

# REVIEWS

## 2016 FEDERAL LEGISLATIVE REVIEW

By  
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## I. INTRODUCTION

On November 8, 2016, millions of Americans voted to “drain the swamp,” electing as their next President celebrity businessman and beltway outsider Donald J. Trump.<sup>1</sup> In its endorsement of Trump’s election opponent, Secretary Hillary Clinton, the Humane Society of the United States called a Trump presidency “a threat to animals everywhere,” deriding his campaign’s assembly of advisors and financial supporters with ties to “trophy hunting, puppy mills, factory farming, horse slaughter, and other abusive industries.”<sup>2</sup> Despite voters’ apparent anti-establishment desire for a political outsider at the helm of Washington politics, their votes also secured Congressional status quo, as the majority party in both houses remained Republican.<sup>3</sup> The Democrats made gains with 46 Senate seats now, up from 44 in the 114th Congress, and 194 House seats, up from 186.<sup>4</sup> However, the Republicans maintained their stronghold with 52 Senate seats and 241 House seats.<sup>5</sup> The Senate’s two Independent members, both of whom caucused with the Democrats, also maintained their seats.<sup>6</sup>

Although a number of commentators have characterized the 2016 election as the resurgence of white, working-class America,<sup>7</sup> the newly elected 115th Congress is set to be the most racially diverse Congress yet.<sup>8</sup> This follows on the heels of the 114th Congress, which was also

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<sup>1</sup> Megan Messerly, *Nevada Democrats Won the Battle; Trump Won the War*, L.V. SUN (Nov. 9, 2016), <http://lasvegassun.com/news/2016/nov/09/nevada-democrats-won-the-battle-trump-won-the-war/> [<https://perma.cc/WA48-9VMA>] (accessed Apr. 9, 2017).

<sup>2</sup> Karin Brulliard, *The Humane Society Calls a Trump Presidency ‘a Threat to Animals Everywhere’*, WASH. POST (Oct. 11, 2016), [https://www.washingtonpost.com/news/animalia/wp/2016/10/11/the-humane-society-calls-a-trump-presidency-a-threat-to-animals-everywhere/?utm\\_term=.83c73384dd87](https://www.washingtonpost.com/news/animalia/wp/2016/10/11/the-humane-society-calls-a-trump-presidency-a-threat-to-animals-everywhere/?utm_term=.83c73384dd87) [<https://perma.cc/Q7LM-AQEM>] (accessed Apr. 13, 2017).

<sup>3</sup> *115th United States Congress*, BALLOTPEDIA, [https://ballotpedia.org/115th\\_United\\_States\\_Congress](https://ballotpedia.org/115th_United_States_Congress) [<https://perma.cc/EX3D-8TDU>] (accessed Apr. 9, 2017) [hereinafter *115th Congress*].

<sup>4</sup> *Id.*; *114th United States Congress*, BALLOTPEDIA, [https://ballotpedia.org/114th\\_United\\_States\\_Congress](https://ballotpedia.org/114th_United_States_Congress) [<https://perma.cc/BQ82-LSP9>] (accessed Apr. 9, 2017) [hereinafter *114th Congress*].

<sup>5</sup> *115th Congress*, *supra* note 3; *114th Congress*, *supra* note 4.

<sup>6</sup> *115th Congress*, *supra* note 3; *114th Congress*, *supra* note 4; JENNIFER E. MANNING, CONG. RESEARCH SERV., R43869, MEMBERSHIP OF THE 114TH CONGRESS: A PROFILE 1, 1 (2016), <https://fas.org/sgp/crs/misc/R43869.pdf> [<https://perma.cc/Z3ZV-RBQ2>] (accessed Apr. 9, 2017).

<sup>7</sup> See, e.g., Jim Tankersley, *How Trump Won: The Revenge of Working Class Whites*, WASH. POST (Nov. 9, 2016), [https://www.washingtonpost.com/news/wonk/wp/2016/11/09/how-trump-won-the-revenge-of-working-class-whites/?utm\\_term=.fd8a860bb373](https://www.washingtonpost.com/news/wonk/wp/2016/11/09/how-trump-won-the-revenge-of-working-class-whites/?utm_term=.fd8a860bb373) [<https://perma.cc/C8H6-7RQC>] (accessed Apr. 9, 2017) (characterizing the 2016 election as the resurgence of white, working-class America).

<sup>8</sup> Christina Marcos, *115th Congress Will Be Most Racially Diverse in History*, HILL (Nov. 17, 2016), <http://thehill.com/homenews/house/306480-115th-congress-will-be-most-racially-diverse-in-history> [<https://perma.cc/N4JJ-8DN6>] (accessed Apr. 9, 2017).

declared the most diverse Congress to date.<sup>9</sup> While the number of women has held steady at 104 members, the new Congress boasts a record number of Hispanics, African Americans, Asian Americans, and women of color, represented largely within the Democratic ranks of Congress.<sup>10</sup>

It is yet to be seen how such seemingly incongruous dynamics will affect animal welfare legislation on the federal front. This review will provide an overview of one law passed by the 114th Congress and a number of bills introduced by the 114th Congress, as well as those likely to be reintroduced by the 115th Congress. Two of these bills—the Western Great Lakes Wolf Management Act of 2015 and the Protect Interstate Commerce Act—aim to diminish federal animal welfare protections, while the rest aim to better federal animal welfare protections.<sup>11</sup>

## II. ANIMAL TESTING

### A. *Toxic Substances Control Act, Modernized by the Frank R. Lautenberg Chemical Safety for the 21st Century Act*

On June 22, 2016, President Obama signed into law the bipartisan Frank R. Lautenberg Chemical Safety for the 21st Century Act (Act), which greatly reforms the Toxic Substances Control Act (TSCA).<sup>12</sup>

<sup>9</sup> Peter Sullivan, *Most Diverse Congress in History Poised to Take Power*, HILL (Jan. 5, 2015), <http://thehill.com/homenews/news/228534-114th-congress-by-the-numbers> [<https://perma.cc/WKA4-EKLP>] (accessed Apr. 9, 2017).

<sup>10</sup> Marcos, *supra* note 8.

<sup>11</sup> *S. 1121—PAST Act*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/1121> [<https://perma.cc/BAW8-MK8E>] (accessed Apr. 9, 2017); *S. 1214—John Rainy Memorial Safeguard American Food Exports Act*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/1214> (accessed Feb. 25, 2017); *H.R. 2493—Wounded Warrior Service Dog Act*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/2493> [<https://perma.cc/X8NV-7S9W>] (accessed Apr. 9, 2017); *H.R. 4019—Orca Responsibility and Care Advancement Act*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/4019> [<https://perma.cc/NEX8-B5EM>] (accessed Apr. 9, 2017); *S. 405—Bipartisan Sportsmen's Act of 2015*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/405> [<https://perma.cc/42JL-S8Q9>] (accessed Apr. 9, 2017); *H.R. 843—Western Great Lakes Wolf Management Act of 2015*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/843> [<https://perma.cc/T6FV-KSZN>] (accessed Apr. 9, 2017); *H.R. 1552—Preservation of Antibiotics for Medical Treatment Act*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/1552> [<https://perma.cc/X8BY-ZGYB>] (accessed Apr. 9, 2017); *H.R. 687—Protect Interstate Commerce Act*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/687> [<https://perma.cc/Y4BW-4XY3>] (accessed Apr. 9, 2017).

<sup>12</sup> Gina McCarthy, *TSCA Reform: A Bipartisan Milestone to Protect Our Health from Dangerous Chemicals*, U.S. ENVTL. PROT. AGENCY: EPA CONNECT (June 22, 2016), <https://blog.epa.gov/blog/2016/06/tasca-reform-a-bipartisan-milestone-to-protect-our-health-from-dangerous-chemicals/> [<https://perma.cc/R9ZK-H4TA>] (accessed Apr. 9, 2017).

