

ENFORCING ANIMAL WELFARE STATUTES: IN MANY STATES, IT'S STILL THE WILD WEST

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I. COMPLAINT

Andrew M. Cuomo v. Yonkers Society for the Prevention of Cruelty to Animals

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14. In or about October 2007, despite the fact that the SPCA of Westchester was handling all of the animal cruelty cases in the city of Yonkers since 1958, Sean Collins decided to resurrect the long-dormant Yonkers SPCA, and enlisted his friends and family to help.

15. On October 25, 2007, Sean Collins and a group of approximately eleven (11) individuals met at the Royal Regency Hotel at 165 Tuckahoe Road, Yonkers, NY and elected themselves to the Board of Directors of the Yonkers SPCA. None of these twelve (12) individuals were part of the prior Board of Directors of the Yonkers SPCA, nor were any members of the prior Board of Directors present at this meeting.

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17. Since October 25, 2007, the newly reconstituted Yonkers SPCA has conducted no law enforcement activities and has not performed any of the duties and responsibilities of a society for the prevention of cruelty to animals pursuant to N-PCL §1403.

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18. Nevertheless, the Yonkers SPCA has conferred peace officer status pursuant to Criminal Procedure Law (“CPL”) §2.10(7) on at least sixteen (16) men over the past three years³

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The peace officer title conferred on those sixteen men solely because of their status in the humane society allowed them to make warrantless arrests,⁴ use deadly physical force in making an arrest,⁵ conduct warrantless searches when constitutionally permissible,⁶ seize weapons,⁷ and carry concealed weapons.⁸

The sixteen included a former Greenburgh police officer, fired for misconduct,⁹ but the attorney general’s office did not begin investigating the society until “after getting a tip from a disgruntled member about an incident involving a peace officer who brandished a firearm ‘in a reckless manner while under the influence of alcohol’ at a training session.”¹⁰ Local media outlets noted that the society had a website declaring themselves “responsible for patrol, emergency response, investigation, and enforcement of animal welfare laws at the federal, state and local levels” and noting that its “detectives” could make arrests in “any crime.”¹¹ Furthermore, the society claimed that volunteers had received “Firearms, Aerosol Subject Restraint, ASP Baton and Tactical Handcuffing training.”¹²

On March 9th, 2010 the court responded to the complaint, issuing an injunction permanently shutting down the Yonkers Society for the Prevention of Cruelty to Animals (SPCA).¹³ As Attorney General Cuomo

³ Complaint at 4, *Andrew M. Cuomo v. Yonkers Society for the Prevention of Cruelty to Animals*, (N.Y. Sup. Ct. 2009) (No. 14365/09), available at <http://www.lohud.com/assets/pdf/BH138348710.pdf>.

⁴ N.Y. CRIM. PROC. LAW § 2.20(1)(a) (McKinney 2005).

⁵ N.Y. CRIM. PROC. LAW § 2.20(1)(b) (McKinney 2005).

⁶ N.Y. CRIM. PROC. LAW § 2.20(1)(c) (McKinney 2005).

⁷ N.Y. CRIM. PROC. LAW § 2.20(1)(h) (McKinney 2005).

⁸ N.Y. PENAL LAW § 400.00(2) (McKinney 2005).

⁹ Helen Kennedy, *Sham Humane Society Shuttered - Outed as Front for Staffers to Score Guns & Badges*, N.Y. Daily News (Mar. 3, 2010), available at http://www.nydailynews.com/news/ny_crime/2010/03/09/2010-03-09_sham_humane_society_shuttered__outed_as_front_for_staffers_to_score_guns__badges.html.

¹⁰ David Caruso, *NY Shuts "Masquerade" Animal Protection Agency*, ASSOCIATED PRESS, Mar. 9, 2010, available at <http://www.newsday.com/news/nation/ny-shuts-masquerade-animal-protection-agency-1.1802144>.

¹¹ Kennedy, *supra* note 9.

¹² Kennedy, *supra* note 9.

¹³ Press Release, New York Attorney General, Attorney General Cuomo Shuts Down Yonkers SPCA (Mar. 9, 2010), available at http://www.ag.ny.gov/media_center/2010/mar/mar9a_10.html.

explained, “The individuals behind the Yonkers SPCA took advantage of a nationally renowned non-profit to masquerade as a law enforcement entity with no responsibilities or oversight.”¹⁴

This was not just an isolated incident, and New York is not the only place it has happened.¹⁵ In 2000, the New Jersey Commission of Investigation released a report and recommendations regarding that state’s Societies for the Prevention of Cruelty to Animals.¹⁶ Among many other things, it discussed the system that delegates law enforcement power to untrained personnel.

Not only is the idea of entrusting private citizens with the enforcement of laws anathema to the state’s advanced system of law enforcement, but specific statutory provisions governing the SPCAs run counter to the state’s methodical establishment of clearly defined police powers. The absurdity of the statutory scheme that delegates law enforcement powers to private citizens is underscored by the continued inclusion of the provision that mandates cooperation by “police forces of all places where such organizations exist.”¹⁷

It discussed societies where “[a]ll officers are required to carry weapons while investigating complaints [and t]here are printed guidelines on the carrying of a concealed firearm and an ASP Tactical Baton (expandable steel baton).”¹⁸ Another chapter “is the paradigm of a society that is out-of-control, that exists for the personal benefit of some of its participants and that has wielded its authority in highly inappropriate ways.”¹⁹ A third is a “highly structured, paramilitary-style organization”²⁰ that owned both a “drug dog” and a “tracking dog.”²¹ And

[t]ypically, [in the state] there is no supervision of the conduct of an investigation or the issuance of summonses. . . . In addition, there have been instances when agents exceeded their authority by charging offenses of the general penal provision or by signing an indiscriminate number of offenses pertaining to the same conduct. At the other extreme are cases that were prosecuted, but the charges dismissed because of the overzealousness of the SPCA officers.²²

¹⁴ *Id.*

¹⁵ See STATE OF N.J. COMM’N OF INVESTIGATION, REPORT AND RECOMMENDATIONS BASED ON INVESTIGATION INTO THE SOCIETIES FOR THE PREVENTION OF CRUELTY TO ANIMALS (2000), available at <http://www.state.nj.us/sci/pdf/spca.pdf>.

¹⁶ STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15.

¹⁷ STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 7 (citing former N.J. STAT. ANN. 4:22-4).

¹⁸ STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 20.

¹⁹ STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 39.

²⁰ STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 30.

²¹ STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 31.

²² STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 14.

The experiences of these two states are hopefully, but not necessarily, anomalies.²³ The delegation of law enforcement authority to private citizens involved with humane organizations dates back to the 1880s, when many of those statutes were passed.²⁴ Currently, over half of the states and the District of Columbia grant some form of law enforcement power to individuals based solely on their involvement with humane societies.²⁵ After a brief history of the statutory scheme, this paper will discuss the states that delegate authority to private citizens involved in humane societies, the authority that is given to these societies, and an overview of the liability concerns that may present themselves as a result of the delegation.

II. HISTORY OF HUMANE SOCIETY AUTHORITY

In 1829, the state of New York passed one of the nation's first anti-cruelty statutes.²⁶ This statute made it a misdemeanor to maliciously mistreat horses, cattle, or sheep, regardless of whether they belonged to the abuser or to another person.²⁷

Almost forty years later, in 1866, the American Society for the Prevention of Cruelty to Animals ("ASPCA") was chartered.²⁸ Its purpose, as set forth in its constitution, was "[t]o provide effective means for the prevention of cruelty to animals throughout the United States, to enforce all laws which are now or may hereafter be enacted for the protection of animals and to secure, by lawful means, the arrest and conviction of all persons violating such laws."²⁹ Further, it "created special humane agents who were used to investigate and enforce the anticruelty statutes and . . . allowed for their own attorneys to prosecute cases of animal cruelty."³⁰

²³ See also Nick Green, *Humane Society Under Fire Over Power, Secrecy*, L.A. TIMES, (Nov. 7, 1997), available at <http://articles.latimes.com/1997/nov/07/local/me-51280>.

²⁴ See David Favre & Vivian Tsang, *The Development of Anti-Cruelty Laws During the 1800's*, 1 DET. C.L. REV. 1, 21 (1993).

²⁵ See Elizabeth R. Springsteen, *Animal Cruelty Statutes: A State-By-State Analysis*, THE NATIONAL AGRICULTURAL LAW CENTER, <http://www.nationalaglawcenter.org/assets/animalcruelty/analysisindex.pdf> (last visited Mar. 20, 2012).

²⁶ Favre & Tsang, *supra* note 24, at 9 (citing N.Y. REV. STAT. tit. 6, § 26 (1829)).

²⁷ *Id.*

²⁸ *History*, AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, <http://www.aspca.org/about-us/history.html> (last visited Jan. 24, 2010).

²⁹ Favre & Tsang, *supra* note 24, at 13.

³⁰ Andrew N. Ireland Moore, *Defining Animals as Crime Victims*, 1 J. ANIMAL L. 91, 94 (2005) (citing LAWRENCE FINSEN AND SUSAN FINSEN, *THE ANIMAL RIGHTS MOVEMENT IN AMERICA: FROM COMPASSION TO RESPECT* 44 (1994)).

