

# INTRODUCTION

## ANIMAL LAW IN A CHANGING (AND CHALLENGING) POLITICAL CLIMATE: ONE PROFESSOR'S MUSINGS AFTER 100 DAYS OF THE TRUMP ADMINISTRATION

By  
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*This Introduction discusses the current political climate following the presidential inauguration of Donald J. Trump, with a focus on Trump's first 100 days in office and what his actions entail for animal advocates as well as for the field of animal law. The Introduction approaches the Trump presidency through a historical and practical lens, then scrutinizes the Trump administration's actions through its first 100 days. Following this analysis, the Introduction turns to the considerable number of voices that have risen in response to the President's initiatives and to those of his party. This Introduction concludes by emphasizing the need for diligence and by proposing avenues for animal advocates to continue fostering change.*

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Teaching and writing about the law in the United States has recently evolved, becoming more uncertain, relevant, necessary, and reactive since the presidential inauguration of Donald Trump in January 2017. To what degree there will be significant or fundamental transformations in legal concepts or institutions remains unknown. But because animal law, as a legal discipline, builds upon so many general legal principles, attention to potential shifts in our general legal and democratic approaches is of particular importance and urgency.

Legal work that incorporates the interests of animals, or seeks protection for them, is inherently challenging. This is still a relatively new and evolving legal discipline, and it is not widely understood, supported, or accepted. Any significant change in political administration at the federal, state, or local levels, or internationally, will impact the work of animal legal advocates and scholars. It is through this prism I consider the nature of the changes taking place in the United States in the first 100 days of the new Trump administration.

My teaching and clinical law practice have been impacted by the ever-changing and developing news emanating from our new White House staff and the actions of members of the administration. I have been called upon to answer questions from students, clients, colleagues, and others about the continued relevance and likelihood of success of our work. It has been my practice to track changes affecting animal law and related areas such as environmental or constitutional law. Now, I have added more intentional focus on issues that used to occupy less time, including: access to justice, the rule of law, respect for the judiciary, conflicts of interest, First Amendment protections, the role of law in society, basic rights education, transparency, open government, the nature of political representation, and general administration of law.

It is axiomatic to say that challenging times present opportunities in unexpected ways. We have a number of historical precedents to consider. The passage of the Endangered Species Act<sup>1</sup> is one example of positive work that happened for animal and environmental protection under President Nixon, whose most memorable actions threatened some of our core democratic principles. In reaction to those threats, and to the Watergate scandal in particular, law schools began to require the teaching of professional responsibility.<sup>2</sup> Many people are

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<sup>1</sup> The Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544 (2012).

<sup>2</sup> Mark Hansen, *1965-1974: Watergate and the Rise of Legal Ethics*, ABA JOURNAL (Jan. 1, 2015, 5:10 AM), [http://www.abajournal.com/magazine/article/1965\\_1974\\_water\\_gate\\_and\\_the\\_rise\\_of\\_legal\\_ethics](http://www.abajournal.com/magazine/article/1965_1974_water_gate_and_the_rise_of_legal_ethics) [https://perma.cc/4AX5-PJLB] (accessed June 8, 2017); JAMES E. MOLITERNO, *THE AMERICAN LEGAL PROFESSION IN CRISIS: RESISTANCE AND RESPONSES TO CHANGE* 100–03 (2013); Street Law, Inc. & Supreme Court Historical Society, *The Legacy of Watergate: Rethinking Legal Ethics*, LANDMARK CASES, [http://landmarkcases.org/en/Page/728/The\\_Legacy\\_of\\_Watergate\\_Rethinking\\_Legal\\_Ethics](http://landmarkcases.org/en/Page/728/The_Legacy_of_Watergate_Rethinking_Legal_Ethics) [https://perma.cc/3R99-WTTR] (accessed on June 8, 2017).

looking to the legal and social responses to the autocratic and illegal actions of the Nixon administration for relevant lessons that may be helpful today. Though there may be positive aspects to challenging times, there are significant downsides as well.

Times are deemed challenging when they pose threats to core values, and we are living in such times now. It has long been recognized that lawyers and judges provide a significant obstacle to the tyrannical desires of would-be kings, people who fancy themselves the sole arbiters of, or completely above, the law.<sup>3</sup> The Trump administration, like that of President Nixon, calls into question the role and function of the law itself by seeking to elevate the authority of the President over the rule of law and working to denigrate respect for courts, laws, ethical standards, and regulations that constrict the exercise of executive, or personal power. Some contemporary analyses of the immediate reactions to the Watergate scandal suggest that the rule of law, and interest in the legal profession, was ultimately vindicated and perhaps advanced as a result of these transgressions against social consensus and legal norms.<sup>4</sup>

We must each assess for ourselves whether the comparison between the Trump and Nixon administrations is apt. While we do, we may also consider individual executive and legislative actions, as well as the overall political tone in which animal and other advocacy is now taking place. Learning from the past, there are a number of general lessons I share for our present time before considering specific actions of the current administration that pose legal concerns for animal lawyers.

First, though many may consider the President's rhetoric and actions demoralizing or even painful, advocates do not have the luxury of despair because the issues our clients are facing are worse than the challenges of working on their behalf. Working to develop animal law and protect animals was important during the last administration, is important now, and will continue to be important during succeeding presidential administrations. Noting that a response is necessary, however, comes with the corresponding recognition of the need to take care of ourselves and one another when doing this work in order for it to be sustainable. It may help to note, even when displeased with current policies, that not all of the things happening now are awful, just as all of the things that happened before were not ideal. Honesty

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<sup>3</sup> Shakespeare recognized this and had one of his characters say, "The first thing we do, let's kill all the lawyers," so that the leader he followed could more easily become king. WILLIAM SHAKESPEARE, *THE SECOND PART OF HENRY VI* act 4, sc. 2, 71 (ed. Roger Warren, Oxford Univ. Press, 2003). This line has been widely misunderstood as a critique of, rather than support for, lawyers and judges. See Debbie Vogel, 'Kill the Lawyers,' *A Line Misinterpreted*, N.Y. TIMES (June 17, 1990), <http://www.nytimes.com/1990/06/17/nyregion/1-kill-the-lawyers-a-line-misinterpreted-599990.html> [https://perma.cc/GES6-48RS] (accessed June 18, 2017).

<sup>4</sup> John E. Cribbet, *Legal Education and the Rule of Law*, 60 AM. BAR ASS'N J. 1363, 1363-66 (1974).

and integrity also compel acknowledgement of behavior that may have laid the groundwork for current actions, both substantive and structural, such as an increase in the use of executive power or treating those who disagree disdainfully. A more nuanced view may lessen any despair and give rise to appropriate and effective responses.

Second, and perhaps more importantly now given the polarization in society, talking across the political and cultural divides is as critical as talking to one's own constituencies. It may help those who feel excluded, marginalized, or threatened under this new administration to understand those who had similar feelings (if not similar bases for those feelings) under previous administrations. Our democracy and civil society are undermined when people on the winning side of an election feel it is appropriate to ignore the concerns of people on the losing side. And it is more difficult for the 'winners' to remember this lesson. It is crucial to acknowledge and address differences of opinion, even if it is only to disagree because an immediate solution or consensus cannot be found. All people and viewpoints should be engaged. This allows for more effective conversation about what is appropriate within civil political discourse, which in turn creates space to reach consensus on issues about which we disagree. It is important to recognize that there has never been full agreement on any legal, political, or social debate in the United States. Rather, certain perspectives are ascendant during certain periods in our history, and disfavored at other times.

Third, though it is important to hear all viewpoints, the conversation must be bounded—the importance of facts and objectively ascertainable truth cannot be overstated. This is the case no matter what perspective one has on current political debates. Those in the legal realm have an additional professional responsibility to comport themselves according to standards of truthfulness, and not to allow or assist others to violate these parameters.<sup>5</sup> In an era where officials in the highest office of the land rely on “alternative facts,”<sup>6</sup> it is incumbent on legal professionals to refrain from engaging in dishonesty and to address it when it happens. Though justice may be subjective and facts disputed, truth cannot be compromised.

Fourth, though we do not need unanimity to move society forward, we should have consensus or majority agreement about certain fundamental aspects of our legal system and democracy. We should

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<sup>5</sup> *E.g.*, ABA Model Rules of Prof. Conduct § 8.4(c) (2017) (“It is professional misconduct for a lawyer to: . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . . .”); *id.* §§ 5.1–5.3 (outlining lawyers’ responsibilities as to subordinate lawyers and non-lawyer assistants).

<sup>6</sup> During the television show *Meet the Press* on January 22, 2017, Kellyanne Conway, counselor to President Trump, coined the term ‘alternative facts’ by stating, “Sean Spicer, our press secretary, gave alternative facts . . . .” *Meet the Press 01/22/17*, NBC NEWS (Jan. 22, 2017, 12:14 PM), <http://www.nbcnews.com/meet-the-press/meet-press-01-22-17-n710491> [https://perma.cc/7P9Z-F7DS] (accessed June 8, 2017) (transcript).

agree on the *mechanisms* by which problems are addressed, even if disagreements about the resolutions themselves remain. One such mechanism that is fundamental to our system of government is the role of courts in maintaining the rule of law. The courts are not a democratic institution; they do not follow the majority, rather they follow and uphold legal principles. The courts were meant to be a check on the democratically elected branches of government. Their function is most important when the rule of law itself is threatened. Thus, those in the minority have traditionally looked to the courts to maintain the rule of law and protect them from the tyranny of the majority. Though the judicial branch has failed often in this duty, it continues to stand for this principle, acknowledge mistakes, and evolve in order that the mistakes of the past do not bind future decision-making.

Fifth, it is important to affiliate with others doing work that is aligned, even if it is not the same. It is impossible for any single group of advocates to do all the work that is necessary to maintain the rule of law or to forward a legal cause. Thus, affiliation and cooperation are required, and are also illuminating, as working with others from different perspectives tends to widen and enrich one's own. This inures to the benefit of all.

Sixth, the workload and scope of work must be managed in order to handle it with competence and efficacy. There is often a compelling pull to take on work that has clear primacy from an advocacy perspective. However, it is just as important to continue the structural work that supports such endeavors, to continue work within areas of one's own expertise, and not to make too many adjustments based on political change that is by its nature, ephemeral. One can add work to maintain democracy and safeguard legal institutions, or one can stay focused on particular issues, such as climate change or animal protection. While there is certainly opportunity to do both, advocates must consider carefully their abilities, expertise, and capacity when making such decisions.

Seventh, those involved in the legal system need to consider how to practice and learn in times where basic legal rules and structures, as well as democratic principles, are changing or challenged. It is important to protect, and to question, the role of the courts; the role of science; the rule of law, and in particular our duties as lawyers; and the role of teachers, as important civic conversations take place. It is also important to acknowledge that there is not complete clarity or agreement about what the role of law, science, or education should be, and that we have not always been as attentive to these questions as we should have been. Another aspect that comes with changing times is the need to address and incorporate intergenerational differences and approaches. Supporting and making space for new voices, the younger generation of advocates, and those voices in each generation that have been marginalized or ignored, helps avoid repetition of past mistakes. When doing so, seasoned advocates can share experience and perspective with those new to these conversations regarding how to lay

the groundwork to proceed productively and compassionately. It is important to the structural integrity of a movement to pass on lessons from previous work, while at the same time recognizing that analogies to past experiences may be apt, but not necessarily controlling, and room must be made for new approaches.

Eighth, it is always helpful to remember that law does not operate in a vacuum, but rather responds to shifting political, scientific, economic, religious, and social realities. Lawyers need to learn from other professions and experts and work collaboratively and cooperatively with them. Law cannot by itself solve political problems. The political, economic, scientific, religious, and philosophical approaches supporting political and legal action should be carefully considered so that responses may be measured and responsive to identified concerns. Taking into account the perspective of others helps advocates better understand the contours of a problem and may lead to potential solutions. If, for example, we identify a lack of focus on the humanity of others as a problem with current executive or congressional activity, it is important to see the humanity in those behaving this way. If advocates think their issues are marginalized, they need to see the issues of those marginalizing them. It is important to work harder to find common ground. It exists. We care about our families—even if we disagree about how to define and protect them. We care about health—even if we do not agree on who has access to health care and how to pay for it. We care about clean water—even if some can pay for it and others cannot. We care about religion—whether it is protection for it, or from it. We care very much about the same issues, though there are important and significantly different approaches to addressing them, including who manages them (role of government vs. private sector) and how they are funded.