TSCA was enacted in 1976 to address the production, importation, use, and disposal of chemicals harmful to human health.<sup>13</sup> According to the former U.S. Environmental Protection Agency (EPA) Administrator under President Obama, Gina McCarthy, “While the intent of the original TSCA law was spot-on, it fell far short of giving EPA the authority [it] needed to get the job done.”<sup>14</sup> This is because, the Administrator explains, TSCA did not require the evaluation of tens of thousands of chemicals for their effects on human health, and because TSCA set impossible-to-meet standards making enforcement difficult.<sup>15</sup> Since TSCA’s passage, only a small number of chemicals have been reviewed for safety, and only five have been banned despite the tens of thousands of chemicals on the market when the law was first passed.<sup>16</sup> Administrator McCarthy is optimistic for the reforms, declaring the Act a victory for protecting public health and the environment.<sup>17</sup>

The EPA highlights as improvements the Act’s enforceable mandatory evaluation of existing chemicals by the Agency, the Act’s additional risk-based standard, the Act’s transparency through public access to chemical information, and the Act’s steady source of funding to the Agency.<sup>18</sup>

In addition to promoting human health and safety, the Act also includes a number of animal welfare measures to curtail animal testing by endorsing the use of scientifically validated alternatives to animals in identifying and testing chemicals.<sup>19</sup> After the Act’s passage through the House of Representatives, President and CEO of the Humane Society of the United States, Wayne Pacelle, declared: “This bill can save hundreds of thousands of animals from having harsh chemicals rubbed into their skin, forced down their throats and dropped in their eyes.”<sup>20</sup> According to Pacelle, the Act contains, for the first time ever, “an explicit decree from Congress to minimize animal testing and

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<sup>13</sup> *Id.*; *Summary of the Toxic Substances Control Act*, EPA, <https://www.epa.gov/laws-regulations/summary-toxic-substances-control-act> [<https://perma.cc/A7C9-PCBA>] (accessed Apr. 9, 2017).

<sup>14</sup> McCarthy, *supra* note 12.

<sup>15</sup> *Id.*

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

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

<sup>18</sup> *Assessing and Managing Chemicals Under TSCA*, EPA, <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act> [<https://perma.cc/6BRG-YRVK>] [<https://perma.cc/R9ZK-H4TA>] (accessed Apr. 9, 2017).

<sup>19</sup> Press Release, Humane Soc’y of the U.S., House Passes Landmark Legislation to Reauthorize the Toxic Substances Control Act (May 24, 2016), [http://www.humanesociety.org/news/press\\_releases/2016/05/house-passes-TSCA-reform-052416.html](http://www.humanesociety.org/news/press_releases/2016/05/house-passes-TSCA-reform-052416.html) [<https://perma.cc/A7C9-PCBA>] (accessed Apr. 9, 2017) [hereinafter *Landmark Legislation*]; Wayne Pacelle, *Breaking News: Obama Signs Measure to Dramatically Reduce Animal Testing*, HUMANE SOC’Y U.S.: A HUMANE NATION (June 22, 2016), <http://blog.humanesociety.org/wayne/2016/06/obama-signs-tsca-bill-reducing-animal-testing.html> [<https://perma.cc/N2BS-4PAY>] (accessed Apr. 9, 2017).

<sup>20</sup> *Landmark Legislation*, *supra* note 19.

to create a clear preference for the development and use of alternative methods and strategies.”<sup>21</sup>

In addition to Congress’s groundbreaking decree to minimize testing on vertebrate animals, the Act adds a number of provisions that allow the EPA to promote the development and use of alternatives to animal testing and creates the infrastructure for citizen advocates to enforce the Act’s new measures through citizen suits.<sup>22</sup> These provisions are contained in § 2625, which adds new language to the statute on “policies, procedures, and guidance,” and § 2603, which amends the statute’s section on testing.<sup>23</sup>

To illustrate how the Act promotes alternatives to animal testing, § 2625(h) of the Act provides that, “to the extent that the [EPA] makes a decision based on science, the [EPA] shall use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science.”<sup>24</sup> This language gives the EPA the opportunity to argue that the best science on alternatives to animal testing must be contemplated by the agency. As another example, § 2625(l)(2)(B) requires a review of the Act’s policies, procedures, and guidance every five years,<sup>25</sup> giving animal welfare advocates an opportunity to press the EPA on animal testing issues.

Although TSCA’s reform is revolutionary in its declaration and opportunity to promote the development, use, and enforcement of alternatives to animal testing, most of the aforementioned provisions are written in permissive terms, such as “may” and “to the extent practicable.”<sup>26</sup> As such, the EPA retains flexibility in enforcement of these additions or amendments. It is yet to be seen what President Trump’s EPA chooses to enforce and prioritize, however, an unmotivated EPA could easily not police these provisions, and it would be difficult to compel it to do so. Notably, Scott Pruitt, former Oklahoma Attorney General and President Trump’s EPA Administrator, in addition to being a well-known climate change denier, previously investigated the Humane Society of the U.S. for backing animal welfare legislation.<sup>27</sup>

#### *B. Battlefield Excellence Through Superior Training (BEST) Practices Act*

Representative Henry “Hank” Johnson Jr. (D-Ga.) and Senator Ron Wyden (D-Or.) introduced the Battlefield Excellence through Su-

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<sup>21</sup> Pacelle, *supra* note 19.

<sup>22</sup> Toxic Substances Control Act, 15 U.S.C. §§ 2603, 2625 (2012).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* § 2625(h).

<sup>25</sup> *Id.* § 2625(l)(2)(B).

<sup>26</sup> *Id.* §§ 2603, 2625.

<sup>27</sup> Jay Michaelson, *Scott Pruitt, Trump’s Climate-Denying EPA Pick, Is Worse Than You Think*, DAILY BEAST (Dec. 7, 2016), <http://www.thedailybeast.com/articles/2016/12/08/scott-pruitt-trump-s-climate-denying-epa-pick-is-worse-than-you-think.html> [https://perma.cc/L96U-8LJP] (accessed Apr. 9, 2017).

perior Training (BEST) Practices Act in February 2015.<sup>28</sup> The BEST Practices Act promotes the use of alternatives to animals in military training for treating combat trauma injuries.<sup>29</sup> The bill would require the U.S. Department of Defense (DOD), by October 1, 2018, “to develop, test, and validate” human-based training procedures for combat trauma injuries, so as to replace such animal-based training procedures, and by October 1, 2020, to use only such human-based training procedures.<sup>30</sup> In particular, the bill would require an annual report to be submitted to Congress detailing the development and use of human-based procedures to replace animal-based procedures as well as justifying any provided exemptions.<sup>31</sup> The bill permits exemptions granted by the DOD for up to one year where the DOD has determined human-based procedures “will not provide an educationally equivalent or superior substitute” for animal-based procedures.<sup>32</sup> The bill received ninety-four cosponsors in the House and one cosponsor in the Senate.<sup>33</sup>

According to the Physicians Committee for Responsible Medicine, the DOD employs approximately 8,500 goats and pigs each year for training purposes.<sup>34</sup> These animals are regularly stabbed, shot, or burned, or their limbs are amputated to train service members in properly treating common combat trauma injuries.<sup>35</sup>

In addition to being “cruel” and “archaic,”<sup>36</sup> such “live-tissue training”<sup>37</sup> does not properly prepare service medics since goats and pigs are anatomically distinct from humans, making it difficult to mimic human skin, head, face, and limb injuries.<sup>38</sup> The Physicians Committee for Responsible Medicine highlights significant differences between goats and pigs and humans, such as the animals’ smaller torsos,

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<sup>28</sup> H.R. 1095, 114th Cong. (2015); S. 587, 114th Cong. (2015).

