# LEGISLATIVE REVIEW

## 2014 FEDERAL LEGISLATIVE REVIEW

By  
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### I. INTRODUCTION

The 113th Congress escaped the designation of “least productive Congress in modern history” thanks to a particularly active lame duck session.<sup>1</sup> During its session, the 113th Congress enacted 296 laws, 212

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<sup>1</sup> Drew DeSilver, *In Late Spurt of Activity, Congress Avoids ‘Least Productive’ Title*, PEW RES. CENTER, <http://www.pewresearch.org/fact-tank/2014/12/29/in-late-spurt-of-activity-congress-avoids-least-productive-title/> [<http://perma.cc/A5K4-CHGY>] (Dec. 29, 2014) (accessed Feb. 10, 2015) [hereinafter *In Late Spurt of Activity*]. A congressional “lame duck” session is one which includes legislators who have lost their seats in November elections, yet whose terms do not expire until January. Drew DeSilver, *How*

of which were “categorized . . . as substantive” by the Pew Research Center,<sup>2</sup> a nonpartisan “fact tank.”<sup>3</sup> This legislative activity, however, did not benefit animals. Of the pieces of proposed legislation discussed in this Review, none passed and, unless otherwise specified, all died in Committee.

## II. EXOTIC ANIMALS

The purpose of the Traveling Exotic Animal Protection Act (TEAPA) is “[t]o amend the Animal Welfare Act to restrict the use of exotic and non-domesticated animals in traveling circuses and exhibitions.”<sup>4</sup> This bill would effectively end the use of exotic animals in traveling circuses. The bill would ban the use of exotic or wild animals in shows, when those animals had traveled in mobile housing facilities at any point in the prior fifteen days.<sup>5</sup> Under this Act, circuses and similar shows would no longer be able to constantly transport animals across the United States (U.S.) without respite.

Traveling circuses are inherently cruel for the animals involved. The very nature of a traveling circus requires ease of mobility: facilities are small, sparse, and subject to frequent movement.<sup>6</sup> As a result, animal housing must be “collapsible, small and lightweight,”<sup>7</sup> requiring that animals live in tiny, barren enclosures, and endure both lengthy transit periods and restrictions on their bodily movement.<sup>8</sup> Indeed, even if traveling circuses improved their animal enclosures, that alone would not entirely remedy the negative impact on animal welfare; the additional time involved in assembling and disassembling such enhanced enclosures would require the animals to spend long pe-

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*Productive Are Lame Duck Congresses?*, PEW RES. CENTER, <http://www.pewresearch.org/fact-tank/2014/12/02/how-productive-are-lame-duck-congresses/> [<http://perma.cc/LPA2-6T8J>] (Dec. 2, 2014) (accessed Feb. 10, 2015).

<sup>2</sup> See DeSilver, *In Late Spurt of Activity*, *supra* note 1 (describing the Pew Research Center’s designation as “deliberately generous criteria . . . [applying to] anything besides building renamings, commemorative-coin issuances and other purely ceremonial laws”).

<sup>3</sup> *About Pew Research Center*, PEW RES. CENTER, <http://www.pewresearch.org/about/> [<http://perma.cc/MZ9R-M3CF>] (accessed Feb. 10, 2015).

<sup>4</sup> Traveling Exotic Animal Protection Act, H.R. 4525, 113th Cong. (2014) (available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr4525ih/pdf/BILLS-113hr4525ih.pdf> [<http://perma.cc/L3YJ-JYQD>] (accessed Jan. 9, 2015)).

<sup>5</sup> *Id.* § 3(i)(1).

<sup>6</sup> Cara Meyers, *Stop the Big Top: New Bill Could Ban Wild Animals in U.S. Circuses*, GLOBAL ANIMAL, <http://www.globalanimal.org/2014/04/30/stop-the-big-top-new-bill-could-ban-wild-animals-in-u-s-circuses/118263/> [<http://perma.cc/TG2U-V37T>] (Apr. 30, 2014) (accessed Feb. 10, 2015).

<sup>7</sup> ANIMAL DEFENDERS INT’L & PERFORMING ANIMAL WELFARE SOC’Y, CONGRESS BRIEFING: CAPTIVITY & TRANSPORT (2010) (available at [http://www.pawsweb.org/documents/4\\_low\\_cong\\_brief\\_captivity\\_transportf\\_16.8.pdf](http://www.pawsweb.org/documents/4_low_cong_brief_captivity_transportf_16.8.pdf) [<http://perma.cc/BTQ5-4RND>] (accessed Feb. 10, 2015)).

<sup>8</sup> *Id.*; Meyers, *supra* note 6.

riods of time in their transit facilities.<sup>9</sup> Scientific evidence shows animals suffer under these conditions,<sup>10</sup> as indicated by display of “stereotypy,” where the animal engages in a “repeated, relatively invariable sequence of movements which [have] no obvious function.”<sup>11</sup> In big cats, such as tigers and lions, circus transport is correlated with “stereotypic behaviors such as pacing,” which worsen the longer the animals are in transit.<sup>12</sup> Notably stereotypic behavior is a hallmark of “long-term coping problems” associated with negative animal welfare—and are entirely absent in the wild.<sup>13</sup> Additionally, traveling circuses coerce their animals to perform through extreme means such as limiting access to food and physical abuse involving electric shocks, bludgeoning, and puncture wounds.<sup>14</sup>

Traveling circuses are also problematic due to public safety concerns. Firstly, animals can spread disease to humans.<sup>15</sup> For example, there are documented incidents of circus elephants transmitting tuberculosis to their handlers;<sup>16</sup> this is a particularly troubling public health concern because tuberculosis is difficult to diagnose or recognize in elephants,<sup>17</sup> increasing the likelihood of unanticipated infection. Secondly, there is a risk of animals escaping their enclosures.<sup>18</sup> As mentioned previously, the temporary and lightweight housing for circus animals is not nearly as sturdy as permanent enclosures.<sup>19</sup> The animals, therefore, can more easily escape, which can lead to injury and death for both people and animals.<sup>20</sup> For example, in 2008, in an area just north of Mexico City, a bus hit an elephant who had escaped from a circus, killing the elephant and bus driver, and injuring at least four passengers.<sup>21</sup>

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<sup>9</sup> ANIMAL DEFENDERS INT’L & PERFORMING ANIMAL WELFARE SOC’Y, *supra* note 7; Meyers, *supra* note 6.

<sup>10</sup> See generally ANIMAL DEFENDERS INT’L, ANIMALS IN TRAVELING CIRCUSES: THE SCIENCE ON SUFFERING 4–22 (2006), [https://www.ad-international.org/admin/downloads/circuses\\_science\\_awb\\_lords\\_\(low\\_res\).pdf](https://www.ad-international.org/admin/downloads/circuses_science_awb_lords_(low_res).pdf) [<http://perma.cc/LMC8-QPPC>] (accessed Feb. 13, 2015) (discussing the scientific literature on animal suffering as applied to animals in traveling circuses).

<sup>11</sup> ANIMAL DEFENDERS INT’L & PERFORMING ANIMAL WELFARE SOC’Y, *supra* note 7.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> H.R. 4525 § 2(3).

<sup>15</sup> ANIMAL DEFENDERS INT’L & PERFORMING ANIMAL WELFARE SOC’Y, CONGRESS BRIEFING: PUBLIC HEALTH & SAFETY (2010) (available at [http://www.pawsweb.org/documents/2\\_low\\_cong\\_brief\\_public\\_safety\\_f\\_16.8.pdf](http://www.pawsweb.org/documents/2_low_cong_brief_public_safety_f_16.8.pdf) [<http://perma.cc/Y925-R8ZC>] (accessed Feb. 10, 2015)).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See *id.* (noting accidents in and escapes from circuses between 2004 and 2010).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Associated Press, *Mexico: One Dead and Four Hurt as Escaped Elephant Is Hit by Bus*, N.Y. TIMES, <http://www.nytimes.com/2008/09/24/world/americas/24briefs-ONE-DEADANDFO-BRF.html?ref=world&r=0> [<http://perma.cc/C5DW-CDXE>] (Sept. 24, 2008) (accessed Feb. 10, 2015).

