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## Keeping Lions, Tigers, and Bears (Oh My!) In Check: The State of Exotic Pet Regulation in the Wake of the Zanesville, Ohio Massacre

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2013]

KEEPING LIONS, TIGERS, AND BEARS (OH MY!) IN CHECK:  
THE STATE OF EXOTIC PET REGULATION IN THE  
WAKE OF THE ZANESVILLE, OHIO MASSACRE

“Tragedy-wise for me . . . it’s probably the worst thing in 45 years of history of working with animals.”<sup>1</sup> This is how wildlife expert, zookeeper and well-known television show host Jack Hanna described the unfortunate scene in Zanesville, Ohio, after Terry Thompson released fifty-six of his own exotic animals into the wild before committing suicide on October 18, 2011.<sup>2</sup> The fifty-six “pets” included lions, leopards, wolves, tigers, primates and bears.<sup>3</sup> All but six of the animals were killed after local police were forced to take extreme measures to prevent the animals from harming the public.<sup>4</sup> One monkey, believed to have been eaten by one of the big cats, was unaccounted for after the chaos and could be carrying a virus that is potentially fatal to humans.<sup>5</sup> Mr. Thompson, released from federal prison just three weeks prior to the massacre, held all of the necessary permits under Ohio law to harbor the animals.<sup>6</sup>

Although it is difficult to determine the precise number of exotic animals privately held in the United States, The Wild Animal

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1. Ben Forer, *Jack Hanna on Zanesville, Ohio, Animals: ‘We Would Have Had Carnage’*, ABC NEWS (Oct. 19, 2011, 7:00 PM), <http://abcnews.go.com/blogs/headlines/2011/10/jack-hanna-on-zanesville-ohio-animals-we-would-have-had-carnage/> (describing reaction to scene in Zanesville, Ohio).

2. *See id.* (recounting number of animals slaughtered). Hanna added, “I’m sorry to say, but what the sheriff did had to be done. Otherwise, we would have had carnage out here in Zanesville, Ohio.” *Id.* For a further discussion of the animals involved in this incident, see *infra* note 3 and accompanying text.

3. *See* Jo Ingles, *Ohio governor takes steps on exotic animals*, REUTERS (Oct. 21, 2011, 5:39 PM), <http://www.reuters.com/article/2011/10/21/us-usa-animals-loose-idUSTRE79K6NU20111021> (discussing types of animals killed in Zanesville).

4. *See id.* (detailing police response).

5. *See Sheriff: All Exotic Animals Accounted for After Farm Mayhem*, NBC NEWS (Oct. 19, 2011, 9:39 PM), [http://today.msnbc.msn.com/id/44964272/ns/today-today\\_news/t/sheriff-all-exotic-animals-accounted-after-farm-mayhem/#.TyWeI1zeDKE](http://today.msnbc.msn.com/id/44964272/ns/today-today_news/t/sheriff-all-exotic-animals-accounted-after-farm-mayhem/#.TyWeI1zeDKE) (citing one animal not accounted for after incident).

6. *See* Greg Bishop & Timothy Williams, *Police Kill Dozens of Animals Freed on Ohio Reserve*, N.Y. TIMES, Oct. 19, 2011, at 2, available at <http://www.nytimes.com/2011/10/20/us/police-kill-dozens-of-animals-freed-from-ohio-preserve.html?page-wanted=1&r=1> (detailing reasons for Mr. Thompson’s previous incarceration). Thompson was questioned dozens of times regarding whether his animals were fed regularly and kept in healthy conditions. *Id.* “[He also] pleaded guilty to federal charges in April 2010 of possessing eight illegal firearms — five automatic weapons and three short-barreled guns whose serial numbers had been filed off, according to court documents.” *Id.* Thompson was also believed to have been illegally selling weapons. *Id.*

Sanctuary estimates roughly thirty thousand large exotic animals live in captivity outside the confines of organized zoos.<sup>7</sup> This number includes approximately ten to fifteen thousand big cats.<sup>8</sup> With such staggering ownership levels, exotic pet regulations are of the utmost importance in order to safely manage the welfare of the owners, the general public and the animals.<sup>9</sup>

Regulations regarding the ownership of exotic pets exist for three main reasons.<sup>10</sup> First, human safety concerns are paramount.<sup>11</sup> Most exotic pet regulations are designed to protect the public against the possibility that animals will escape enclosures, endangering innocent citizens.<sup>12</sup> Regulations are also intended to protect the pet owners themselves.<sup>13</sup> With these interests in mind, policymakers often regulate against big cats, bears, wolves, and other notoriously dangerous animals.<sup>14</sup>

Public health concerns are the second main reason for regulation.<sup>15</sup> Some wild animals carry diseases that are only transmitted to the public through human-animal contact.<sup>16</sup> Legislators hope to limit the transmission of these diseases by regulating the types of animals citizens may own.<sup>17</sup> Rodents, reptiles, monkeys and other animals that frequently transmit diseases are of particular concern.<sup>18</sup> Finally, when drafting regulations, lawmakers may consider

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7. See *Major Programs*, THE WILD ANIMAL SANCTUARY, <http://www.wildanimal-sanctuary.org/aboutus/majorprograms.html> (last visited Sept. 25, 2012) (estimating number of exotic pets in United States).

8. See *id.* (estimating number of big cats privately owned in United States).

9. See *Three Reasons for Banning the Private Possession of Exotic Animals*, BORN FREE USA, <http://www.bornfreeusa.org/facts.php?p=438&more=1> (last visited Sept. 25, 2012) (citing reasons why exotic pet regulation is important).

10. See *id.* (listing public health, safety, and animal welfare as reasons for exotic pet regulation).

11. For a discussion of human safety concerns, see *infra* notes 48-61 and accompanying text.

12. See, e.g., Criteria for the possession of potentially dangerous species, N.J. ADMIN. CODE § 7:25-4.9 (2006) (mandating proper housing facilities to protect public from dangerous animals).

13. See *id.* (describing functional knowledge required to possess exotic animals).

14. See *id.* § 7:25-4.8 (differentiating between classes of dangerous animals). For a further discussion of human safety concerns, see *infra* notes 48-61 and accompanying text.

15. For a discussion of public health concerns, see *infra* notes 62-79 and accompanying text.

16. See, e.g., MICH. COMP. LAWS ANN. § 287.731 (West 2012) (noting potential spread of zoonotic disease motivated regulation).

17. See *id.* (describing limitations imposed to prevent spreading infectious disease).

18. See, e.g., N.J. ADMIN. CODE § 7:25-4.8 (2006) (prohibiting keeping as pets certain species of rodents, reptiles, and monkeys).