<sup>29</sup> S. 587, 114th Cong. (2015).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Cosponsors: H.R. 1095—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/1095/cosponsors> [<https://perma.cc/FK8M-LWEV>] (accessed Apr. 9, 2017); *Cosponsors: S. 587—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/587/cosponsors> [<https://perma.cc/5KKM-E8VC>] (accessed Apr. 9, 2017).

<sup>34</sup> PHYSICIANS COMM. FOR RESPONSIBLE MED., THE BATTLEFIELD EXCELLENCE THROUGH SUPERIOR TRAINING (BEST) PRACTICES ACT (S. 587/H.R. 1095), <http://www.pcrm.org/sites/default/files/pdfs/research/research/BEST-Practices-Act-Factsheet-2015.pdf> [<https://perma.cc/QYS4-3TPG>] (accessed Apr. 9, 2017).

<sup>35</sup> *Id.*

<sup>36</sup> *Tell Congress to End Military Trauma Training on Animals!*, PETA, <http://www.peta.org/action/action-alerts/congress-end-military-trauma-training-animals/> [<https://perma.cc/3B35-GUU7>] (accessed Apr. 9, 2017).

<sup>37</sup> James Bennet et al., *Ban Animal Use in Military Medical Training*, N.Y. TIMES (June 25, 2016), <http://www.nytimes.com/2016/06/26/opinion/ban-animal-use-in-military-medical-training.html> [<https://perma.cc/8433-J5KP>] (accessed Apr. 9, 2017).

<sup>38</sup> PHYSICIANS COMM. FOR RESPONSIBLE MED., *supra* note 34.

lighter limbs, thicker skin, and dissimilar heads, necks, organs, rib cages, blood vessels, and airways.<sup>39</sup>

The bill aims to spur the use of high-tech simulators fashioned after human anatomy in place of animals.<sup>40</sup> Training simulators can displace anatomically dissimilar animals with lifelike skin, fat, muscle, and limbs for service members to train on.<sup>41</sup>

A 2014 study confirmed that there is no advantage to using live animal tissue for training over human simulators.<sup>42</sup> Alternatives, such as simulators, are in use in most civilian trauma programs and a growing number of military training centers.<sup>43</sup> Notably, twenty-two of the North Atlantic Treaty Organization's twenty-eight member nations have banned animal-based live-tissue training for combat medics.<sup>44</sup>

In June 2016, seventy-one bipartisan members of Congress sent a letter to Defense Secretary Ashton Carter requesting further information on animal-based live-tissue training procedures and its replacement with human simulators.<sup>45</sup> Several medical associations—the National Medical Association, the American Medical Student Association, and the American Osteopathic Association—endorsed the bill.<sup>46</sup> The *New York Times*'s editorial board also backed the bill, alleging that “[i]t shouldn't take an act of Congress or the Pentagon to give up this practice. . . . There's no reason the Pentagon should continue inflicting cruelty on animals.”<sup>47</sup>

### III. EQUINE

#### A. *Prevent All Soring Tactics (PAST) Act*

Soring is the practice of intentionally inflicting pain on show horses to exaggerate their high-stepping gait, known as the “big lick,”<sup>48</sup> to provide them an advantage in the show ring.<sup>49</sup> Show horses may be

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Andrew B. Hall et al., *Comparison of Self-Efficacy and Its Improvement After Artificial Simulator or Live Animal Model Emergency Procedure Training*, 179 MIL. MED. 320, 324 (2014), <http://militarymedicine.amsus.org/doi/pdf/10.7205/MILMED-D-12-00446> [<https://perma.cc/2P3J-9JJM>] (accessed Apr. 9, 2017).

<sup>43</sup> PHYSICIANS COMM. FOR RESPONSIBLE MED., *supra* note 34.

<sup>44</sup> Bennet et al., *supra* note 37.

<sup>45</sup> *Id.*; Letter from Joe Heck et al., Members of Congress, to Ashton Carter, Sec'y of Def. (June 21, 2016), <https://static01.nyt.com/content/lttletter.pdf> [<https://perma.cc/G9TR-54XB>] (accessed Apr. 9, 2017).

<sup>46</sup> Bennet et al., *supra* note 37.

<sup>47</sup> *Id.*

<sup>48</sup> *Prevent All Soring Tactics (PAST) Act S. 1121 / H.R. 3268*, AVMA (Dec. 29, 2015), [https://www.avma.org/KB/Resources/Reference/AnimalWelfare/Documents/PreventAllSoringTacticsAct\\_Dec2015.pdf](https://www.avma.org/KB/Resources/Reference/AnimalWelfare/Documents/PreventAllSoringTacticsAct_Dec2015.pdf) [<https://perma.cc/C72N-HQYV>] (accessed Apr. 9, 2017) [hereinafter AVMA on PAST].

<sup>49</sup> *The PAST Act: End Horse Soring*, HUMANE SOC'Y U.S., [http://www.humanesociety.org/issues/tenn\\_walking\\_horses/facts/about-the-past-act.html](http://www.humanesociety.org/issues/tenn_walking_horses/facts/about-the-past-act.html) [<https://perma.cc/N8AH-DNY9?type=image>] (accessed Apr. 9, 2017).

sored through the use of caustics, such as kerosene or mustard oil, to burn the skin on the horse's lower leg, through grinding the horse's hoof or sole to expose its sensitive tissues, through inserting hard objects between the horse's shoe pads and sole, through the tightening of metal hoof bands, or through improper shoeing techniques.<sup>50</sup> Horses subjected to these methods may suffer from irreversible foot damage, crippling, and mental distress from the abuse.<sup>51</sup> Even those horses that do recover from soring are likely to suffer from constant, extreme pain throughout their show careers.<sup>52</sup>

To put an end to this abuse, Senator Kelly Ayotte (R-N.H.) and Congressman Ted Yoho (R-Fla.) introduced the Prevent All Soring Tactics (PAST) Act in April and July of 2015.<sup>53</sup> First and foremost, the legislation would make soring illegal.<sup>54</sup> Presently, it is only illegal to transport, show, or auction sored horses.<sup>55</sup> The bill would also amend the Horse Protection Act to increase civil and criminal penalties for illegal soring, to revise enforcement procedures, and to create new procedures for inspecting soring on show horses.<sup>56</sup> The bill would also require the USDA to promulgate regulations for licensing, training, assigning, and overseeing the hiring of persons to detect soring at horse shows, exhibitions, sales, and auctions.<sup>57</sup> The bill received 272 cosponsors in the House of Representatives and 49 cosponsors in the Senate.<sup>58</sup>

Soring has been condemned by the American Veterinary Medical Association and the Association of Equine Practitioners, as well as by various animal rights organizations and veterinarians.<sup>59</sup> The American Veterinary Medical Association, the Association of Equine Practitioners, the American Paint Horse Association, the American Morgan Horse Association, the Pinto Horse Association of America, the American Horse Council, and every state's veterinary medical association formally endorsed the bill.<sup>60</sup>

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<sup>50</sup> AVMA on PAST, *supra* note 48.

<sup>51</sup> *Id.*

<sup>52</sup> *Prevent All Soring Tactics (PAST) Act*, ANIMAL WELFARE INST., <https://awionline.org/content/prevent-all-soring-tactics-past-act> [<https://perma.cc/N552-ALHS>] (accessed Apr. 9, 2017).

<sup>53</sup> S. 1121, 114th Cong. (2015); H.R. 3268, 114th Cong. (2015).

<sup>54</sup> AVMA on PAST, *supra* note 48.