In the coming months, Henry Bergh, the first president of the organization and a driving force behind the charter, was instrumental in the passage of an amended animal cruelty statute, which was passed in 1887.³¹ As part of the revisions, the ASPCA was officially given the power to enter private property to care for abused animals³² and to arrest violators of the anti-cruelty statute.³³ Additionally, all fines collected from the defendants were to be remitted to the ASPCA.³⁴

Soon, several other states – including Massachusetts, Pennsylvania, Illinois, New Hampshire and New Jersey – passed similar legislation to that in New York and chartered local ASPCA chapters to help with enforcement.³⁵ Since that time, “[f]orty-one states and the District of Columbia have drafted anti-cruelty legislation based on the language of [New York’s 1867 animal cruelty law].”³⁶ That was almost 150 years ago. Many elements of those laws are still on the books, in some cases substantively unchanged for over a century.³⁷

III. WHO IS GIVEN AUTHORITY?

When specific conduct is criminalized, the underlying question is always: Who is given the authority to enforce the prohibition? In modern society, the response is typically “the police department.” However, for offenses involving animal welfare, the answer is not that simple, and varies dramatically from state to state. In some states, that authority is limited solely to law enforcement personnel.³⁸ In others, members or

³¹ Favre & Tsang, *supra* note 24, at 15.

³² Favre & Tsang, *supra* note 24, at 16 (citing N.Y. REV. STAT. § 375.4 (1887)).

³³ *Id.* at 17.

³⁴ *Id.*

³⁵ *Id.* at 21.

³⁶ Moore, *supra* note 30, at 95 (citing THE EVOLUTION OF ANTI-CRUELTY LAWS IN THE UNITED STATES, ANIMALS AND THEIR LEGAL RIGHTS: A SURVEY OF AMERICAN LAW FROM 1641 TO 1990 5 (Emily Steward Leavitt & Diane Halverson eds., 1990)).

³⁷ For an overview of state animal cruelty statutes, see Pamela D. Frasch et al., *State Animal Anti-Cruelty Statutes: An Overview*, 5 ANIMAL L. 69 (1999). For the specific text of each state’s statute, see Springsteen, *supra* note 25.

³⁸ ALASKA STAT. § 03.55.110(c) (2011); ARIZ. REV. STAT. ANN. §13-2910(d) (2011); ARK. CODE ANN. § 5-62-113 (humane societies had law enforcement power until 2009, when Arkansas passed a new animal welfare law); COLO. REV. STAT. ANN. § 18-9-202 (West 2011); GA. CODE ANN. § 4-11-9.2(c) (West 2011) (as defined by GA. CODE ANN. § 4-11-2(1.1) (West 2011)); IDAHO CODE ANN. § 25-3501A(1) (West 2011); 510 ILL. COMP. STAT. 70/3.04 (2007) (limited to law enforcement, with minor powers to “humane investigators” appointed by the state); IND. CODE § 35-46-3-6(b) (2011); IOWA CODE §§ 717B.1(5), 717B.5 (2011); ME. REV. STAT. ANN. tit. 17, § 1011(15) (2011); MINN. STAT. § 343.12 (2011); MISS. CODE ANN. § 97-41-2 (West 2011); MO. REV. STAT. § 578.016 (2011); NEB. REV. STAT. § 28-1008(6) (2011); N.M. STAT. ANN. § 30-18-1.1 (West

officers of humane societies are given the ability to enforce the laws as long as they go through some level of training or education.³⁹ In a third group of states, members or officers of humane societies are given enforcement authority on animal welfare laws solely by virtue of their membership in that society and without any additional training.⁴⁰

In around twenty states, the authority to investigate offenses against animals is limited to law enforcement personnel.⁴¹ However the term “law enforcement” encompasses many different groups, depending on the state at issue, with some states limiting the term to law enforcement in the traditional sense, while others widen the definition to include individuals with differing levels of training and responsibility.

Nebraska is an example of a state that limits the definition (and authority) to those operating in the traditional law enforcement capacity.⁴² In that state, the term means “any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances.”⁴³ Oregon has similar language, giving enforcement authority to “peace officers,”⁴⁴ which include such people as a “(a) a member of the Oregon State Police; (b) [a] sheriff, constable, marshal or municipal po-

2011); N.D. CENT. CODE § 36-21.1-06 (2011); OKLA. STAT. ANN. tit. 21, § 1680.4 (West 2011); OR. REV. STAT. § 167.345(1) (2011) (as defined by OR. REV. STAT. § 161.015 (2011)); TEX. HEALTH & SAFETY CODE ANN. § 821.022 (West 2011) (Humane societies had law enforcement power until 1953, when they were repealed by TEX. REV. CIV. STAT. ANN. art. § 4597 (West 2010)); UTAH CODE ANN. § 76-9-305(1) (West 2011) (law enforcement officers have power to enforce general animal cruelty provisions); W. VA. CODE § 7-10-1 (2011); WIS. STAT. § 173.07 (2011).

³⁹ CAL. CORP. CODE § 14502(i) (West 2011); KY. REV. STAT. ANN. §436.605(1) (West 2011) (requirements outlined in KY. REV. STAT. ANN. §15.334 (West 2011)); MASS. GEN. LAWS ANN. ch. 22C, § 57 (West 2011); MINN. STAT. § 343.01 (2011); N.J. STAT. ANN. § 4:22-11.8 (West 2011); N.Y. CRIM. PROC. § 2.30 (McKinney 2011); OHIO REV. CODE ANN. § 1717.06 (West 2011); 22 PA. STAT. ANN. § 3712 (West 2011); VA. CODE ANN. § 3.2-6558 (West 2011); WASH. REV. CODE § 16.52.025 (2011).

⁴⁰ ALA. CODE § 3-1-13 (2011); CONN. GEN. STAT. § 29-108b (2011); DEL. CODE ANN. tit. 3, § 7904 (West 2011); FLA. STAT. ANN. § 828.03(1) (West 2011); HAW. REV. STAT. § 711-1110 (2011); KAN. STAT. ANN. § 21-6412 (West 2011); LA. REV. STAT. ANN. § 3:2391 (2011); MD. CODE ANN., CRIM. LAW § 10-609 (West 2011); MICH. COMP. LAWS ANN. § 750.55 (West 2011); NEV. REV. STAT. § 574.040 (2011); N.H. REV. STAT. ANN. § 105:18 (2011); R.I. GEN. LAWS § 4-1-21 (2011); S.C. CODE ANN. § 47-1-150 (2011); S.D. CODIFIED LAWS § 40-1-5 (2011); TENN. CODE ANN. § 39-14-210(a) (West 2011); VT. STAT. ANN. tit. 13, § 354 (West 2011).

⁴¹ See statutes cited *supra* note 38.

⁴² NEB. REV. STAT. § 28-1008(6) (2011).

⁴³ *Id.*

⁴⁴ OR. REV. STAT. § 167.345(1) (2011).

lice officer; (c) [a]n investigator of the Criminal Justice Division of the Department of Justice or investigator of a district attorney's office; and (d) . . . any other person designated by law as a peace officer."⁴⁵

Georgia is one example of a state that divides enforcement responsibilities between different levels of law enforcement personnel. In Georgia, the majority of investigative and enforcement power is given only to "any sheriff, deputy sheriff, or other peace officer."⁴⁶ On the other hand, the state allows the "Commissioner, his or her designated agent, an animal control officer who is an employee of state or local government, or any sheriff, deputy sheriff, or other peace officer" the limited power to impound animals.⁴⁷

Other states give some level of authority to a statutorily defined and officially appointed member of law enforcement with the word "humane" in their title.⁴⁸ While these individuals are called such things as "humane officers" or "humane investigators," it is important to note that they are not necessarily associated with "humane societies."⁴⁹ Instead, they are analogous to animal control officers, hired or appointed based on their individual qualifications, rather than on the request of a humane society. This is an important distinction to make, as this article will later discuss "humane investigators" who gain their investigative authority based solely on their affiliation with a humane society.

One example of a state that gives some level of authority to law enforcement with "humane" in their job title is Illinois.⁵⁰ In that state, enforcement authority for arrest and seizure is specifically reserved for "law enforcement officer[s]."⁵¹ However, the legislature has also allowed the creation of a category of "humane investigators."⁵² "Humane investigators" who meet certain qualifications and are approved by the Department of Agriculture are permitted to "complet[e] routine investigations and fil[e] reports of violations of [the Humane Care of Animals Act] received by the Department."⁵³ Similarly, Wisconsin allows the government of political subdivisions to appoint "humane officers."⁵⁴ These trained and certified⁵⁵ officers are given investigative powers over

⁴⁵ OR. REV. STAT. § 161.015 (2011).

⁴⁶ GA. CODE ANN. § 4-11-9.2(b) (West 2011).

⁴⁷ *Id.*

⁴⁸ 510 ILL. COMP. STAT. 70/9, Wis. Stat. § 173.03(1).

⁴⁹ *Id.*

⁵⁰ 510 ILL. COMP. STAT. 70/3.04 (2007).

⁵¹ *Id.*

⁵² 510 ILL. COMP. STAT. 70/9 (2011).

⁵³ *Id.*

⁵⁴ WIS. STAT. § 173.03(1) (2011).