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the well-being of the animals.<sup>19</sup> Exotic pet owners are not always financially and educationally prepared to properly care for their exotic pets, which can negatively impact the animals' health and welfare.<sup>20</sup>

No single federal law exists that explicitly regulates the private ownership of exotic animals.<sup>21</sup> The federal government does not have general police powers under the Constitution; consequently, any regulations regarding animals are often tied to either the Commerce or Foreign Powers Clause.<sup>22</sup> The Animal Welfare Act regulates, in part, the possession of warm-blooded animals for exhibition and breeding purposes.<sup>23</sup> The Captive Wildlife Safety Act, passed in 2007, amended the Lacey Act and made it illegal to move certain big cats across state lines.<sup>24</sup> Additionally, in some situations, the Endangered Species Act prevents owners from introducing (or releasing) their pets into the wild.<sup>25</sup>

States, in their sovereign capacity, however, do have general police powers.<sup>26</sup> As such, the issue of keeping exotic pets has primarily been left to the states to regulate and enforce.<sup>27</sup> Surveying laws across the country uncovers vast inconsistencies and discrepancies between the states, though some similarities do exist.<sup>28</sup>

There are three varying degrees of regulation that states impose.<sup>29</sup> Twenty-one states, including Colorado and Connecticut,

19. See, e.g., FLA. ADMIN. CODE ANN. r. 68A-6.0022 (2006) (factoring animal well-being into permit granting process).

20. See *id.* (conditioning permit on caged exotic animals' future well-being). For a complete discussion on animal welfare concerns, see *infra* notes 80-96 and accompanying text.

21. For a discussion of federal exotic pet regulation, see *infra* notes 97-115 and accompanying text.

22. See generally, U.S. CONST. amend. X (reserving non-delegated powers to states); see also *United States v. Lopez*, 514 U.S. 549, 552, 567-68 (1995) (reinforcing limitations on federal government's powers).

23. See Animal Welfare Act, 7 U.S.C.A. § 2131 (West 2007) (describing Act's congressional intent).

24. See Captive Wildlife Safety Act, 50 C.F.R. § 14.252 (2007) (listing species Act prohibits trafficking). Included are lions, tigers, leopards, snow leopards, clouded leopards, jaguars, cheetahs, cougars, or any hybrids of the aforementioned species. *Id.*

25. See Endangered Species Act, 16 U.S.C.A. § 1538 (West 2012) (describing Act's general prohibitions).

26. See generally, *Lopez*, 514 U.S. at 552, 567-68 (affirming limitations of federal government's powers).

27. See generally, U.S. CONST. amend. X (reserving non-delegated powers to States).

28. For a comparative analysis of state exotic animal regulations, see *infra* notes 116-154 and accompanying text.

29. For a discussion of the three types of state exotic animal regulations, see *infra* notes 116-154 and accompanying text.

completely ban private ownership of most big cats, wolves, bears, venomous reptiles, and primates.<sup>30</sup> Nine states, including Florida, ban ownership of some of these animals.<sup>31</sup> Thirteen states, including Pennsylvania, have devised a permit or licensing scheme for animals the state deems sufficiently safe.<sup>32</sup> Finally, seven states, including Nevada, have no license or permit system, but may require the owner comply with some sort of regulation.<sup>33</sup> In states that do regulate exotic animal ownership, the statutory language varies and may describe the regulated animal as exotic, dangerous, inherently dangerous, potentially dangerous, wild, non-native, or undomesticated.<sup>34</sup>

The punishment for violating these statutes also varies between states and may include fines, confiscation of the animal, and incarceration.<sup>35</sup> In some situations the animal may even be euthanized.<sup>36</sup> As with most controversial statutes, exotic pet dealers and owners are free to challenge a state's ability to regulate.<sup>37</sup> The most common challenge is to argue the pet is not dangerous or does not fit under the scope of the state statute.<sup>38</sup> Owners may claim the pet is not a threat to the public health, safety, and general

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30. See *Summary of State Laws Relating to the Private Possession of Exotic Animals*, BORN FREE USA (June 2011) [http://www.bornfreeusa.org/downloads/pdf/State-LawMaps\\_EXOTICS.pdf](http://www.bornfreeusa.org/downloads/pdf/State-LawMaps_EXOTICS.pdf) (surveying animal laws state by state).

31. See *id.* (noting states that partially ban exotic pet ownership).

32. See *id.* (listing states utilizing permit or licensing systems to regulate exotic pet ownership).

33. See *id.* (documenting states without ban or licensing scheme for exotic pet regulation).

34. See, e.g., N.J. ADMIN. CODE § 7:25-4.8 (2006) (describing prohibited exotic pets as "potentially dangerous species").

35. See, e.g., 34 PA. CONS. STAT. ANN. § 2963 (1986) (describing potential penalties for violating Pennsylvania's exotic pet regulations).

36. See *id.* (noting "disposal" of exotic wildlife as potential penalty for violation of Pennsylvania's exotic pet regulations).

37. See *Summit Cnty. Bd. of Health v. Pearson*, 809 N.E.2d 80, 84 (Ohio Ct. App. 2004) (holding property was public health nuisance because of landowner's exotic pets). The Board of Health in Ohio found that there was:

Feces and urine observed in cages and large buckets around cages. Blood accumulation was observed on ground around butchering area. Animal bones in various stages of decomposition observed on ground around property and in animal cages. Numerous animals housed on property including lions, tigers, bears, foxes, pigeons, alligator, and dogs. Odor was excessive.

*Id.* at 82.

38. See *Flikshtein v. City of New York*, 710 N.Y.S.2d 112, 113 (N.Y. App. Div. 2d Dep't 2000) (upholding state confiscation of monkey over owner's claim monkey was not dangerous). The court stated that New York law does not allow ownership of a pet monkey, so it was inconsequential the monkey was not dangerous. *Id.*

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welfare of the state.<sup>39</sup> Additionally, some pet owners have challenged the legality of the statute itself by employing a preemption, Commerce Clause, Takings, or Equal Protection Clause argument.<sup>40</sup>

Part I of this Comment discusses why states and the federal government regulate the private ownership of exotic animals.<sup>41</sup> Part II outlines relevant statutes already in place at the federal level.<sup>42</sup> Part III details different types of regulations that states have promulgated to control exotic pet ownership.<sup>43</sup> Part IV examines how these regulations are enforced by the government and challenged by exotic pet owners.<sup>44</sup> Finally, Part V proposes possible solutions that both states and the federal government can utilize to better regulate exotic pet ownership.<sup>45</sup>

## I. REASONS FOR REGULATION

Because of the complexities inherent in owning what are normally wild animals, several major concerns exist for regulating exotic animal ownership.<sup>46</sup> Of all the reasons for regulating exotic animal ownership, human safety, public health, and animal welfare are of particular concern.<sup>47</sup>

### A. Human Safety

The private ownership of exotic animals can present a real physical threat to owners, neighbors, and the surrounding commu-

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39. See *Wright v. Fish and Game Comm'n*, No. D040685, 2003 Cal. App. LEXIS 8091, at \*13, \*18 (Cal. Ct. App. Aug. 26, 2003) (holding ferrets sufficiently dangerous to ban ownership).