<sup>55</sup> *Id.*

<sup>56</sup> S. 1121, 114th Cong. (2015).

<sup>57</sup> *Id.*

<sup>58</sup> *Cosponsors: S. 1121—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/1121> [<https://perma.cc/A9AP-KCU5>] (accessed Apr. 9, 2017); *Cosponsors: H.R. 3268—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/3268/cosponsors> [<https://perma.cc/LG42-FJ7Y>] (accessed Apr. 9, 2017).

<sup>59</sup> AVMA on PAST, *supra* note 48.

<sup>60</sup> *Id.*; HUMANE SOC'Y U.S., *Support the Prevent All Soring Tactics (PAST) Act—S. 1121/H.R. 3268 Factsheet*, ANIMAL LEGAL DEF. FUND, [http://aldf.org/wp-content/uploads/ALC/2016/PAST\\_Act\\_factsheet\\_114th\\_Congress.pdf](http://aldf.org/wp-content/uploads/ALC/2016/PAST_Act_factsheet_114th_Congress.pdf) [<https://perma.cc/G88N-XWNX>] (accessed Apr. 9, 2017).



*B. John Rainey Memorial Safeguard American Food Exports (SAFE) Act*

In April and May of 2015, Representative Frank Guinta (R-N.H.) and Senator Robert Menendez (D-N.J.) introduced the John Rainey Memorial Safeguard American Food Exports (SAFE) Act.<sup>61</sup> The bill would amend the Federal Food, Drug, and Cosmetic Act to declare horsemeat unsafe for use as a food additive or animal drug.<sup>62</sup> Essentially, the bill would ban horse slaughter or export for slaughter for human consumption.<sup>63</sup> The bill had 199 cosponsors in the House and 30 cosponsors in the Senate.<sup>64</sup>

Unlike animals that are raised for human consumption, American horses are given hundreds of drugs, including wormers, pain killers, muscle relaxers, sedatives, anti-inflammatories, and tranquilizers, which remain in the horses' bodies and can make the horses unsafe for consumption.<sup>65</sup> To preclude consumption, the U.S. Food and Drug Administration (FDA) currently bans the use of 379 equine drugs in animals raised for human consumption.<sup>66</sup> This is insufficient, however, to ensure that American horses sold and slaughtered for human consumption have not been given those banned substances.<sup>67</sup>

The United States effectively banned equine slaughter in 2007.<sup>68</sup> Until then, there were three domestic equine slaughter facilities—two in Texas and one in Illinois.<sup>69</sup> These facilities produced horsemeat, but also glue and food for pets and zoo animals.<sup>70</sup> In 2007, both states enacted laws banning the slaughter of horses for human consumption.<sup>71</sup> The Fifth and Seventh Circuits upheld the bans and the three slaughter facilities closed.<sup>72</sup> Although the Texas and Illinois laws only banned slaughter intended for human consumption, without the prof-

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<sup>61</sup> S. 1214, 114th Cong. (2015); H.R. 1942, 114th Cong. (2015).

<sup>62</sup> S. 1214, 114th Cong. (2015); H.R. 1942, 114th Cong. (2015).

<sup>63</sup> *Safeguard American Food Exports (SAFE) Act*, ANIMAL WELFARE INST., <https://awionline.org/content/safeguard-american-food-exports-safe-act> [https://perma.cc/6NL2-LLME] (accessed Apr. 9, 2017).

<sup>64</sup> *Cosponsors: S. 1214—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/1214/cosponsors> [https://perma.cc/SCD3-BVY5] (accessed Apr. 9, 2017); *Cosponsors: H.R. 1942—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/1214/cosponsors> [https://perma.cc/SCD3-BVY5] (accessed Apr. 9, 2017).

<sup>65</sup> *Safeguard American Food Exports (SAFE) Act*, *supra* note 63.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Laura Jane Durfee, *Anti-Horse Slaughter Legislation: Bad for Horses, Bad for Society*, 84 IND. L. J. 353, 354 (2009), <https://www.animallaw.info/article/anti-horse-slaughter-legislation-bad-horses-bad-society> [https://perma.cc/PW8K-JSH4] (accessed Apr. 9, 2017).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

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

its from horsemeat for human consumption, equine slaughterhouses cannot afford to operate.<sup>73</sup>

Though domestic slaughter for human consumption has been halted, diners in Europe and Asia still purchase and slaughter American horses for their meat.<sup>74</sup> Each year tens of thousands of American horses are shipped to Canada and Mexico for slaughter.<sup>75</sup> In transport to Canadian and Mexican slaughterhouses, horses are overcrowded onto trailers and deprived of food, water, and rest, sometimes for more than 24 hours.<sup>76</sup> Upon arrival to the slaughter facilities, horses may be kept in the cramped trailers and, depending on the weather, further subjected to extreme heat or cold.<sup>77</sup> Once in the facilities, workers herd the horses using fiberglass rods to prod the animals' faces, necks, backs, and legs.<sup>78</sup> Because of common methods of slaughter in Mexican equine slaughter facilities, the horses are often paralyzed, but fully conscious when slaughter begins.<sup>79</sup>

According to the Animal Welfare Institute (AWI), most American horse owners do not think their horses will be slaughtered someday for horsemeat.<sup>80</sup> As such, owners regularly give their horses drugs and medications that are dangerous and sometimes lethal to humans when administered to livestock raised for human consumption.<sup>81</sup> There is also no way to determine whether a horse to be slaughtered has been given substances dangerous to humans.<sup>82</sup> AWI formally supported the SAFE Act as a means to completely end the slaughter of American horses for human consumption.<sup>83</sup>

One legal analysis, however, contends that bans on the slaughter of horses for human consumption should be lifted for the sake of equine welfare.<sup>84</sup> "If legislators eliminate the option of slaughter for horse owners, the number of abused, neglected, malnourished, and abandoned horses will likely increase."<sup>85</sup> According to the author, horse adoption agencies lack the space and funding to take in or even euthanize the 65,000 to 90,000 unwanted horses each year.<sup>86</sup>

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<sup>73</sup> *Id.* at 354–55.

<sup>74</sup> *Horse Slaughter*, ANIMAL WELFARE INST., <https://awionline.org/content/horse-slaughter> [<https://perma.cc/WFK7-GN4V>] (accessed Apr. 9, 2017).

<sup>75</sup> *Id.*; *Horse Slaughter Statistics*, ANIMAL WELFARE INST., <https://awionline.org/content/horse-slaughter-statistics> [<https://perma.cc/2EGE-Q3DM>] (accessed Apr. 9, 2017).

<sup>76</sup> *Horse Slaughter*, *supra* note 74.

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

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

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

<sup>80</sup> *Safeguard American Food Exports (SAFE) Act*, *supra* note 63.

<sup>81</sup> *Id.*

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

<sup>83</sup> *Id.*

<sup>84</sup> Durfee, *supra* note 68, at 353.

<sup>85</sup> *Id.* at 354.

<sup>86</sup> *Id.* at 353.