Ninth, we need to safeguard fundamental principles even when it is hard to do so. In fact, that is the time such work is most needed, because the risk of erosion is the greatest. One core principle in our legal and political realms is the protection of free speech. This valuable principle and tool for preserving democracy and furthering legal developments is being significantly challenged at present. It must be protected, bolstered, and better understood. Protecting free speech does not mean protecting violent behavior, though in the U.S., it does mean protecting racist and hateful speech and managing the challenges of determining the distinctions between speech and action, and speech that incites action.<sup>7</sup> It is useful to acknowledge that other

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<sup>7</sup> See, e.g., Ioanna Tourkochoriti, *Should Hate Speech Be Protected? Group Defamation, Party Bans, Holocaust Denial and the Divide Between (France) Europe and the United States*, 45 COLUM. HUM. RTS. L. REV. 552, 554–55, 574–80 (2014) (using a comparative approach to discuss these issues); Alexander Tsesis, *Burning Crosses on Campus: University Hate Speech Codes*, 43 CONN. L. REV. 617, 619–20, 635 (2011) (discussing the challenges of regulating hate speech on college campuses); Ken White, *Actually, Hate Speech Is Protected Speech*, L.A. TIMES (June 8, 2017, 4:00 AM), <http://www.latimes.com/opinion/op-ed/la-oe-white-first-amendment-slogans-20170608->

democratic countries have made different decisions with respect to the limits of free speech. For instance, France and Germany do not allow Holocaust denial or Nazi speech,<sup>8</sup> and religious statements deemed to conflict with prevailing laws protecting the rights of minorities and others are not protected.<sup>9</sup> In the U.S., it is an ongoing challenge determining how best to allow different types of speech that are uncomfortable, but not harmful, to the legal system or democracy overall, even when that speech may be harmful to certain individuals and to civic discourse in general. It is important to understand those who want to curtail certain types of speech because it may normalize harmful ideas and actions. And in that context, it may be helpful to think about occasions in the past when speech was deemed too dangerous or offensive to allow in public, but later became accepted.<sup>10</sup> A rigorous analysis of past struggles to limit or protect speech will inform our current debates and perhaps offer rational guidelines for resolving evolving questions.

Tenth, it is important to remember that humans are animals too, and that our interests with regard to clean air, water, and land as well as safety, habitat preservation, and so on, are biologically connected to those same interests of nonhuman animals. This connection underscores the idea that working to protect the environment and all the animals who depend upon it is intrinsically beneficial for nonhuman animals, and extrinsically benefits humans as well. When we stop seeing ourselves as apart from nature and fundamentally different from nonhuman animals we can more easily see our fates as linked, and work for solutions that will benefit all. Utilization of this perspective may also help avoid creating additional problems in the future.

With all of that, and much more than can be addressed in this introduction, in mind, we turn to look at the specific actions taken in the first 100 days of the Trump administration by the executive and legislative branches, as well as responses to those actions, with an eye

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story.html [https://perma.cc/9NHC-PSGE?type=image] (accessed June 8, 2017) (providing a layperson's outline of protected speech in the United States).

<sup>8</sup> Michael J. Bazylar, *Holocaust Denial Laws and Other Legislation Criminalizing Promotion of Nazism*, <http://www.yadvashem.org/holocaust/holocaust-antisemitism/articles/holocaust-denial-laws> [https://perma.cc/YD4Q-RSTV] (accessed June 8, 2017).

<sup>9</sup> See, e.g., Anthony Faiola, *Germany Springs to Action over Hate Speech Against Migrants*, WASH. POST (Jan. 6, 2016), [https://www.washingtonpost.com/world/europe/germany-springs-to-action-over-hate-speech-against-migrants/2016/01/06/6031218e-b315-11e5-8abc-d09392edc612\\_story.html](https://www.washingtonpost.com/world/europe/germany-springs-to-action-over-hate-speech-against-migrants/2016/01/06/6031218e-b315-11e5-8abc-d09392edc612_story.html) [https://perma.cc/YJB7-G22K] (accessed June 8, 2017) (explaining how the German government has criminalized speech "aimed at creating hostile feelings or triggering violence against a particular race, religion or ethnicity").

<sup>10</sup> See, e.g., *N.Y. Times Co. v. United States*, 403 U.S. 713, 722–24 (1971) (lifting the restraint on publishing what came to be known as the "Pentagon Papers"); Tom Head, *Censorship in the United States*, THOUGHTCO. (updated Feb. 28, 2017), <https://www.thoughtco.com/censorship-in-the-united-states-721221> [https://perma.cc/AB6U-BTTA] (accessed June 13, 2017) (timeline of censorship in the United States).

towards consequences for the work of animal lawyers in particular. The foregoing guidance may assist the reader in avoiding despair when considering the Trump administration's actions addressed below, many of which are harmful to the integrity of the courts and government, as well as advocacy for animal and environmental policies.

## I. TRUMP ADMINISTRATION ACTIONS IN THE FIRST 100 DAYS

### A. *Executive Action*

Executive actions, or actions of the president, include: executive orders, presidential memoranda, and presidential proclamations.<sup>11</sup> Each of these broadly derives its power from Article II of the Constitution and carries different weight.<sup>12</sup> An executive order is a presidential directive “issued to federal government agencies or officials . . . [that] bind the agencies, [and] may have substantial effect on the public.”<sup>13</sup> In his first 100 days in office, President Trump issued thirty-two executive orders,<sup>14</sup> some of which direct agencies to look at an issue, rather than take a specific action. Presidential memoranda are a type of executive order that do not have to be submitted to the Federal Register and have no established process for how they are issued.<sup>15</sup> They have the same binding effect on the executive branch because they are a type of executive order.<sup>16</sup> President Trump issued twenty-eight of these.<sup>17</sup> And finally, Presidential Proclamations “are generally hortatory or declaratory” and not a “substantial presidential legislative activity.”<sup>18</sup> Though some presidential proclamations can be enormously consequential, as exemplified by President Abraham Lincoln's Emancipation Proclamation,<sup>19</sup> none of President Trump's thirty proclamations fall into that category.

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<sup>11</sup> Tim Perry, *What Are Executive Actions?*, CBS NEWS (Jan. 26, 2017), <http://www.cbsnews.com/news/wrapping-our-heads-around-trumps-use-of-executive-actions> [<https://perma.cc/MLP8-8TLX>] (accessed June 8, 2017).

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

<sup>13</sup> 32 Fed. Prac. & Proc. Judicial Review § 8278 (1st ed., 2017).

<sup>14</sup> Rebecca Harrington, *Trump Signed 90 Executive Actions in His First 100 Days – Here's What Each One Does*, BUSINESS INSIDER (May 3, 2017, AA:07 AM), <http://www.businessinsider.com/trump-executive-orders-memorandum-proclamations-presidential-action-guide-2017-1> (accessed June 8 2017).

<sup>15</sup> Jessica M. Stricklin, Note, *The Most Dangerous Directive: The Rise of Presidential Memoranda in the Twenty-First Century as a Legislative Shortcut*, 88 TUL. L. REV. 397, 406–07 (2013).

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

<sup>17</sup> Harrington, *supra* note 14.

<sup>18</sup> 32 Fed. Prac. & Proc. Judicial Review § 8278.

<sup>19</sup> See, e.g., Henry L. Chambers, Jr. *Lincoln, the Emancipation Proclamation, and Executive Power*, 73 MD. L. REV. 100, 101–03, 126, 131 (2013) (discussing the constitutionality of the Emancipation Proclamation's “blanket emancipation of slaves in Confederate-held areas”).

### B. Congressional Action

President Trump signed twenty-nine laws in his first 100 days in office.<sup>20</sup> Many were somewhat ceremonial, such as naming a Veterans Affairs healthcare center.<sup>21</sup> Some were rollbacks of President Obama's actions, such as lifting the ban on predatory control tactics in National Wildlife Refuges in Alaska<sup>22</sup> and overturning the Stream Protection Rule restricting the dumping of mining waste.<sup>23</sup> And a few were more standard legislative actions, such as the continuing appropriations bill<sup>24</sup> and allowing the GAO access to federal agency records.<sup>25</sup>

President Trump and his administration have made a priority of rolling back environmental protections, especially those put into place by President Obama. This includes nullifying the Stream Protection Rule;<sup>26</sup> reviewing and perhaps limiting the scope of the Waters of the United States Rule (WOTUS Rule), which attempted to clarify the Clean Water Rule;<sup>27</sup> opening national monuments to drilling, mining and logging;<sup>28</sup> eliminating the ban on offshore drilling in the Atlantic, Pacific, and Arctic oceans;<sup>29</sup> constructing the Keystone XL and Dakota Access pipelines;<sup>30</sup> preparing to build a wall on the border with Mexico;<sup>31</sup> fast-tracking environmental reviews and de-emphasizing scientific analysis;<sup>32</sup> promoting agribusiness and exempting it from some

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<sup>20</sup> Marshall Cohen & Wade Payson-Denny, *By the Numbers: How Trump Stacks Up After 100 Days*, CNN (May 1, 2017, 8:28 AM), <http://www.cnn.com/2017/04/29/politics/donald-trump-100-days-data/index.html> [<https://perma.cc/95W2-T96A>] (accessed June 8, 2017).

<sup>21</sup> An Act to name the Department of Veterans Affairs community-based outpatient clinic in Pago Pago, American Samoa, the Faleomavaega Eni Fa'aua'a Hunkin VA Clinic, Pub. L. No. 115-16, §1, 131 Stat. 80 (2017).

<sup>22</sup> Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the final rule of the Department of the Interior relating to "Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska," Pub. L. No. 115-20, 131 Stat. 86 (2017).

<sup>23</sup> Joint Resolution Disapproving the rule submitted by the Department of the Interior known as the Stream Protection Rule, Pub. L. No. 115-5, §1, 131 Stat. 10 (2017).

<sup>24</sup> Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017).

<sup>25</sup> GAO Access and Oversight Act of 2017, Pub. L. No. 115-3, 131 Stat. 7 (2017).

<sup>26</sup> §1, 131 Stat. at 10.

<sup>27</sup> Exec. Order 13778: Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule, 82 Fed. Reg. 12497 (Mar. 3, 2017).

<sup>28</sup> Exec. Order 13792: Review of Designations Under the Antiquities Act, 82 Fed. Reg. 20429 (May 1, 2017).

<sup>29</sup> Exec. Order 13795: Implementing an America-First Offshore Energy Strategy, 82 Fed. Reg. 20815 (May 3, 2017).

<sup>30</sup> Construction of the Keystone XL Pipeline: Memorandum for the Secretary of State[,] the Secretary of the Army[, and] the Secretary of the Interior, 82 Fed. Reg. 8663 (Jan. 30, 2017); Construction of the Dakota Access Pipeline: Memorandum for the Secretary of the Army, 82 Fed. Reg. 8661 (Jan. 30, 2017)

<sup>31</sup> Exec. Order 13767: Border Security and Immigration Enforcement Improvements, 82 Fed. Reg. 8793 (Jan. 30, 2017).

<sup>32</sup> Exec. Order 13766: Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects, 82 Fed. Reg. 8657 (Jan. 30, 2017).

environmental regulations;<sup>33</sup> and reducing regulation generally, including the plan to force the deletion of two regulations for every new one,<sup>34</sup> to name only a few actions of the new administration. All of these are problematic for animal advocates because increased pollution and increased degradation and intrusion into animal habitats will challenge already fragile and neglected animal populations. Much cooperative work lies ahead for animal and environmental advocates to staunch, and reverse, the impact of these executive actions. Many lawsuits have already been filed to do just that, some of which are discussed below.

One of Trump's actions is a mixed bag for animal legal advocates. The WOTUS Rule enhances protection from pollution for certain water bodies, which is beneficial for humans and nonhuman animals alike.<sup>35</sup> However, the WOTUS Rule also exempts certain activities of Concentrated Animal Feeding Operations (CAFOs),<sup>36</sup> a significant source of pollution and climate change causing emissions,<sup>37</sup> from this regulation. This would make it substantially more difficult to bring environmental suits against CAFOs to reduce pollution and correspondingly improve the welfare of the animals in such confinement. Those pursuing CAFO lawsuits may be pleased that this exclusion is not currently in effect, but because it benefits agribusiness, which lobbied heavily against the bill,<sup>38</sup> it seems likely to be included in any subsequent version of the rule that is implemented. If the final version of the rule weakens environmental protection and pollution management, it will be equally harmful to human and nonhuman interests, as are many of Trump's actions to date.

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<sup>33</sup> Exec. Order 13790: Promoting Agriculture and Rural Prosperity in America, 82 Fed. Reg. 20237 (Apr. 28, 2017).

<sup>34</sup> Exec. Order 13771: Reducing Regulation and Controlling Regulatory Costs, 82 Fed. Reg. 9339 (Feb. 3, 2017).

<sup>35</sup> Merrit Kennedy & Susan Phillips, *Trump Aims to 'Eliminate' Clean Water Rule*, NPR (Feb. 28, 2017), <http://www.npr.org/sections/thetwo-way/2017/02/28/517016071/trump-aims-to-eliminate-clean-water-rule> [<https://perma.cc/TX6M-DHHK>] (accessed June 13, 2017); Kelsey Marquart, *President Trump Aims to 'Eliminate' the Clean Water Rule Through an Executive Order*, FUTURISM (Mar. 2, 2017), <https://futurism.com/trump-aims-to-eliminate-clean-water-rule/> [<https://perma.cc/3W7Q-PYFR?type=image>] (accessed June 13, 2017); CLAUDIA COPELAND, CONG. RESEARCH SERV., R43455, EPA AND THE ARMY CORPS' RULE TO DEFINE "WATERS OF THE UNITED STATES" (2017), <https://fas.org/sgp/crs/misc/R43455.pdf> [<https://perma.cc/C9JB-DBX2>] (accessed June 13, 2017).

<sup>36</sup> CLAUDIA COPELAND, *supra* note 35, at 12.