40. See *DeHart v. Town of Austin*, 39 F.3d 718, 721 (7th Cir. 1994) (holding Animal Welfare Act does not preempt state law).

41. For a discussion of reasons for exotic pet regulation, see *infra* notes 48-96 and accompanying text.

42. For a discussion of federal exotic pet regulation, see *infra* notes 97-115 and accompanying text.

43. For a discussion of state exotic pet regulation, see *infra* notes 116-154 and accompanying text.

44. For a discussion regarding exotic pet regulation enforcement and challenges thereto, see *infra* notes 155-182 and accompanying text.

45. For a discussion of suggestions and solutions for exotic pet regulation, see *infra* notes 183-207 and accompanying text.

46. For a general overview of the complexities involved in owning exotic animals, see *supra* notes 10-20 and accompanying text.

47. For a discussion regarding the human safety, public health, and animal welfare concerns involved in owning exotic animals, see *infra* notes 48-96 and accompanying text.

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nity.<sup>48</sup> Escapes and attacks happen more frequently than the public is aware, but they are often far smaller in scale and do not receive the type of national attention garnered in Zanesville.<sup>49</sup> Between 1990 and 2012, seventy-seven people in the United States died after confined exotic animals attacked caretakers, owners, or innocent bystanders.<sup>50</sup>

On June 14, 2011, a woman died in a New York suburb after being bitten by a black mamba - one of the deadliest snakes in the world, and a snake she chose to keep as a pet in her own home.<sup>51</sup> According to National Geographic, the black mamba is one of the fastest and most deadly species of snake in the world.<sup>52</sup> Police recovered seventy-five snakes from the New York woman's home.<sup>53</sup> Fifty-six of these snakes, including a cobra and the black mamba, were poisonous.<sup>54</sup> The United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) is responsible for enforcing the Animal Welfare Act by inspecting and regulating exhibitors of wild animals.<sup>55</sup> APHIS stresses that the average person does not have the knowledge or experience to handle exotic animals safely at home or in public.<sup>56</sup>

In contrast to the positions APHIS takes, Responsible Exotic Animal Ownership (REXANO), a non-profit organization supporting private ownership of exotic animals in the United States, claims

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48. See generally *Exotic Animal Incidents*, BORN FREE USA, [www.bornfreeusa.org/database/exo\\_incidents.php](http://www.bornfreeusa.org/database/exo_incidents.php) (last updated Oct. 2, 2012) (documenting exotic animal attacks throughout United States).

49. See *id.* (noting 1,807 reported exotic animal attacks in America since 1990).

50. See *id.* (illustrating potential lethality of exotic animal attacks).

51. See Lou Young, *Putnam Lake Woman Killed by Pet Snake Bite; Friends Perplexed*, CBS NEW YORK (June 16, 2011, 8:50 PM), <http://newyork.cbslocal.com/2011/06/16/aleta-stacey-of-putnam-lake-apparently-killed-by-bite-from-pet-snake/> (discussing incident in New York where woman was killed by her own pet snake).

52. See *Black Mamba*, NATIONAL GEOGRAPHIC, <http://animals.nationalgeographic.com/animals/reptiles/black-mamba/> (last visited Dec. 15, 2012) (describing traits inherent in wild black mamba snakes).

53. See Young, *supra* note 51 (discussing other types of snakes recovered at scene).

54. See *id.* (accounting for variety of woman's pet snakes). It was unclear from the investigation how or why the snake escaped, and whether or not the death was accidental. *Id.*

55. See *Large Wild and Exotic Cats Make Dangerous Pets*, UNITED STATES DEP'T OF AGRIC. (Feb. 2000), [http://www.aphis.usda.gov/animal\\_welfare/downloads/big\\_cat/position.pdf](http://www.aphis.usda.gov/animal_welfare/downloads/big_cat/position.pdf) [hereinafter *Dangerous Pets*] (discussing Animal Welfare Act). See also *infra* notes 98-103 and accompanying text (explaining history of Animal Welfare Act and its provisions).

56. See *Dangerous Pets*, *supra* note 55 (documenting warnings APHIS gives to pet owners).

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private ownership of exotic animals is not a threat to the public.<sup>57</sup> According to REXANO, “[b]etween 2000-2010, there is no record of a member of the general public in the USA dying as a result of a captive bear, elephant, big cat, non-human primate, or killer whale at large, meaning, unsupervised and *off* the property where the animals were kept.”<sup>58</sup> REXANO notes most victims of exotic pet attacks are owners, caretakers, or others who have voluntarily assumed the risk that the animal may inflict bodily harm.<sup>59</sup>

What has become clear is that protecting the public against exotic animal incidents is a legitimate state interest and an area states are willing and able to regulate.<sup>60</sup> In the wake of the Zanesville incident, Virginia, Arizona, Missouri, West Virginia, Tennessee, Indiana, and Oklahoma are considering stricter exotic animal regulations.<sup>61</sup>

## B. Public Health

Any disease transferred from animals to humans is referred to as a zoonosis or zoonotic disease.<sup>62</sup> Although less vicious than a tiger attack, zoonotic diseases can affect a devastating amount of people and have lasting consequences on affected populations.<sup>63</sup> It is estimated that 75% of emerging diseases are zoonotic related.<sup>64</sup> National and global events involving West Nile virus (WNV), severe acute respiratory syndrome (SARS), and avian influenza (bird flu)

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57. See USA: *Large Captive Exotic & Wild Mammal Related Human Fatalities by the Type of Facility and Animal, 2000-2010*, REXANO, [http://www.rexano.org/Statistics/Captive\\_exotic\\_fatality.pdf](http://www.rexano.org/Statistics/Captive_exotic_fatality.pdf) (last visited October 29, 2012) (asserting between 2000 and 2010, private keeping of exotic animals presented no public danger).

58. *Id.* (emphasis in original) (quoting REXANO fatality study).

59. See *id.* (describing REXANO fatality study).

60. See generally Sue Manning, *Exotic Animal Law Review Ignited By Ohio Exotic Animal Stampede*, HUFFPOST GREEN (May 2, 2012, 5:38 PM), [http://www.huffingtonpost.com/2012/05/01/exotic-animal-laws-review\\_n\\_1466590.html](http://www.huffingtonpost.com/2012/05/01/exotic-animal-laws-review_n_1466590.html) (discussing effect of Zanesville attacks).