## IV. COMPANION ANIMALS

A. *Wounded Warrior Service Dog Act*

The Wounded Warrior Service Dog Act, if enacted, would create the K-9 Companion Corps Program to award grants to nonprofit organizations that establish, plan, design, or operate programs to provide assistance dogs to members of the Armed Forces and veterans with disabilities.<sup>87</sup> An “assistance dog” is defined as a dog “trained to perform physical tasks to mitigate the effects of such a disability . . . except that the term does not include a dog specifically trained for comfort or personal defense.”<sup>88</sup> James McGovern (D-Mass.) introduced the bill in May 2015.<sup>89</sup> The bill received ninety-nine cosponsors in the House.<sup>90</sup>

Evidence suggests that wounded warriors who are provided with assistance dogs benefit via improved mobility, independence, social skills, and reduced panic and stress.<sup>91</sup> Assistance dogs can be trained to respond to specific cues in military members or veterans suffering with post-traumatic stress disorder (PTSD), traumatic brain injuries, or other mental health issues.<sup>92</sup> If her human companion is about to suffer from a flashback, the assistance dog will initiate “calming behaviors,” for example laying her head in her companion’s lap.<sup>93</sup> If her human companion is suffering from a nightmare, the assistance dog will again initiate calming behaviors, such as resting her head on her companion’s chest, licking her companion’s face, or nuzzling her companion’s feet.<sup>94</sup> “The benefits of these pairings are . . . not a one-way street,” says AWI.<sup>95</sup> The nonprofit organizations that train assistance dogs often rescue their dogs from shelters,<sup>96</sup> providing homes and companions for the dogs in addition to the benefits being provided to the veterans.

Roughly 40,000 military members were wounded in Afghanistan and Iraq.<sup>97</sup> About ten times that number exhibit signs of PTSD.<sup>98</sup> With

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<sup>87</sup> H.R. 2493, 114th Cong. (2015).

<sup>88</sup> *Id.*

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

<sup>90</sup> *Cosponsors: H.R. 2493—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/2493/cosponsors> [<https://perma.cc/3377-Z5ZD>] (accessed Apr. 9, 2017).

<sup>91</sup> *Wounded Warrior Service Dog Act*, ANIMAL WELFARE INST., <https://awionline.org/content/wounded-warrior-service-dog-act> [<https://perma.cc/5EK2-B59R>] (accessed Apr. 9, 2017).

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

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Mark Thompson, *Bringing Dogs to Heal: Care for Veterans with PTSD*, TIME (Dec. 5, 2010), <http://content.time.com/time/magazine/article/0,9171,2030897,00.html> [<https://perma.cc/M8S2-ZQAZ>] (accessed Apr. 9, 2017).

<sup>98</sup> *Id.*

such a large number of military members and veterans wounded or suffering from PTSD, and with mounting evidence of the benefits of assistance dogs, the demand for assistance dogs is growing.<sup>99</sup> The Wounded Warrior Service Dog Act seeks to assist organizations providing assistance dogs to military members and veterans by providing \$5 million in funding to make dogs available and to help with training and care expenses.<sup>100</sup>

### B. Veterans Dog Training Therapy Act

In January of 2015, Steven Stivers (R-Ohio) introduced the Veterans Dog Training Therapy Act.<sup>101</sup> The bill, which received thirty-six cosponsors in the House, would direct the Secretary of the U.S. Department of Veterans Affairs (VA) to initiate a five-year pilot program “to assess[] the effectiveness of addressing veterans’ post-deployment mental health and post-traumatic stress disorder symptoms through the therapeutic medium of educating those veterans in the training and handling of service dogs for veterans with disabilities.”<sup>102</sup>

Sandra Carson of Paws for Purple Hearts said, “A lot of [v]eterans with PTSD tend to isolate. They don’t engage. They build a defensive wall around themselves so they can feel safe. But dogs have an ability to shatter that wall. They’re friendly and non-judgmental. They invite interaction.”<sup>103</sup> According to Carson, training a dog requires communication and interaction with another living creature, and this is a step toward learning to engage again with people.<sup>104</sup>

Carson also provides human interactions while walking a dog as an example of another benefit of veterans training service dogs.<sup>105</sup> “[W]hen you’re out in public with the dog, people come up to you and start conversations with you, because you have the dog. So now you’re suddenly talking to people. And it’s easier, because the conversation isn’t about you; it’s about the dog. It takes the pressure off you[,]” said Carson.<sup>106</sup>

According to the VA, the program would provide a veteran with a dog for a couple of months, during which time the veteran would be responsible for teaching the dog a number of commands that the dog

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<sup>99</sup> *Wounded Warrior Service Dog Act*, *supra* note 91.

<sup>100</sup> JoAnna Lou, *Wounded Warrior Service Dog Act*, BARK (Sept. 24, 2016), <http://thebark.com/content/wounded-warrior-service-dog-act> [https://perma.cc/B3M7-9RXP] (accessed Apr. 9, 2017).

<sup>101</sup> H.R. 359, 114th Cong. (2015).

<sup>102</sup> *Id.*; *Cosponsors: H.R. 359—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/359/cosponsors> [https://perma.cc/U3TM-3XSF] (accessed Apr. 9, 2017).

<sup>103</sup> Tom Cramer, *Training Dogs for Service: Helping Veterans Cope with Distress*, U.S. DEP’T VETERANS AFF. (Feb. 13, 2014), <http://www.va.gov/health/NewsFeatures/2014/February/Dogs-Helping-Veterans-Cope-with-PTSD.asp> [https://perma.cc/SP8D-EVFFV] (accessed Apr. 9, 2017).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

would need to know for when the dog becomes an assistance dog for another veteran.<sup>107</sup>

## V. WILDLIFE

### A. *Orca Responsibility and Care Advancement (ORCA) Act*

Making its debut at the 2013 Sundance Film Festival, *Blackfish*, a documentary about the late Tilikum, the captive performing orca that killed several people, spurred what *Huffington Post* calls “The Blackfish Effect.”<sup>108</sup> The phrase is used to describe the activism and public awareness that have flourished since the film’s debut and that undoubtedly led to SeaWorld’s March 2016 announcement that it will cease to breed orcas and end orca shows in its parks.<sup>109</sup>

Just months prior to SeaWorld’s announcement, Representative Adam Schiff (D-Cal.) introduced the Orca Responsibility and Care Advancement (ORCA) Act of 2015.<sup>110</sup> The bill proposes to amend the Mammal Protection Act of 1972 by making it illegal to take, import, or export orcas or any product containing orcas to be used for public display or exhibition.<sup>111</sup> The bill also proposes to amend the Animal Welfare Act (AWA) by making it illegal for any person to artificially inseminate or breed orcas for public display or exhibition.<sup>112</sup> The bill received thirty-nine cosponsors.<sup>113</sup> “This legislation will allow for the orderly phasing out of the display of the species,” said a press release by Congressman Schiff following the bill’s introduction.<sup>114</sup>

Although a wild orca has not been captured in or imported to the United States since 1976 and 2001, respectively, current federal law allows the government to issue permits to capture or import wild orcas.<sup>115</sup> Orcas in captivity, however, are still bred, either through artificial insemination or physical mating.<sup>116</sup> The U.S. Department of Agriculture (USDA) is presently considering updating its regulations

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<sup>107</sup> *Id.*

<sup>108</sup> Caty Borum Chattoo, *Anatomy of “The Blackfish Effect,”* HUFFINGTON POST (updated Mar. 25, 2016), [http://www.huffingtonpost.com/caty-borum-chattoo/anatomy-of-the-blackfish-\\_b\\_9511932.html](http://www.huffingtonpost.com/caty-borum-chattoo/anatomy-of-the-blackfish-_b_9511932.html) [https://perma.cc/7DMT-B7WF] (accessed Apr. 9, 2017).

<sup>109</sup> *Id.*

<sup>110</sup> H.R. 1584, 115th Cong. (2017); H.R. 4019, 114th Cong. (2015).

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

<sup>112</sup> *Id.*

<sup>113</sup> *Cosponsors: H.R. 4019—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/4019/cosponsors> [https://perma.cc/54Y9-NMC3] (accessed Apr. 9, 2017).

<sup>114</sup> Press Release, U.S. Congressman Adam Schiff of California’s 28th District, Rep. Schiff to Introduce ORCA Act to Phase Out Display of Captive Killer Whales (Nov. 6, 2015), <https://schiff.house.gov/news/press-releases/rep-schiff-to-introduce-orca-act-to-phase-out-display-of-captive-killer-whales> [https://perma.cc/R8MT-U4RV] (accessed Apr. 9, 2017).