<sup>37</sup> Ronnie Cummins, *How Factory Farming Contributes to Global Warming*, ECOWATCH (Jan. 21, 2013), <https://www.ecowatch.com/how-factory-farming-contributes-to-global-warming-1881690535.html> [<https://perma.cc/Q3BB-2ME5>] (accessed June 11, 2017).

<sup>38</sup> Timothy Cama, *Ag Lobby: Final EPA Water Rule Is Worse Than Proposal*, THE HILL (June 11, 2015, 5:11 PM), <http://thehill.com/policy/energy-environment/244750-agriculture-lobby-epa-water-rule-is-worse-than-proposal> [<https://perma.cc/7WNN-E87E>] (accessed June 13, 2017).

The swiftness of these environmental changes provides a reminder of the need to be careful about the process used to get things done, as much as the substance of the actions themselves. President Obama used executive authority to act more unilaterally in his second term<sup>39</sup> when faced with a Republican-controlled Congress that had a stated goal of not letting him accomplish any part of his legislative agenda.<sup>40</sup> At the time, some were upset with the substantive changes he was making, and others were bothered by the increasingly expansive use of executive power to bypass an uncooperative Congress.<sup>41</sup>

There is a notable consequence to President Obama's choice to use executive power to accomplish what he was blocked by Congress from doing. The measures put into place using this approach are easily undone by any subsequent president. It is also notable that those Republicans who made principled critiques regarding the expansion of executive power by the Obama administration are conspicuously silent now that Trump is using that same power in ways they previously found problematic.<sup>42</sup> These outcomes raise significant questions about the function of the executive branch in relation to the legislative branch. And similarly, the country faces important challenges to the framework of environmental, and relatedly, animal protection.

### C. Additional Actions

In addition to the actions listed above, the Trump administration has caused concern to many communities, including those focused on law, animals, and the environment, with less formal actions. It removed factually accurate information from government websites—for example, data about animal welfare violations from the United States Department of Agriculture (USDA) website<sup>43</sup>—prompting outcry, law-

<sup>39</sup> Coral Davenport & Eric Lipton, *How G.O.P. Leaders Came to View Climate Change as Fake Science*, N.Y. TIMES (June 3, 2017), <https://www.nytimes.com/2017/06/03/us/politics/republican-leaders-climate-change.html> [https://perma.cc/M29X-KM2B] (accessed June 8, 2017).

<sup>40</sup> Ron Fournier, *Republicans Won't Even Fake It*, ATLANTIC (Feb. 24, 2016), <https://www.theatlantic.com/politics/archive/2016/02/republicans-wont-even-fake-it/470790/> [https://perma.cc/TUE5-G9YC] (accessed June 8, 2017); Andy Barr, *The GOP's No-Compromise Pledge*, POLITICO (Oct. 28, 2010, 8:09 AM), <http://www.politico.com/story/2010/10/the-gops-no-compromise-pledge-044311> [https://perma.cc/47MC-WQ92] (accessed June 8, 2017); Michael Grunwald, *The Victory of 'No'*, POLITICO (Dec. 4, 2016), <http://www.politico.com/magazine/story/2016/12/republican-party-obstructionism-victory-trump-214498> [https://perma.cc/KD2E-HT8G] (accessed June 8, 2017).

<sup>41</sup> Curtis Tate, *To GOP, Obama's Immigration Orders Were 'Executive Overreach.'* *What Is It When Trump Does It?* (Jan. 25, 2017, 6:37 PM), <http://www.mcclatchydc.com/news/politics-government/congress/article128775414.html> [https://perma.cc/NXG9-K9MZ] (accessed June 8, 2017).

<sup>42</sup> *Id.*

<sup>43</sup> Karin Brulliard, *USDA Abruptly Purges Animal Welfare Information from Its Website*, WASH. POST (Feb. 3, 2017), <https://www.washingtonpost.com/news/animalia/wp/2017/02/03/the-usda-abruptly-removes-animal-welfare-information-from-its-website> [https://perma.cc/6YFX-6U6J] (accessed June 8, 2017); Natasha Daly, *U.S. Animal Abuse Records Deleted – What We Stand to Lose*, NATIONAL GEOGRAPHIC (Feb. 6, 2017),

suits,<sup>44</sup> and legislation (discussed below). These records are used by journalists, advocates, and members of the public interested in violations of the Animal Welfare Act; their removal created additional problems for the “[s]even states [that] currently require pet stores to source puppies from breeders with clean USDA inspection reports[,] . . . a requirement that could now be impossible to meet.”<sup>45</sup>

The Trump administration removed the Environmental Protection Agency’s (EPA) climate change website<sup>46</sup> and research<sup>47</sup> and proposes ending climate change research and prevention programs.<sup>48</sup> It even removed the word “science” itself from the EPA’s Office of Science and Technology policy mission statement and removed reference to science-based standards generally.<sup>49</sup> The White House Office of Science and Technology Policy is understaffed and run by a climate change denier.<sup>50</sup> Much has been written about these and other negative im-

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<http://news.nationalgeographic.com/2017/02/wildlife-watch-usda-animal-welfare-trump-records/> [<https://perma.cc/L5PK-TVTT>] (accessed June 8, 2017).

<sup>44</sup> Meredith Wadman, *Updated: USDA Responds to Outcry over Removal of Animal Welfare Documents, Lawsuit Threats*, SCIENCE (updated Feb. 7, 2017, 12:15 PM), <http://www.sciencemag.org/news/2017/02/updated-usda-responds-outcry-over-removal-animal-welfare-documents-lawsuit-threats> [<https://perma.cc/E3MQ-HR2X>] (accessed June 8, 2017); Meredith Wadman, *More Groups Sue to Force USDA to Restore Online Animal Welfare Records*, SCIENCE (Feb. 22, 2017, 4:30 PM), <http://www.sciencemag.org/news/2017/02/breaking-reversal-usda-reposts-some-animal-welfare-records-it-had-scrubbed-website> [<https://perma.cc/4SZY-YPDB>] (accessed June 8, 2017).

<sup>45</sup> Brulliard, *supra* note 43.

<sup>46</sup> Katherine Rodriguez, *EPA Removes Climate Science Website, Announces ‘Changes’ to Reflect Trump Administration*, BREITBART (Apr. 29, 2017), <http://www.breitbart.com/big-government/2017/04/29/epa-removes-climate-science-website-announces-changes-reflect-trump-administration/> [<https://perma.cc/KLF8-PBGB>] (accessed June 8, 2017); Chris Mooney & Juliet Ellperin, *EPA Website Removes Climate Science Site from Public View After Two Decades*, WASH. POST (Apr. 29, 2017), <https://www.washingtonpost.com/news/energy-environment/wp/2017/04/28/epa-website-removes-climate-science-site-from-public-view-after-two-decades> [<https://perma.cc/26PV-ZKPZ>] (accessed June 8, 2017).

<sup>47</sup> Victoria Herrmann, *I Am an Arctic Researcher. Donald Trump Is Deleting My Citations*, GUARDIAN (Mar. 28, 2017), <https://www.theguardian.com/commentisfree/2017/mar/28/arctic-researcher-donald-trump-deleting-my-citations> [<https://perma.cc/9KN6-R7XA>] (accessed June 8, 2017).

<sup>48</sup> Martin Khor, *Trump’s First 100 Days: A Serious Cause for Concern*, INTER PRESS SERVICE NEWS AGENCY (Apr. 24, 2017), <http://www.ipsnews.net/2017/04/trumps-first-100-days-a-serious-cause-for-concern/> [<https://perma.cc/R6X6-SYAE>] (accessed June 8, 2017).

<sup>49</sup> Emily Atkin, *The EPA’s Science Office Removed “Science” from Its Mission Statement*, NEW REPUBLIC (Mar. 7, 2017), <https://newrepublic.com/article/141174/epas-science-office-removed-science-mission-statement> [<https://perma.cc/B3NG-XHNH?type=image>] (accessed June 8, 2017); Karla Lant, *The EPA’s Science Office Just Removed the Word ‘Science’ from Its Mission Statement*, BUSINESS INSIDER (Mar. 13, 2017, 2:21 PM), <http://www.businessinsider.com/epa-science-office-removed-science-mission-statement-2017-3> [<https://perma.cc/5JE8-YX9U?type=image>] (accessed June 8, 2017).

<sup>50</sup> Emily Atkin, *Can the White House Office of Science Survive Trump?*, NEW REPUBLIC (Apr. 5, 2017), <https://newrepublic.com/article/141630/can-white-house-office-science-survive-trump> [<https://perma.cc/9YMT-D2ZM>] (accessed June 8, 2017); Lev

pacts the administration has had on environmental issues in just its first 100 days.<sup>51</sup>

In the exercise of a different kind of power, the Trump administration's budget proposals have also caused significant consternation in the animal and environmental communities. Trump proposed and Congress passed a budget to fund the fiscal year until September 30, 2017. The proposed draconian cuts to the EPA, and to scientific funding more generally, were not in the final negotiated budget. However, those proposed cuts are back in the plan for 2018, including reducing the EPA budget by one third and its workforce by 20%.<sup>52</sup> Trump also proposes to reduce the EPA's federal enforcement office by 40% and cut grants for state enforcement by 45%; cut by 50% the office that determines acceptable amounts of pollution in drinking water; cut the superfund by 25%; slash science and climate change budgets; cut Department of Energy green programs; and shut down entire programs at the EPA including: Energy Star, and cleanup programs for the Great Lakes, Chesapeake Bay, and Puget Sound.<sup>53</sup> Included among many troubling aspects is the proposal to cut "just about everything having to do with climate change."<sup>54</sup> Though the proposed budget for 2018 was released after the first 100 days, it tracks, and is consistent with, efforts by the Trump administration to reduce environmental, and relatedly animal, protections during that time.

Trump's actions, rolling back protections against pollution; defunding climate protection measures and environmental work in general; supporting polluting industries, especially in the energy sec-

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Facher, *Science Committee Dems to Trump: Stop with the Fake News and Get a Science Advisor*, STAT NEWS (May 18, 2017), <https://www.statnews.com/2017/05/18/science-committee-trumps-fake-news-ostp/> [https://perma.cc/32C4-8HMX] (accessed June 8, 2017); Morgan Lynch, *Senators Urge Trump to Fill White House Science, Technology Jobs*, MERITALK (Apr. 24, 2017), <https://www.meritalk.com/articles/senators-urge-trump-to-fill-white-house-science-technology-jobs/> [https://perma.cc/K9UT-UCKT?type=image] (accessed June 8, 2017).

<sup>51</sup> E.g., Eric Levitz, *All the Terrifying Things that Donald Trump Did Lately*, N.Y. DAILY INTELLIGENCER (Apr. 28, 2017), <http://nymag.com/daily/intelligencer/2017/04/every-terrifying-thing-that-donald-trump-has-done.html> (accessed June 8, 2017); FiveThirtyEight Staff, *What Trump Has Done*, FIVETHIRTYEIGHT (Apr. 28, 2017), <https://fivethirtyeight.com/features/what-trump-has-done/> [https://perma.cc/ZX8C-K4SW] (accessed June 8, 2017); Eric Pooley, *The 4 Worst Things Trump Has Done for the Environment in His First 100 Days—And 1 Good*, FORBES (Apr. 27, 2017, 5:42 PM), <https://www.forbes.com/sites/edfenergyexchange/2017/04/27/100-days-4-worst-and-1-good-thing-trump-has-done-for-the-environment/#68c1397afe71> [https://perma.cc/QD2L-HJ3E] (accessed June 8, 2017); Dominique Mosbergen, *100 Days of Trashing the Planet. . . And How YOU Can Stop It*, HUFFINGTON POST (updated Apr. 26, 2017), [http://www.huffingtonpost.com/entry/trump-100-days-environment-earth-day\\_us\\_58f87b68e4b0cb086d7e3175](http://www.huffingtonpost.com/entry/trump-100-days-environment-earth-day_us_58f87b68e4b0cb086d7e3175) [https://perma.cc/CH83-6ESE] (accessed June 8, 2017).

<sup>52</sup> Robinson Meyer, *What Does Trump's Budget Mean for the Environment?*, ATLANTIC (May 24, 2017), <https://www.theatlantic.com/science/archive/2017/05/trump-epa-budget-noaa-climate-change/527814/> [https://perma.cc/7PQD-WUSU] (accessed June 8, 2017).

<sup>53</sup> *Id.*

<sup>54</sup> FiveThirtyEight Staff, *supra* note 51.

tor; moving forward to build a border wall; moving away from the use of science; undermining respect for the judiciary; and more, have negative impacts on the environment, on specific vulnerable groups of people, and also on animals' well-being. This is not a complete list of even just the environmentally-focused, less formal, negative actions taken by the administration, but presents an example of what has happened and will in all likelihood continue to happen.