Though Representative James Moran (D-Va.) introduced TEAPA to the House of Representatives on April 30, 2014,<sup>22</sup> the Act's history stretches back years prior. Representative Moran—in conjunction with Animal Defenders International and the Performing Animal Welfare Society—had originally announced the Act in 2011.<sup>23</sup> In reference to the bill, Representative Moran stated, “The mounting evidence of inhumane treatment and the growing public concern for these animals demands that we reconsider what are appropriate living conditions for these intelligent, social creatures.”<sup>24</sup>

In true animal legislation fashion, this bill is not without exemptions.<sup>25</sup> First, the law only applies to exotic animals and non-domesticated animals.<sup>26</sup> The reasoning for this is that such animals “have wild instincts and needs and . . . demonstrated unpredictability,” and so providing them with an adequate environment in the context of a traveling circus is impossible.<sup>27</sup> Second, TEAPA does not apply to many institutions, including zoos; aquariums; research facilities; the film, television, and advertising industries; and rodeos.<sup>28</sup> Representative Moran reasoned these exemptions would allow the Act to focus on “the most egregious conditions.”<sup>29</sup> Representative Moran's analysis, thus, is essentially that while conditions for animals in facilities which would

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<sup>22</sup> H.R. 4525. Rep. Moran has long been an important animal advocate in Congress. See *Animal Protection Caucus Leaders to Retire*, ANIMAL WELFARE INST., <https://awionline.org/awi-quarterly/2014-winter/animal-protection-caucus-leaders-retire> [<http://perma.cc/Y74Q-G553>] (2014) (accessed Feb. 10, 2015) (noting Rep. Moran announced his plan to retire after the 113th Congress, and lauding him as having been “one of [Congress's] fiercest protectors of animals” during his twenty-four year tenure, a period which saw him co-chair the Congressional Animal Protection Caucus).

<sup>23</sup> Doris Lin, *The Traveling Exotic Animal Protection Act Could Ban Circus Animals*, ABOUT.COM, <http://animalrights.about.com/od/animalsinentertainment/a/The-Traveling-Exotic-Animal-Protection-Act-Could-Ban-Circus-Animals.htm> [<http://perma.cc/4GVB-BG5E>] (accessed Feb. 10, 2015).

<sup>24</sup> Nikki Schwab, *Rep. Jim Moran Trying to Free Traveling Circus Animals*, U.S. NEWS WASH. WHISPERS, <http://www.usnews.com/news/blogs/washington-whispers/2014/04/30/rep-jim-moran-trying-to-free-traveling-circus-animals> [<http://perma.cc/4WRT-26SF>] (May 1, 2014, 7:26 AM) (accessed Apr. 15, 2015).

<sup>25</sup> Legislation protecting animals tends to exclude large classes of animals, either through explicit statutory language or regulatory interpretation. See, e.g., *Animal Welfare Act*, 7 U.S.C. § 2132(g)(1) (2015) (statutorily excluding birds, mice, and rats bred for research from the protections for research animals); *Levine v. Vilsack*, 587 F.3d 986, 990 (9th Cir. 2009) (summarizing “history of USDA's position” that poultry are regulatorily excluded from the category of “livestock” covered by the Humane Methods of Slaughter Act (HMSA), while the USDA's position was being initially ambiguous at the HMSA's 1958 enactment, as of 1960 it hardened to an absolute rejection of poultry as “livestock” for HMSA purposes).

<sup>26</sup> H.R. 4525 § 3(i)(1).

<sup>27</sup> *Id.* § 2(5), (8).

<sup>28</sup> *Id.* § 3(5).

<sup>29</sup> Press Release, Jim Moran, *Moran Bill Would Limit Use of Exotic Circus Animals* (Apr. 30, 2014) (<https://moran.house.gov/press-release/moran-bill-would-limit-use-exotic-circus-animals> (original site no longer available; cached version available at <http://www.noodls.com/view/2235EA14484881464B332E7C76CADEBA80D641A2> [<http://perma.cc/56A6-2Q87>] (accessed Jan. 9, 2015))).

not be covered by TEAPA are less than optimal,<sup>30</sup> they are better than the conditions for exotic animals in traveling circuses, who are the animals TEAPA seeks to protect. Presumably, this would have helped the bill get more support by exempting this large group of exhibitors who would otherwise be threatened by TEAPA. Despite these exemptions, TEAPA did not pass.<sup>31</sup>

### III. FARM ANIMALS

#### A. *Preservation of Antibiotics for Medical Treatment Act of 2013*

Representative Louise Slaughter (D-N.Y.) introduced the Preservation of Antibiotics for Medical Treatment Act of 2013 (PAMTA) on March 14, 2013.<sup>32</sup> Congress's sole microbiologist, Representative Slaughter has opposed nontherapeutic antibiotic use in farm animals since 1999.<sup>33</sup> Senator Dianne Feinstein (D-Cal.) introduced the companion Senate bill, the Preventing Antibiotic Resistance Act of 2013.<sup>34</sup> The language of the two acts is almost identical.<sup>35</sup>

The purpose of PAMTA is “[t]o amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antimicrobials used in the treatment of human and animal diseases.”<sup>36</sup>

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<sup>30</sup> In fact, the evidence suggests they are far from it. See *10 Facts About Zoos*, CAPTIVE ANIMALS' PROTECTION SOC'Y, <http://www.captiveanimals.org/news/2010/03/10-facts-about-zoos> [<http://perma.cc/MN2N-F4HP>] (Mar. 3, 2010) (accessed Jan. 9, 2015) (explaining that zoos lack adequate space for animals, have animals die prematurely, and kill unwanted animals); *Rodeo Facts: The Case Against Rodeos*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/when-you-witness-animal-cruelty/rodeo-facts-the-case-against-rodeos/> [<http://perma.cc/3ELY-RTEH>] (accessed Jan. 9, 2015) (explaining that animals in rodeos “suffer broken ribs, backs, and legs, torn tails, punctured lungs, internal organ damage, ripped tendons, torn ligaments, snapped necks, and . . . agonizing deaths”); *Harm and Suffering*, NEW ENG. ANTI-VIVISECTION SOC'Y, <http://www.neavs.org/research/harm-suffering> [<http://perma.cc/7X2V-7SHL>] (accessed Jan. 9, 2015) (“In research and testing, animals are subjected to experiments that can include everything from testing new drugs to infecting with diseases, poisoning for toxicity testing, burning skin, causing brain damage, implanting electrodes into the brain, maiming, blinding, and other painful and invasive procedures.”).

<sup>31</sup> *H.R. 4525 (113th): Traveling Exotic Animal Protection Act*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/hr4525> [<http://perma.cc/N8PT-7WSU>] (accessed Feb. 23, 2015).

<sup>32</sup> Preservation of Antibiotics for Medical Treatment Act of 2013, H.R. 1150, 113th Cong. (2013) (available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr1150ih/pdf/BILLS-113hr1150ih.pdf> [<http://perma.cc/9GQA-TGRH>] (accessed Mar. 1, 2015)).

<sup>33</sup> Luke Moretti & Rose Ciotta, *Lawmaker Targets Farm Animals for Overuse of Antibiotics*, YOUR FOOD: WHAT DO YOU REALLY KNOW?, <http://wivb.com/2014/11/17/law-maker-targets-farm-animals-for-overuse-of-antibiotics/> [<http://perma.cc/R7Z5-7SXE>] (Nov. 24, 2014) (accessed Jan. 9, 2015).