<sup>115</sup> Adam Schiff, *The Orca Responsibility and Care Advancement (ORCA) Act*, CONGRESSMAN ADAM SCHIFF, <http://schiff.house.gov/imo/media/doc/ORCA%20Act%20Fact%20Sheet%2011.4.pdf> [https://perma.cc/42A4-7WL4] (accessed Apr. 9, 2017).

<sup>116</sup> *Id.*

promulgated under the AWA for marine mammals held in captivity.<sup>117</sup> According to Congressman Schiff's fact sheet, however, while such an update may improve the lives of smaller marine animals, "no amount of regulation can ensure that orcas thrive while in captivity."<sup>118</sup>

Captivity conditions cause orcas to experience stress, as indicated by dorsal fin collapse, and display atypical orca behavior, such as seriously injuring or killing humans.<sup>119</sup> Marine biologists attribute dorsal fin collapse to the conditions of orca captivity, including "repetitive circular swimming patterns, dehydration, and the gravitational pull from spending the vast majority of their time at the surface of the water."<sup>120</sup> Although dorsal fin collapse is extremely rare in the wild, all captive adult male orcas have fully collapsed dorsal fins and many captive female orcas have partially collapsed dorsal fins.<sup>121</sup> Wild orcas are highly social and can swim 100 miles per day, routinely diving to 300 feet below the water's surface.<sup>122</sup> Captive orcas, however, are often held alone in shallow concrete tanks 1/10,000th of 1% of the size of their wild ranges.<sup>123</sup>

Congressman Schiff's legislation is backed by animal rights groups, including the AWI, the Humane Society of the United States, and People for the Ethical Treatment of Animals.<sup>124</sup> The bill aims to ensure that the present generation of orcas living in captivity will be the last.<sup>125</sup> According to Congressman Schiff, "[w]e cannot be responsible stewards of our natural environment and propagate messages about the importance of animal welfare when our behaviors do not reflect our principles."<sup>126</sup>

#### *B. Bipartisan Sportsmen's Act of 2015*

Lisa Murkowski (R-Alaska) introduced the Bipartisan Sportsmen's Act of 2015 in February 2015.<sup>127</sup> The bill would amend existing legislation to improve access to recreational hunting, fishing, and shooting.<sup>128</sup> The bill received twenty-four cosponsors.<sup>129</sup>

According to the Senate Committee on Energy and Natural Resources, the bill provides "a broad array of bipartisan measures to en-

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<sup>117</sup> *Id.*

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

<sup>119</sup> *Id.* at 1–2.

<sup>120</sup> *Id.* at 1.

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

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

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 2.

<sup>125</sup> Press Release, *supra* note 114.

<sup>126</sup> *Id.*

<sup>127</sup> S. 405, 114th Cong. (2015).

<sup>128</sup> *Id.*; see, e.g., *id.* § 103 (amending § 103(c)(5) of the Marine Mammal Protection Act of 1972 to allow for the importation of certain polar bear parts with a permit).

<sup>129</sup> *Cosponsors: S. 405—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/405/cosponsors> [<https://perma.cc/BZ2H-WYQE>] (accessed Apr. 9, 2017).

hance opportunities for hunters, anglers, and outdoor recreation enthusiasts, reauthorize key conservation programs, improve access to public lands, and help boost the outdoor recreation economy.”<sup>130</sup>

Specifically, the bill includes nine regulatory reforms and five provisions regarding habitat conservation.<sup>131</sup> The bill’s regulatory reforms would exempt lead shot and tackle from EPA regulation, expand states’ authority to fund shooting ranges on public lands, and authorize the importation of forty-one polar bears that were legally harvested prior to the species’ listing as threatened under the Endangered Species Act.<sup>132</sup> The reforms also would weaken standards for determining “baited areas” under the Migratory Bird Treaty Act’s take prohibition, open all Bureau of Land Management and Forest Service lands to recreational hunting, fishing, and shooting, and permit commercial filming by crews of five or fewer people.<sup>133</sup>

Finally, the reforms permit lawful possession of firearms on lands maintained as “water resource development projects” by the U.S. Army Corps of Engineers, mandate transparency of attorneys fees awarded under the Equal Access to Justice Act, and permit lawful transportation of bows and crossbows within national parks.<sup>134</sup> The bill’s habitat conservation provisions require at least 1.5% or \$10 million of annual Land and Water Conservation Funds to be used to improve recreational access on restricted public lands, require identification of and improved access to those public lands where recreational hunting, fishing, and outdoor recreation are permitted but public access is restricted, and authorize the selling of public lands for ranching or other projects.<sup>135</sup> Finally, the provisions provide three-to-one matching grants through 2019 to organizations, state and local governments, and private landowners that acquire, restore, and enhance wetlands critical to migratory bird populations and provide conservation funds with matching private funds to advance environmental needs.<sup>136</sup>

“While a good number of the provisions are benign, and a few even beneficial, there are several loaded grenades in the package that are inimical to the interest of wildlife, conservation, and our public lands,” said Humane Society of the United States CEO Wayne Pacelle of the bill.<sup>137</sup> Pacelle claims that the bill panders to special interests and the 1% by providing “priority access” to trophy hunters and commercial fur

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<sup>130</sup> *The Bipartisan Sportsmen’s Act 2015—S. 405*, U.S. SENATE COMMITTEE ON ENERGY & NAT. RESOURCES (Feb. 5, 2015), <https://www.energy.senate.gov/public/index.cfm/legislation?ID=ba3485d0-b3d5-427a-ba6b-8a707a491706> [https://perma.cc/9U9C-2WYB] (accessed Apr. 9, 2017).

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

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

<sup>133</sup> *Id.*; see S. 405, 114th Cong. § 104 (2015) (changing the Migratory Bird Treaty Act’s definition of “baited area”).

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

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> Wayne Pacelle, *Sportsmen’s Act Takes Aim at Wildlife and Wild Lands*, HUMANE SOC’Y U.S.: A HUMANE NATION (Feb. 9, 2015), <http://blog.humanesociety.org/wayne/>

trappers while ordinary hunters stand to gain little to nothing.<sup>138</sup> The National Anti-Vivisection Society expresses similar concerns, alleging that the legislation would make recreational hunting, fishing, and shooting a priority in wildlife conservation plans and give preference to hunting, trapping, and fishing interests.<sup>139</sup>

According to the National Rifle Association's (NRA) Institute for Legislative Action, "[the bill] is a compilation of various legislative efforts that seek to increase opportunities for hunters, shooters and anglers by reducing regulations that prevent Americans from enjoying our outdoor heritage."<sup>140</sup> The NRA, on behalf of its 5 million members, has endorsed the bill, alleging it advances the NRA's mission of preserving Second Amendment freedoms and hunting heritage.<sup>141</sup>

### C. *Western Great Lakes Wolf Management Act of 2015*

The nineteenth and twentieth centuries witnessed a massive decline in U.S. wolf populations due to shooting, poisoning, and trapping.<sup>142</sup> In 1974, just 750 gray wolves remained in Michigan, Wisconsin, and Minnesota.<sup>143</sup> In 2014, that population is estimated at more than 3,700.<sup>144</sup> This spike spurred twenty-six scientists in 2015 to write to Interior Secretary Sally Jewell and U.S. Fish and Wildlife Service Director Dan Ashe, asserting that the species has recovered and urging its delisting from the Endangered Species Act's (ESA) list of threatened species.<sup>145</sup>

In February of 2015, just a week prior to the letter, John Kline (R-Minn.) introduced the Western Great Lakes Wolf Management Act of 2015.<sup>146</sup> The bill would prohibit listing any gray wolf species in Michigan, Wisconsin, or Minnesota under any status—endangered species, threatened species, an essential experimental population, or a nones-

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2015/02/sportsmens-act-reintroduced.html [https://perma.cc/UT3Q-P5SS] (accessed Apr. 9, 2017).