⁵⁵ WIS. STAT. § 173.05 (2011).

the statutes and ordinances related to animals.⁵⁶ Additionally, they shall “investigate alleged violations” and “may execute inspection warrants,”⁵⁷ as well as request subpoenas.⁵⁸ However, their other law enforcement powers are very strictly limited, and their prohibitions are very specifically explained.⁵⁹ Humane officers may not

- 1) Execute a search warrant.
- 2) Carry firearms.
- 3) Stop or arrest persons.
- 4) Stop, search, or detain vehicles, except under an inspection warrant under Wis. Stat. § 66.0119.
- 5) Enter any place or vehicle by force or without the consent of the owner, except in an emergency occasioned by fire or other circumstance in which that entry is reasonable and is necessary to save an animal from imminent death or a person from imminent death or injury.
- 6) Remove any animal from the custody of another person by force.⁶⁰

The second group of states, about ten in total, gives enforcement power to individuals who are associated with humane societies but have received some form of training or meet an established standard.⁶¹ However, the description of that training or standard varies widely from state to state. In Kentucky, the authority is given to

any officer or agent of any society or association for the prevention of cruelty to animals duly incorporated under the laws of this Commonwealth who is employed by, appointed by, or has contracted with a city, county, urban-county, charter county, or consolidated local government to provide animal sheltering or animal control services.⁶²

These officers or agents are given all of the powers of peace officers except the power to arrest.⁶³ Like peace officers, however, they must meet the standards⁶⁴ and undergo the training⁶⁵ outlined by the Kentucky legislature.

⁵⁶ WIS. STAT. § 173.07 (2011).

⁵⁷ WIS. STAT. § 173.07(2) (2011).

⁵⁸ WIS. STAT. § 173.07(3) (2011).

⁵⁹ WIS. STAT. § 173.07(5) (2011).

⁶⁰ WIS. STAT. § 173.07(5) (2011).

⁶¹ See statutes cited *supra* note 39.

⁶² KY. REV. STAT. ANN. § 436.605(1) (West 2011).

⁶³ KY. REV. STAT. ANN. §436.605(2) (West 2011).

⁶⁴ KY. REV. STAT. ANN. §61.300 (West 2011).

⁶⁵ KY. REV. STAT. ANN. §15.334 (West 2011).

In Massachusetts, the legislature outlines the specific societies that may request to have individuals appointed as special police officers.⁶⁶ These include the “Massachusetts Society for the Prevention of Cruelty to Animals, the Berkshire Animal Protective Society, Inc., the Animal Rescue League of Boston, the Boston Work Horse Relief Association, the Lowell Humane Society, the Worcester Animal Rescue League, [and] the Animal Rescue League of New Bedford.”⁶⁷ If appointed, they must undergo training and meet the standards for special officers that are established by the state police.⁶⁸ However, they are then given the “powers of constables and police officers to arrest and detain any person violating any law for the prevention of cruelty to animals.”⁶⁹

Many of these states outline the training requirements that the humane society member or agent must meet, including, in various cases, a designated number of training hours,⁷⁰ a judicial appointment,⁷¹ a background check,⁷² and even, in Pennsylvania, the designated topics that the training must cover.⁷³ Other states, like Minnesota, allow their state federation of county and district societies for the prevention of cruelty to animals to “appoint agents for the purpose of investigating or otherwise assisting lawfully empowered officials in the prosecution of persons charged with cruelty to animals.”⁷⁴ However, the description of the training required for those agents is vague, merely mandating that those agents have “training and experience in activities relating to prevention of cruelty to animals or enforcement of laws relating to cruelty to animals.”⁷⁵

The New Jersey law requiring training is a recent enactment.⁷⁶ It mandates that county societies for the prevention of cruelty to animals require their “humane law enforcement officers and agents” to complete specified training programs.⁷⁷ It became effective in 2006, in response to the Commission on Investigation’s review which found that

[i]n the absence of any formal law enforcement training, any standards or guidelines governing their activities and any monitoring by a government entity to ensure the uniform and proper application of the laws, SPCA officers

⁶⁶ MASS. GEN. LAWS ANN. ch. 22C, § 57 (West 2011).

⁶⁷ *Id.*

⁶⁸ MASS. GEN. LAWS ANN. ch. 22C, § 69 (West 2011).

⁶⁹ MASS. GEN. LAWS ANN. ch. 22C, § 57 (West 2011).

⁷⁰ OHIO REV. CODE ANN. § 1717.06 (West 2011).

⁷¹ WASH. REV. CODE § 16.52.025 (2011).

⁷² CAL. CORP. CODE § 14502(i) (West 2011).

⁷³ 22 PA. STAT. ANN. § 3712 (West 2011).

⁷⁴ MINN STAT. § 343.01 (2011).

⁷⁵ *Id.*

⁷⁶ N.J. STAT. ANN. § 4:22-11.8 (West 2011).

⁷⁷ *Id.*

and agents exercise unbridled discretion in investigating complaints of animal cruelty and issuing civil and criminal summonses. Their erratic application of the statutes has rendered them ineffective as enforcers of the cruelty laws.⁷⁸

The final group of states does not require any formal law enforcement training before members or officers of a humane society are authorized with law enforcement power. Sixteen states fall into this group.⁷⁹ In some states, the law mandates that the humane society nominate an individual to serve the quasi law enforcement function, and that nomination is then ratified by a government official. For example, after a Nevada humane society nominates a “member, agent or local or district officer of [the] society” for the position, they must then be approved by a judge and sworn in by the sheriff before they are given law enforcement authority.⁸⁰ In Connecticut, they are approved by the Commissioner of Emergency Services and Public Protection,⁸¹ after which they must carry a humane society issued badge.⁸² In New Hampshire, “[a]ny officer or agent of any incorporated society for the prevention of cruelty to animals,” after they are approved by the county sheriff, is given the power to arrest.⁸³ In Louisiana, after the nomination, the “mayor of the city or town and the police jury of the parish, respectively, as the case may be, shall appoint and commission” the nominees as special police officers that “have the usual power of policemen and peace officers.”⁸⁴

On the other hand, in some states, the humane society’s nomination is enough in and of itself to vest the nominees with law enforcement authority. These statutes should be evaluated closely in light of New Jersey’s experience, where, “[b]ecause SPCAs operate outside the realm of government, they have become havens for those who cannot obtain legitimate law enforcement positions.”⁸⁵

In Tennessee, all it takes is an appointment by the president of “any society which is incorporated for the prevention of cruelty to animals,” to obtain the authority to arrest those they believe are violating animal cruelty laws.⁸⁶ In the west, Hawaii’s statute is almost identical.⁸⁷ On the east coast, “[t]he general agent of the Rhode Island society for the pre-

⁷⁸ STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 2.

⁷⁹ See statutes cited *supra* note 40.

⁸⁰ NEV. REV. STAT. § 574.040 (2011).

⁸¹ CONN. GEN. STAT. § 29-108b (2011).

⁸² CONN. GEN. STAT. § 29-108i (2011).

⁸³ N.H. REV. STAT. ANN. § 105:18 (2011).

⁸⁴ LA. REV. STAT. ANN. § 3:2391 (2011).

⁸⁵ STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 2.

⁸⁶ TENN. CODE ANN. § 39-14-210(a) (West 2011).

⁸⁷ HAW. REV. STAT. § 711-1110 (2011).

vention of cruelty to animals and any number of special agents as may be appointed by that society have the same power and authority to arrest as any officer authorized to serve criminal process.”⁸⁸ Further south in Alabama, any “duly authorized officer or employee of a recognized humane society” may seize neglected or cruelly treated animals.⁸⁹ In Delaware, arrest warrants may be issued to agents appointed “by either the Delaware or Kent County Society for the Prevention of Cruelty to Animals.”⁹⁰

In a few states, there is no training or education required for humane society “officers,” while animal control officers employed by the local government are required to take part in a training course.⁹¹ In Michigan, for example, the process requires simply that “[a]ny society incorporated . . . for the purpose of preventing cruelty to animals”⁹² may nominate individuals who may then be appointed by the county sheriff into the position of a deputy sheriff and “shall possess all the powers of a sheriff of the county.”⁹³ However, in order to become a “county animal control officer,” the minimum standards include both “[r]equirements for physical, educational, mental and moral fitness” and “a minimum course of study of not less than 100 instructional hours as prescribed by the department of agriculture.”⁹⁴

Similarly, in Florida, “[a]ny county or any society or association for the prevention of cruelty to children or animals” may simply appoint an agent for the purposes of investigating the violation of animal welfare laws and “preventing any act of cruelty” to animals.⁹⁵ The appointment must then be approved by the mayor (if the society is located in a city) or the county or circuit court judge (if located outside city limits).⁹⁶ County-employed animal control officers, on the other hand, must “successfully complete a 40-hour minimum standards training course.”⁹⁷ The mandated topics to be covered in the course include training on “animal cruelty investigations, search and seizure, animal handling, courtroom

⁸⁸ R.I. GEN. LAWS § 4-1-21 (2011).

⁸⁹ ALA. CODE § 3-1-13 (2011); *but see* Humane Soc’y of Marshall County v. Adams, 439 So.2d 150, 153 (Ala. 1983) (finding section 3-1-13 unconstitutional on due process grounds).