## II. RESPONSES TO EXECUTIVE AND CONGRESSIONAL ACTION

Reactions to the president and the actions of his administration have been swift, numerous, and varied. Though there have been many types of responses, some supportive and many in opposition, I will focus on two of the most visible categories of oppositional public response—protests and lawsuits, and only briefly address legislative responses. When citizens wish to register opposition to the actions of government, via governmental mechanisms, they have a few options: address the executive branch; influence the legislative branch; or appeal for change through the judicial branch. In this case, the federal executive and legislative branches are in political alignment, which naturally leads to more lawsuits.<sup>55</sup> It also leads to increased political activism at the state and local levels and to other types of activism outside of governmental channels such as letters to the editor, changes in consumer behavior including calls for boycott,<sup>56</sup> support<sup>57</sup> or opposition<sup>58</sup> for certain media outlets, challenges to the media,<sup>59</sup> and public demonstrations, vigils, rallies, and protests. While there has been activity both opposing and supporting the Trump administration, below I focus on the opposition.

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<sup>55</sup> Lydia Wheeler, *Lawsuits Piling Up Against Trump*, HILL (May 11, 2017, 6:00 AM), <http://thehill.com/regulation/332858-lawsuits-piling-up-against-trump> [https://perma.cc/6BLL-VXC7] (accessed June 8, 2017).

<sup>56</sup> Kate Taylor, *An Anti-Trump Movement Is Calling for the Boycott of These 51 Companies*, BUSINESS INSIDER (Feb. 1, 2017, 9:11 AM), <http://www.businessinsider.com/trump-boycott-retailers-sell-trump-products-2017-1> [https://perma.cc/8AEH-8HUH?type=image] (accessed June 8, 2017); Ahiza Garcia, *Pro-Trump Boycott Calls Follow Super Bowl Ads*, CNN (Feb. 7, 2017), <http://money.cnn.com/2017/02/06/news/companies/trump-super-bowl-boycott/> [https://perma.cc/SY25-CRTB] (accessed June 8, 2017).

<sup>57</sup> Melanie Morgan, *Conservatives Return Fire, Support Embattled Fox News Channel Host*, MEDIA EQUALIZER (May 25, 2017, 5:25 PM), <https://mediaequalizer.com/melanie-morgan/2017/05/conservatives-return-fire-support-embattled-fox-news-channel-host> [https://perma.cc/S2NQ-VMX7] (accessed June 8, 2017).

<sup>58</sup> *It's Time to Drop Fox*, PEOPLE FOR THE AMERICAN WAY, <http://site.pfaw.org/site/PageServer?pagename=DropFox#takeaction&autologin=true> [https://perma.cc/2ZT4-NV67] (accessed June 8, 2017).

<sup>59</sup> Ali Breland, *FCC chairman: Whether NY Times, CNN, NBC Are 'Fake News' Is a 'Political Debate'*, HILL (Mar. 23, 2017), <http://thehill.com/policy/technology/325473-fcc-chairman-whether-or-not-new-york-times-cnn-nbc-are-fake-news-is-a> [https://perma.cc/P3UN-SB3L] (accessed June 8, 2017).

### A. Protests

Protests against the Trump administration and its proposed policies began immediately after the election and before the inauguration.<sup>60</sup> People all over the country engaged in traditional protest activity—they marched, attended rallies, walked out of classes, burned flags and effigies, and blocked roads.<sup>61</sup> Protests against the president-elect and his policies, and in support of women, immigrants, racial inclusion, and other policies many feared were at risk, continued and escalated after the election.<sup>62</sup> This response was not limited to the United States. Protests occurred around the world as well.<sup>63</sup> The pace of protests stepped up after the inauguration in January, with a coordinated national and international Women’s March<sup>64</sup> that garnered millions of participants,<sup>65</sup> with more people at the Washington rally alone than at the President’s inauguration the day before.<sup>66</sup>

<sup>60</sup> Christopher Mele & Annie Correal, ‘Not Our President’: Protests Spread After Donald Trump’s Election, N.Y. TIMES (Nov. 9, 2016), <https://www.nytimes.com/2016/11/10/us/trump-election-protests.html> [https://perma.cc/MMD2-E58T] (accessed June 8, 2017); Bryan Logan & Chris Sanchez, Protests Against Donald Trump Break Out Nationwide, BUSINESS INSIDER (Nov. 9, 2016, 9:45 PM), <http://www.businessinsider.com/anti-donald-trump-protest-united-states-2016-11> [https://perma.cc/96GH-3W3E?type=image] (accessed June 8, 2017).

<sup>61</sup> *Id.*

<sup>62</sup> *Anti-Trump Protests After Election*, CNN (updated Nov. 18, 2016, 7:55 AM), <http://www.cnn.com/2016/11/09/us/gallery/trump-protest-across-america/> [https://perma.cc/B66Q-QVYT] (accessed June 8, 2017) (photo gallery of post-election protests); Esther Yu Hsi Lee, *People in More Than 60 Countries Are Protesting Trump with the Women’s March*, THINK PROGRESS (Jan. 21, 2017) <https://thinkprogress.org/womens-march-global-10c4cb8b084d> [https://perma.cc/R5VX-8NAA] (accessed June 15, 2017).

<sup>63</sup> Associated Press, *Fourth Day of Nationwide and International Protests Against President-Elect Donald Trump*, KTUU NEWS (Nov. 12, 2016), <http://www.ktuu.com/content/news/-nationwide-and-international-protests-against-President-elect-Donald-Trump-400950056.html> [https://perma.cc/B2Y7-DMKY] (accessed June 3, 2017); Mahita Gajanan, *Donald Trump’s Election Victory Sparks Protests Across the World*, TIME (Nov. 9, 2016, 6:22 PM), <http://time.com/4565023/donald-trump-election-victory-protests-world/> [https://perma.cc/7V98-Y24Q] (accessed June 8, 2017).

<sup>64</sup> *Women’s March Global*, WOMEN’S MARCH, <https://www.womensmarch.com/global/> [https://perma.cc/H4C5-ATHH] (accessed June 8, 2017).

<sup>65</sup> Anemona Hartocillis & Yamiche Alcindor, *Women’s March Highlights as Huge Crowds Protest Trump: ‘We’re Not Going Away,’* N.Y. TIMES (Jan. 21, 2017), <https://www.nytimes.com/2017/01/21/us/womens-march.html> [https://perma.cc/9RY2-M4L4] (accessed June 8, 2017); Heidi M. Przybyla & Fredreka Schouten, *At 2.6 million Strong, Women’s Marches Crush Expectations*, USA TODAY (updated Jan. 22, 2017, 9:23 AM), <https://www.usatoday.com/story/news/politics/2017/01/21/womens-march-aims-start-movement-trump-inauguration/96864158/> [https://perma.cc/ZZ2E-H9NH] (accessed June 8, 2017); Laura Smith-Spark, *Protesters Rally Worldwide in Solidarity with Washington March*, CNN (updated Jan. 21, 2017, 9:43 PM), <http://www.cnn.com/2017/01/21/politics/trump-women-march-on-washington/> [https://perma.cc/N7SC-63HU] (accessed June 8, 2017).

<sup>66</sup> Tim Wallace & Alicia Parlapiano, *Crowd Scientists Say Women’s March in Washington Had 3 Times as Many People as Trump’s Inauguration*, N.Y. TIMES (updated Jan. 22, 2017), <https://www.nytimes.com/interactive/2017/01/22/us/politics/womens-march-trump-crowd-estimates.html> [https://perma.cc/JZD7-HWEA] (accessed June 8,

Protests, rallies, and marches, in the United States and around the world, have continued since the inauguration. Some have been spontaneous in response to actions of the Trump administration, like the immediate response to the travel ban.<sup>67</sup> Others have been coordinated well in advance in opposition to planned actions of the administration, such as the protest for climate action.<sup>68</sup> One of the goals of the Climate March, on President Trump's 100th day in office, was to encourage the President to keep the U.S. in the Paris Accord, which he declined to do.<sup>69</sup> Protests have occurred in response to many of the other Trump administration activities including: the proposed border wall, increased deportations, restrictions on sanctuary cities, reduc-

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2017); Melia Robinson, *Aerial Photos Show the Contrast Between Crowds at Trump's Inauguration and the Women's March*, BUSINESS INSIDER (Jan. 21, 2017, 2:01 PM), <http://www.businessinsider.com/womens-march-versus-trump-inauguration-attendance-2017-1> [<https://perma.cc/5RA6-JNV5?type=image>] (accessed June 8, 2017).

<sup>67</sup> Lauren Gambino, Sabrina Siddiqui, Paul Owen, & Edward Helmore, *Thousands Protest Against Trump Travel Ban in Cities and Airports Nationwide*, GUARDIAN (Jan. 29, 2017, 7:01 PM), <https://www.theguardian.com/us-news/2017/jan/29/protest-trump-travel-ban-muslims-airports> [<https://perma.cc/R826-Q7S9>] (accessed June 8, 2017); Emanuella Grinberg & Elliott C. McLaughlin, *Travel Ban Protests Stretch into Third Day from US to UK*, CNN (Jan. 31, 2017), <http://www.cnn.com/2017/01/30/politics/travel-ban-protests-immigration/index.html> [<https://perma.cc/MNG6-JDQP>] (accessed June 8, 2017); *Global Protests Against Trump's Travel Ban*, CBS, <http://www.cbsnews.com/pictures/global-protests-against-trumps-travel-ban/> [<https://perma.cc/YZD9-EC8R>] (accessed June 3, 2017) (photo gallery of travel-ban protests).

<sup>68</sup> See *Peoples Climate Movement*, <https://peoplesclimate.org/> [<https://perma.cc/963Z-NVXJ>] (accessed June 8, 2017) (noting that the protest was scheduled in advance for Trump's 100th day in office); Chris Mooney, Joe Helm, & Brady Dennis, *Climate March Draws Massive Crowd to D.C. in Sweltering Heat*, WASH. POST (Apr. 29, 2017), [https://www.washingtonpost.com/national/health-science/climate-march-expected-to-draw-massive-crowd-to-dc-in-sweltering-heat/2017/04/28/1bdf5e66-2c3a-11e7-b605-33413c691853\\_story.html](https://www.washingtonpost.com/national/health-science/climate-march-expected-to-draw-massive-crowd-to-dc-in-sweltering-heat/2017/04/28/1bdf5e66-2c3a-11e7-b605-33413c691853_story.html) [<https://perma.cc/S7MP-YJR4>] (accessed June 8, 2017); Eric Levenson, *Climate Protest Takes On Trump's Policies—and the Heat—in DC March*, CNN (Apr. 29, 2017, 5:17 PM), <http://www.cnn.com/2017/04/29/us/climate-change-march/> [<https://perma.cc/8HUL-42HU>] (accessed June 8, 2017); Laura McKenna, *London People's Climate March Demands Theresa May Take Climate Change Seriously*, DESMOG UK (Apr. 29, 2017), <https://www.desmog.uk/2017/04/29/london-people-climate-march-demands-theresa-may-take-climate-change-seriously> [<https://perma.cc/YX7C-2VV9>] (accessed June 8, 2017); Chauncey Alcorn, *March for Science 2017: Here Is a List of Major Cities Participating Saturday*, MIC (Apr. 20, 2017), <https://mic.com/articles/174737/here-are-some-of-the-worldwide-cities-participating-in-saturday-s-march-for-science#rPynw07es> [<https://perma.cc/ED3E-JTY3>] (accessed June 8, 2017).

<sup>69</sup> Michael D. Shear, *Trump Will Withdraw U.S. from Paris Climate Agreement*, N.Y. TIMES (June 1, 2017), <https://www.nytimes.com/2017/06/01/climate/trump-paris-climate-agreement.html> [<https://perma.cc/7HWP-NNUQ>] (accessed June 8, 2017).

tions in education funding, changes to the Affordable Care Act, and more,<sup>70</sup> and they will keep happening.<sup>71</sup>

The increase in protest activity has not been ignored by those targeted by the protesters. Reactionary legislation has been introduced in at least eighteen states around the country to limit protest activity and to create new penalties for those arrested.<sup>72</sup> These bills include elements such as: exempting drivers from civil liability if they injure, or even kill, protesters blocking traffic; criminalizing the wearing of masks at protests; increasing penalties for trespass and vandalizing property or blocking roads; assessing costs to protesters; and capping the number of people allowed to gather on public lands at twenty.<sup>73</sup> Other proposals would subject protesters and organizations to anti-racketeering laws; increase fines for mass picketing or protests at critical infrastructure sites (including pipelines, highways, and airports); make it illegal to wear robes or disguises; and require public community colleges and universities to expel any student convicted of participating in a violent riot.<sup>74</sup>

This worrying trend has even been commented on by the United Nations (U.N.) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (David Kaye), and the U.N. Special Rapporteur on the rights to freedom of peaceful assembly

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<sup>70</sup> Andrew Blake, *Michael Moore Launches 'Resistance Calendar' Website to Track Anti-Trump Protests*, WASH. TIMES (Feb. 21, 2017), <http://www.washingtontimes.com/news/2017/feb/21/michael-moore-launches-resistance-calendar-website/> [<https://perma.cc/C7CV-EARG>] (accessed June 8, 2017); RESISTANCE CALENDAR, <https://www.resistancecalendar.org/> [<https://perma.cc/Q96C-2PGF?type=image>] (accessed June 9, 2017); Nereida Moreno & Gregory Pratt, *Immigrants, Advocates Vow to Fight Trump Orders on Wall, Sanctuary Cities*, CHI. TRIB. (Jan. 25, 2017, 4:49 PM), <http://www.chicagotribune.com/news/local/breaking/ct-trump-chicago-immigration-order-met-20170125-story.html> (accessed June 15, 2017); Kanyakrit Vongkiatkajorn, *A Firestorm of Protests Will Take Aim at Donald Trump's Inauguration*, MOTHER JONES (Jan. 14, 2017, 11:00 AM), <http://www.motherjones.com/politics/2017/01/trump-inauguration-protest-rally/> [<https://perma.cc/BX65-XLNQ>] (accessed June 15, 2017).