<sup>138</sup> *Id.*

<sup>139</sup> *Wildlife: Bipartisan Sportsmen's Act Gives Preference in Land Management to Hunters and Fishers*, NAT'L ANTI-VIVISECTION SOC'Y: LEGIS., [http://www.kintera.org/c.cuIXJjNVKfL2G/b.8102069/k.ED2F/Federal\\_Legislation/siteapps/advocacy/Action-Item.aspx?c=cuIXJjNVKfL2G&b=8102069&aid=521445#.WGvvi7YrLVo](http://www.kintera.org/c.cuIXJjNVKfL2G/b.8102069/k.ED2F/Federal_Legislation/siteapps/advocacy/Action-Item.aspx?c=cuIXJjNVKfL2G&b=8102069&aid=521445#.WGvvi7YrLVo) [https://perma.cc/W7HZ-DACT] (accessed Apr. 9, 2017).

<sup>140</sup> *NRA Backs Bipartisan Sportsmen's Act of 2015*, NAT'L RIFLE ASS'N INST. FOR LEGIS. ACTION (Feb. 5, 2015), <https://www.nraila.org/articles/20150205/nra-backs-bipartisan-sportsmens-act-of-2015> [https://perma.cc/R7CA-QZMY] (accessed Apr. 9, 2017).

<sup>141</sup> *Id.*

<sup>142</sup> *The Gray Wolf Has Rebounded in Western Great Lakes, Scientists Say*, WASH. POST (Nov. 30, 2015), [https://www.washingtonpost.com/national/health-science/the-gray-wolf-has-rebounded-in-western-great-lakes-scientists-say/2015/11/30/6f28d7a0-93ca-11e5-b5e4-279b4501e8a6\\_story.html](https://www.washingtonpost.com/national/health-science/the-gray-wolf-has-rebounded-in-western-great-lakes-scientists-say/2015/11/30/6f28d7a0-93ca-11e5-b5e4-279b4501e8a6_story.html) [https://perma.cc/J2V8-E78M] (accessed Apr. 9, 2017) [hereinafter *Gray Wolf*].

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*; H.R. 843, 114th Cong. (2015).



sential experimental population—of the ESA.<sup>147</sup> Rather than have the Department of Interior regulate the species under the ESA, regulatory authority would be given to those states to manage those wolf populations within their borders.<sup>148</sup> The bill is consistent with three former federal agency decisions to delist the species in those states, although each of those decisions was overturned by legal challenges.<sup>149</sup> The bill received eleven cosponsors.<sup>150</sup>

According to the Humane Society Legislative Fund in its scorecard of the 114th Congress, states have adopted “reckless and cruel state management practices” when ESA protections have been removed in the past.<sup>151</sup> Such practices have included “shooting over bait, the use of steel-jawed leghold and wire snare traps, and chasing by packs of hounds.”<sup>152</sup>

The twenty-six scientists allege in their letter to Secretary Jewel and Director Ashe that “[i]t is in the best interests of gray wolf conservation and for the integrity of the [ESA] for wolves to be de-listed in the western Great Lakes states where biological recovery has occurred and where adequate regulatory mechanisms are in place to manage the species.”<sup>153</sup> Adrian Wydeven of the Timber Wolf Alliance and former wolf biologist with Wisconsin’s Department of Natural Resources agreed with the scientists that once a species recovers it should be delisted from federal regulation.<sup>154</sup> Although Wydeven did not take a stance on this particular bill, he believes that wildlife management should belong to the states once a species has recovered.<sup>155</sup>

The Center for Biological Diversity’s Noah Greenwald, however, says there are still large swaths of the species’ habitat where it has not yet returned.<sup>156</sup> According to Greenwald, the wolves inhabit less than 10% of their historic habitat range.<sup>157</sup> In fact, over seventy wildlife scientists wrote to the 114th Congress urging rejection of another bill that would delist the gray wolf in all of the lower forty-eight states.<sup>158</sup>

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<sup>147</sup> H.R. 843, 114th Cong. (2015).

<sup>148</sup> *Id.*

<sup>149</sup> *Gray Wolf*, *supra* note 142.

<sup>150</sup> H.R. 843, 114th Cong. (2015).

<sup>151</sup> HUMANE SOC’Y LEGISLATIVE FUND, HUMANE SCORECARD: THE 114TH CONGRESS IN REVIEW 8 (2016), <http://www.hslf.org/assets/pdfs/humane-scorecard/humane-scorecard-preview-114th-congress.pdf> [<https://perma.cc/D39H-DCT7>] (accessed Apr. 9, 2017).

<sup>152</sup> *Id.*

<sup>153</sup> *Gray Wolf*, *supra* note 142.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> HUMANE SCORECARD, *supra* note 151, at 8.

## VI. FARMED ANIMALS

A. *Preservation of Antibiotics for Medical Treatment Act*

An estimated 63,151 tons of antimicrobials were fed to U.S. livestock in 2010, according to a 2015 study by two Princeton researchers.<sup>159</sup> These researchers anticipate that this number will increase 67% by the year 2030.<sup>160</sup> Presently, approximately 80% of the antibiotics used in the United States are administered to healthy farmed animals.<sup>161</sup>

Antibiotics are used in livestock production to treat disease, but also to prevent disease and promote growth. Such rampant antibiotic use is dangerous as it may cause the spread of drug-resistant pathogens, rendering antibiotics ineffective for treating infections in both humans and livestock.<sup>162</sup> In 2014, the World Health Organization (WHO) warned that, without action, “the world is headed for a post-antibiotic era.”<sup>163</sup> Complete antibiotic resistance would mean that once treatable minor infections and injuries could lead to death and would render most surgeries “too dangerous to perform” due to the likelihood of post-operation infections.<sup>164</sup> Human infections attributable to antibiotic-resistant pathogens may be transferred through consumption of animal products, soil transfers, and water runoff.<sup>165</sup>

In an effort to curb the dangerous use of non-therapeutic antibiotics in livestock production, Representative Louise Slaughter (D-N.Y.) introduced the Preservation of Antibiotics for Medical Treatment Act in March of 2015.<sup>166</sup> The bill received seventy-seven cosponsors.<sup>167</sup>

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<sup>159</sup> Lydia Zuraw, *Scientists Model Global Trends in Animal Antibiotic Use*, FOOD SAFETY NEWS (Mar. 23, 2015), <http://www.foodsafetynews.com/2015/03/scientists-model-global-trends-in-animal-antibiotic-use/#.WGPbv7YrLV0> [https://perma.cc/GP23-K63K] (accessed Apr. 9, 2017); Aude Teillant & Ramanan Laxminarayan, *Economics of Antibiotic Use in U.S. Swine and Poultry Production*, 30 CHOICES 1, 1 (2015), [http://www.choicesmagazine.org/UserFiles/file/cmsarticle\\_404.pdf](http://www.choicesmagazine.org/UserFiles/file/cmsarticle_404.pdf) [https://perma.cc/7BD5-AJ3N] (accessed Apr. 9, 2017).

<sup>160</sup> Zuraw, *supra* note 159; Teillant & Laxminarayan, *supra* note 159, at 1.

<sup>161</sup> Lydia Zuraw, *Rep. Slaughter Reintroduces Preservation of Antibiotics Legislation*, FOOD SAFETY NEWS (Mar. 25, 2015), <http://www.foodsafetynews.com/2015/03/rep-slaughter-reintroduces-preservation-of-antibiotics-legislation/#.WGPbYrYrLV0> [https://perma.cc/344U-3NDR] (accessed Apr. 9, 2017).