⁹⁰ DEL. CODE ANN. tit. 3, § 7904 (West 2011).

⁹¹ *See* FLA. STAT. ANN. § 828.03(1) (West 2011); MICH. COMP. LAWS ANN. § 750.55 (West 2011).

⁹² MICH. COMP. LAWS ANN. § 750.55 (West 2011).

⁹³ *Id.*

⁹⁴ MICH. COMP. LAWS 287.289b (West 2011).

⁹⁵ FLA. STAT. ANN. § 828.03(1) (West 2011).

⁹⁶ FLA. STAT. ANN. § 828.03 (West 2011).

⁹⁷ FLA. STAT. ANN. §828.27(4)(a) (West 2011).

demeanor, and civil citations[,]" and they must be approved by the Florida Animal Control Association.⁹⁸ Further, county-employed animal control officers must complete four hours of continuing education training every two years to maintain their certification.⁹⁹

The final few states that allow members or officers of a humane society to have law enforcement authority without any training all have another feature in common.¹⁰⁰ In Kansas, the authorizing language gives that power to any "officer or agent of an incorporated humane society."¹⁰¹ In South Dakota, that power is given to any "agent or officer of any humane society."¹⁰² In South Carolina, authority is vested in "any agent of any county or of the South Carolina Society for the Prevention of Cruelty to Animals, or any society incorporated for that purpose,"¹⁰³ while in Vermont animals are protected by officers of "the Vermont Humane Federation, Inc., or its successor, or any incorporated humane society."¹⁰⁴

In Maryland, "if an officer of a humane society sees a person committing a misdemeanor that involves cruelty to an animal, the officer shall arrest and bring before the District Court the person committing the misdemeanor."¹⁰⁵ While this statute has been criticized,¹⁰⁶ a "humane soci-

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ New Hampshire, Louisiana, Tennessee, Hawaii, Michigan and Florida also grant similar authority. See *supra* note 40 and accompanying text.

¹⁰¹ KAN. STAT. ANN. § 21-6412 (West 2011).

¹⁰² S.D. CODIFIED LAWS § 40-1-5 (2011); but see S.D. CODIFIED LAWS § 40-2-3 (repealed 2006) that outlined duties of agents of humane societies.

¹⁰³ S.C. CODE ANN. § 47-1-150 (2011).

¹⁰⁴ VT. STAT. ANN. tit. 13, § 351 (West 2011).

¹⁰⁵ MD. CODE ANN., CRIM. LAW § 10-609 (West 2011).

¹⁰⁶ The failure to train humane society officers has already been questioned by the Maryland Bar Association. See Laurell E. Taylor, *Training of Animal Control Officers*, 40-OCT MD. B.J. 44, 49 (Sept./Oct. 2007):

It is probably safe to assume that most people in the field of animal control are there because of their love of animals, a love that most of us share. Accordingly, regardless of the lack state-mandated training and certification, many of the officers and agency directors do ensure that they have sufficient knowledge and training. However, it is probably also safe to assume that many do not receive adequate training and lack the experience to make up for it. Given the depth of responsibility of the officers, the fact that they engage in many of the same activities as regular law enforcement officers, and the seriousness of potential consequences when something goes amiss, not to mention the public's assumption that these officers (who present themselves in uniforms with badges, batons, defensive sprays, citation books and other law enforcement gear) are well trained, the author respectfully suggests that the time has come for the Maryland General Assembly to take up the issue of mandatory training and certification for these officers.

ety,” in this context, includes any “society or association incorporated in Maryland for the prevention of cruelty to animals.”¹⁰⁷ So, to use Maryland as an example of the eleven states with similar authority, assume that an individual believes the confinement of sows in gestation crates¹⁰⁸ constitutes cruelty to animals.¹⁰⁹ That person then files the proper articles of incorporation¹¹⁰ and pays the required \$120 filing fee. At that point, they have the authority to arrest individuals who are committing cruelty to animals, and that may potentially include those farmers who use the crates that person believes are cruel.

IV. WHAT AUTHORITY IS GIVEN?

The next obvious question, after determining *who* is given law enforcement authority, is to ask *what* authority has been given. There are currently twenty-seven states that allow members or officers some form of law enforcement authority. This section focuses on those specific states and touches on several police powers that have been granted to non-law enforcement personnel.

A. *The Authority to Arrest*

One hundred and twenty years ago, during the time period in which many of the laws granting police power to those outside law enforcement were enacted, the Supreme Court enunciated the standard that “[n]o right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.”¹¹¹ Based on this principle, delegation of police authority to arrest or detain has changed dramatically over the past century. Except, perhaps, in the area of animal welfare.

Of the twenty-seven states that give humane society members or officers some form of law enforcement authority, only one – Florida – spe-

¹⁰⁷ MD. CODE. ANN., CRIM. LAW § 10-601 (West 2011).

¹⁰⁸ See NAT'L PORK BOARD, 2003 SWINE CARE HANDBOOK 8-9 (2002), available at <http://www.pork.org/PorkScience/Documents/swine%20care%C20handbook%202003.pdf>.

¹⁰⁹ See generally Elizabeth R. Springsteen, *A Proposal to Regulate Farm Animal Confinement in the United States and an Overview of Current and Proposed Laws on the Subject*, 14 DRAKE J. AGRIC. L. 437 (2009).

¹¹⁰ STATE OF MARYLAND, ARTICLES OF INCORPORATION FOR A TAX-EXEMPT NONSTOCK CORPORATION, available at http://www.dat.state.md.us/sdatweb/ex_corp_form.pdf.

¹¹¹ Union Pac. R.R. Co. v. Botsford, 141 U.S. 250, 251 (1891).

cifically prohibits arrests by non-law enforcement personnel.¹¹² Another four implicitly reserve the power to arrest to law enforcement personnel by giving humane society members or officers the responsibility to notify police about the wrongdoers, after which the police “shall” arrest the perpetrator.¹¹³ Five states do not specify who is vested with arrest power,¹¹⁴ and the remaining seventeen states give humane society members or officers the power to arrest individuals that they believe are responsible for mistreating animals.¹¹⁵

The only mention of the power to arrest in Florida’s statute concerns warrantless arrests. According to section 828.17 of the Florida Statute, a “sheriff or any other peace officer of the state, or any police officer of any city or town of the state,” shall arrest without a warrant any person found violating the animal cruelty provisions of the criminal code. As to whether the society’s agent may arrest with a warrant, the statute is silent.

Four other states implicitly reserve the right to arrest to law enforcement by requiring humane society actors to report acts of cruelty to officers, who then make the arrest. Minnesota, for example, requires that when a humane society agent makes a complaint, “it shall be the duty of any sheriff or the agent's deputy or any police officer to investigate any alleged violation of the law relative to cruelty to animals, and to arrest any person found violating those laws.”¹¹⁶ In other words, it is the same amount of power given to an average citizen who makes a complaint where the police follow up.

However, police officers in the District of Columbia, “upon application of a member of the Washington Humane Society who has viewed a violation of a law or regulation of the District for the prevention of cruelty to animals, shall arrest the offending party without a warrant.”¹¹⁷ And in Washington, humane society animal control officers have the power to “cause a law enforcement officer to arrest and take into custody any person the animal control officer has probable cause to believe has

¹¹² FLA. STAT. ANN. §§ 828.17, 828.27 (West 2011).

¹¹³ D.C. CODE § 44-1505 (2011); KY. REV. STAT. ANN. §436.605(1) (West 2011); MINN. STAT. § 343.12 (2011); WASH. REV. CODE § 16.52.015(3) (2011).

¹¹⁴ Those states are Vermont, Virginia, Kansas, Alabama, and South Dakota. In 2006, South Dakota repealed the provision, S. D. Codified Laws § 40-2-3, that gave agents of humane societies arrest powers. See *supra* notes 40 and 102 and accompanying text.

¹¹⁵ These states also differ dramatically in whether or not humane society officers are allowed to arrest without a warrant. See *supra* Part III. While interesting and important to consider, the use of warrants is beyond the scope of this paper.

¹¹⁶ MINN. STAT. § 343.12 (2011).

¹¹⁷ D.C. CODE § 44-1505 (2011).

committed or is committing a violation of this chapter.”¹¹⁸ So in both the District of Columbia and Washington State, the law enforcement officer is forced to substitute his own judgment for that of the humane agent. And finally, Kentucky imposes on humane agents the duty to report animal cruelty to law enforcement so that the offender may be arrested.¹¹⁹

The remaining seventeen states allow humane society officers to arrest individuals suspected of cruelty to animals.¹²⁰ They may be further divided into two groups: those that give “normal police powers” to humane society agents and those that specifically delegate the authority to arrest.

States like California allow humane officers to “make arrests for the violation of any penal law of this state relating to or affecting animals in the same manner as any peace officer.”¹²¹ Connecticut gives them the “powers of constables and police officers to arrest and detain any person violating any provision of the statutes concerning cruelty to animals.”¹²² In Pennsylvania, an agent of any society or association for the prevention of cruelty to animals “shall have the same power to initiate criminal proceedings provided for police officers,”¹²³ while Michigan allows them “all the powers of a sheriff of the county.”¹²⁴ In Massachusetts, the humane society agents have “the powers of constables and police officers to arrest and detain any person violating any law for the prevention of cruelty to animals,”¹²⁵ while in Rhode Island the agents have the “same power and authority to arrest as any officer authorized to serve criminal process”¹²⁶ Across the country in Nevada, they may make arrests for violations of the animal cruelty laws “in the same manner as is provided for other officers.”¹²⁷ The state of Louisiana grants them the “usual

¹¹⁸ WASH. REV. CODE § 16.52.015(3) (2011).