<sup>71</sup> See *Resistance Calendar*, *supra* note 71 (listing future anti-Trump protests at the state, local and national level, as well as political and social justice events); Jordan Darville, *Find Out Where and When to Protest Trump Next with the Resistance Calendar*, FADER (Feb. 20, 2017), <http://www.thefader.com/2017/02/20/the-resistance-calendar-trump-protests> [<https://perma.cc/V486-ZVSV>] (accessed June 8, 2017) (listing future anti-Trump protests at the state, local and national level, as well as political and social justice events).

<sup>72</sup> Linh Tran, *Numerous States Considering Anti-Protest Bills*, CNN (updated Apr. 25, 2017, 12:05 PM), <http://www.cnn.com/2017/04/24/politics/states-anti-protest-legislation/index.html> [<https://perma.cc/T6GW-NJYB>] (accessed June 8, 2017); Christopher Ingraham, *Republican Lawmakers Introduce Bills to Curb Protesting in at Least 18 States*, WASH. POST (Feb. 24, 2017), [https://www.washingtonpost.com/news/wonk/wp/2017/02/24/republican-lawmakers-introduce-bills-to-curb-protesting-in-at-least-17-states/?utm\\_term=.19a850a1038d](https://www.washingtonpost.com/news/wonk/wp/2017/02/24/republican-lawmakers-introduce-bills-to-curb-protesting-in-at-least-17-states/?utm_term=.19a850a1038d). [<https://perma.cc/7G9R-JWJB>] (accessed June 10, 2017).

<sup>73</sup> *Id.*

<sup>74</sup> Ingraham, *supra* note 73.

and of association (Maina Kiai).<sup>75</sup> They prepared a report regarding their concerns about the rapid increase in state bills that would infringe on these rights and are “incompatible with [U.S.] obligations under international human rights law.”<sup>76</sup> The report also notes that similar bills were introduced, but not passed, in four other states.<sup>77</sup> The authors raise concerns regarding the growing criminalization of protests, the lack of protection for peaceful protestors, the increase in violence at protests, and the assessment of costs to private individuals for public expenses connected with protests.<sup>78</sup> The U.S. government’s response reaffirms the value of protections for free speech as well as identifying accompanying limitations, and points out that none of the bills have passed thus far.<sup>79</sup> However, there is no evidence to suggest that the Trump administration would address these concerns should any of the proposed bills become enacted.

### B. Lawsuits

President Trump and his administration were met with more than fifty lawsuits in their first two weeks in office.<sup>80</sup> One source estimates that there were 134 suits at the federal level alone after 100 days in office.<sup>81</sup> A few of these relate to Donald Trump’s personal business affairs, but most are in response to the actions of his administration. Rather than cataloging them all, I will note a few that are relevant to the protection of animals and occurred within the first 100 days:

- The Center for Biological Diversity (the Center) (in its tenth lawsuit against the President) and others, sued to stop the bor-

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<sup>75</sup> Letter to Theodore Allegra, from David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association (Mar. 27, 2017), [http://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL\\_USA\\_3\\_2017.pdf](http://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL_USA_3_2017.pdf) [https://perma.cc/V82Y-W9KD] (accessed June 4, 2017).

<sup>76</sup> *Id.* at 1.

<sup>77</sup> *Id.* at 11.

<sup>78</sup> *Id.* at 13–15.

<sup>79</sup> Letter to David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Annalisa Ciampi (vice Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association from Jason R. Mack, U.S. Deputy Permanent Representative to the U.N. Human Rights Council (May 11, 2017), [http://www.ohchr.org/Documents/Issues/Opinion/Legislation/USA\\_Reply\\_to\\_SR\\_freedom\\_of\\_Peaceful\\_Assembly\\_2017-05-11\\_16-41-01.pdf](http://www.ohchr.org/Documents/Issues/Opinion/Legislation/USA_Reply_to_SR_freedom_of_Peaceful_Assembly_2017-05-11_16-41-01.pdf) [https://perma.cc/UT7H-R9SN] (accessed June 4, 2017).

<sup>80</sup> Phil McCausland, *Trump Named in More Than 50 Lawsuits Since Inauguration*, NBC NEWS (Feb. 3, 2017, 5:28 PM), <http://www.nbcnews.com/news/us-news/trump-named-more-50-lawsuits-inauguration-n716191> [https://perma.cc/T6HF-Z4ME] (accessed June 8, 2017).

<sup>81</sup> Matt Viser, *Trump Has Been Sued 134 Times in Federal Court Since Inauguration*, BOSTON GLOBE (May 5, 2017), <https://www.bostonglobe.com/news/politics/2017/05/05/trump-has-been-sued-times-federal-court-since-inauguration-day/E4AqZBYaKYHtzwfQ3k9hdM/story.html> [https://perma.cc/2GW4-233A] (accessed June 10, 2017) (noting that many of these suits relate to the travel ban and can be lumped together, and some are frivolous, but even discounting those, there are still a significant number of serious suits).

der wall saying that it threatens ninety-three endangered and threatened species.<sup>82</sup>

- Environmental and Alaska Native groups sued in an effort to maintain a U.S. ban on oil and gas exploration (drilling) in the Arctic and Atlantic Oceans after President Trump took steps to reverse the ban.<sup>83</sup>
- The Center sued “challenging the constitutionality of the Congressional Review Act (CRA), which Congress used to pass legislation that Trump signed repealing the Department of Interior’s Refuges Rule.”<sup>84</sup> Certain hunting practices that were banned under the rule, including killing wolves and pups in their dens, shooting bears from aircraft and at bait stations, and the use of steel-jaw leg-hold traps and wire snares, can now be used in Alaska’s national wildlife refuges since the ban on these activities was lifted.<sup>85</sup>
- Keystone XL pipeline lawsuits brought by environmental and indigenous groups accuse the Trump administration of using an “outdated and incomplete environmental impact statement.”<sup>86</sup> Environmental groups allege that moving forward with the pipeline violates the law.<sup>87</sup> And on the other side, TransCanada suspended its lawsuit pushing for approval of the pipeline after President Trump announced it would proceed.<sup>88</sup>

<sup>82</sup> Timothy Cama, *Green Group, Dem Lawmaker Sue Trump to Stop Border Wall*, HILL (Apr. 12, 2017, 12:12 PM), <http://thehill.com/policy/energy-environment/328485-green-group-sues-trump-to-stop-border-wall> [https://perma.cc/6KTZ-H999] (accessed June 8, 2017); Save Wolves Now, *APPEAL by the Center for Biological Diversity: Help Us Fight Trump’s Border Wall*, FACEBOOK (Apr. 19, 2017), [https://www.facebook.com/permalink.php?story\\_fbid=669589389907654&id=272970539569543&substory\\_index=0](https://www.facebook.com/permalink.php?story_fbid=669589389907654&id=272970539569543&substory_index=0) [https://perma.cc/7P38-9C2Y?type=image] (accessed June 15, 2017); Press Release, Ctr. for Biological Diversity, Study: Trump’s Border Wall Threatens 93 Endangered Species (May 16, 2017), [http://www.biologicaldiversity.org/news/press\\_releases/2017/border-wall-05-15-2017.php](http://www.biologicaldiversity.org/news/press_releases/2017/border-wall-05-15-2017.php) [https://perma.cc/3NWZ-VYX7] (accessed June 15, 2017).

<sup>83</sup> Dan Joling, *Correction: Trump-Offshore Drilling Story*, U.S. NEWS (May 4, 2017, 12:02 PM), <https://www.usnews.com/news/best-states/alaska/articles/2017-05-03/groups-sue-to-keep-drilling-ban-in-arctic-atlantic-waters> [https://perma.cc/WT2X-4LF3] (accessed June 8, 2017).

<sup>84</sup> Lydia Wheeler, *Green Group Sues Trump Admin Repeal of Wildlife Protections*, HILL (Apr. 20, 2017), <http://thehill.com/regulation/329723-green-group-sues-over-repeal-of-wildlife-protections> [https://perma.cc/92Z8-VXBV] (accessed June 8, 2017).

<sup>85</sup> *Id.*

<sup>86</sup> Lauren McCauley, *Lawsuits Pile Up, Resistance Revs Up Against Trump’s KXL Order*, COMMON DREAMS (Mar. 30, 2017), <https://www.commondreams.org/news/2017/03/30/lawsuits-pile-resistance-revs-against-trumps-kxl-order> [https://perma.cc/5LD9-REWS] (accessed June 8, 2017).

<sup>87</sup> Michael McLaughlin, *Here Come the Lawsuits to Stop Keystone XL Pipeline*, HUFFINGTON POST (Mar. 30, 2017), [http://www.huffingtonpost.com/entry/keystone-xl-law-suits\\_us\\_58dd2d3de4b0e6ac7092e8ea](http://www.huffingtonpost.com/entry/keystone-xl-law-suits_us_58dd2d3de4b0e6ac7092e8ea) [https://perma.cc/FJZ5-GJK8] (accessed June 8, 2017).

<sup>88</sup> Ethan Lou, *TransCanada Suspends \$15 Billion Lawsuit Against the US After Trump Approves Keystone Pipeline*, BUSINESS INSIDER (Feb. 28, 2017, 11:43 PM), <http://www.businessinsider.com/r-transcanadas-us-keystone-xl-lawsuit-suspended-arbitration-court-2017-2> [https://perma.cc/9MRF-HL5U] (accessed June 8, 2017).

- The Natural Resources Defense Council (NRDC) and others filed a suit regarding the executive order that requires “federal agencies to repeal two regulations for each new rule they issue.”<sup>89</sup>
- The Center filed a lawsuit to protect wolves and lynx from mine dangers in Minnesota.<sup>90</sup>
- Four activist groups filed a lawsuit to stop the USDA’s Wildlife Service from using cyanide ‘bombs’ as a method of killing unwanted wild animals.<sup>91</sup>
- WildEarth Guardians and others sued to challenge the revocation of protections for black bears and mountain lions.<sup>92</sup>
- Regarding the decision to withdraw from the Paris Climate Agreement, the President initially delayed his decision after stating he would withdraw during his campaign, after getting significant pressure not to do so. President Trump ultimately decided to withdraw the U.S. from the agreement (though this was after the first 100 days) and NRDC announced almost immediately that it would sue him.<sup>93</sup> In the meantime, some states and cities declared that they are taking up climate protection in the vacuum left by this federal abdication.<sup>94</sup> Some companies committed to help as well.<sup>95</sup> On a related note, the

<sup>89</sup> Tim Devaney, *Trump Sued Over ‘1-in-2-out’ Regulations Order*, HILL (Feb. 2, 2017), <http://thehill.com/regulation/318457-trump-sued-over-1-in-2-out-regulations-order> [https://perma.cc/PM2L-8XTA] (accessed June 8, 2017).

<sup>90</sup> Ctr. for Biological Diversity v. Zinke, No. 0:17-cv-00914 (D. Minn. Mar. 28, 2017); Press Release, Ctr. for Biological Diversity, *Lawsuit Filed to Protect Wolves, Lynx from PolyMet Copper Mine in Minnesota* (Mar. 28, 2017), [https://www.biologicaldiversity.org/programs/public\\_lands/mining/pdfs/2017-01-10\\_PolyMet\\_60-day\\_notice\\_letter.pdf](https://www.biologicaldiversity.org/programs/public_lands/mining/pdfs/2017-01-10_PolyMet_60-day_notice_letter.pdf) [https://perma.cc/YET9-BQRZ] (accessed June 8, 2017).

<sup>91</sup> Eric Mortenson, *Activists File Suit Against Wildlife Service’s Use of Cyanide ‘Bombs,’* CAPITAL PRESS (April 5, 2017, 9:07 PM), [http://www.capitalpress.com/Nation\\_World/20170405/activists-file-suit-against-wildlife-services-use-of-cyanide-bombs](http://www.capitalpress.com/Nation_World/20170405/activists-file-suit-against-wildlife-services-use-of-cyanide-bombs) [https://perma.cc/76FH-JGNK?type=image] (accessed June 8, 2017).

<sup>92</sup> WildEarth Guardians v. Suckow, No. 1:17-cv-00891 (D. Colo. Apr. 12, 2017); Grant Stringer, *Conservationists Sue Feds over Controversial Plan to Kill Bears and Mountain Lions*, WESTWORD (Apr. 17, 2017, 8:33 AM), <http://www.westword.com/news/conservationists-sue-federal-government-over-plan-to-kill-bears-and-mountain-lions-8974329> [https://perma.cc/PN8Q-NQUF] (accessed June 8, 2017).

<sup>93</sup> Press Release, Nat’l Res. Def. Council, *NRDC Will Sue as Trump Administration Begins Dismantling Methane Pollution Protections* (May 31, 2017), <https://www.nrdc.org/media/2017/170531> [https://perma.cc/X5ZE-VX3P] (accessed June 13, 2017).