<sup>162</sup> *Id.*

<sup>163</sup> Press Release, Rep. Louise M. Slaughter (D-N.Y.), Rep. Slaughter, Only Microbiologist in Congress, Reintroduces Legislation to Save Antibiotics (Mar. 24, 2015), <https://louise.house.gov/media-center/press-releases/rep-slaughter-only-microbiologist-congress-reintroduces-legislation-save> [https://perma.cc/U2NY-M2SS] (accessed Apr. 9, 2017).

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Cosponsors: H.R. 1552—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/1552> [https://perma.cc/LK9Q-49NP] (accessed Apr. 9, 2017).

<sup>167</sup> *Id.*

According to a press release by Congresswoman Slaughter, each year more than 2 million Americans contract an antibiotic-resistant infection, and more than 23,000 Americans die from these infections.<sup>168</sup> This causes an estimated annual healthcare cost ranging from \$20 billion to \$35 billion.<sup>169</sup>

For new drugs, the bill would amend the Federal Food, Drug, and Cosmetic Act (FDCA) to require approval of new “medically important” antimicrobials—i.e., drugs for food-producing animals with specific antibiotics or drugs on the WHO’s list of critically important antimicrobials—only where applicants can demonstrate with reasonable certainty that the drug is not harmful to human health via antimicrobial resistance resulting from its non-therapeutic use.<sup>170</sup> For existing drugs, the bill would require withdrawal of approval by the Food and Drug Administration for drugs used in livestock for non-therapeutic uses except where, again, applicants can demonstrate with reasonable certainty that the drug is not harmful to human health.<sup>171</sup> Eventually, the bill would make it so that medically important antimicrobials could not be administered, through feed or otherwise, to animals raised for human consumption for non-therapeutic uses, such as disease prevention.<sup>172</sup>

“We are allowing the greatest medical advancement of the 20th century to be frittered away, in part because it’s cheaper for factory farms to feed these critical drugs to animals rather than clean up the deplorable conditions on the farm[,]” said Representative Slaughter in a press conference following the bill’s reintroduction.<sup>173</sup> Representative Slaughter is a former microbiologist and has been a co-sponsor or sponsor of the bill since 1999.<sup>174</sup>

### B. *Protect Interstate Commerce Act*

In February 2015, Steve King (R-Iowa) introduced the Protect Interstate Commerce Act (PICA).<sup>175</sup> If enacted, the bill would forbid state and local governments from imposing certain standards or conditions on agricultural products produced or manufactured and sold in interstate commerce. This result would hinge on whether the product is produced or manufactured in another state or if the standard or condition is additional to standards or conditions imposed by federal law

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<sup>168</sup> Press Release, *supra* note 163.

<sup>169</sup> *Id.*

<sup>170</sup> H.R. 1552, 114th Cong. (2015).

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> Zuraw, *supra* note 161.

<sup>174</sup> *Id.*

<sup>175</sup> H.R. 687, 114th Cong. (2015).

or state and local laws in the state where production or manufacture occurs.<sup>176</sup> The bill received nine cosponsors.<sup>177</sup>

According to Congressman King, following the bill's reintroduction, "Open and unrestricted commerce between the states is a vital component for a thriving economy[.] . . . [PICA] would prevent states from enacting laws that would prohibit the trade of an agricultural product from other states based on its means of production."<sup>178</sup> To exemplify his concerns, the Congressman cites California's 2015 ban on the sale of eggs<sup>179</sup> produced in facilities where hens are kept in industry-standard henhouses with less than the state's required 116 square inches of floor space.<sup>180</sup> As a result of the ban, says Representative King, egg prices spiked 79% in California and 35% in Midwest states.<sup>181</sup> According to the Congressman, "[p]reventing the sale of a product based on its means of production prohibits the consumer from choosing to purchase the products they want. [PICA] will allow consumers to make their own choices about the products they buy, without the government interfering in that choice."<sup>182</sup>

A number of groups fear that the bill would weaken or nullify states' rights, the environment, animal welfare, and food safety if passed.<sup>183</sup> In 2013, when Representative King proposed the bill as an amendment to the Farm Bill, a coalition of eight consumer groups wrote a letter to Congress requesting rejection of the amendment.<sup>184</sup> The coalition, which included The Pew Charitable Trusts, Center for Foodborne Illnesses Research & Prevention, and the American Public Health Association, believed the amendment would prohibit states from adopting stronger food safety standards and result in a race-to-

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<sup>176</sup> *Id.*

<sup>177</sup> *Cosponsors: H.R. 687—114th Cong. (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/2493/cosponsors> [<https://perma.cc/M2VY-6Q56>] (accessed Apr. 9, 2017).

<sup>178</sup> Press Release, Rep. Steve King (R-Iowa), King Introduces Protect Interstate Commerce Act (Feb. 3, 2015), <https://steveking.house.gov/media-center/press-releases/king-introduces-protect-interstate-commerce-act> [<https://perma.cc/K9LV-8BTR>] (accessed Apr. 9, 2017).

<sup>179</sup> *Id.*

<sup>180</sup> Dan Charles, *How California's New Rules Are Scrambling the Egg Industry*, NPR (Dec. 29, 2014), <http://www.npr.org/sections/thesalt/2014/12/29/373802858/how-californias-new-rules-are-scrambling-the-egg-industry> [<https://perma.cc/PN4Z-3EL6>] (accessed Apr. 9, 2017).

<sup>181</sup> Press Release, *supra* note 178.

<sup>182</sup> *Id.*

<sup>183</sup> *Iowa Congressman Reintroduces Interstate Commerce Agricultural Bill*, FOOD SAFETY NEWS (Feb. 10, 2015), <http://www.foodsafetynews.com/2015/02/king-again-introduces-bill-to-protect-interstate-commerce/#.WGP25rYrLV0> [<https://perma.cc/7K5B-WHE7>] (accessed Apr. 9, 2017).

<sup>184</sup> Cathy Siegner, *Food-Safety Coalition Asks Farm Bill Conferees to Reject Two Amendments*, FOOD SAFETY NEWS (Oct. 24, 2013), <http://www.foodsafetynews.com/2013/10/food-safety-coalition-asks-farm-bill-conferees-to-reject-two-amendments/#.WGP3EbYrLVp> [<https://perma.cc/8WZD-AD72>] (accessed Apr. 9, 2017).

the-bottom in which one state with weaker food safety standards sets the standards for all states hoping to compete.<sup>185</sup>

According to a 2013 opinion letter published in *The Hill* by Anne Lieberman, the U.S. Executive Director of the World Society for the Protection of Animals, Representative King's amendment ignores consumer trends demanding ethical farming practices.<sup>186</sup> The letter reports that 60% of shoppers are willing to pay more for food produced with higher ethical standards.<sup>187</sup> As a result, an increasing number of states have introduced legislation aimed at promoting animal welfare in food production.<sup>188</sup> Representative King's bill would protect out-of-state producers from meeting stricter in-state requirements.<sup>189</sup> "The King amendment not only turns back the clock on animal protection, but jeopardizes food safety, environmental protection and more—all issues consumers care about[,]” said Lieberman.<sup>190</sup>

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<sup>185</sup> *Id.*

<sup>186</sup> Anne Lieberman, *King Amendment to House Farm Bill Ignores Consumer Trends*, HILL (June 20, 2013), <http://thehill.com/blogs/congress-blog/economy-a-budget/306637-king-amendment-to-house-farm-bill-ignores-consumer-trends> [https://perma.cc/C98F-GPSM] (accessed Apr. 9, 2017).

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*