¹¹⁹ KY. REV. STAT. ANN. § 436.605(1) (West 2011).

¹²⁰ CAL. CORP. CODE §§ 14502(h)(1)(B), 14502(h)(2)(B) (West 2011); CONN. GEN. STAT. § 29-108b (2011); DEL. CODE ANN. tit. 3, § 7904 (West 2011); HAW. REV. STAT. § 711-1110 (2011); LA. REV. STAT. ANN. § 3:2391 (2011); MD. CODE ANN., CRIM. LAW § 10-609(a) (West 2011); MASS. GEN. LAWS ANN. ch. 22C, § 57 (West 2011); MICH. COMP. LAWS ANN. § 750.55 (West 2011); NEV. REV. STAT. § 574.040 (2011); N.H. REV. STAT. ANN. § 105:18 (2011); N.J. STAT. ANN. § 4:22-44 (West 2011); N.Y. AGRIC. & MKTS. LAW § 371 (McKinney 2011); OHIO REV. CODE ANN. § 1717.06 (West 2011); 18 PA. CONS. STAT. § 5511(i) (2011); R.I. GEN. LAWS § 4-1-21 (2011); S.C. CODE ANN. § 47-1-140 (2011); TENN. CODE ANN. § 39-14-210(a) (West 2011).

¹²¹ CAL. CORP. CODE §§ 14502(h)(1)(B), 14502(h)(2)(B) (West 2011).

¹²² CONN. GEN. STAT. § 29-108b (2011).

¹²³ 18 PA. CONS. STAT. § 5511(i) (2011).

¹²⁴ MICH. COMP. LAWS ANN. § 750.55 (West 2011).

¹²⁵ MASS. GEN. LAWS ANN. ch. 22C, § 57 (West 2011).

¹²⁶ R.I. GEN. LAWS § 4-1-21 (2011).

¹²⁷ NEV. REV. STAT. § 574.040 (2011).

power of policemen and peace officers,”¹²⁸ even though a judge noted that the “provision was originally enacted in 1888, [and t]he prudence of granting such authority to private individuals untrained in constitutional law is questionable.”¹²⁹

Other states specifically delegate humane society officers the power to arrest. In Hawaii, for example, agents may “make arrests and bring before any district judge thereof offenders found violating” the animal cruelty provisions.¹³⁰ And in Maryland, if an “officer of a humane society sees a person committing a misdemeanor that involves cruelty to an animal, the officer shall arrest and bring before the District Court the person committing the misdemeanor.”¹³¹ The same is true in states from Delaware¹³² to New Jersey,¹³³ South Carolina¹³⁴ to New York,¹³⁵ and New Hampshire¹³⁶ to Tennessee.¹³⁷

In Ohio, “[s]uch agents may arrest any person found violating this chapter or any other law for protecting persons or animals or preventing acts of cruelty thereto.”¹³⁸ In fact, the Third District Court of Appeals held that “[w]hile county humane societies may engage in certain activities that are not governmental in nature, the above statutes demonstrate that the primary purpose of such organizations is law enforcement, an activity traditionally reserved for the government.”¹³⁹

B. The Authority to Seize Property

Another activity traditionally reserved for government, and more specifically in our modern society to the police force, is the ability to “take” citizens’ property with or without a warrant.¹⁴⁰ This section addresses

¹²⁸ LA. REV. STAT. ANN. § 3:2391 (2011).

¹²⁹ *State v. Lazarus*, 633 So.2d 225, 230 (La. Ct. App. 1993).

¹³⁰ HAW. REV. STAT. § 711-1110 (2011).

¹³¹ MD. CODE ANN., CRIM. LAW § 10-609(a) (West 2011).

¹³² DEL. CODE ANN. tit. 3, § 7904 (West 2011).

¹³³ N.J. STAT. ANN. § 4:22-44 (West 2011).

¹³⁴ S.C. CODE ANN. § 47-1-140 (2011).

¹³⁵ N.Y. AGRIC. & MKTS. LAW § 371 (McKinney 2011).

¹³⁶ N.H. REV. STAT. ANN. § 105:18 (2011).

¹³⁷ TENN. CODE ANN. § 39-14-210(a) (West 2011); *see also* *Tennessee v. Adkisson*, No. M2000-01079-CCA-R3-CD, M2000-02319-CCA-R3-CD, 2001 WL 1218570, at *4 (Tenn. Crim. App. Oct. 12, 2001) (“Humane societies which are chartered by the state ... are specifically vested with the power to arrest and prosecute animal cruelty offenders”).

¹³⁸ OHIO REV. CODE ANN. § 1717.06 (West 2011).

¹³⁹ *Studer v. Seneca County Humane Soc’y*, No. 13-99-59, 2000 WL 566738, 2000-Ohio-1823, at *3 (Ohio Ct.App. May 4, 2000) (holding that humane society was political subdivision for purposes of immunity statutes).

¹⁴⁰ Much like the power to arrest without a warrant, states differ in the authority they give to humane society agents to seize property with or without a warrant. They also

those states that give humane society agents the ability to seize private property, including animals.¹⁴¹

Arrest power and the power to seize property are not necessarily coexistent in state codes. For example, in Hawaii, as discussed above, an “agent of any society which is formed or incorporated for the prevention of cruelty to animals” may make arrests for violation of the animal cruelty laws.¹⁴² However, those same agents may not impound “pet animals,” that responsibility being reserved for “law enforcement officers.”¹⁴³ On the opposite side of the coin, Washington, D.C. does not allow humane officers to arrest individuals accused of animal welfare violations. However, a “humane officer of the Washington Humane Society may take possession of any animal to protect it from neglect or cruelty.”¹⁴⁴

Minnesota is another state that limits the power of seizure to law enforcement.¹⁴⁵ Their statute requires that only a “sheriff or the agent's deputy or any police officer” take “possession of any animals in their respective jurisdictions which have been cruelly treated.”¹⁴⁶ In the state of Washington, the language is ambiguous, ceding seizure authority to “law enforcement officer[s] or animal control officer[s].”¹⁴⁷

In Connecticut, any “officer or agent of the Connecticut Humane Society may lawfully take charge of any animal found neglected or cruelly treated,”¹⁴⁸ and in Maryland, an “officer or authorized agent of a humane society, or a police officer or other public official required to protect animals may seize an animal if necessary to protect the animal from cruelty.”¹⁴⁹ Similar authorization is found in Alabama,¹⁵⁰ California,¹⁵¹

differ in the delegation of authority to obtain search warrants. However, those distinctions (while important) are beyond the scope of this paper. See *generally supra* Part III.

¹⁴¹ See *Porter v. DiBlasio*, 93 F.3d 301, 305 (7th Cir.1996) (“The parties do not dispute, and we certainly agree, that [Plaintiff's] ownership interest in the nine horses is a protected property interest under the Fourteenth Amendment.”); see also *Altman v. City of High Point*, 330 F.3d 194, 196 (4th Cir. 2008) (holding that the dogs at issue in that case were protected property under the Fourth Amendment).

¹⁴² HAW. REV. STAT. § 711-1110 (2011).

¹⁴³ HAW. REV. STAT. § 711-1109.1 (2011).

¹⁴⁴ D.C. CODE § 22-1004 (2011).

¹⁴⁵ MINN. STAT. § 343.12 (2011).

¹⁴⁶ *Id.*

¹⁴⁷ WASH. REV. CODE § 16.52.085 (2011). It is uncertain whether humane society officers fall into the category of “animal control officers,” however language in other sections seems to indicate that they would. See WASH. REV. CODE § 16.52.025 (2011) (trustees of humane societies may appoint society members to act as animal control officers).

¹⁴⁸ CONN. GEN. STAT. § 29-108e (2011).

¹⁴⁹ MD. CODE. ANN., CRIM. LAW § 10-615(b)(1) (West 2011).

Delaware,¹⁵² Kansas,¹⁵³ Louisiana,¹⁵⁴ Massachusetts,¹⁵⁵ New York,¹⁵⁶ South Carolina,¹⁵⁷ South Dakota,¹⁵⁸ and Vermont.¹⁵⁹

In Florida, agents of “any society or association for the prevention of cruelty to animals” may seize animals that they believe to be neglected or cruelly treated.¹⁶⁰ Moreover, they are given the additional authority to “order the owner of any animal found neglected or cruelly treated to provide certain care to the animal at the owner's expense without removal of the animal from its present location.”¹⁶¹ However, in Ohio the power of seizure given to agents of county humane societies¹⁶² extends only to “companion animals,” whose definition includes “any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept.”¹⁶³ It does not include livestock or any wild animal.¹⁶⁴

Similarly, the seizure power of humane society officers is limited in several states in regard to livestock. In Virginia, for example, investigators associated with the humane society may “lawfully seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an apparent violation of this chapter that has rendered the animal in such a condition as to constitute a direct and immediate threat to its life, safety or health.”¹⁶⁵ However, “[b]efore seizing or impounding any agricultural animal, the humane investigator, law enforcement officer or animal control officer shall contact the State Veterinarian or State Veterinarian’s representative, who shall recommend to the person the most appropriate action for effecting the seizure and impoundment.”¹⁶⁶ In Tennessee, humane officers have no power at all when it comes to

¹⁵⁰ ALA. CODE § 3-1-13 (2011); *but see* Humane Soc’y of Marshall County v. Adams, 439 So.2d 150 (Ala. 1983) (finding § 3-1-13 unconstitutional on due process grounds).