<sup>34</sup> Preventing Antibiotic Resistance Act of 2013, S. 1256, 113th Cong. (2013) (available at <http://www.gpo.gov/fdsys/pkg/BILLS-113s1256is/pdf/BILLS-113s1256is.pdf> [<http://perma.cc/563N-E5KX>] (accessed Jan. 9, 2015)).

<sup>35</sup> Compare *id.*, with H.R. 1150 (showing almost identical bills). Because the two acts are so similar, this analysis of PAMTA applies equally to the Preventing Antibiotic Resistance Act, unless otherwise noted.

<sup>36</sup> H.R. 1150; S. 1256.

The U.S. Department of Agriculture (USDA) defines an antimicrobial as “an agent that kills bacteria or suppresses their multiplication or growth.”<sup>37</sup> Antibiotics are a type of antimicrobial.<sup>38</sup> PAMTA is concerned with antibiotic resistance, specifically targeting animal agriculture.<sup>39</sup> Antibiotic resistance results when the targeted microorganisms evolve to survive despite the presence of the antibiotics, thus reducing or eliminating the antibiotics’ effectiveness.<sup>40</sup> The Act seeks to limit the nontherapeutic use of antibiotics in animal agriculture.<sup>41</sup> PAMTA defines nontherapeutic use as “administration of antibiotics to an animal through feed and water (or, in poultry hatcheries, through any means) for purposes (such as growth promotion, feed efficiency, weight gain, or disease prevention) other than therapeutic use or nonroutine disease control.”<sup>42</sup> Therapeutic use is defined as “the use of antimicrobials for the specific purpose of treating an animal with a documented disease or infection.”<sup>43</sup> Therefore, to put it simply, nontherapeutic use is using antibiotics on animals that are not sick.

PAMTA focuses on animal agriculture because a majority of antibiotics are used in animal agriculture. In 2010, 80% of the antibiotics sold in the U.S. were intended for use on farm animals, not people.<sup>44</sup> This large number provides evidence that animal agriculture significantly contributes to antimicrobial resistance because “it can be assumed that the wider the use of antimicrobials, the greater the chance for the development of resistance.”<sup>45</sup> Representatives of the U.S. Food and Drug Administration, Centers for Disease Control and Prevention, and U.S. Department of Agriculture have all testified that substantial evidence demonstrates that animal agriculture’s overuse of antibiotics

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<sup>37</sup> Judy E. Akkina & Reginald Johnson, ANIMAL & PLANT HEALTH INSPECTION SERV., U.S. DEP’T AGRIC., ANTIMICROBIAL RESISTANCE ISSUES IN ANIMAL AGRICULTURE 1, 2 (May 2007) (available at [http://www.aphis.usda.gov/animal\\_health/emergingissues/downloads/antiresist2007update.pdf](http://www.aphis.usda.gov/animal_health/emergingissues/downloads/antiresist2007update.pdf) [<http://perma.cc/Y9SR-NU2X>] (accessed Mar. 1, 2015)).

<sup>38</sup> Mich. State Univ., *Antimicrobials: An Introduction*, ANTIMICROBIAL RESISTANCE LEARNING SITE, <http://amrls.cvm.msu.edu/pharmacology/antimicrobials/antimicrobials-an-introduction> [<http://perma.cc/MUE4-NDK6>] (accessed Jan. 9, 2015).

<sup>39</sup> H.R. 1150 § 2(1)(A); S. 1256 § 2(1)(A).

<sup>40</sup> Mich. State Univ., *Antimicrobial Resistance*, ANTIMICROBIAL RESISTANCE LEARNING SITE, <http://amrls.cvm.msu.edu/microbiology/antimicrobial-resistance> [<http://perma.cc/8PJ5-KJEC>] (accessed Mar. 1, 2015).

<sup>41</sup> H.R. 1150 § 4(b); S. 1256 § 4(b).

<sup>42</sup> H.R. 1150 § 4(b)(q)(6)(C)(i); S. 1256 § 4(b)(q)(6)(C)(i).

<sup>43</sup> H.R. 1150 § 4(b)(q)(6)(B); S. 1256 § 4(b)(q)(6)(B).

<sup>44</sup> H.R. 1150 § 2(16)(C); S. 1256 § 2(16)(C). According to the Food and Drug Administration, of antibiotic drugs sold within the U.S. in 2010, 13.5 million kilograms were intended for use on “food animals” and 3.3 million kilograms were intended for human use. H.R. 1150 § 2(16); S. 1256 § 2(16).

<sup>45</sup> PEW COMM’N ON INDUS. FARM ANIMAL PROD., PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA 5 (2008) (available at [http://www.ncifap.org/\\_images/PCIFAPFin.pdf](http://www.ncifap.org/_images/PCIFAPFin.pdf) [<http://perma.cc/EB2Y-GM3V>] (accessed Mar. 1, 2015)).

creates antimicrobial resistance.<sup>46</sup> Additionally, The Pew Charitable Trusts, a nonprofit organization,<sup>47</sup> has published a sixty-eight-page bibliography of studies dating back to 1969 which indicates that animal agriculture contributes to antibiotic resistance.<sup>48</sup>

Behind the evidence that animal agriculture's overuse of antibiotics contributes to antibiotic resistance is the question of why animal agriculture feels the need to use such a massive amount of antibiotics on its animals. The answer lies in what animal agriculture has become. Any animal advocate knows that the idyllic, rolling green pastures with cows and chickens roaming free are long gone. Instead, animal agriculture has industrialized, with large corporate farms becoming the standard.<sup>49</sup> This industrialization is ultimately expressed in Concentrated Animal Feeding Operations (CAFOs), facilities where animals are raised to produce meat, egg, or dairy products under conditions of extremely high density, effectively warehoused.<sup>50</sup> The design of such factory farms is to produce cheap animal products (and do so successfully),<sup>51</sup> but they also produce animals who are injured and more likely to get sick.<sup>52</sup> Animals living in these conditions are kept so close together that chickens' beaks must be trimmed to keep them from pecking at one another, and pigs' tails must be docked to keep

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<sup>46</sup> See *Antibiotic Resistance and the Use of Antibiotics in Animal Agriculture: Hearing Before the Subcomm. on Health of the H. Comm. on Energy and Commerce*, 111th Cong. 28, 44, 49 (2010) (statements of Joshua Sharfstein, M.D., Principal Deputy Comm'r, FDA; John Clifford, D.V.M., Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, USDA; and Rear Admiral Ali S. Khan, M.D., M.P.H., Assistant Surgeon General and Acting Deputy Director, National Center for Emerging and Zoonotic Infectious Disease, CDC) (available at <http://democrats.energycommerce.house.gov/sites/default/files/documents/Final-Transcript-Health-Antibiotic-Resistance-Animal-Agriculture-2010-7-14.pdf> [<http://perma.cc/585G-C7DE>] (accessed Mar. 1, 2015)) (all reporting their respective organizations have found evidence concluding antibiotic use for animal agriculture contributes to antibiotic resistance).

<sup>47</sup> *Mission & Values*, PEW CHARITABLE TRUSTS, <http://www.pewtrusts.org/en/about/mission-and-values> [<http://perma.cc/VX66-MQ8R>] (accessed Jan. 10, 2015).

<sup>48</sup> PEW CHARITABLE TRUSTS, *ANTIBIOTIC RESISTANCE AND FOOD ANIMAL PRODUCTION: A BIBLIOGRAPHY OF SCIENTIFIC STUDIES (1969-2014)* (May 31, 2013) (available at [http://www.pewtrusts.org/~media/Assets/2013/05/21/HHIFBibliographyFinalwithTOC\\_041714.pdf](http://www.pewtrusts.org/~media/Assets/2013/05/21/HHIFBibliographyFinalwithTOC_041714.pdf) [<http://perma.cc/ZSK2-R9R9>] (accessed Jan. 10, 2015)).