<sup>94</sup> David Abel, *After Trump’s Decision, Cities and States Vow to Step Up*, BOS. GLOBE (June 2, 2017), <https://www.bostonglobe.com/metro/2017/06/01/after-trump-decision-cities-and-states-vow-step-honor-pledge-curb-emissions/kvY73Y9mX2doELrSdMeDkN/story.html> [https://perma.cc/6PBA-ZDK3?type=image] (accessed June 8, 2017); Meghan Keneally & Julia Jacobo, *Cities and States Aim to Take up Paris Accord After Trump’s Withdrawal*, ABC NEWS (June 2, 2017, 11:20 AM), <http://abcnews.go.com/US/cities-states-aim-paris-accord-trumps-withdrawal/story?id=47773477> [https://perma.cc/J73N-CMSX] (accessed June 8, 2017).

<sup>95</sup> Kif Leswing, *Bad for the Environment, Bad for the Economy: Facebook, Google, and Amazon React to Trump’s Decision to Withdraw from Paris Climate Agreement*, BUSINESS INSIDER (June 1, 2017, 6:36 PM), <http://www.businessinsider.com/google->

Trump administration is trying to stop the climate lawsuit filed by young people against the federal government during the Obama administration.<sup>96</sup>

The mere filing of these lawsuits gives some advocates hope, though there is no guarantee either of winning or that a ‘win’ would produce the desired results. Sometimes there is a benefit simply from filing a lawsuit because it can have the effect of convincing a party to reexamine a position or consider negotiating. For a person like Donald Trump, it is unlikely that the mere filing of lawsuits will have any positive impact or encourage him to change his policies. It is estimated that he has been involved in somewhere between 3,500<sup>97</sup> and 4,100<sup>98</sup> lawsuits before taking office. He has bragged about winning<sup>99</sup> and about not settling suits filed against him, though he evidently does.<sup>100</sup>

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facebook-tech-companies-react-trump-paris-accord-withdrawal-2017-6/#google-ceo-sundar-pichai-1 [https://perma.cc/QJJ2-EQNJ?type=image] (accessed June 8, 2017); Julia Jacobo, *Reactions Swift After Trump’s Withdrawal from Paris Climate Accord*, ABC NEWS (June 1, 2017, 10:56 PM), <http://abcnews.go.com/Politics/public-figures-react-trumps-decision-withdraw-paris/story?id=47767113> [https://perma.cc/BWN8-W22B] (accessed June 8, 2017); Hiroko Tabuchi, *With Government in Retreat, Companies Step Up on Emissions*, N.Y. TIMES (Apr. 25, 2017), <https://www.nytimes.com/2017/04/25/climate/with-government-in-retreat-companies-step-up-on-emissions.html> [https://perma.cc/LFC8-UDK7?type=image&] (accessed June 8, 2017).

<sup>96</sup> Chelsea Harvey, *The Climate Change Lawsuit the Trump Administration Is Desperate to Stop Going to Trial*, INDEPENDENT (Mar. 10, 2017, 1:00 PM), <http://www.independent.co.uk/news/world/americas/us-politics/donald-trump-climate-change-lawsuit-white-house-desperate-to-stop-a7622606.html> (accessed June 8, 2017).

<sup>97</sup> Nick Penzenstadler & Susan Page, *Exclusive: Trump’s 3,500 Lawsuits Unprecedented for a Presidential Nominee*, USA TODAY (2017), <https://www.usatoday.com/story/news/politics/elections/2016/06/01/donald-trump-lawsuits-legal-battles/84995854/> [https://perma.cc/3AT2-7MLM] (accessed June 8, 2017).

<sup>98</sup> Matt Viser, *Trump Has Been Sued 134 Times in Federal Court Since Inauguration*, BOS. GLOBE (May 5, 2017), <https://www.bostonglobe.com/news/politics/2017/05/05/trump-has-been-sued-times-federal-court-since-inauguration-day/E4AqZBYaKYHtzwfQ3k9hdM/story.html> [https://perma.cc/A3H7-KQM7?type=image] (accessed June 8, 2017).

<sup>99</sup> Rebecca Savransky, *Trump Brags About Winning Record in Lawsuits*, HILL (June 2, 2016, 12:50 PM), <http://thehill.com/blogs/ballot-box/presidential-races/282008-trump-brags-about-winning-record-in-lawsuits> [https://perma.cc/YY9S-F6DM] (accessed June 10, 2017); Pamela Engel, *Donald Trump Brags About his Lawsuit Record After USA Today Scrutinizes ‘Unprecedented’ Legal Skirmishes*, BUSINESS INSIDER (June 2, 2016, 7:28 PM), <http://www.businessinsider.com/donald-trump-lawsuits-2016-6> [https://perma.cc/L2NC-BDT2] (accessed June 8, 2017).

<sup>100</sup> Tina Nguyen, *The Trump Campaign Has Quietly Settled Millions in Lawsuits*, VANITY FAIR HIVE (Apr. 20, 2017, 12:36 PM), <http://www.vanityfair.com/news/2017/04/trump-campaign-lawsuits-settlements> [https://perma.cc/984C-C484] (accessed June 8, 2017); Bryce Covert, *Donald Trump Says ‘I Don’t Settle,’ But We Found 13 Times He Did.*, THINKPROGRESS (May 19, 2016), <https://thinkprogress.org/donald-trump-says-i-dont-settle-but-we-found-13-times-he-did-3a7ae4678b22> [https://perma.cc/JX7P-5U6U] (accessed June 8, 2017); Russ Choma, *Donald Trump, the Man Who Never Settles, Agrees to Settle Trump University Lawsuits*, MOTHER JONES (Nov. 18, 2016, 4:09 PM), <http://www.motherjones.com/politics/2016/11/trump-ready-settle-trump-university-fraud-cases> [https://perma.cc/4B6G-69X7] (accessed June 8, 2017); Dave Jamieson, *Donald Trump Doesn’t Settle Lawsuits. Except When He Does.*, HUFFINGTON POST (Sept. 26,

Lawsuits will not likely have immediate impacts on the policy direction of the Trump administration, but they may provide encouragement in a few ways. First, they make it more difficult for the administration to carry out policies deemed harmful. Second, they may take some time and resources away from other destructive activities of the administration. And finally, they provide hope and a set of approaches to resist the harm this administration seems intent on inflicting upon animals and the environment.

### C. Legislative Responses

The Republicans control both the House and Senate, but that has not stopped Democratic legislators from resisting some Trump administration activity by putting forward legislative responses. Though some of those efforts have little chance of passing, they offer an alternative approach to current policy directions. Other bills may be less controversial and have a chance to make a difference. One example is H.R. 1368, the Animal Welfare Accountability and Transparency Act,<sup>101</sup> sponsored by Representative Earl Blumenauer (D-OR),<sup>102</sup> who is co-chair of the Congressional Animal Protection Caucus along with Representative Vern Buchanan (R-FL).<sup>103</sup> Congressman Blumenauer led the effort to submit a bi-partisan letter to President Trump after the withdrawal of animal welfare violation data from the USDA website.<sup>104</sup> Following receipt of the letter, as well as significant additional negative response, the agency started restoring some of the information to its publicly available website.<sup>105</sup>

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2016, 11:09 PM), [http://www.huffingtonpost.com/entry/trump-who-never-settles-defends-against-discrimination-charges-by-noting-he-settled-them\\_us\\_57e9dcd4e4b082aa9d9b69173](http://www.huffingtonpost.com/entry/trump-who-never-settles-defends-against-discrimination-charges-by-noting-he-settled-them_us_57e9dcd4e4b082aa9d9b69173) [<https://perma.cc/AFQ5-PWA5>] (accessed June 8, 2017).

<sup>101</sup> Animal Welfare Accountability and Transparency Act, H.R. 1368, 115th Cong. (2017).

<sup>102</sup> *Id.*

<sup>103</sup> Press Release, Vern Buchanan, Buchanan to Co-Chair Animal Protection Caucus (Jan. 30, 2017), <https://buchanan.house.gov/media-center/press-releases/buchanan-co-chair-animal-protection-caucus> [<https://perma.cc/3A2U-ERL3>] (accessed June 15, 2017).

<sup>104</sup> Press Release, Earl Blumenauer, Blumenauer Calls on Donald Trump to Restore Vital Animal Welfare Data Online (Feb. 14, 2017), <https://blumenauer.house.gov/media-center/press-releases/blumenauer-calls-donald-trump-restore-vital-animal-welfare-data-online> [<https://perma.cc/6S8Z-TVLF>] (accessed June 15, 2017) (showcasing the bi-partisan letter to President Trump to restore data “removed from USDA’s website regarding the Animal Welfare Act and Horse Protection Act”).

<sup>105</sup> Press Release, Earl Blumenauer, Blumenauer Statement on USDA Step to Restore Vital Animal Welfare Data (Feb. 17, 2017), <https://blumenauer.house.gov/media-center/press-releases/blumenauer-statement-usda-step-restore-vital-animal-welfare-data> [<https://perma.cc/YPC5-QFES>] (accessed June 15, 2017); Sarah Kaplan, *Amid Outcry, Some Animal Welfare Documents Are Restored to USDA Website*, WASH. POST (Feb. 17, 2017), [https://www.washingtonpost.com/news/animalia/wp/2017/02/17/amid-outcry-some-animal-welfare-documents-restored-to-usda-website/?utm\\_term=.14ebd1d92155](https://www.washingtonpost.com/news/animalia/wp/2017/02/17/amid-outcry-some-animal-welfare-documents-restored-to-usda-website/?utm_term=.14ebd1d92155) [<https://perma.cc/B8Z8-EL4L>] (accessed June 15, 2017).

#### D. Some Victories

One of the most commonly cited positive results “post-Trump” is the rise and organization of grassroots activism.<sup>106</sup> But there are also some concrete victories (focusing on environmental, animal, and other issues) as well:

- One million acres in California that were previously protected from drilling and fracking were threatened, but are again temporarily protected in a legal settlement preserving a four-year moratorium on leases to oil companies.<sup>107</sup>
- The travel ban was enjoined from going into effect after a number of successful legal challenges to both versions of the ban, though the initial complete ban was limited after 100 days<sup>108</sup> and litigation on this issue continues.
- The rusty patched bumble bee was listed as an endangered species after a suit was filed by NRDC against the Trump administration, which had suspended the rule one day before federal protections were to attach.<sup>109</sup>

<sup>106</sup> Laura Sydell, *On Both the Left and Right, Trump Is Driving New Political Engagement*, NPR (Mar. 3, 2017, 5:42 AM), <http://www.npr.org/2017/03/03/518261347/on-both-left-and-right-trump-is-driving-new-political-engagement> [https://perma.cc/VC6K-4HAK] (accessed June 8, 2017); Heidi M. Przbyla, *Women’s March an ‘Entry Point’ for a New Activist Wave*, USA TODAY (Jan. 5, 2017, 2:20 PM), <https://www.usatoday.com/story/news/politics/2017/01/05/womens-march-searches-themes-amid-concern-trump-gop-congress/96199000/> [https://perma.cc/2JYN-RTU7] (accessed June 8, 2017); Nadia Prupis, *Watchdogs: Trump’s Disastrous 100 Days Fueling “Golden Era of Activism.”*, COMMON DREAMS (Apr. 28, 2017), <https://www.commondreams.org/news/2017/04/28/watchdogs-trumps-disastrous-100-days-fueling-golden-era-activism> [https://perma.cc/24AU-6PAL] (accessed June 8, 2017).

<sup>107</sup> Andrew Follett, *Enviro Lawsuit Effectively Bans Fracking in 1 Million Acres of California*, DAILY CALLER (May 5, 2017), <http://dailycaller.com/2017/05/07/enviro-law-suit-effectively-bans-fracking-in-1-million-acres-of-california/> [https://perma.cc/Z6BZ-GXEB] (accessed June 8, 2017).

<sup>108</sup> Int’l Refugee Assistance Proj. v. Trump, 857 F.3d 554 (4th Cir. 2017) (cert. granted in part on June 26, 2017, No. 16-1436); Hawai’i v. Trump, No. 17-15589, — F.3d— (9th Cir. June 12, 2017) (cert. granted in part on June 26, 2017, No. 16-1540); Richard Gonzales, *Trump Travel Ban Blocked Nationwide by Federal Judges in Hawaii, Maryland*, NPR (Mar. 15, 2017), <http://www.npr.org/sections/thetwo-way/2017/03/15/520171478/trump-travel-ban-faces-court-hearings-by-challengers-today> [https://perma.cc/2QLN-7ZHP] (accessed June 8, 2017); Mark Joseph Stern, *Trump Versus Everyone*, SLATE (Feb. 1, 2017, 7:58 PM), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2017/02/a\\_comprehensive\\_guide\\_to\\_the\\_lawsuits\\_against\\_trump\\_s\\_executive\\_order.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2017/02/a_comprehensive_guide_to_the_lawsuits_against_trump_s_executive_order.html) [https://perma.cc/2WVX-4MCT] (accessed June 8, 2017); Ann E. Marimow & Robert Barnes, *Federal Appeals Court Maintains Freeze of Trump’s Travel Ban. Attorney General Vows Supreme Court Appeal.*, WASH. POST (May 25, 2017), [https://www.washingtonpost.com/local/public-safety/federal-appeals-court-largely-maintains-freeze-of-trumps-travel-ban/2017/05/25/395aa394-365b-11e7-b4ee-434b6d506b37\\_story.html?utm\\_term=.2cc409e88d97](https://www.washingtonpost.com/local/public-safety/federal-appeals-court-largely-maintains-freeze-of-trumps-travel-ban/2017/05/25/395aa394-365b-11e7-b4ee-434b6d506b37_story.html?utm_term=.2cc409e88d97) [https://perma.cc/Y5JD-LZ6U] (accessed June 8, 2017).