61. See *id.* (highlighting nationwide changes in exotic animal laws post Zanesville).

62. See Mira Leslie, Jo Hoffman & Jane Rooney, *Zoonotic Diseases and Exotic Pets: A Public Health Policy Analysis*, WASHINGTON STATE BD. OF HEALTH, 1 (Oct. 2004), available at [http://sboh.wa.gov/Pubs/docs/Zoonotics\\_ExoticPets.pdf](http://sboh.wa.gov/Pubs/docs/Zoonotics_ExoticPets.pdf) (discussing zoonotic diseases). Zoonotic diseases may also include diseases humans transfer to animals. *Id.*

63. See *id.* at 4-10, 26-27 (noting zoonotic diseases' drastic consequences on various United States populations).

64. See Bruno B. Chomel, Albino Belotto, & Francois-Xavier Meslin, *Wildlife, Exotic Pets, and Emerging Zoonoses*, 13 EMERGING INFECTIOUS DISEASES 6 (Jan. 2007), available at <http://wwwnc.cdc.gov/eid/article/13/1/pdfs/06-0480.pdf> (calling for coordinated response to emerging public health crises resulting from human exposure to zoonotic diseases).



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have recently brought zoonotic diseases to the public health forefront.<sup>65</sup> Exotic pets transmit zoonotic diseases that can have drastic effects on their owners and the public.<sup>66</sup>

Monkeys and other primates play a unique role in disease transmission because of their similar genetic makeup to humans.<sup>67</sup> For example, the macaque, a common breed of monkey traded in the United States, is one of the most common carriers of the Herpes-B virus.<sup>68</sup> This virus, although prognostically similar to the human herpes simplex virus while in a macaque, is extremely deadly when contracted by humans.<sup>69</sup> Police believe a missing monkey from the Zanesville, Ohio compound carried the Herpes-B virus.<sup>70</sup>

Monkeypox, a virus common to Central and East Africa, has a human mortality rate of 10% and causes rashes, high fevers, swollen lymph nodes, and other flu-like symptoms in those infected.<sup>71</sup> Although not native to North America, infected Gambian rats transported from Africa in 2003 introduced monkeypox to the United States.<sup>72</sup> The rodents subsequently passed the disease to prairie dogs sold in the same exotic pet trade.<sup>73</sup> The outbreak spread rapidly with seventy-two cases reported in six states between May and July, 2003.<sup>74</sup> Less severe illnesses are also problematic, such as ringworm infections linked to pet hedgehogs and chinchillas.<sup>75</sup>

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65. See Leslie et al., *supra* note 62 at 4-10, 26-27 (discussing recent global pandemics).

66. See *id.* at 4-10 (describing specific diseases common exotic pets can transfer to humans).

67. See *id.* at 8 (identifying diseases monkeys can transfer to humans).

68. See *id.* (noting frequency at which monkeys are purchased as pets).

69. See *id.* (describing how disease operates differently in humans than monkeys).

70. For a further discussion of the missing Zanesville monkey, see *supra* note 5 and accompanying text.

71. See Leslie et al., *supra* note 62 at 14-27 (discussing transmission of monkeypox from monkeys and other exotic pets to humans).

72. *Id.* at 6 (discussing introduction of monkeypox to United States). See also *Preliminary Report: Multistate Outbreak of Monkeypox in Persons Exposed to Pet Prairie Dogs*, CTNS. FOR DISEASE CONTROL AND PREVENTION, 1 (June 9, 2003), available at <http://www.cdc.gov/ncidod/monkeypox/pdf/report060903.pdf> [hereinafter "*Preliminary Report*"] (noting possible transmission of monkey pox to prairie dogs).

73. See Leslie et al., *supra* note 62, at 6 (explaining possible transmission of monkey pox through exotic pet trade); *Preliminary Report*, *supra* note 72, at 1 (offering possible solution for how monkeypox was transferred to humans).

74. See Leslie et al., *supra* note 62, at 6 (describing speed at which disease spread over several states).

75. See Bruno B. Chomel, Albino Belotto, and Francois-Xavier Meslin, *Wildlife, Exotic Pets, and Emerging Zoonoses*, 13 EMERGING INFECTIOUS DISEASES 1, 1-9 (Jan. 2007), available at <http://wwwnc.cdc.gov/eid/article/13/1/pdfs/06-0480.pdf>

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Finally, more common pets such as lizards, turtles, and snakes carry *Salmonella*, which is transferred to about 93,000 people each year.<sup>76</sup> Approximately 90% of all reptiles carry *Salmonella*.<sup>77</sup> Although symptoms in animals are not apparent, when contracted by humans – especially children and the immunocompromised – the disease causes severe abdominal pain, diarrhea, and even death.<sup>78</sup> A sixty-five person outbreak of *Salmonella* occurred at a Colorado zoo after the disease contaminated the wooden barrier of a Komodo dragon exhibit.<sup>79</sup>

## C. Animal Welfare

Although often overlooked, animal and environmental concerns remain one of the most important reasons to regulate exotic pet ownership.<sup>80</sup> Most critically, many owners are simply ill-equipped to properly care for exotic pets.<sup>81</sup> Monkeys, reptiles, birds, and wild cats travel many miles a day in the wild; life in a cage or a small house is not suitable for their innate needs.<sup>82</sup> As such, stress and agitated behaviors are not uncommon among exotic pets.<sup>83</sup> Furthermore, owners may not be financially able to take care of growing pets over the course of their lives.<sup>84</sup> Malnutrition and large veterinary costs may lead to the pets' illness, death, or euthanasia.<sup>85</sup>

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(describing wide range of public health repercussions resulting from human contact with exotic rodents).

76. See *Three Reasons for Banning the Private Possession of Exotic Animals*, *supra* note 9 (noting many reptiles carrying *Salmonella* exhibit no symptoms, making it difficult to identify infected animals).

77. See Amy B. Worell, *Potential Zoonotic Diseases in Exotic Pets*, 4 EXOTIC PET PRACTICE 57, 58 (Aug. 1999), available at [http://www.aemv.org/Documents/EPP\\_4-8.pdf](http://www.aemv.org/Documents/EPP_4-8.pdf) (describing prevalence of *Salmonella* in reptiles).

78. See *id.* (explaining common symptoms and effects of *Salmonella* when contracted by immunocompromised individuals).

79. See Chomel et. al, *supra* note 75 at 9-10 and accompanying text (describing exotic reptiles' impact on public health).

80. See *Exotic Animals as Pets*, ASPCA, <http://www.aspc.org/adoption/adoption-tips/exotic-animals.aspx> (last visited Sept. 26, 2012) (noting importance of animal welfare).

81. See *id.* (describing complex care exotic pets require).

82. See *id.* (illustrating why exotic animals should not be confined to cages or homes).

83. See *id.* (noting repercussions of caging or not properly exercising exotic animals).

84. See *id.* (stating financial costs associated with keeping many exotic animals).

85. See *Exotic Animals as Pets*, *supra* note 80 and accompanying text (noting consequences of incompetently keeping exotic pets).