<sup>49</sup> See CARRIE HRIBAR, *UNDERSTANDING CONCENTRATED ANIMAL FEEDING OPERATIONS AND THEIR IMPACT ON COMMUNITIES 1* (Mark Schultz ed., 2010) (available at [http://www.cdc.gov/nceh/ehs/docs/understanding\\_cafos\\_nalboh.pdf](http://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf) [<http://perma.cc/E7VG-H57L>] (accessed Feb. 13, 2015)) (discussing the use of "high-density" facilities for livestock production).

<sup>50</sup> *Id.*; see also *Meat Production*, PHYSICIANS FOR SOC. RESP., <http://www.psr.org/chapters/oregon/safe-food/industrial-meat-system.html#CAFO> (accessed Mar. 2, 2015) (site no longer available) (noting that while CAFOs represent "only 5% of livestock operations [they] produce 50% of our food animals").

<sup>51</sup> Monica Eng, *The Costs of Cheap Meat: Critics of Factory Farms Say We Pay a High Price for Low-Cost Food*, CHI. TRIB., [http://articles.chicagotribune.com/2010-09-24/health/ct-met-cheap-protein--20100923\\_1\\_factory-farms-cafos-salmonella-outbreak](http://articles.chicagotribune.com/2010-09-24/health/ct-met-cheap-protein--20100923_1_factory-farms-cafos-salmonella-outbreak) [<http://perma.cc/S5TT-3REG>] (Sept. 24, 2010) (accessed Feb. 13, 2015).

<sup>52</sup> Moretti & Ciotta, *supra* note 33.

them from biting each other.<sup>53</sup> Producers prefer genetically similar animals, which produce uniform products,<sup>54</sup> but those genetic similarities increase the chances of disease spreading from one animal to the others.<sup>55</sup> Antibiotics are often given to farm animals in order “to compensate for the effects of unsanitary and overcrowded conditions.”<sup>56</sup> These conditions make the animals more likely to get sick, and so producers give animals who are not yet ill antibiotics preventatively, in order to combat this.<sup>57</sup> Economics also drives the nontherapeutic use of antibiotics, as frequently dosing farmed animals with antibiotics “help[s] promote growth and improve feed efficiency.”<sup>58</sup> In other words, by giving the animals low doses of antibiotics, producers get more for their money: the animals can eat less yet still grow to market weight.<sup>59</sup>

PAMTA will not solve the animal welfare issues implied above, but it could inadvertently improve them. If producers cannot fill animals with antibiotics to compensate for the horrible conditions, they may have to improve these conditions to keep the animals alive. Discussion of PAMTA mainly focuses on the benefits to people, specifically decreasing antibiotic resistance in humans.<sup>60</sup> However, the implied benefits make this an animal-friendly bill, one supported by animal welfare groups.<sup>61</sup>

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<sup>53</sup> See *Meat Production*, *supra* note 50 (noting the overcrowding in CAFOs requires the use of methods like beak trimming and tail docking); see also *Farm Animal Cruelty Glossary*, ASPCA, <https://www.asPCA.org/fight-cruelty/farm-animal-cruelty/farm-animal-cruelty-glossary> [<http://perma.cc/G7U2-AGFJ>] (accessed Mar. 2, 2015) (defining beak-trimming and tail-docking).

<sup>54</sup> See *Loss of Agricultural Diversity: Pressure State Response Indicators*, FOOD & AGRIC. ORG. OF THE U.N., [http://www.fao.org/ag/againfo/programmes/en/lead/toolbox/in\\_dust/lossagea.htm](http://www.fao.org/ag/againfo/programmes/en/lead/toolbox/in_dust/lossagea.htm) [<http://perma.cc/GRA5-TGSN>] (accessed Mar. 2, 2015) (discussing the rise of genetic uniformity in livestock).

<sup>55</sup> Moretti & Ciotta, *supra* note 33.

<sup>56</sup> *Human Health and Industrial Farming 101*, PEW CHARITABLE TRUSTS, <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2012/08/09/human-health-and-industrial-farming-101> [<http://perma.cc/HT9Y-TD3K>] (Aug. 9, 2012) (accessed Feb. 13, 2015).

<sup>57</sup> Brad Plumer, *The FDA is Cracking Down on Antibiotics on Farms. Here's What You Should Know.*, WASH. POST, <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/12/14/the-fda-is-cracking-down-on-antibiotics-at-farms-heres-what-you-should-know/> [<http://perma.cc/C8Y5-L43K>] (Dec. 14, 2013) (accessed Feb. 12, 2015).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *E.g.*, Moretti & Ciotta, *supra* note 33 (noting the need to keep antibiotics for use on humans).

<sup>61</sup> The Humane Society of the United States, Farm Sanctuary, and Farm Forward all urged their members to support the Act. See *Humane Groups Commend Rep. Slaughter for Reintroduction of Preservation of Antibiotics for Medical Treatment Act*, HUMANE SOC'Y OF THE U.S., [http://www.humanesociety.org/news/press\\_releases/2013/03/PAMTA-reintroduction-031413.html](http://www.humanesociety.org/news/press_releases/2013/03/PAMTA-reintroduction-031413.html) [<http://perma.cc/Y55F-KH2P>] (Mar. 14, 2013) (accessed Feb. 13, 2015) (noting the Humane Society and almost 450 other organizations endorse the legislation); *Federal Legislation and Regulation*, FARM SANCTUARY, <http://www.farmsanctuary.org/get-involved/federal-legislation/> [<http://perma.cc/2DD7-74TK>] (accessed Feb. 13, 2015) (asking its members to call their representatives and promote PAMTA); *Current Legislation*, FARM FORWARD, <http://www.farmforward.com/>

Unfortunately, PAMTA did not pass<sup>62</sup> but, since Representative Louise Slaughter has been pushing the Act since 1999,<sup>63</sup> it is likely that she will reintroduce it again. Additionally, the repeated introductions of the Act, whether it passes or not, at least fosters discussion and awareness of the issues involved. Perhaps someday a more open-minded and active Congress will pass the Act.

### B. *Safeguard American Food Exports Act of 2013*

The Safeguard American Food Exports (SAFE) Act was introduced on March 12, 2013 by Representative Patrick Meehan (R-Pa.) in the House (H.R. 1094)<sup>64</sup> and by Senator Mary Landrieu (D-La.) in the Senate (S. 541).<sup>65</sup> Both sponsors have previously advocated for animals by co-sponsoring the Prevent All Soring Tactics Act and the Animal Fighting Spectator Prohibition Act.<sup>66</sup>

The purpose of SAFE is to prohibit the sale or transport of horses for food.<sup>67</sup> In doing this, the Act addresses two main concerns: one focused on human health, threatened by eating horsemeat, and the other focused on equine welfare, threatened by problems with horse slaughter.<sup>68</sup>

First, eating horsemeat poses safety concerns.<sup>69</sup> Horses in the U.S. are not raised for food.<sup>70</sup> Ignorant that their horses may be one day slaughtered for food, most American horse-owners routinely treat

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farming-forward/legislation (accessed Feb. 13, 2015) (site no longer available) (providing information on how members can take action to support PAMTA).

<sup>62</sup> *H.R. 1150 (113th): Preservation of Antibiotics for Medical Treatment Act of 2013*, GovTRACK.US, <https://www.govtrack.us/congress/bills/113/hr1150> [http://perma.cc/8K52-MJ43] (accessed Feb. 24, 2015); *S. 1256 (113th): Preventing Antibiotic Resistance Act of 2013*, GovTRACK.US, <https://www.govtrack.us/congress/bills/113/s1256> [http://perma.cc/XHT8-ZENX] (accessed Feb. 24, 2015).