¹⁵¹ CAL. PENAL CODE § 597 (West 2011) (seizure for cruelty); CAL. PENAL CODE § 597f (West 2011) (seizure for neglect and abandonment).

¹⁵² DEL. CODE ANN. tit. 11, § 1325 (West 2011).

¹⁵³ KAN. STAT. ANN. § 21-6412 (West 2011).

¹⁵⁴ LA. REV. STAT. ANN. §§ 3:2391, 14:102.2 (2011).

¹⁵⁵ MASS. GEN. LAWS ch. 272, § 104 (2011).

¹⁵⁶ N.Y. AGRIC. & MKTS. LAW § 373 (McKinney 2011).

¹⁵⁷ S.C. CODE ANN. § 47-1-150 (2011).

¹⁵⁸ S.D. CODIFIED LAWS § 40-1-5 (2011).

¹⁵⁹ VT. STAT. ANN. tit. 13, § 354(b) (West 2011).

¹⁶⁰ FLA. STAT. ANN. § 828.073(1)(a) (West 2011).

¹⁶¹ *Id.*

¹⁶² OHIO REV. CODE ANN. § 959.132(b) (West 2011).

¹⁶³ OHIO REV. CODE ANN. § 959.131 (West 2011).

¹⁶⁴ *Id.*

¹⁶⁵ VA. CODE ANN. § 3.2-6569 (West 2011).

¹⁶⁶ *Id.*

livestock,¹⁶⁷ and in New Hampshire, in order to seize livestock¹⁶⁸ a veterinarian must be present “who shall set the probable cause criteria for taking the animal or animals.”¹⁶⁹ In Nevada, no “member, agent or officer of a society for the prevention of cruelty to animals may enforce regulations (including the power to seize) from catteries or kennels.¹⁷⁰ Additionally, they may not seize any animal which is “located on land being employed for an agricultural use” unless the impoundment takes place with the concurrence and supervision of the sheriff or the sheriff’s designee, a licensed veterinarian, and the district brand inspector or the district brand inspector’s designee.¹⁷¹

Other states put further limitations on the type of animals that may be seized by humane society officers. In both Pennsylvania and New York, the power to seize is limited to fighting animals. In Pennsylvania, any “agent of a society or association for the prevention of cruelty to animals incorporated under the laws of this Commonwealth, shall have power to seize any animal kept, used, or intended to be used for animal fighting.”¹⁷² And in New Jersey, a

humane law enforcement officer of the New Jersey Society for the Prevention of Cruelty to Animals or of a county society for the prevention of cruelty to animals, may enter any building or place where there is an exhibition of the fighting or baiting of a living animal or creature, where preparations are being made for such an exhibition, or where a violation otherwise of R.S. 4:22-24 is occurring, arrest without warrant all persons there present, and take possession of all living animals or creatures engaged in fighting . . .¹⁷³

In some states, the power to seize animals is incidental to the arrest of the perpetrator. In Michigan, for example, it “shall be the duty of the person making the arrest to seize all animals and fowls found in the keeping or custody of the person arrested.”¹⁷⁴ Those persons making the arrest could include humane society officers, who after their appointment are given “all the powers of a sheriff of the county.”¹⁷⁵ In Rhode Island, “the person making an arrest, with or without a warrant . . . shall properly

¹⁶⁷ TENN. CODE ANN. § 39-14-210(f) (West 2011).

¹⁶⁸ N.H. REV. STAT. ANN. § 427:38(III) (2011) (“‘Livestock’ shall mean all cattle, goats, sheep, swine, horses or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, yaks, elk, fallow deer, red deer, reindeer” (species names omitted)).

¹⁶⁹ N.H. REV. STAT. ANN. § 644:8(IV)(a) (2011).

¹⁷⁰ NEV. REV. STAT. § 574.350 (2011).

¹⁷¹ NEV. REV. STAT. § 574.055 (2011).

¹⁷² 18 PA. CONS. STAT. § 5511(j) (2011).

¹⁷³ N.J. STAT. ANN. § 4:22-47 (West 2011).

¹⁷⁴ MICH. COMP. LAWS ANN. § 750.53 (West 2011).

¹⁷⁵ MICH. COMP. LAWS ANN. § 750.55 (West 2011).

care and provide for those animals until the owner shall take charge of them.”¹⁷⁶

C. Examples of Other Authority

While the power to arrest and the right to seize property are the most commonly authorized powers in states that delegate authority to humane societies, there are several other law enforcement powers authorized around the country. They include the power to euthanize seized animals without due process, the criminalization of resistance to their authority, the right to collect fines paid by animal cruelty defendants, the ability to carry firearms, and the right to display humane society badges. The following are some examples of the states in which these powers have been delegated.

1. Euthanasia Without Due Process

In Florida, after an animal has been impounded, if it appears “so injured or diseased as to appear useless and is suffering,” and it “reasonably appears to an officer that such animal is imminently near death or cannot be cured or rendered fit for service,”¹⁷⁷ the officer (including an officer or agent of any society or association for the prevention of cruelty to animals)¹⁷⁸ has certain responsibilities. First, she must make a “reasonable and concerted, but unsuccessful, effort to locate the owner, the owner's agent, or a veterinarian.”¹⁷⁹ If unable to do so, the officer, “acting in good faith and upon reasonable belief, may immediately destroy”¹⁸⁰ the creature, without a court order.¹⁸¹ Further, an officer who does so while “acting in good faith and with due care” may not be held criminally or civilly liable.¹⁸² Similarly, in Nevada, an officer who seizes an animal “is not liable for any action arising out of the taking or humane destruction of the animal.”¹⁸³ And in New Jersey, a person seizing an animal “may destroy it before it is adjudged forfeited if the animal or

¹⁷⁶ R.I. GEN. LAWS § 4-1-18 (2011).

¹⁷⁷ FLA. STAT. ANN. § 828.05(3) (West 2011).

¹⁷⁸ FLA. STAT. ANN. § 828.05(2)(c) (West 2011).

¹⁷⁹ FLA. STAT. ANN. § 828.05(3) (West 2011).

¹⁸⁰ *Id.*

¹⁸¹ FLA. STAT. ANN. § 828.05(5) (West 2011).

¹⁸² FLA. STAT. ANN. § 828.05(4) (West 2011).

¹⁸³ NEV. REV. STAT. ANN. § 574.055 (2011).

creature is thought to be beyond reasonable hope of recovery.”¹⁸⁴ Again, the person destroying the animal “shall not be liable . . . to the owner.”¹⁸⁵

2. *Criminalizing Resistance*

Other states make it a crime to resist the law enforcement authority of humane society officers. An example of that is found in California, where the law provides that “[a]ny person resisting a humane officer in the performance of his or her duty as provided in this section is guilty of a misdemeanor.”¹⁸⁶ In Connecticut, “any person who interferes with or obstructs or resists any such officer or agent in the discharge of his duty shall be fined not more than fifty dollars or imprisoned not more than thirty days.”¹⁸⁷ The penalty is a little higher in Massachusetts, where the maximum sentence is set at one hundred dollars or imprisonment for up to two months for anyone who “prevents, obstructs or interferes with any such agent in the performance of such duties.”¹⁸⁸ Other examples are found in New York,¹⁸⁹ Tennessee,¹⁹⁰ and Vermont.¹⁹¹ Still other states punish those who resist “in the same manner as is provided for the punishment of resistance to other officers.”¹⁹²

3. *Collection of Fines*

In some states, humane societies collect all or a portion of the fines paid by animal cruelty offenders. For example, humane societies in Washington, D.C.¹⁹³ and Louisiana¹⁹⁴ are entitled to half of all fines collected, while Tennessee societies receive the entire amount.¹⁹⁵ In Delaware, South Carolina, and Rhode Island, humane societies have a vested interest in becoming involved with cruelty investigations, as they do not receive any of the money if they are not. If they are responsible for making the complaint,¹⁹⁶ “aiding in”¹⁹⁷ or “instituting and conduct-

¹⁸⁴ N.J. STAT. ANN. § 4:22-48.1(b) (West 2011).

¹⁸⁵ *Id.*

¹⁸⁶ CAL. CORP. CODE § 14502 (West 2011).

¹⁸⁷ CONN. GEN. STAT. § 29-108c (2011).

¹⁸⁸ MASS. GEN. LAWS ANN. ch. 129, § 9 (West 2011).

¹⁸⁹ N.Y. AGRIC. & MKTS. LAW § 369 (McKinney 2011).

¹⁹⁰ TENN. CODE ANN. § 39-14-210 (West 2011).

¹⁹¹ VT. STAT. ANN. tit. 13, § 354 (West 2011).