On occasion, owners opt to release their exotic pets back into the wild when the owners realize they cannot continue caring for the animal.<sup>86</sup> Although the owners may be well-intentioned, releasing exotic pets into the wild can have unforeseen and incalculable environmental consequences which would not occur if their pets were euthanized or rehomed.<sup>87</sup> Since the mid-1990s, Burmese pythons, a nonnative and invasive species to South Florida, have caused an ecological nightmare for the Everglades National Park.<sup>88</sup>

Approximately 99,000 Burmese pythons were imported into the United States between 1996 and 2006, selling for as little as twenty dollars per hatchling.<sup>89</sup> In a few years, and unbeknownst to many of their new owners, the once-tiny snakes can grow up to twenty feet long.<sup>90</sup> Unable to house or care for the large snakes, many owners illegally released them into the Everglades.<sup>91</sup> Pythons, however, have few natural predators to temper their ecological impact, and so are relatively free to thrive and multiply throughout South Florida.<sup>92</sup> Current estimates place the number of pythons in the Everglades at anywhere from 5,000 to 180,000.<sup>93</sup>

In response to the continued python spread, Florida instituted pet amnesty programs allowing owners of snakes (and other exotic pets) to turn in animals for which they can no longer care without

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86. See Rebecca G. Harvey et al., *Burmese Pythons in South Florida: Scientific Support for Invasive Species Management*, UNIV. OF FLORIDA, 1 (May, 2008), available at <http://edis.ifas.ufl.edu/pdf/FILES/UW/UW28600.pdf> (discussing problems resulting from owners releasing exotic pets).

87. See *id.* (discussing environmental consequences of releasing pet snakes into Florida Everglades).

88. See *id.* (describing difference between nonnative and invasive species). Burmese pythons are a nonnative, or exotic, species to South Florida because they are native only to Southeast Asia. *Id.* Further, they are an invasive species because, “they are not constrained by natural factors as much as they were in their native habitat.” *Id.* “Invasive species have the potential to harm their new environment.” *Id.*

89. See *id.* (illustrating low initial cost of purchasing snakes).

90. See *id.* (explaining snake owners are often unaware of sizes to which snakes grow).

91. See Harvey et al., *supra* note 86 (discussing how snake owners simply release large snakes into wild when unable to care for them). Releasing a snake into the wild in Florida is a first-degree misdemeanor and carries penalties of up to a \$1,000 fine and one year in prison. *Id.* at 9.

92. See *id.* at 2 (noting large pythons have no competition for food and resources).

93. Amy Ferriter et al., *The Status of Nonindigenous Species in the South Florida Environment*, 1 SOUTH FLORIDA ENVTL. REPORT, 9-1, 9-21 (2009), available at [https://my.sfwmd.gov/portal/page/portal/pg\\_grp\\_sfwmd\\_sfer/portlet\\_sfer/tab2236041/2009report/report/v1/chapters/v1\\_ch9.pdf](https://my.sfwmd.gov/portal/page/portal/pg_grp_sfwmd_sfer/portlet_sfer/tab2236041/2009report/report/v1/chapters/v1_ch9.pdf) (estimating number of snakes released into Everglades).

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legal reprisal.<sup>94</sup> Florida also changed its laws to require a one hundred dollar yearly permit to legally keep a python, as well as requiring each snake to be fixed with a microchip.<sup>95</sup> In January 2012, Secretary of the Interior Ken Salazar announced the Burmese python would be added to the amended Lacey Act, making its import into the United States illegal.<sup>96</sup>

## II. CURRENT FEDERAL REGULATIONS

No federal law completely encompasses the ownership of exotic animals as pets; a few statutes, however, regulate exotic pet ownership by providing guidelines designed to protect the safety and welfare of the general public and exotic animals.<sup>97</sup> In 1966, for example, President Lyndon B. Johnson enacted the Animal Welfare Act (AWA) to protect certain animals from inhumane treatment and neglect.<sup>98</sup> Over the past forty years, the AWA has been amended seven times.<sup>99</sup> The AWA, as amended, regulates exotic pet ownership by establishing standards of care that owners must comply with for warm-blooded animals exhibited to the public for compensation.<sup>100</sup>

Under the AWA, APHIS is charged with inspecting zoos, circuses, aquariums, petting farms, and many private wildlife sanctuar-

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94. See *Exotic Pet Amnesty Day Events*, FL. FISH AND WILDLIFE CONSERVATION COMM'N, <http://myfwc.com/wildlifehabitats/nonnatives/amnesty-day-events/> (last visited Oct. 29, 2012) (discussing Florida initiatives preventing python release by amnestying python owners that turn pythons over to proper authorities).

95. See Harvey et al., *supra* note 86 at 9 and accompanying text (noting legal reform making python ownership more expensive).

96. See Kim Segal, *U.S. Bans Imports of 4 Exotic Snake Species*, CNN (Jan. 17, 2012), [http://articles.cnn.com/2012-01-17/us/us\\_florida-python-ban\\_1\\_southern-african-pythons-burmese-python-snake-problem?\\_s=PM:US](http://articles.cnn.com/2012-01-17/us/us_florida-python-ban_1_southern-african-pythons-burmese-python-snake-problem?_s=PM:US) (describing federal initiative to curb spread of invasive species). The Lacey Act is a federal act protecting native plants and wildlife by prohibiting the trade and importation of certain non-native and invasive species that have been shown to detrimentally affect the environment. *Id.* See also *Nation Marks Lacey Act Centennial*, U.S. FISH AND WILDLIFE SERV. (May 30, 2000), <http://www.fws.gov/pacific/news/2000/2000-98.htm> (describing Lacey Act's history).

97. See *USDA Does Not Regulate the Private Ownership of Exotic Animals*, USDA (Nov. 2011), [http://www.aphis.usda.gov/animal\\_welfare/newsroom/2011/11/ac\\_statement\\_ohio\\_animal\\_release.shtml](http://www.aphis.usda.gov/animal_welfare/newsroom/2011/11/ac_statement_ohio_animal_release.shtml) (illustrating how USDA regulates exotic animals).

98. See *The Animal Welfare Act*, ANIMAL AND PLANT HEALTH INSPECTION SERV. (Feb. 2012), [http://www.aphis.usda.gov/publications/animal\\_welfare/content/printable\\_version/fs\\_awawact.pdf](http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/fs_awawact.pdf) (noting Animal Welfare Act's history).