<sup>63</sup> Moretti & Ciotta, *supra* note 33.

<sup>64</sup> Safeguard American Food Exports Act of 2013, H.R. 1094, 113th Cong. (2013) (available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr1094ih/pdf/BILLS-113hr1094ih.pdf> [http://perma.cc/R8YJ-5UNY] (accessed Mar. 2, 2015)).

<sup>65</sup> Safeguard American Food Exports Act of 2013, S. 541, 113th Cong. (2013) (available at <http://www.gpo.gov/fdsys/pkg/BILLS-113s541is/pdf/BILLS-113s541is.pdf> [http://perma.cc/R9LK-YPA2] (accessed Mar. 2, 2015)).

<sup>66</sup> See *Humane Society Legislative Fund Endorses Sen. Mary Landrieu of Louisiana for Re-Election*, HUMANE SOC'Y LEGIS. FUND, [http://www.hslf.org/news/press-releases/mary-landrieu-endorsement-09242014.html#\\_VLALfMZN3zI](http://www.hslf.org/news/press-releases/mary-landrieu-endorsement-09242014.html#_VLALfMZN3zI) [http://perma.cc/WBA7-GCGA] (Sept. 24, 2014) (accessed Feb. 13, 2015) (applauding Sen. Landrieu's past legislative efforts); *Humane Society Legislative Fund Endorses Rep. Patrick Meehan of Pennsylvania for Re-Election to Congress*, HUMANE SOC'Y LEGIS. FUND, [http://www.hslf.org/news/press-releases/meehan-endorsement-092014.html#\\_VLAMHMZN3zJ](http://www.hslf.org/news/press-releases/meehan-endorsement-092014.html#_VLAMHMZN3zJ) [http://perma.cc/9ARN-CMG8] (Sept. 15, 2014) (accessed Feb. 13, 2015) (applauding Rep. Meehan's past legislative efforts).

<sup>67</sup> H.R. 1094; S. 541.

<sup>68</sup> ASS'N N.Y.C. BAR, REPORT ON LEGISLATION BY THE ANIMAL LAW COMMITTEE 1 (May 2014) (available at [http://www2.nychar.org/pdf/report/uploads/20072692-Support forSAFEAct.pdf](http://www2.nychar.org/pdf/report/uploads/20072692-Support%20forSAFEAct.pdf) [http://perma.cc/8DDU-YRK9] (accessed Feb. 13, 2015)).

<sup>69</sup> H.R. 1094 § 2(4); S. 541 § 2(4).

<sup>70</sup> H.R. 1094 § 2(1); S. 541 § 2(1).

their horses with drugs labeled “*not for animals intended for human consumption*.”<sup>71</sup> Drugs routinely administered to horses, which can persist in their bodies, threatening future meat eaters, include phenylbutazone, which can cause lethal bone-marrow toxicity in humans.<sup>72</sup> In response to these food safety concerns, in late 2014 the European Union suspended import of horsemeat originating in Mexico.<sup>73</sup> Many of the horses slaughtered in Mexico come from the U.S.; therefore, the EU’s suspension indicates concern about the safety of eating American horses.<sup>74</sup>

Second, horse slaughter is cruel. There are no horse slaughterhouses in the U.S., so horses are shipped to Canada or Mexico during lengthy journeys in packed trailers without food, water, or breaks.<sup>75</sup> When the horses finally make it to a slaughterhouse, they may be forced to remain for long periods of time in the cramped trailers, “subjected to further extremes of heat and cold.”<sup>76</sup> The horses are eventually herded into the slaughterhouse where, “[s]ubjected to overcrowding, deafening sounds and the smell of blood, the horses become more and more desperate, exhibiting fear typical of ‘flight’ behavior—pacing in prance-like movements with their ears pinned back against their heads and eyes wide open.”<sup>77</sup> The conditions at these slaughterhouses are worse than previously operational ones in the United States.<sup>78</sup> For instance, a 2007 investigation by the San Antonio News-Express showed that horses being slaughtered at corporate slaughterhouses in Mexico were being stabbed in the neck, rendered paralyzed but not unconscious, before being hung by a hind leg and having their throats slit.<sup>79</sup>

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<sup>71</sup> *Safeguard American Food Exports (SAFE) Act: Horsemeat Poses Serious Risks to Human Health*, ANIMAL WELFARE INST., <https://awionline.org/content/safeguard-american-food-exports-safe-act> [<http://perma.cc/PU5P-9G7U>] (accessed Feb. 13, 2015) (emphasis in original).

<sup>72</sup> *Id.*

<sup>73</sup> Wayne Pacelle, *Europeans Suspend Horsemeat Imports from Mexico—Deal Huge Blow to North American Slaughter Operations*, HUMANE SOC’Y OF THE U.S., <http://blog.humanesociety.org/wayne/2014/12/europe-bans-mexican-horsemeat.html> [<http://perma.cc/7V5H-QP49>] (Dec. 8, 2014) (accessed Feb. 13, 2015) [hereinafter *Europeans Suspend Horsemeat Imports from Mexico*]; see also *EU Suspends Mexican Horsemeat Imports after Food Safety Concerns*, HUMANE SOC’Y INT’L, <http://www.hsi.org/world/europe/news/releases/2014/12/eu-suspends-mexican-horsemeat-120814.html> [<http://perma.cc/T4ZG-RDWG>] (Dec. 8, 2014) (accessed Feb. 13, 2015) (noting that in addition to European Union nations, Switzerland was also suspending import of horsemeat from Mexico “due to food safety concerns”).

<sup>74</sup> *Europeans Suspend Horsemeat Imports from Mexico*, *supra* note 73.

<sup>75</sup> *Horse Slaughter*, ANIMAL WELFARE INST., <https://awionline.org/content/horse-slaughter> [<http://perma.cc/P9TC-6CM7>] (accessed Apr. 11, 2015).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

SAFE would stop U.S. involvement in the horse-slaughter business by prohibiting anyone from selling or transporting horses across borders for food production. Unfortunately, the Act did not pass.<sup>80</sup>

#### IV. WILDLIFE

The Wildlife Services, a branch of the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service, is responsible for handling situations when there are conflicts between human and non-human animal interests.<sup>81</sup> The program's website states that its mission is "to resolve wildlife conflicts to allow people and wildlife to coexist."<sup>82</sup> Despite this supposed mission, the branch's solution to these conflicts is often to deploy a 'lethal control' strategy, simply killing the animals,<sup>83</sup> spending "over \$100 million annually to kill more than one million animals."<sup>84</sup> Despite the mounting toll of dead animals and spent dollars, the USDA declines to release information about Wildlife Services to such a significant degree that, in the words of Representative Susan Davis (D-Cal.), it "makes oversight impossible."<sup>85</sup> Seeking to address the USDA's secrecy regarding its use of lethal control, Representative Susan Davis introduced the Transparency for Lethal Control Act (H.R. 2074) on May 21, 2013.<sup>86</sup> The Act would require

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<sup>80</sup> *H.R. 1094 (113th): Safeguard American Food Exports Act of 2013*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/hr1094> [<http://perma.cc/GM6N-3TBW>] (accessed Feb. 24, 2015); *S. 541 (113th): Safeguard American Food Exports Act of 2013*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/s541> [<http://perma.cc/Y9SR-GC6T>] (accessed Feb. 24, 2015). SAFE, however, has been reintroduced in the 114th Congress. *H.R. 1942: Safeguard American Food Exports Act of 2015*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/114/hr1942> [<http://perma.cc/9GFM-EKWX>] (accessed June 15, 2015); *S. 1214: John Rainey Memorial Safeguard American Food Exports (SAFE) Act*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/114/s1214> [<http://perma.cc/2QEJ-7VLG>] (accessed June 15, 2015).