<sup>109</sup> *Rusty Patched Bumble Bee* (*Bombus affinis*), U.S. Fish & Wildlife Serv. (updated June 6, 2017), <https://www.fws.gov/midwest/endangered/insects/rpbb/> [https://perma.cc/QUD9-QK6Y] (accessed June 9, 2017); *Suit Filed by NRDC to Protect Rusty Patched Bumblebee*, NRDC (Feb. 14, 2017) <https://www.nrdc.org/resources/suit-filed-nrdc-pro>

- A bill to sell 3.3 million acres of public land was withdrawn.<sup>110</sup>
- Some, though not all, of the records of animal welfare violations removed from the USDA website were returned, and related lawsuits are ongoing.<sup>111</sup>
- Significant and vocal attendance at town hall meetings increased, which may have had an impact on the first and second versions of President Trump's health care bill as well as on other congressional votes.<sup>112</sup>
- There has been some increase in voter turnout and better than expected outcomes in some local elections.<sup>113</sup>

tect-rusty-patched-bumblebee [https://perma.cc/8FP9-38ZN] (accessed June 13, 2017); Weston Williams, *Every Day Counts: Group Sues Trump for Stalling Rusty Patch Bumblebee Protection*, CHRISTIAN SCI. MONITOR (Feb. 15, 2017), <http://www.csmonitor.com/Environment/2017/0215/Every-day-counts-Group-sues-Trump-for-stalling-rusty-patch-bumblebee-protection> [https://perma.cc/4ZDL-USTK] (accessed June 8, 2017); Darryl Fears, *The Endangered Listing for the Rusty Patched Bumblebee Is Finally Given Wings*, WASH. POST (Mar. 21, 2017), [https://www.washingtonpost.com/news/animalia/wp/2017/03/21/the-endangered-listing-for-the-rusty-patched-bumblebee-is-finally-given-wings/?utm\\_term=.e8f22e58a875](https://www.washingtonpost.com/news/animalia/wp/2017/03/21/the-endangered-listing-for-the-rusty-patched-bumblebee-is-finally-given-wings/?utm_term=.e8f22e58a875) [https://perma.cc/AUQ3-J969] (accessed June 8, 2017); see Endangered and Threatened Wildlife and Plants; Endangered Species Status for Rusty Patched Bumble Bee, 82 Fed. Reg. 3186 (Jan. 11, 2017) (establishing an effective date for the listing rule of February 10, 2017).

<sup>110</sup> Adam Gabbatt, *How Activists Have Already Scored Victories Against Trump's Policies*, GUARDIAN (Mar. 7, 2017), <https://www.theguardian.com/us-news/2017/mar/07/trump-activists-anti-progressive-policies> [https://perma.cc/373N-27BU] (accessed June 8, 2017).

<sup>111</sup> Lydia Wheeler, *USDA Reposts Some Animal Welfare Records After Outcry*, HILL (Feb. 17, 2017, 4:08 PM), <http://thehill.com/regulation/administration/320163-usda-reposts-some-animal-welfare-records> [https://perma.cc/E44R-5EKW] (accessed June 8, 2017).

<sup>112</sup> Jacey Fortin and Daniel Victor, *Critics at Town Halls Confront Republicans over Health Care*, N.Y. TIMES (May 9, 2017), <https://www.nytimes.com/2017/05/09/us/politics/town-hall-meetings-.html> [https://perma.cc/3EF4-B5D3] (accessed June 8, 2017); Heidi M. Przbyla, *Republicans Avoid Town Halls After Health Care Votes*, USA TODAY (Apr. 10, 2017), <https://www.usatoday.com/story/news/politics/2017/04/10/republicans-avoid-town-halls-after-health-care-votes/100286290/> [https://perma.cc/C8NR-FULJ] (accessed June 8, 2017).

<sup>113</sup> Paul Blumenthal, *Buoyed By Anti-Trump Activism, Democrat Wins Delaware Special Election*, HUFFINGTON POST (Feb. 25, 2017), [http://www.huffingtonpost.com/entry/delaware-special-senate-election\\_us\\_58b22659e4b060480e089560](http://www.huffingtonpost.com/entry/delaware-special-senate-election_us_58b22659e4b060480e089560) [https://perma.cc/Q32U-EN7A] (accessed June 8, 2017); Mark Hensch, *Trump: "Runoff Will Be a Win" in Georgia Special Election*, HILL (Apr. 17, 2017), <http://thehill.com/homenews/campaign/329218-trump-runoff-will-be-a-win-in-georgia-special-election> [https://perma.cc/VM3Z-QSE7] (accessed June 8, 2017); Phillip Bump, *What We've Learned So far from the 2017 Special Elections*, WASH. POST (May 26, 2017), [https://www.washingtonpost.com/news/politics/wp/2017/05/26/what-weve-learned-so-far-from-the-2017-special-elections/?utm\\_term=.b0b6b46b4469](https://www.washingtonpost.com/news/politics/wp/2017/05/26/what-weve-learned-so-far-from-the-2017-special-elections/?utm_term=.b0b6b46b4469) [https://perma.cc/BF3L-57PU?type=image] (accessed June 8, 2017); Carol Polsky, *New Activists Try to Tap Disaffection with Donald Trump*, NEWS-DAY (June 3, 2017), <http://www.newsday.com/long-island/politics/new-activists-try-to-tap-disaffection-with-donald-trump-1.13704811> [https://perma.cc/8YV9-9657] (accessed June 8, 2017).

- Some of Trump's staffing choices have been unsuccessful, with candidates withdrawing (Andrew Puzder,<sup>114</sup> Vincent Viola,<sup>115</sup> Mark Green,<sup>116</sup> Philip M. Bilden,<sup>117</sup> Joe Lieberman,<sup>118</sup> Richard McFeely,<sup>119</sup> Trey Gowdy,<sup>120</sup> John Cornyn,<sup>121</sup> Alice Fisher,<sup>122</sup> Monica Crowley,<sup>123</sup> Luis Quinonez,<sup>124</sup> Toby Cosgrove,<sup>125</sup> Rudy

<sup>114</sup> Manu Raju et al., *Andrew Puzder Withdraws as a Labor Secretary Nominee*, CNN (updated Feb. 16, 2017), <http://www.cnn.com/2017/02/15/politics/top-senate-republicans-urge-white-house-to-withdraw-puzder-nomination/index.html> [https://perma.cc/F3FA-KKED] (accessed June 10, 2017).

<sup>115</sup> Ryan Browne & Eli Watkins, *Vincent Vila Withdraws from Secretary of Army Nomination*, CNN (updated Feb. 4, 2017, 12:01 AM), <http://www.cnn.com/2017/02/03/politics/vincent-viola-withdraws-from-secretary-of-army-nomination/index.html> [https://perma.cc/YX7F-M8SJ] (accessed June 10, 2017).

<sup>116</sup> Andrew Kaczynski et al., *Mark Green Withdraws His Nomination for Army Secretary*, CNN (updated May 5, 2017, 9:23 PM), <http://www.cnn.com/2017/05/05/politics/mark-green-army-secretary-withdrawal/index.html> [https://perma.cc/B5KM-AR8J] (accessed June 10, 2017).

<sup>117</sup> Ralph Ellis, *Navy Secretary Nominee Philip Bilden Withdraws*, CNN (updated Feb. 26, 2017, 8:17 PM), <http://www.cnn.com/2017/02/26/politics/navy-secretary-nominee-bilden-withdraws/index.html> [https://perma.cc/E5ED-4KYK] (accessed June 10, 2017).

<sup>118</sup> Josh Gerstein, *Lieberman Withdraws from FBI Director Search*, POLITICO (May 25, 2017, 1:09 PM), <http://www.politico.com/story/2017/05/25/joe-liberman-withdraws-trump-fbi-director-238824> [https://perma.cc/6298-GFSD] (accessed June 10, 2017).

<sup>119</sup> Francesca Chambers & Nikki Schwab, *Trump Loses Another Potential FBI Director as Richard McFeely Withdraws His Name*, DAILY MAIL (updated May 21, 2017, 6:08 PM), <http://www.dailymail.co.uk/news/article-4528326/Richard-McFeely-withdraws-FBI-director.html> (accessed June 10, 2017).

<sup>120</sup> Saba Hamedy, *Rep. Trey Gowdy: 'I Would Not Be the Right Person' for FBI Director Job*, CNN (updated May 16, 2017, 1:22 AM), <http://www.cnn.com/2017/05/15/politics/trey-gowdy-fbi-director/index.html> [https://perma.cc/EL4K-U9HK] (accessed June 10, 2017).

<sup>121</sup> Rebecca Shabad, *Sen. John Cornyn Withdraws from FBI Director Search*, CBS NEWS (May 16, 2017, 3:07 PM), <http://www.cbsnews.com/news/sen-john-cornyn-withdraws-from-fbi-director-search/> [https://perma.cc/HJ7Q-SGQU] (accessed June 10, 2017).

<sup>122</sup> Andrew Henderson, *Kentuckian Alice Fisher Withdraws Name from Search to Replace James Comey as FBI Director*, USA TODAY (May 17, 2017, 6:46 PM), <https://www.usatoday.com/story/news/politics/2017/05/17/kentuckian-alice-fisher-withdraws-name-search-replace-james-comey-fbi-director/328879001/> [https://perma.cc/M4KD-R7XL] (accessed June 10, 2017).

<sup>123</sup> David M. Jackson, *Monica Crowley, Trump Pick for NSC Spokeswoman, Bows Out Amid Plagiarism Charges*, USA TODAY (updated Jan. 16, 2017, 2:01 PM), <https://www.usatoday.com/story/news/politics/onpolitics/2017/01/16/crowley-trump-pick-national-security-spokeswoman-quits-amid-plagiarism-charges/96635918/> [https://perma.cc/YR53-BZJ3] (accessed June 10, 2017).

<sup>124</sup> Leon Shane III, *Top Contender for Trump's VA Secretary Withdraws*, MILITARY TIMES (Dec. 31 2016), <http://www.militarytimes.com/articles/luis-quinonez-withdraws-va-sec> [https://perma.cc/VRY2-QPGA] (accessed June 10, 2017).

<sup>125</sup> Stephen Koff, *Cleveland Clinic's Toby Cosgrove Says 'No' Again to Running VA*, CLEVELAND.COM (updated Jan. 3, 2017, 3:26 PM), [http://www.cleveland.com/metro/index.ssf/2017/01/cleveland\\_clinics\\_toby\\_cosgrove\\_1.html](http://www.cleveland.com/metro/index.ssf/2017/01/cleveland_clinics_toby_cosgrove_1.html) (accessed June 10, 2017).

Giuliani,<sup>126</sup> and Chuck Cooper<sup>127</sup>) or resigning (Michael Flynn,<sup>128</sup> Paul Manafort,<sup>129</sup> Michael Dubke,<sup>130</sup> Bob Iger, and Elon Musk<sup>131</sup>). Additionally, many other resignations that were not expected from already serving officials have occurred.<sup>132</sup>

- The country has received a reminder that activism is a positive part of our civic duty.<sup>133</sup>

### III. INTERIM CONCLUSIONS (BECAUSE LONG-TERM ASSESSMENT OF THESE FIRST 100 DAYS IS STILL TO COME)

We need not get dispirited. Instead, we need to think creatively about responses to harmful proposals from the Trump administration. For instance, if some EPA regulations are eliminated, that may also eliminate federal preemption restrictions on lawsuits by state and private individuals or organizations, though the preferred outcome would still be maintaining regulations that have been helpful to the environ-

<sup>126</sup> Susan Heavey et al., *Rudy Giuliani Won't Be Trump's Secretary of State* (updated Dec. 9, 2016), [http://www.huffingtonpost.com/entry/rudy-giuliani-state\\_us\\_584b1301e4b0bd9c3dfcd14b](http://www.huffingtonpost.com/entry/rudy-giuliani-state_us_584b1301e4b0bd9c3dfcd14b) [<https://perma.cc/A2RE-ZJ28>] (accessed June 10, 2017).

<sup>127</sup> Eliana Johnson & Tara Palmeri, *Cooper Withdraws from Solicitor General Consideration*, POLITICO (Feb. 9, 2017, 5:41 PM), <http://www.politico.com/story/2017/02/chuck-cooper-solicitor-general-withdraws-consideration-234869> [<https://perma.cc/H93K-PGRD>] (accessed June 10, 2017).

<sup>128</sup> Sara Murray et al., *Flynn Resigns Amid Controversy over Russia Contacts*, CNN (updated 2, 14, 2017), <http://www.cnn.com/2017/02/13/politics/michael-flynn-white-house-national-security-adviser/index.html> [<https://perma.cc/6WB4-KGDC>] (accessed June 10, 2017).