99. See *id.* (noting Animal Welfare Act amendments). The Act was amended in 1970, 1976, 1985, 1990, 2002, 2007, and 2008. *Id.*

100. See *id.* (describing how Animal Welfare Act only applies to animals that are exhibited for money).

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ies.<sup>101</sup> These inspections ensure private exotic animal owners exhibiting their animals for money are maintaining safety standards necessary to protect the animals' welfare.<sup>102</sup> The AWA is authorized to regulate in this capacity under the assumption that exhibiting exotic animals for money substantially affects interstate and foreign commerce.<sup>103</sup> APHIS, however, was not charged with regulating the animal farm in Zanesville, Ohio, as those animals were not exhibited to the public for money.<sup>104</sup> Similarly, Mr. Thompson was not federally required to hold a license for dealing in exotic animals under the AWA.<sup>105</sup>

In response to growing concerns over private ownership of large cats, the Captive Wildlife Safety Act (CWSA)<sup>106</sup> was enacted in September 2007.<sup>107</sup> The law makes it illegal to move certain big cats across state lines or United States borders unless the owner qualifies for an exemption.<sup>108</sup> Cats covered by the act include lions, tigers, leopards, jaguars, cheetahs, and cougars, as well as all subspecies and hybrids of each cat.<sup>109</sup> In effect, the CWSA prohibits importing or exporting any of the animals, and strictly limits the circumstances and availability of purchasing or moving a big cat.<sup>110</sup> Penalties for violating the act vary, but can include up to five years in federal prison and fines up to \$500,000.<sup>111</sup> There is currently a bill in the House to add primates to the list of prohibited animals.<sup>112</sup>

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101. *See id.* (illustrating common types of regulations).

102. *See id.* (noting reason for establishing Animal Welfare Act).

103. *See generally* 7 U.S.C.A. § 2131 (2007) (explaining Commerce Clause powers enable Congress to regulate animal ownership).

104. *See USDA Does Not Regulate the Private Ownership of Exotic Animals*, U.S. DEP'T OF AGRIC. (Nov. 2011), [http://www.aphis.usda.gov/animal\\_welfare/newsroom/2011/11/ac\\_statement\\_ohio\\_animal\\_release.shtml](http://www.aphis.usda.gov/animal_welfare/newsroom/2011/11/ac_statement_ohio_animal_release.shtml) (noting Mr. Thompson kept his animals for personal use only).

105. *See id.* (explaining lack of federal regulation over Mr. Thompson's activities).

106. *See* 50 C.F.R. § 14.253 (2007) (describing Captive Wildlife Safety Act). The Captive Wildlife Safety Act amended the Lacey Act. *Id.* *See also supra* note 96 for a further discussion of the Lacey Act.

107. *See Captive Wildlife Safety Act Factsheet: What Big Cat Owners Need to Know*, U.S. FISH AND WILDLIFE SERV. (Aug. 2007), <http://www.fws.gov/le/pdf/CaptiveWildlifeSafetyActFactsheet.pdf> (discussing motivation for Captive Wildlife Safety Act's enactment).

108. *See id.* (describing rationale behind Captive Wildlife Safety Act).

109. *See id.* (explaining which animals Captive Wildlife Safety Act covers).

110. *See id.* (illustrating effect of Captive Wildlife Safety Act).

111. *See id.* (noting penalties for Captive Wildlife Safety Act violations).

112. *See Captive Primate Species Act*, S. 1324, 112th Cong. (as reported by Senate, July 17, 2012) (discussing Captive Primate Species Act).

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Finally, the Endangered Species Act<sup>113</sup> (ESA) restricts taking or selling species listed as “endangered” or “threatened” within the United States.<sup>114</sup> Exotic pets released into the wild may inadvertently kill an endangered species or disrupt their ecosystem, which would constitute a “taking” under the ESA.<sup>115</sup>

### III. CURRENT STATE REGULATIONS

States and localities regulate the ownership of exotic animals through the authority they possess under their general police powers.<sup>116</sup> Although state statutes vary in phraseology, they principally operate in one of three ways: (1) as a ban; (2) as a license or permit; or (3) with little to no regulation.<sup>117</sup>

#### A. Bans

Twenty-one states have an outright ban on the private ownership of exotic animals; nine states have a partial ban.<sup>118</sup> In New Jersey, it is illegal for anyone to possess a “potentially dangerous species” as a pet.<sup>119</sup> New Jersey defines “potentially dangerous species” “as any exotic mammals, birds, reptiles or amphibians or non-game species which, in the opinion of the Division, is capable of inflicting serious or fatal injuries or which has the potential to become . . . a menace to the public health or indigenous wildlife populations . . . .”<sup>120</sup> Included in this class are: primates (apes, monkeys); carnivora (nondomestic dogs and cats, bears); saura (venomous gila monsters); serpentes (venomous coral snakes, cobras, vipers, pit vipers); crocodilia (alligators, crocodiles, gavials);

113. See 16 U.S.C.A. § 1531 (West 2012) (outlining regulations protecting endangered species).

114. See *Endangered Species Act*, NAT’L WILDLIFE FED’N, <http://www.nwf.org/Wildlife/Wildlife-Conservation/Understanding-Wildlife-Conservation/Endangered-Species-Act.aspx> (last visited Oct. 13, 2012) (noting protection afforded to endangered or threatened animals). Over 1,300 plants and animals were listed as “endangered” or “threatened” as of October 2009. *Id.*

115. See *Invasive Species*, NAT’L WILDLIFE FED’N, <http://www.nwf.org/Wildlife/Wildlife-Conservation/Threats-to-Wildlife/Invasive-Species.aspx> (last visited Sept. 27, 2012) (describing possibility that nonnative and invasive species will overtake endangered species’ habitats).

116. See *Summary of State Laws Relating to Private Possession of Exotic Animals*, BORN FREE USA, [http://www.bornfreeusa.org/b4a2\\_exotic\\_animals\\_summary.php](http://www.bornfreeusa.org/b4a2_exotic_animals_summary.php) (last visited Oct. 13, 2012) (summarizing state laws that regulate keeping exotic animals as pets).

117. See *id.* (noting common types of state regulation).

118. See *id.* (listing states that ban exotic pet ownership).

119. See N.J. ADMIN. CODE §§ 7:25-4.8, 7:25-4.9 (1991) (describing New Jersey law regulating exotic pet ownership).

120. See *id.* § 7.25-4.8 (defining “potentially dangerous species”).

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psittaciformes (ring-necked and monk parakeets); and rodentia (prairie dogs, ground squirrels).<sup>121</sup>

The other twenty states banning exotic animal ownership, including Alaska and Georgia, have comparable statutes, but may classify the animals differently.<sup>122</sup> The statutes commonly use the words exotic, dangerous, inherently dangerous, wild, non-native, or undomesticated to classify the animals.<sup>123</sup> Virginia's statute is similar to the New Jersey statute, although it does not classify primates as a dangerous animal.<sup>124</sup> Likewise, Nebraska does not classify primates or reptiles as dangerous species.<sup>125</sup> These states, and seven others, operate under a partial ban regulation.<sup>126</sup> Nearly all of these regulations provide special exceptions for zoos, research facilities, and other qualified exhibitors of exotic animals upon a showing of extensive background and training in the care of the specific animal.<sup>127</sup> These exceptions also provide details on how the animals must be kept and cared for.<sup>128</sup>

Exceptions existing for zoos and research facilities are specifically not available to private pet owners.<sup>129</sup> In Massachusetts, "applications and renewals shall . . . be denied when . . . the application is for a license to possess, maintain, propagate or cultivate animals as pets. . . ." <sup>130</sup> Likewise, applicants will be rejected when their "purposes or intentions [are] based purely on curiosity, impulse or novelty, or to provide for personal amusement or entertainment."<sup>131</sup>

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121. *See id.* (classifying dangerous animals taxonomically).