<sup>81</sup> *Wildlife Damage*, USDA, <http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/wildlifedamage> [<http://perma.cc/C9BA-KJNF>] (accessed Feb. 12, 2015).

<sup>82</sup> *Id.*

<sup>83</sup> *Reform Wildlife Services' Predator Control*, NAT. RES. DEF. COUNCIL, <http://www.nrdc.org/wildlife/animals/wolves/predatorcontrol.asp> [<http://perma.cc/3WZS-LH6V>] (Feb. 11, 2013) (accessed Jan. 17, 2015).

<sup>84</sup> *Id.*

<sup>85</sup> See 158 CONG. REC. E1396 (daily ed. Aug. 3, 2012) (statement of Rep. Susan Davis) (available at <http://www.gpo.gov/fdsys/pkg/CREC-2012-08-03/pdf/CREC-2012-08-03-pt1-PgE1395-4.pdf> [<http://perma.cc/ZPT8-L336>] (accessed Feb. 12, 2015)) ("The USDA has not made detailed data available to the public relating to where, why, how, and which animals have been killed.")

<sup>86</sup> Transparency for Lethal Control Act, H.R. 2074, 113th Cong. § 2 (2013) (available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr2074ih/pdf/BILLS-113hr2074ih.pdf> [<http://perma.cc/AXE6-4C43>] (accessed Feb. 12, 2015)) (Rep. Moran co-sponsored the bill). Rep. Davis credits concerns voiced by her constituents and a series of articles published by the *Voice of San Diego* with bringing issues with Wildlife Services to her attention. *Animal Welfare*, CONGRESSWOMAN SUSAN DAVIS, <http://susandavis.house.gov/issues/animal-welfare> [<http://perma.cc/2S68-JRY3>] (accessed Feb. 12, 2015). Rep. Davis has historically worked to protect animals through legislation, serving as a member of the Congressional Animal Protection Caucus, co-sponsoring both the Animal Fighting Spec-

the Secretary of Agriculture to make available online an annual report that includes the number of animals killed in each area of the country, the kind of animals killed, the method used, the reasons the Secretary determined that the species was a problem and that the killing was 'necessary.'<sup>87</sup>

The purpose of making Wildlife Services' lethal control information public is to allow for oversight.<sup>88</sup> In Representative Davis's opinion, as long as information regarding Wildlife Services is secret, oversight will be impossible.<sup>89</sup> Without oversight, the USDA could be acting irresponsibly.<sup>90</sup> Representative Davis sees lethal control as a final option, but stated "[t]he killing of animals should not be a routine or reflexive government response."<sup>91</sup> The increased oversight aims to ensure the branch does so only "after careful deliberation . . . and considering all cheaper and more humane alternatives."<sup>92</sup> Unfortunately, the bill did not pass.<sup>93</sup>

## V. ELEPHANTS

### A. *Lawful Ivory Protection Act of 2014*

The Lawful Ivory Protection Act of 2014 is a step backward in U.S. efforts to protect African elephants from extinction.<sup>94</sup> The ivory trade is causing the extinction of African elephants, because elephants cannot reproduce as fast as poachers are killing them.<sup>95</sup> Taking action against elephant poaching, the White House in February 2014 announced a near-complete ban on the commercial trade of elephant

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tator Prohibition Act of 2013 and the Puppy Uniform Protection and Safety Act, and being recognized for her efforts by the Humane Society of the United States as a recipient of their Humane Advocate Award. *Id.*

<sup>87</sup> H.R. 2074.

<sup>88</sup> 158 CONG. REC. E1396 (daily ed. Aug. 3, 2012) (statement of Rep. Susan Davis).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *H.R. 2074 (113th): Transparency for Lethal Control Act*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/hr2074> [<http://perma.cc/HQA5-5A4P>] (accessed Feb. 12, 2015).

<sup>94</sup> Note, this is the only legislation discussed in this Review that is *not* animal-friendly; its passage would have been negative for elephants.

<sup>95</sup> Laura Geggel, *Poachers Killed More than 100,000 Elephants in 3 Years*, LIVE SCIENCE, <http://www.livescience.com/47420-african-elephant-poaching.html> [<http://perma.cc/7V6B-LXN8>] (Aug. 18, 2014) (accessed Feb. 12, 2015).

ivory.<sup>96</sup> The U.S. Fish & Wildlife Services (FWS) is implementing the ban.<sup>97</sup>

The American public generally prefers live elephants rather than the ivory trade,<sup>98</sup> and so the ban—on its face—seems fairly non-controversial: most people presumably do not want elephants to go extinct so they can have an ivory trinket. However, the ban has its opponents, a formidable one being the National Rifle Association (NRA).<sup>99</sup> The NRA opposes the ban because it prohibits sale of weapons younger than one hundred years old which contain ivory as well as limits elephant trophy hunting.<sup>100</sup>

A result of the NRA's opposition to the ivory ban is the Lawful Ivory Protection Act of 2014.<sup>101</sup> On July 10, 2014, Representative Steve Daines (R-Mont.) and Senator Lamar Alexander (R-Tenn.) introduced the Act in the House of Representatives and Senate, respectively.<sup>102</sup> The purpose of the Act is “to protect . . . the lawful possession

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<sup>96</sup> EXEC. OFFICE OF THE PRESIDENT, *National Strategy for Combating Wildlife Trafficking* (Feb. 11, 2014) (available at <http://www.whitehouse.gov/sites/default/files/docs/nationalstrategywildlifetrafficking.pdf> [<http://perma.cc/3TJ6-WG86>] (accessed Feb. 21, 2015)); Press Release, Office of the Press Sec'y, White House, Fact Sheet: National Strategy for Combating Wildlife Trafficking & Commercial Ban on Trade in Elephant Ivory (Feb. 11, 2014) (available at <http://www.whitehouse.gov/the-press-office/2014/02/11/fact-sheet-national-strategy-combating-wildlife-trafficking-commercial-b> [<http://perma.cc/BCB7-K6A8>] (accessed Mar. 14, 2015)) (The ban applies to commercial import of ivory to the U.S., and commercial exports other than “bona fide antiques, certain noncommercial items, and in exceptional circumstances permitted under the Endangered Species Act [other items].”).

<sup>97</sup> Director's Order No. 210: Administrative Actions to Strengthen U.S. Trade Controls for Elephant Ivory, Rhinoceros Horn, and Parts and Products of Other Species Listed Under the Endangered Species Act, U.S. DEPT OF INTERIOR FISH & WILDLIFE SERV., <http://www.fws.gov/policy/do210.pdf> [<http://perma.cc/S4PZ-6GGK>] (accessed Apr. 15, 2015).

<sup>98</sup> See Peter LaFontaine et al., *Treasured to Death: Elephants, Ivory, and the Resurgence of a Crisis*, 29 NAT. RES. & ENV'T 1 (2014) (available at: <http://www.ifaw.org/sites/default/files/publications/ABA-NRE-Treasured-to-Death.pdf> [<http://perma.cc/BE7H-F8V6>] (accessed Mar. 25, 2015)) (noting polling data which reveals “80 percent [of Americans] supported a prohibition on domestic sales of ivory if it would help save elephants—a statement of values that cut across party and state lines”).

<sup>99</sup> Christina Russo, *Can Elephants Survive a Legal Ivory Trade? Debate is Shifting Against It*, NAT'L GEOGRAPHIC, <http://news.nationalgeographic.com/news/2014/08/140829-elephants-trophy-hunting-poaching-ivory-ban-cities/> [<http://perma.cc/YF5R-GTPK>] (Aug. 29, 2014) (accessed Feb. 12, 2015).