¹⁹² NEV. REV. STAT. § 574.040 (2011); *see also* R.I. GEN. LAWS § 4-1-21 (2011).

¹⁹³ D.C. CODE § 44-1506 (2011).

¹⁹⁴ LA. REV. STAT. ANN. § 3:2393 (2011).

¹⁹⁵ TENN. CODE ANN. § 39-14-210 (West 2011).

¹⁹⁶ R.I. GEN. LAWS § 4-1-20 (2011).

¹⁹⁷ S.C. CODE ANN. § 47-1-160 (2011).

ing”¹⁹⁸ the prosecution, they earn between fifty and one hundred percent of the proceeds. In New Jersey, “all fines, penalties and moneys imposed and collected”¹⁹⁹ are given to the county society for the prevention of cruelty to animals or to the New Jersey Society for the Prevention of Cruelty to Animals, depending on the agency involved in the investigation.²⁰⁰ The fines are to be used “in aid of the benevolent objects for which [the society] was incorporated.”²⁰¹ For one New Jersey county society, that meant spending \$19,247 on the purchase of ammunition over a six year period.²⁰²

4. Ability to Carry Weapons

“Perhaps the most disturbing area of unbridled authority bestowed upon SPCAs is the ability of their officers to carry firearms without being subject to governmental oversight of most of the stringent requirements governing legitimate law enforcement officers.”²⁰³ This was one of the issues with humane society powers that New Jersey addressed since the report was released.²⁰⁴ However, humane law enforcement officers that have been commissioned by the Superintendent of State Police and complete a firearms training course are still allowed to “possess, carry, or use a firearm while enforcing any law or ordinance for the protection of animals.”²⁰⁵ In New York, humane society officers’ status as “peace officers” gives them the ability to apply and be approved for a concealed weapons permit.²⁰⁶ On the west coast, in California, humane officers are divided into “level 1” and “level 2” officers, depending on their training.²⁰⁷ While level 2 officers may not carry firearms; level 1 officers who have completed the firearms training outlined in the code are “authorized to carry firearms while exercising the duties of a humane officer.”²⁰⁸ Pennsylvania allows humane society police officers to take part in a firearms program determined to be “of sufficient scope and du-

¹⁹⁸ DEL. CODE ANN. tit. 3, § 7903 (West 2011).

¹⁹⁹ N.J. STAT. ANN. 4:22-55 (West 2011).

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 51.

²⁰³ STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 9.

²⁰⁴ For more information on the changes made to the New Jersey system since the investigative report was released, *see generally* Gerofsky v. Passaic County Soc’y for Prevention of Cruelty to Animals, 376 N.J.Super. 405 (N.J. Super. Ct. App. Div. 2005).

²⁰⁵ N.J. STAT. ANN. 4:22-11.1 (West 2011).

²⁰⁶ N.Y. PENAL LAW § 400.00 (McKinney 2011).

²⁰⁷ CAL. CORP. CODE § 14502(i) (West 2011).

²⁰⁸ CAL. CORP. CODE § 14502(c) (West 2011).

ration as to provide the participant with basic training in the use and handling of firearms.”²⁰⁹ Once they do so, they may “carry, possess or use a firearm” in the performance of their duties.²¹⁰

Rhode Island allows the “general agent of the Rhode Island society for the prevention of cruelty to animals and any number of special agents as may be appointed by that society” to “possess and carry pistols”²¹¹ for the purpose of carrying out their duties. In and of itself, this is not a unique statute. As discussed above, several states have similar provisions.²¹² However, Rhode Island also includes a provision stating that section 11-47-5 of the Rhode Island General Laws do not apply to humane society agents.²¹³ Section 11-47-5 prevents individuals who have been convicted of violent crimes from “purchas[ing], own[ing], carry[ing], transport[ing], or hav[ing] in his or her possession any firearm.”²¹⁴ It also stops convicted felons from purchasing, owning, carrying, transporting or possessing any firearms for two years after the conviction.²¹⁵ Furthermore, that section prevents criminals who are on parole and subject to electronic surveillance or monitoring devices from owning, carrying, transporting or possessing firearms.²¹⁶ In other words, it prevents all of these criminals, and former criminals, from owning, carrying, transporting or possessing firearms; unless those criminals happen to be the “general agent of the Rhode Island society for the prevention of cruelty to animals” or “any number of special agents as may be appointed by that society.”²¹⁷

5. *Carrying a Badge*

The last law enforcement power that is given to humane society officers in some states is the ability to carry a badge. In many states and on the federal level, the ability of non-law enforcement personnel to wear law-enforcement-style badges is limited by “false personation” statutes.²¹⁸ These are meant to curtail those individuals, like former Humane Society of the United States’ Director of Emergency Services who, when

²⁰⁹ 22 PA. STAT. ANN. § 3711 (West 2011).

²¹⁰ *Id.*

²¹¹ R.I. GEN. LAWS § 4-1-21 (2011).

²¹² N.J. STAT. ANN. 4:22-11.1 (West 2011); N.Y. PENAL LAW § 400.00 (McKinney 2011); CAL. CORP. CODE § 14502(i) (West 2011); 22 PA. STAT. ANN. § 3711 (West 2011).

²¹³ R.I. GEN. LAWS § 4-1-21 (2011).

²¹⁴ R.I. GEN. LAWS § 11-47-5(a) (2011).

²¹⁵ R.I. GEN. LAWS § 11-47-5(b) (2011).

²¹⁶ R.I. GEN. LAWS § 11-47-5(c) (2011).

²¹⁷ R.I. GEN. LAWS § 4-1-21 (2011).

²¹⁸ *See generally* 35 C.J.S. *False Personation* § 1 (2011).

questioned about wearing a law-enforcement-style badge, allegedly said, “I want the scum to think we’re law enforcement.”²¹⁹

However, some states actually require that humane society officers wear badges. For example, in Pennsylvania, “[e]very individual appointed as a humane society police officer . . . shall possess a metallic shield with the words ‘humane society police officer’ and the name of the society or association for which the individual is appointed displayed thereon.”²²⁰ And in Connecticut, when humane society officers are performing their duties, they are required to carry a badge or certificate issued by the society and to display it when requested.²²¹ Similarly, California requires that every humane officer, when making an arrest, “exhibit and expose a suitable badge” that has been adopted by the society of which they are a part, including the society’s name and number.”²²² Further, “uniforms worn by humane officers shall prominently display the name of the appointing society [and] uniforms shall not display the words “state” or “California,” except to the extent that one or both of those words are part of the appointing society’s incorporated name.”²²³

V. AN OVERVIEW OF LEGAL LIABILITY CONCERNS

Every American is familiar with the stories of posses being formed to assist in the apprehension of cattle rustlers and horse thieves, but has the American legal system evolved since the days of the Wild West? When looking at many states’ enforcement of animal welfare, the answer is no. The same laws provide non-law enforcement members of humane societies the same power as in the late 1800s. However, in today’s more professionalized society, what liability concerns may arise by delegating such authority to non-law enforcement personnel? May the states be held responsible for the action of these individuals? Or is it the humane society that bears the responsibility? Or does responsibility lie with the individual alone? And what impact, if any, do training requirements have on this liability? A few state legislatures have attempted to answer these questions, and there is limited case law on these subjects; many situations depend on the unique facts and the statutory text of the state where the incident occurs.

²¹⁹ Podcast: The Carroll Cox Show (Oct 18, 2009), <http://carrollcox.com/show/101809.htm> (see statement of Ronnie Graves, <http://carrollcox.com/HSUSbadge.htm>).

²²⁰ 22 PA. STAT. ANN. § 3708 (West 2011).

²²¹ CONN. GEN. STAT. § 29-108i (2011).

²²² CAL. CORP. CODE § 14502 (West 2011).

²²³ *Id.*

According to the New Jersey commission, “[t]he SPCAs are accountable to no governmental authority.”²²⁴ Even so, several state legislatures have attempted to limit the liability that may be faced by state governments as a result of granting law enforcement powers to non-law enforcement personnel. Seven states include some form of a disclaimer of legal liability (either a personal disclaimer or one meant to protect the state) as a result of the actions of law enforcement or members of humane societies.²²⁵ For example, in Michigan the “sheriff shall not be responsible for any of the acts of” the members of the humane society nominated by the society and designated as a deputy sheriff, “but the society, if incorporated, and if not, then the officers and members of the society, on the request of which such person was appointed, shall be liable in the degree of a principal for the acts of an agent.”²²⁶ In Nebraska, “[a]ny law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer’s negligence.”²²⁷ In South Dakota, “[n]o agent of the board, peace officer, or agent or officer of a humane society may be held liable as a result of reasonable actions taken pursuant to this chapter.”²²⁸

All the statutes except New Jersey’s also require that the individual is only entitled to this immunity so long as they are behaving reasonably or non-negligently.²²⁹ New Jersey currently employs a slightly different approach at limiting liability.²³⁰ Under New Jersey law, either those operating in a traditional law enforcement capacity or the New Jersey Society for the Prevention of Cruelty to Animals may exercise police power when dealing with suspected animal cruelty.²³¹ So long as only one group is involved in the action, under the statute, only that group is “liable for any civil damages as a result of any act or omission” that they may have committed.²³² The New Jersey statute may have been enacted as a result

²²⁴ STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 1.