<sup>129</sup> Nolan D. McCaskill, *Paul Manafort Resigns from Trump Campaign*, POLITICO (updated Aug. 19, 2016, 1:48 PM), <http://www.politico.com/story/2016/08/paul-manafort-resigns-from-trump-campaign-227197> [<https://perma.cc/733R-GL4W>] (accessed June 10, 2017).

<sup>130</sup> Peter Baker and Maggie Haberman, *As Trump Weighs Shake-Up, He Faces Recruiting Challenge*, N.Y. TIMES (May 30, 2017), <https://www.nytimes.com/2017/05/30/us/politics/trump-dubke-white-house-staff-changes.html> [<https://perma.cc/NP3N-ZFWJ>] (accessed June 10, 2017). Though this resignation was tendered after Trump's first 100 days. *Id.*

<sup>131</sup> Russ Mitchell, *Tesla's Elon Musk and Disney's Robert Iger Quit Trump Advisory Councils, Citing Climate Change*, L.A. TIMES (June 1, 2017, 4:55 PM), <http://www.latimes.com/business/la-fi-elon-musk-climate-change-20170601-story.html> (accessed June 10, 2017). Though these resignations were tendered after Trump's first 100 days. *Id.*

<sup>132</sup> See, e.g., David A. Graham, *Trump's Hollowed-Out State Department*, ATLANTIC (Jan. 26, 2017), <https://www.theatlantic.com/politics/archive/2017/01/state-department-resignations/514550/> [<https://perma.cc/PYJ2-QTSE>] (accessed June 8, 2017); Rebecca Savrasnsky, *10 Members Resign from Trump Panel on Asian Americans, Pacific Islanders*, HILL (Feb. 16, 2017), <http://thehill.com/homenews/administration/319907-10-resign-from-presidents-advisory-commission-on-asian-americans-and> [<https://perma.cc/38GS-LG6C>] (accessed June 8, 2017).

<sup>133</sup> See Micah White, *A Message for Activists After Trump's First 100 Days: Resistance Is Supposed to Be Fun*, QUARTZ (Apr. 27, 2017), <https://qz.com/970189/trumps-first-100-days-remember-that-resistance-is-supposed-to-be-fun/> [<https://perma.cc/VSP3-F5MJ>] (accessed June 8, 2017) (stating that "the important thing for today's activists to remember is that they must never give up").

ment and animals. In order to garner more support for this beleaguered agency and its regulatory framework, activists and lawyers may need to help people remember what it was like before EPA regulation. The case needs to be made to those who do not remember, or know, why the EPA and its regulations came into effect, with bi-partisan support, in the first place. No one likely wants to return to the days of needing headlights during the day because of smog,<sup>134</sup> rivers catching on fire,<sup>135</sup> and facing the consequences of toxins in our food, soil, and drugs.<sup>136</sup> Educating the public about the role the federal government played in ending or reducing these problems may help people understand the need for regulation. Unfettered capitalism has led to many problems in our country's history. Federal government action was needed to constrain corporate irresponsibility and the tragedy of the commons.<sup>137</sup> Additionally, it may also be helpful to alert local and state governments and businesses that they, as well as individual citizens, animals, and the environment, will have to pay the costs of the federal government's abdication of its environmental responsibility.

The proposals of the Trump administration are a call to action for legal advocates, and have a community-building impact that should be fostered. This is a time to bring people together, to help people learn the importance of law and regulation, and to generate creativity, resilience, and energy for immediate as well as long-term struggles. Citizens should be encouraged to think about the nature of progressive legal reform, as well as the importance of the rule of law. Activists and organizations can support both healthy respect, as well as appropriate skepticism, for institutions and the use of political power. Lawyers can encourage people to study the law and go to law school to learn the skills needed to effectively engage in this work.

Another cause for hope is our judiciary. Given that it provides a check on executive power, it makes sense that courts would more carefully scrutinize the conservative agenda now that Republicans are in power and President Trump is using executive privilege more than

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<sup>134</sup> Alexis C. Madrigal, *Aghast over Beijing's Air Pollution? This Was Pittsburgh Not That Long Ago*, ATLANTIC (Jan. 16, 2013), <https://www.theatlantic.com/technology/archive/2013/01/aghast-over-beijings-air-pollution-this-was-pittsburgh-not-that-long-ago/267237/> [https://perma.cc/RQS5-9KTB] (accessed June 8, 2017).

<sup>135</sup> Michael Rotman, *Cuyahoga River Fire*, CLEVELAND HISTORICAL, <https://clevelandhistorical.org/items/show/63#.WTTcgDOZNSY> [https://perma.cc/48YB-PQTD] (accessed June 8, 2017).

<sup>136</sup> Rebecca Altman, *The Toxic-Waste Drum Is Everywhere*, ATLANTIC (Nov. 22, 2016), <https://www.theatlantic.com/technology/archive/2016/11/the-toxic-waste-drum-is-everywhere/508418/> [https://perma.cc/J7PX-3FCF] (accessed June 8, 2017); Eckardt C. Beck, *The Love Canal Tragedy*, EPA J. ARCHIVE (Jan. 1979), <https://archive.epa.gov/epa/aboutepa/love-canal-tragedy.html> [https://perma.cc/26AQ-RTBN] (accessed June 8, 2017); Wallace F. Janssen, *The Story Behind the Labels, Part I: The 1906 Food and Drugs Act*, FDA CONSUMER (June 1981), <https://www.fda.gov/aboutfda/whatwedo/history/overviews/ucm056044.htm> [https://perma.cc/HV8W-J3EK] (accessed June 8, 2017).

<sup>137</sup> See Amy Sinden, *The Tragedy of the Commons and the Myth of a Private Property Solution*, 78 U. COLO. L. REV. 533, 545–47 (2007) (discussing the “market failures” that led to the need for federal environmental regulations).

presidents have for decades. Those who were not happy with the courts curbing the power of the Obama administration may feel differently about similar decisions limiting the power of the Trump administration. But it is also essential that the integrity of the judicial branch be safeguarded. Though the high ideals of the judiciary may not be fulfilled in each and every instance, like democracy itself, it is worth preserving nonetheless. As Winston Churchill said, “Many forms of Government have been tried, and will be tried . . . . No one pretends that democracy is perfect or all-wise. Indeed it has been said that democracy is the worst form of Government except for all those other forms that have been tried from time to time.”<sup>138</sup>

Likewise, while some may acclaim the benefit of states and cities working on climate change now because the federal government is opposed to doing it, we need to recognize that this is not ideal for uniform regulation and problem-solving approaches. If it works, it will be helpful, but will not be without its challenges and any positive outcomes may more easily be overturned at the local level. It is another unusual position for activists on the left to find themselves in. They have traditionally favored the exercise of governmental power at the federal level, while those on the right have been in favor of state or private control of decision-making. These roles may be changing somewhat now that the balance of power has shifted. This provides an opportunity to better understand one another’s positions and to reexamine, and perhaps re-commit to, underlying values and core principles. This work, animal and environmental protection, is a journey, not a destination, and the processes used are important. Success also requires integrity, as techniques used now in favor of certain goals can later be used against those goals as well.

Ultimately, we are dealing with the clash between opposing views of the role of government. On one side are those who think government should be as small as possible and stay out of the way of businesses and individuals, letting them decide for themselves how to behave both privately and publicly. Though many of these folks are happy to have the actions of others constrained by the government when they disapprove (e.g., abortion, gay marriage, bathroom bills, the death penalty, birth control). Some people do not want to protect animals or the environment, or be told to treat women, minorities, immigrants, people with disabilities, or others with the same respect they feel they deserve and have earned. On the other side are people who are comfortable with the concept of government involvement in these decisions even if they do not always agree with the government’s decisions or trust it to use a good decision-making process. They see government as an extension of the people, to do more efficiently what they cannot do on their own. For example, they want the government to build roads, bridges,

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<sup>138</sup> *The Worst Form of Government*, INT’L CHURCHILL SOC’Y, <https://www.winstonchurchill.org/resources/quotes/the-worst-form-of-government> [https://perma.cc/YP2F-3PMP] (accessed June 8, 2017) (quoting Winston S. Churchill from November 11, 1947).

hospitals, schools, parks, fire stations and police departments. They want the government to regulate pollution and racism as well as animal cruelty and exploitation. They feel it does not make sense to allow activities to be unregulated when they cause harm, and that it is sometimes most efficient to have one set of federal regulations rather than a patchwork of state laws and differing standards.

To be clear, people fit on both sides of this spectrum depending on their personal views. For example, a person who believes in small government may also want government programs to support small businesses or appreciate programs that boost trade or reduce costs even if they involve environmental protections. People are generally not completely in agreement or in disagreement with all the actions of the government. People who are comfortable with more government involvement may not like efforts to ban gay marriage or restrict abortion or voting rights. Or they may approve of some but not all of those things. This makes it difficult to determine the best way forward for the most people while respecting and protecting minority views. Yet, that is the task before us. We cannot hope to address the differences we face on policy issues without attending to some of the structural differences in approaches to governing.

We also face a clash of cultural views—between those who are focused inward, protecting what they feel is rightfully theirs against incursions and slights, and those focused on protecting others beyond themselves, including other people, the environment, or animals. People in both categories may be self-righteous at times and may be dismissive of the impact of their efforts on those with whom they disagree. They may choose strategy poorly or be overzealous and impatient at times. But their work, at its core, is motivated by a belief that it is for the overall good of the country. Viewed in this light, it may be easier to work with people who come from different perspectives. It is helpful to give others the benefit of the doubt as to their motivation and keep working towards solutions that are in the best interest of all. The mere expression of this goal may help alleviate some tension because previous and current dialogues leave many people feeling their interests are not taken into account.

Despite political and cultural differences, we have much in common. People care about family, friends, and neighbors. They want good educational, economic, and job opportunities. They want safe communities and products, and a healthy environment. Animal issues may seem less important or more politically divisive, but in fact some can be a source of common ground and perhaps even offer opportunities to build bridges across political, cultural, religious, economic, and other divides. A majority of people in the United States have animals in their homes,<sup>139</sup> and they tend to have similar interests in protecting

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<sup>139</sup> Hal Herzog, *Are We Really a Nation of Animal Lovers?*, PSYCHOLOGY TODAY (Feb. 14, 2011), <https://www.psychologytoday.com/blog/animals-and-us/201102/are-we-really-nation-animal-lovers> [https://perma.cc/Z98C-S3XL] (accessed June 15, 2017).

those animals. Starting conversations with this point in common may de-emphasize other political or cultural differences and make joint problem solving more possible.

We already have bi-partisan agreement that abuse and neglect of companion animals is wrong and should be taken seriously by legal authorities. In fact, the Congressional Animal Protection Caucus has members of both parties<sup>140</sup> and there is generally bi-partisan support for their bills. A successful strategy when talking with people who care about companion animals is to help them understand that other animals can suffer in similar ways and are also in need of protection.

Without the ability to offer immediate solutions to the problems presented by the Trump administration, I end with an exhortation to continue to work; to resist despair; to find ways to work with others who do not agree with you, and support those who generally do; to reduce movement in-fighting; and to do a better job of listening to and understanding others, as well as (and sometimes before) advocating. I acknowledge that differences in approaches and goals are real. I also recognize that simply acknowledging common ground where it can be found may make finding a way forward easier. It is easy to undo things, easier to attack and deconstruct than to build. It is hard to maintain progress—that work needs constant tending, and tireless vigilance. There is something each person can do, whether it be voting, protesting, writing letters to the editor or elected officials, running for office, going to law school, filing lawsuits, helping non-profits, rescuing animals, reducing carbon footprints, or a myriad of other options.

The work of animal protection calls for passion and patience. Reminding people that humans are animals too, and placing them within, rather than outside of nature, will help them see connections and the benefits that derive from protecting animals and the environment. It is important not just to call out and critique the exercise of species privilege, but also to be in solidarity with all progressive legal initiatives, now more than ever. The resilience of people and ideas never ceases to amaze and inspire me. A particularly hopeful quote from Fred Rogers may be of assistance in these challenging times:

When I was a boy and I would see scary things in the news, my mother would say to me, 'Look for the helpers. You will always find people who are helping.' To this day, especially in times of 'disaster,' I remember my mother's words and I am always comforted by realizing that there are still so many helpers – so many caring people in this world.<sup>141</sup>

To those words I would add that one of the things I most admire about people who work for the protection of animals is their selflessness. Lit-

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<sup>140</sup> See *Congressional Animal Protection Caucus-Members*, CONGRESSMAN EARL BLUMENAUER, <https://blumenauer.house.gov/congressional-animal-protection-caucus/congressional-animal-protection-caucus-members> [<https://perma.cc/GK9C-J62A>] (accessed June 8, 2017) (listing the bi-partisan membership).

<sup>141</sup> FRED ROGERS CO., <http://www.fredrogers.org/parents/special-challenges/tragic-events.php> [<https://perma.cc/CCW3-5RET>] (accessed June 9, 2017).

tle, if any, of their work will personally benefit them. This altruism is inspiring and uplifting and critically needed. Those who have no voice in our legal system deserve the most effective and dedicated defenders, and that is why the work must continue.