<sup>100</sup> *Id.* If you are wondering how an endangered species is allowed to be hunted, see Christina Russo, *Controversy Swirls around the Recent U.S. Suspension of Sport-Hunted Elephant Trophies*, NAT'L GEOGRAPHIC, <http://voices.nationalgeographic.com/2014/05/06/controversy-swirls-around-the-recent-u-s-suspension-of-sport-hunted-elfant-trophies/> [<http://perma.cc/7J3C-X68T>] (May 6, 2014) (accessed Jan. 23, 2015), for a discussion on the paradoxical belief that trophy hunting promotes conservation.

<sup>101</sup> Nick Wing, *The NRA Is Quietly Fighting for Your Right to Kill Elephants for Their Ivory*, HUFFINGTON POST, [http://www.huffingtonpost.com/2014/08/12/nra-ivory-elephant-hunting\\_n\\_5671332.html](http://www.huffingtonpost.com/2014/08/12/nra-ivory-elephant-hunting_n_5671332.html) [<http://perma.cc/2D35-RYCD>] (Aug. 12, 2014) (accessed Mar. 1, 2015).

<sup>102</sup> Lawful Ivory Protection Act of 2014, H.R. 5052, 113th Cong. (2014) (available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr5052ih/pdf/BILLS-113hr5052ih.pdf> [<http://>



Kenya at the hands of poachers.<sup>109</sup> The Act would “impose trade sanctions on countries that facilitate ivory trafficking.”<sup>110</sup> Wildlife groups such as Born Free USA, the World Wildlife Federation, and Humane Society International support the TUSKER Act.<sup>111</sup> Unfortunately, the Act did not pass.<sup>112</sup>

## VI. COMPANION ANIMALS

2014 saw introduction of a House Resolution meant to address euthanasia methods in animal shelters. Each year between 6 and 8 million cats and dogs are placed in animal shelters.<sup>113</sup> Nearly half of those animals will be euthanized because the shelters are unable to find them homes.<sup>114</sup> Some shelters euthanize via gas chambers.<sup>115</sup> Gas chamber euthanasia kills animals by placing them in an airtight space, which is then filled with a gas, usually carbon monoxide.<sup>116</sup> The whole process generally takes twenty-five minutes.<sup>117</sup> Doug Fakkema, an animal-euthanasia expert explains the process: “The animal is in a warm or hot box, usually with other animals. They don’t know what’s going on. The hiss of the gas is going on inside. They get dizzy, and they panic . . . Fights can break out, and animals’ calls can sometimes

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adopted by colonial-era trophy hunters to describe the elephants whose mighty tusks weighed more than 45kg a piece. Today, because of poaching, no more than a dozen such animals are still alive in Kenya.”)

<sup>109</sup> Press Release, Congressman Peter DeFazio, DeFazio Introduces Legislation to Curb Illegal Ivory Trafficking (Sept. 11, 2014) (available at <http://defazio.house.gov/media-center/press-releases/defazio-introduces-legislation-to-curb-illegal-ivory-trafficking> [<http://perma.cc/Z37Q-U4YM>] (accessed Jan. 23, 2015)); Tamara Van Hooser, *Endangered African Elephant Wins New Allies*, LIBERTY VOICE, <http://guardianlv.com/2014/09/endangered-african-elephant-wins-new-allies/> [<http://perma.cc/X2GP-WVDF>] (Sept. 28, 2014) (accessed Jan. 23, 2015); *see also* Targeted Use of Sanctions for Killing Elephants in Their Range Act of 2014, H.R. 5454, 113th Cong. (2014) (available at <https://www.congress.gov/113/bills/hr5454/BILLS-113hr5454ih.pdf> [<http://perma.cc/QP4N-WB87>] (accessed Mar. 17, 2015)) (“A Bill To amend the African Elephant Conservation Act to provide for trade sanctions against countries involved in illegal ivory trade. . .”).

<sup>110</sup> DeFazio Introduces Legislation to Curb Illegal Ivory Trafficking, *supra* note 109.

<sup>111</sup> *Id.*

<sup>112</sup> H.R. 5454 (113th): Targeted Use of Sanctions for Killing Elephants in Their Range Act of 2014, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/hr5454> [<http://perma.cc/MG3J-Y7VX>] (accessed Jan. 23, 2015).

<sup>113</sup> H.R. Res. 208, 113th Cong. (2013) (available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hres208ih/pdf/BILLS-113hres208ih.pdf> [<http://perma.cc/8K49-94Y6>] (accessed Jan. 23, 2015)).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*; Maryann Mott, *Animal Gas Chambers Draw Fire in U.S.*, NAT’L GEOGRAPHIC, [http://news.nationalgeographic.com/news/2005/04/0411\\_050411\\_peteuthanasia.html](http://news.nationalgeographic.com/news/2005/04/0411_050411_peteuthanasia.html) [<http://perma.cc/R6PD-JA3C>] (Apr. 11, 2005) (accessed July 29, 2015).

<sup>117</sup> Mott, *supra* note 116.

be heard.”<sup>118</sup> Death by gas chamber, unlike lethal injection, is not immediate, and sometimes animals can even survive.<sup>119</sup>

The animal welfare concerns described above are just some of the reasons that on May 8, 2013, Representative James Moran (D-Va.) introduced a resolution into the House encouraging state bans on gas chamber euthanasia in shelters.<sup>120</sup> The purpose of the resolution is to express opposition to gas chambers and express “support for State laws that require the use of the more humane euthanasia by injection method.”<sup>121</sup> Besides animal welfare, the resolution is also concerned with the safety of shelter staff and the cost of gas chambers.<sup>122</sup> Shelter workers risk possible bites and scratches from the scared animals they must place in the chambers.<sup>123</sup> The chambers also pose a direct threat to the staff, as there have been incidents of workers being injured and even killed.<sup>124</sup> Unfortunately, the House did not adopt the Resolution.<sup>125</sup>

## VII. HORSES

The Prevent All Soring Tactics Act (PAST) of 2013 seeks to close loopholes in the Horse Protection Act (HPA) in order to strengthen enforcement against soring.<sup>126</sup> Prohibited by the HPA since its passage

<sup>118</sup> *Id.*

<sup>119</sup> H.R. Res. 208; see *Dog That Survived Gassing Settles in New Home*, NBC NEWS, [http://www.nbcnews.com/id/45320895/ns/us\\_news-wonderful\\_world/t/dog-survived-gassing-settles-new-home/#.VMlLMZn3zI](http://www.nbcnews.com/id/45320895/ns/us_news-wonderful_world/t/dog-survived-gassing-settles-new-home/#.VMlLMZn3zI) [<http://perma.cc/Q2ZJ-VNVC>] (Nov. 16, 2011) (accessed Feb. 20, 2015) (describing how a beagle mix survived an Alabama pound’s gas chamber and subsequently got adopted); Chris Cowperwathe, *Stray Dog Survives Euthanasia Chamber*, WTOC, <http://www.wtoc.com/Global/story.asp?s=5183653> [<http://perma.cc/4LXD-VNHP>] (accessed Feb. 20, 2015) (telling the story of a dog in Georgia who survived a gas chamber and was named “Amazing Grace”).

<sup>120</sup> H.R. Res. 208.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Carbon Monoxide Gas Chamber Fact Sheet*, HUMANE SOC’Y OF THE U.S., <http://www.animalsheltering.org/resources/all-topics/euthanasia/gas-chamber-fact-sheet.html> [<http://perma.cc/83EQ-TWYQ>] (accessed Feb. 10, 2015).

<sup>124</sup> *Id.*

<sup>125</sup> *H.Res. 208 (113th): Expressing opposition to the use of carbon monoxide, carbon dioxide, nitrogen, nitrous oxide, argon, or other gases to euthanize shelter animals and support for State laws that require the use of the more humane euthanasia by injection method*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/hr5454> [<http://perma.cc/9N99-FZ5K>] (accessed Mar. 2, 2015).