²²⁵ ALA. CODE § 13A-11-243(b) (2011); MICH. COMP. LAWS ANN. § 750.55 (West 2011); NEB. REV. STAT. § 28-1012 (2011); N.J. STAT. ANN. 4:22-56 (West 2011); N.D. CENT. CODE § 36-21.1-14 (2011); OR. REV. STAT. ANN. § 167.345(3) (2011); S.D. CODIFIED LAWS § 40-1-31 (2011).

²²⁶ MICH. COMP. LAWS ANN. § 750.55 (West 2011).

²²⁷ NEB. REV. STAT. § 28-1012(5) (2011).

²²⁸ S.D. CODIFIED LAWS § 40-1-31 (2011).

²²⁹ ALA. CODE § 13A-11-243(b) (2011); MICH. COMP. LAWS ANN. § 750.55 (West 2011); NEB. REV. STAT. § 28-1012 (2011); N.J. STAT. ANN. 4:22-56 (West 2011); N.D. CENT. CODE § 36-21.1-14 (2011); OR. REV. STAT. ANN. § 167.345(3) (2011); S.D. CODIFIED LAWS § 40-1-31 (2011).

²³⁰ N.J. STAT. ANN. 4:22-56 (West 2011).

²³¹ N.J. STAT. ANN. 4:22-47 (West 2011).

²³² N.J. STAT. ANN. 4:22-56 (West 2011).

of the report explaining that “[b]ecause the SPCAs operate independently of all established law enforcement institutions and without any governmentally imposed regulations, those who control each separate society are free to define the scope of their authority and powers.”²³³

However, regardless of who determines the scope of their authority and powers, state governments may still be held responsible for their actions. The Supreme Court has held that “when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations.”²³⁴ This determination could make states vulnerable to claims under the Civil Rights Act of 1871 (42 U.S.C. § 1983)²³⁵ based solely on the actions of the humane society. To establish a claim under section 1983, the plaintiff must prove (1) that the conduct complained of “was committed by a person or persons acting under color of state law;” (2) that “this conduct deprived the plaintiff of rights . . . secured by the Constitution of the United States;” and (3) that this conduct was a proximate cause of the injuries and consequent damages sustained by the plaintiff.²³⁶

As the court in *Daskalea v. Washington Humane Society* explained, several courts, including the Ninth Circuit, have already

recognized that the Humane Society and its officers are state actors for the purposes of §1983. In reaching this conclusion, that court noted that the Humane Society was created by special California statute, and [that] it engages in a quasi-public function. . . . [T]he humane society employees in [the Ninth Circuit case] were invested with authority to investigate reports of animal cruelty, impound animals, place liens on property, and bring criminal charges against citizens.²³⁷

Other courts from around the country have also held humane societies to be “agents of the state,”²³⁸ or “state actor[s],”²³⁹ or an “arm of the

²³³ STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 12.

²³⁴ *Evans v. Newton*, 382 U.S. 296, 299 (1966).

²³⁵ *See* 42 U.S.C. §1983.

²³⁶ *Parratt v. Taylor*, 451 U.S. 527, 535 (1981).

²³⁷ *Daskalea v. Washington Humane Soc’y*, 480 F.Supp.2d 16, 27 (D.D.C. 2007) (quotes and citations omitted).

²³⁸ *Putnam County Humane Soc’y, Inc. v. Woodward*, 740 So.2d 1238, 1240 (Fla. App. 1999) (“Where the Society has used its statutory authority to investigate acts of animal abuse and has used this authority, further, to seize animals, it has acted as an agent of the state.”).

²³⁹ *Suss v. Am. Soc’y for Prevention of Cruelty to Animals*, 823 F.Supp. 181, 186 (S.D.N.Y. 1993) (“ASPCA, although a private entity, was a state actor in this situation”).

state”²⁴⁰ when engaging in law enforcement activities.²⁴¹ With the many findings that humane society actors are behaving as agents of the state, all it takes is for a member engaged in law enforcement activity to behave improperly (either out of malice or ignorance) and violate a constitutional right before the city, county, or state is subject to legal fees and expensive financial penalties.

But it is not only the state that should be concerned about lawsuits. “Because of their volunteer nature, the societies and those who conduct cruelty investigations expose themselves to tremendous liability should anyone be injured or sued in the course of conducting investigations.”²⁴² In fact, according to one court, “[j]oint interference of state agents and private parties with private rights constitutes state action attributable to both public and private sector participants.”²⁴³

In *Allen v. Pennsylvania Soc. for Prevention of Cruelty to Animals*, 488 F.Supp.2d 450 (M.D. Pa. 2007), the plaintiff, a farmer, argued that the state and county humane societies “failed to provide adequate training and supervision to their humane society police officers regarding how to investigate and prosecute offenses in a manner that does not violate the civil rights of a suspect.” After the societies moved for dismissal, the court held that the allegations were sufficient to support a claim against the humane societies under section 1983.²⁴⁴ Liability, as shown throughout this series of cases, can attach not only to the bad actor, but also to the humane society under which he operates and ultimately to the state that authorized him to carry out a law enforcement function.

However, the questions still remain as to whether proper training can reduce or eliminate the liability faced as a result of having private citizens behave as law enforcement based only on their affiliation with the humane society. The New Jersey Commission believes it is part of the problem, that it is “the lack of proper training that has made some societies reluctant to enforce the laws aggressively out of fear of liability and

²⁴⁰ *Mesgleski v. Oraboni*, 330 N.J.Super. 10, 19 (2000) (for purposes of immunity, “[b]ecause the SPCA has the responsibility to enforce laws under State statutory authorization, it acts as an arm of the State”).

²⁴¹ See also *Brunette v. Humane Society of Ventura County*, 294 F.3d 1205, 1208 (9th Cir. 2002) (the Humane Society and its officers are state actors for the purposes of § 1983). But see *Fabrikant v. French*, 328 F.Supp.2d 303 (N.D.N.Y. 2004) *vacated sub nom.* *Schindler v. French*, 232 Fed.Appx. 17 (2d Cir. 2007).

²⁴² STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 44.

²⁴³ *Suss v. Am. Soc’y for Prevention of Cruelty to Animals*, 823 F.Supp. 181, 186 (S.D.N.Y. 1993).

²⁴⁴ *Allen v. Pennsylvania Soc’y for Prevention of Cruelty to Animals*, 488 F.Supp.2d 450, 463 (M.D.Pa. 2007).

others reckless in enforcing them.”²⁴⁵ Further, because “the SPCAs fall outside of the structured law enforcement system, the only training their officers and agents receive is that which the governing individuals decide to provide. Generally, the training is either nonexistent or informal and on-the-job. There is no professional legal training on arrest and search and seizure procedures or on the advising of Miranda rights.”²⁴⁶

There have been only a few cases addressing liability for the failure to train agents. The first one, *Allen*, was discussed earlier. It addressed the potential liability of the humane society and held that an allegation of a failure to train the field agents was sufficient to maintain the case against that society. However, the court did not hold that training would completely eliminate liability on the part of the society, nor did it discuss whether liability would still attach to the state based on the actions of the humane society officers.²⁴⁷

In 1989, the United States Supreme Court considered whether a city could be held liable under section 1983 for inadequate training of its employees. They held that liability could indeed attach.²⁴⁸ In fact, the standard they set for when “inadequacy of police training may serve as the basis for §1983 liability” was “where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact.”²⁴⁹ “Only where a municipality's failure to train its employees in a relevant respect evidences a ‘deliberate indifference’ to the rights of its inhabitants can such a shortcoming be properly thought of as a city ‘policy or custom’ that is actionable under § 1983.”²⁵⁰ So now the question remains – what constitutes a “deliberate indifference” to citizen’s rights? Is it shown by giving arrest power to private citizens with no training? Or letting them carry guns in the furtherance of their law enforcement powers? Or letting them seize (and in some cases, destroy) private property, either with or without a warrant? The answer to those questions may not be obvious yet, but it probably will not take another hundred years before it becomes perfectly clear.

While there is no doubt that many of the men and women working for humane societies across the country care deeply about the animals they protect, the possibilities for misuse, corruption, and legal liability are very dangerous and very real. There is no better way to end this article

²⁴⁵ STATE OF N.J. COMM’N OF INVESTIGATION, *supra* note 15, at 15.

²⁴⁶ *Id.*

²⁴⁷ *Allen*, 488 F.Supp.2d at 463.

²⁴⁸ *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1989).

²⁴⁹ *Id.*

²⁵⁰ *Id.*

than with a final quote, and a question, from the New Jersey Commission of Investigation:

Today, the SPCAs represent a rudimentary system that has not kept pace with the state's advancements in law enforcement or its interest in the welfare of animals. Against the backdrop of a highly stratified and professional law enforcement system, it is an anomaly that the state continues to empower organizations of private citizens to carry weapons, investigate criminal and civil conduct, enforce laws, issue summonses, effect arrests and obtain and execute search warrants. The issue is no longer whether or how to fix this errant group of self-appointed, self-directed and uncontrolled entities, but whether to eliminate the archaic system entirely.²⁵¹

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²⁵¹ STATE OF N.J. COMM'N OF INVESTIGATION, *supra* note 15, at at 1.