122. *See Summary of State Laws Relating to Private Possession of Exotic Animals*, *supra* note 116 and accompanying text (noting differences in states' statutory language).

123. *See id.* (citing different ways states describe exotic pets).

124. *See id.* (summarizing VA statute regarding exotic animal ownership).

125. *See id.* (noting animals not regulated by Nebraska exotic pet statute).

126. *See id.* (summarizing types of partial ban regulations). As of September 5, 2012, Ohio operates under a partial ban; however, because exotic pet owners in Ohio are allowed to keep their pets without a permit until January 1, 2014, information on Ohio's law remains in the section discussing states with little to no regulation. For further discussion, *see infra* notes 150-154 and accompanying text.

127. *See Summary of State Laws Relating to Private Possession of Exotic Animals*, *supra* note 116 and accompanying text (explaining common exceptions found in state exotic animal statutes).

128. *See id.* (detailing regulations regarding excepted institutions).

129. *See* 321 MASS. CODE REGS. §2.12; §9.01 (West 2012) (citing Massachusetts general prohibition on keeping wild animals as pets).

130. *Id.* §2.12 (describing Massachusetts licensing requirements for excepted institutions).

131. *Id.* (citing statutory intention).

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## B. License or Permit

Thirteen states have a license or permit scheme, which allows private ownership of exotic animals as pets.<sup>132</sup> Such state regulations often appoint a committee or commission to which a citizen must apply in order to obtain a license to keep a dangerous animal as a pet.<sup>133</sup> This process provides a layer of security intended to protect the general welfare, while still allowing private parties to possess exotic pets.<sup>134</sup>

One of the thirteen states with such a system is Pennsylvania, which makes it illegal to possess exotic animals without first obtaining a permit.<sup>135</sup> Under the Pennsylvania statute, the state commission “may issue permits to persons to possess exotic wildlife which shall authorize the holder to purchase, receive or possess exotic wildlife from any lawful source from within or without this Commonwealth.”<sup>136</sup> The statute also provides for animal safety standards in order to obtain a permit.<sup>137</sup> Under the statute, “[n]o permit provided for in this section shall be granted until the commission is satisfied that the provisions for housing and caring for such exotic wildlife and for protecting the public are proper and adequate and in accordance with the standards established by the commission.”<sup>138</sup> Further, Pennsylvania makes it illegal to: (1) release the animal into the wild; (2) “fail to exercise due care” to protect the public from the animal attacking; and (3) recklessly engage in conduct that exposes others to the danger of the exotic animal attacking.<sup>139</sup>

In comparison, Missouri requires owners to register exotic animals “with the local law enforcement agency in the county in which the animal is kept.”<sup>140</sup> On January 1, 2012, Missouri passed important measures of the Large Carnivore Act that established a permit

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132. See *Summary of State Laws Relating to Private Possession of Exotic Animals*, *supra* note 116 and accompanying text (summarizing state statutes allowing exotic pet ownership pursuant to permit or licensing).

133. See *id.* (noting common state process to acquire license or permit).

134. See *id.* (illustrating safeguards provided by committee determination of exotic pet ownership applications).

135. See 34 PA. CONS. STAT. ANN. § 2963 (1986) (describing PA’s statutory permit scheme).

136. See *id.* § 2963 (illustrating authority commission possesses to grant exotic pet permits).

137. See *id.* (noting animal safety standards applying to permit holders).

138. *Id.* (explaining requirements for obtaining permit).

139. *Id.* (noting standards PA established to protect general welfare).

140. See MO. ANN. STAT. § 578.023, § 578.600-624 (West 2012) (describing Missouri’s permit system).



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system for tigers, lions, leopards, and bears.<sup>141</sup> Under the system, each animal must have a microchip placed in it by, or under the supervision of, a veterinarian.<sup>142</sup> Each microchip is fitted with a unique identification number.<sup>143</sup>

By requiring veterinarians to implant microchips in the animals, Missouri ensures the animal will be checked by a veterinarian and properly documented and registered with the state in the event of an escape or attack.<sup>144</sup> Moreover, Missouri's Large Carnivore Act provides that "[n]o permit shall be issued to any person under the age of twenty-one . . . or who has been found guilty of, or pled guilty to, a violation of any state or local law prohibiting neglect or mistreatment of any animal or, within the previous ten years, any felony."<sup>145</sup>

### C. Little to No Regulation

Finally, seven states, including Alabama, Idaho, Nevada, North Carolina, South Carolina, West Virginia, and Wisconsin do not have a ban or licensing system regulating ownership of exotic animals.<sup>146</sup> Prior to the Zanesville incident, Ohio had one of the most lenient exotic pet regulations in the country.<sup>147</sup> Ohio only required an entry permit, health certificate, and certificate of veterinary inspection for non-domestic pets brought into the state.<sup>148</sup> None of these requirements, however, were needed for pets that were already in the state, or that were bred, sold, or traded within the state.<sup>149</sup>

In reaction to the Zanesville incident, Ohio lawmakers introduced a bill requiring background checks, insurance, fence and caging standards, and microchips for all exotic animals.<sup>150</sup> Even in

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141. *See id.* § 578.600-624 (showing recent change in legislation covering large exotic animals).

142. *See id.* § 578.604 (describing microchip identification procedure).

143. *See id.* (citing microchip requirement for each animal).

144. *See id.* § 578.602 (illustrating rationale for enacting Large Carnivore Act).

145. *See* MO. ANN. STAT. § 578.602(4) (West 2012) (noting statute prohibits granting permits to felons and anyone previously found guilty of animal abuse).

146. *See Summary of State Laws Relating to Private Possession of Exotic Animals*, *supra* note 116 and accompanying text (listing states without strict regulation of exotic pet ownership).

147. *See id.* (noting Ohio's lack of exotic pet regulation).

148. *See id.* (noting Ohio's current law only applies to animals entering Ohio).

149. *See id.* (explaining Ohio does not require permits to acquire exotic animals from in-state sources).