<sup>126</sup> Prevent All Soring Tactics Act of 2013, H.R. 1518, 113th Cong. (2013) (available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr1518ih/pdf/BILLS-113hr1518ih.pdf> [<http://perma.cc/Z3R4-YTQG>] (accessed Mar. 3, 2015)); see also *Legislation to End Rampant Cruelty in Tennessee Walking Horse Competitions Endorsed by Animal Welfare Organizations*, HUMANE SOC’Y OF THE U.S., [http://www.humanesociety.org/news/press\\_releases/2013/04/PAST-Act-2013-041213.html](http://www.humanesociety.org/news/press_releases/2013/04/PAST-Act-2013-041213.html) [<http://perma.cc/AR4Z-X8LA>] (Apr. 12, 2013) (accessed Feb. 13, 2015) [hereinafter *Legislation to End Rampant Cruelty*] (discussing the Act).

in 1970,<sup>127</sup> soring consists of intentionally inflicting pain to a horse's legs or hooves in order to encourage the horse to perform an exaggerated, high-stepping gait—the iconic 'big lick' step of a Tennessee Walking Horse, prized in competitions focusing on the breed.<sup>128</sup> There are various methods of soring.<sup>129</sup> Chemical soring typically involves applying a caustic chemical substance—such as mustard oil, kerosene, or diesel fuel—to the horse's leg, covering the chemical and leg with a wrap, and allowing the caustic substance chemical to set for several days.<sup>130</sup> Mechanical, or physical, soring “involves trimming the hoof or applying devices that cause the horse's hooves to be painful and force the horse to pick up its feet faster and higher.”<sup>131</sup> This method involves such actions as grinding down the hoof to the sensitive, spongy tissues and placing hard objects between the shoe and the sole.<sup>132</sup> These descriptions of soring make the degree of inhumanity shown towards these horses abundantly clear. Soring essentially forces a horse to suffer so that a person may unfairly win a prize at a competition.

From the 1970s, underfunding and pressure from insiders have prevented HPA from being adequately enforced.<sup>133</sup> Currently, the horse industry chooses and trains its own inspectors, who have a stake in maintaining the practice because of their involvement with the industry.<sup>134</sup> PAST fixes this issue by making the United States Department of Agriculture (USDA) choose the inspectors, rather than the horse industry.<sup>135</sup> PAST also adds to the prohibitions against soring. For example, HPA currently allows soring that involves action devices, which are chains attached to a horse's limbs in order to rub against them and cause pain.<sup>136</sup> PAST would amend HPA to outlaw these devices.<sup>137</sup>

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<sup>127</sup> Horse Protection Act of 1970, Pub. L. No. 91-540, 84 Stat. 1404 (codified as amended at 15 U.S.C. §§ 1821–1831) (available at <http://www.gpo.gov/fdsys/pkg/STATUTE-84/pdf/STATUTE-84-Pg1404.pdf> [<http://perma.cc/9RRZ-JZ2A>] (accessed Mar. 3, 2015)).

<sup>128</sup> *What Is Soring?*, HUMANE SOC'Y OF THE U.S., [http://www.humanesociety.org/issues/tenn\\_walking\\_horses/facts/what\\_is\\_soring.html](http://www.humanesociety.org/issues/tenn_walking_horses/facts/what_is_soring.html) [<http://perma.cc/Z4DM-E5PE>] (Oct. 3, 2014) (accessed Feb. 10, 2015); Blake Farmer, *Making Sure Those Walking Horses Aren't Hurting Horses*, NPR, <http://www.npr.org/2014/08/30/344319283/tennessee-walking-horse-show-steps-up-inspection-efforts> [<http://perma.cc/HD55-83TA>] (Aug. 30, 2014) (accessed Jan. 10, 2015).

<sup>129</sup> ANIMAL WELFARE DIV., AM. VETERINARY MED. ASS'N, *SORING IN HORSES 1–2* (Feb. 5, 2010) (available at [https://www.avma.org/KB/Resources/FAQs/Documents/soring\\_in\\_horses\\_bgnd.pdf](https://www.avma.org/KB/Resources/FAQs/Documents/soring_in_horses_bgnd.pdf) [<http://perma.cc/2NTL-J26N>] (accessed Feb. 10, 2015)).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *What Is Soring?*, *supra* note 128.

<sup>134</sup> *Id.*

<sup>135</sup> H.R. 1518 § 2(c)(3); Prevent All Soring Tactics Act of 2013, S. 1406 § 2(c)(3), 113th Cong. (2013) (available at <http://www.gpo.gov/fdsys/pkg/BILLS-113s1406is/pdf/BILLS-113s1406is.pdf> [<http://perma.cc/SXD5-559N>] (accessed Mar. 3, 2015)).

<sup>136</sup> *Legislation to End Rampant Cruelty*, *supra* note 126.

<sup>137</sup> H.R. 1518 § 2(d)(6); S. 1406 § 2(d)(6).

Representative Ed Whitfield (R-Ky.) introduced PAST to the House of Representatives on April 11, 2013,<sup>138</sup> and Senator Kelly Ayotte (R-N.H.) introduced the Act into the Senate on July 31, 2013.<sup>139</sup> The Act has received an unlikely supporter, in the American Veterinary Medical Association (AVMA).<sup>140</sup> The AVMA has a history of *not* supporting animal-friendly acts and has come out opposing other acts discussed in this Review, including the Preservation of Antibiotics for Medical Treatment Act of 2013 (PAMTA)<sup>141</sup> and the Safeguard American Food Exports (SAFE) Act.<sup>142</sup> Based on the AVMA's support of the Act, it is or it would be reasonable to assume that PAST is fairly uncontroversial and would have been likely to pass. Soring is clearly cruel and is already illegal, so strengthening enforcements is a logical next step. However, this Act still failed to pass.<sup>143</sup>

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<sup>138</sup> H.R. 1518.

<sup>139</sup> S. 1406.

<sup>140</sup> Position Paper, Am. Veterinary Med. Ass'n, H.R. 1518/S. 1406 Prevent All Soring Tactics (PAST) Act (available at [https://www.avma.org/advocacy/national/congress/documents/ib\\_\\_past\\_act\\_30aug2013.pdf](https://www.avma.org/advocacy/national/congress/documents/ib__past_act_30aug2013.pdf) [<http://perma.cc/9Q23-UDJE>] (accessed Feb. 13, 2015)); *Legislation to End Rampant Cruelty*, *supra* note 126.

<sup>141</sup> AM. VETERINARY MED. ASS'N, H.R. 1150, PRESERVATION OF ANTIBIOTICS FOR MEDICAL TREATMENT ACT (PAMTA) OF 2013 (n.d.) (available at [https://www.avma.org/Advocacy/National/Congress/Documents/IB\\_PAMTA\\_5June2013.pdf](https://www.avma.org/Advocacy/National/Congress/Documents/IB_PAMTA_5June2013.pdf) [<http://perma.cc/7F93-9YYL>] (accessed Feb. 13, 2015)).

<sup>142</sup> AM. VETERINARY MED. ASS'N, HORSE SLAUGHTER LEGISLATION AND APPROPRIATIONS RIDERS (n.d.) (available at [https://www.avma.org/Advocacy/National/Documents/IB\\_Horse\\_Slaughter\\_17April2013.pdf](https://www.avma.org/Advocacy/National/Documents/IB_Horse_Slaughter_17April2013.pdf) [<http://perma.cc/Z5EV-886R>] (accessed Feb. 10, 2015)).

<sup>143</sup> *H.R. 1518 (113th): PAST Act*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/hr1518> [<http://perma.cc/695N-PWAB>] (accessed Mar. 3, 2015); *S. 1406 (113th): PAST Act*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/s1406> [<http://perma.cc/HAM5-YVZW>] (accessed Jan. 10, 2015).