150. *See* Ann Sanner, *Bill to Regulate Exotic Animals Introduced in Ohio*, ASSOCIATED PRESS (Mar. 8, 2012), <http://cnsnews.com/news/article/bill-regulate-exotic>

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the wake of the slaughter of fifty exotic pets, there was an absence of widespread public support for a total ban on exotic pets in Ohio.<sup>151</sup> On June 5, 2012, however, Governor John Kasich signed the Dangerous Wild Animal Act into law in Ohio.<sup>152</sup> This law will ban new ownership of dangerous wild animals including big cats, small exotic cats, bears, wolves, primates, alligators, and crocodiles.<sup>153</sup> The law, however, allows current exotic pet owners to continue to own their pets provided they: (1) obtain permits; (2) obtain liability insurance; (3) comply with housing and safety standards; and (4) pass a criminal background check.<sup>154</sup>

## IV. LEGAL ISSUES IN EXOTIC PET REGULATION

In *DeHart v. Town of Austin, Ind.*,<sup>155</sup> an exotic pet owner in Indiana challenged a local ordinance under the theories of preemption, the Commerce Clause, and the Takings Clause.<sup>156</sup> In *DeHart*, the plaintiff, the owner of an exotic animal business, challenged a town ordinance regulating ownership of dangerous pets.<sup>157</sup> The ordinance made it unlawful for a person to possess an animal that “is capable of inflicting serious physical harm or death to human beings.”<sup>158</sup> In *DeHart*, the pet owner possessed the necessary federal and state permits required to own and sell exotic animals in Indiana.<sup>159</sup>

The plaintiff in *DeHart* challenged the ordinance on three theories: (1) the ordinance was preempted by the Animal Welfare Act; (2) the ordinance violated the Commerce Clause; and (3) the ordinance was an impermissible taking because it deprived the pet

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animals-introduced-ohio-0 (citing measures currently underway to change Ohio exotic pet law in wake of Zanesville incident).

151. *See id.* (noting complete ban was not proposed by local legislators).

152. *See* Alan Johnson, *Exotic Animal Bill Becomes Law*, COLUMBUS DISPATCH, June 6, 2012, at 3B, available at <http://www.dispatch.com/content/stories/local/2012/06/05/exotic-animal-bill-is-signed.html> (highlighting effects of Ohio’s new exotic pet law). This law took effect ninety days from the signing, on September 5, 2012. *Id.* By October 1, 2012, owners must obtain a permit and pay a fee to the Ohio Department of Agriculture in order to keep their exotic pets. *Id.* Owners who do not comply with this regulation by January 1, 2014 risk having their animals seized by local authorities. *Id.*

153. *See id.* (discussing animals covered under new law).

154. *See id.* (detailing restrictions placed on current exotic pet owners).

155. *See DeHart v. Town of Austin*, 39 F.3d 718, 721 (7th Cir. 1994) (holding Animal Welfare Act did not preempt state law).

156. *See id.* (describing petitioner’s constitutional challenges).

157. *See id.* (noting petitioner’s claims).

158. *See id.* (describing ordinance in question).

159. *See id.* at 720 (comparing permits required to possess pets in Indiana with permits plaintiff owned).

owner of his property interest in the federal and state licenses he obtained, which allowed him to own and sell exotic animals.<sup>160</sup> The case reached the Seventh Circuit Court of Appeals.<sup>161</sup> The court first acknowledged that states have traditional police powers to provide and protect the public health, safety, and general welfare of their communities.<sup>162</sup> Likewise, the court stressed that the regulation of animals has “long been recognized as part of the historic police power of the [s]tates.”<sup>163</sup>

The court concluded the AWA did not preempt the town’s ordinance.<sup>164</sup> Looking at Congressional intent, the Seventh Circuit noted the AWA expressly stated it “shall not prohibit any [s]tate (or a political subdivision of such [s]tate) from promulgating standards in addition to those standards promulgated by the Secretary [of Agriculture].”<sup>165</sup> The court thus held there was no discernible Congressional intent to ban state or local legislatures from regulating against the possession of exotic animals.<sup>166</sup>

The Seventh Circuit next found the ordinance did not violate the Commerce Clause because it regulated “evenhandedly by imposing a complete ban on commerce in wild or dangerous animals within the town of Austin without regard to the origin of the animals.”<sup>167</sup> Finally, the court ruled there was no taking in regards to the permits because the plaintiff still physically possessed the permits.<sup>168</sup>

The effect of the Seventh Circuit’s holding on the takings issue generated interesting consequences, as the plaintiff was unable to

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160. See *DeHart*, 39 F.3d at 721 (noting issues petitioner raised in court).

161. See *id.* (discussing plaintiff’s appeal to Seventh Circuit from lower court’s grant of summary judgment).

162. See *id.* at 722 (describing longstanding recognition that states possess general police powers).

163. See *id.* (citation omitted) (linking statutory regulation of animals to general police power).

164. See *id.* (concluding preemption did not apply).

165. See *DeHart*, 39 F.3d at 722 (citation omitted) (noting statute’s plain language indicated Congress did not intend to preempt state exotic animal regulations).

166. See *id.* at 722-23 (noting no congressional intent to ban state or local legislators from regulating animals and pets).

167. See *id.* at 723-24 (explaining local ordinance did not violate Commerce Clause). The Seventh Circuit determined the ordinance did not facially discriminate against interstate commerce because the ordinance regulated uniformly, regardless of animal origin. *Id.* at 723. The Ordinance also did not discriminate in effect because the “incidental burden” it placed on interstate commerce was not “clearly excessive in relation to the putative local benefits.” *Id.* at 724 (internal citation omitted).

168. See *id.* at 724 (finding it unnecessary to determine whether state and federal licenses were property interests because no taking had occurred).

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continue operating his business in Austin because wild animal possession became illegal.<sup>169</sup> The court, however, was not persuaded by the plaintiff's argument that the ordinance had drastic consequences on his ability to continue operating his business in the town.<sup>170</sup> The takings analysis was hampered due to the plaintiff's ability to operate his business elsewhere, thus not establishing a total taking.<sup>171</sup>

Courts have also addressed the constitutionality of local ordinances under the Equal Protection Clause.<sup>172</sup> In *Rhodes v. City of Battle Ground*,<sup>173</sup> a Washington city passed an ordinance making it illegal to possess inherently dangerous animals within city limits.<sup>174</sup> The plaintiffs owned two cougars, one caiman, and one African serval, all of which fell under the city ordinance's sweeping definition of an inherently dangerous animal.<sup>175</sup>

The plaintiffs challenged the ordinance on several different grounds, including an equal protection theory.<sup>176</sup> The town permitted owners to keep "dangerous dogs" in the city "provided that the owners obtain a license . . . keep them confined in a secure area with warnings, post a bond or carry sufficient homeowner's insurance, and keep the dog muzzled and leashed when out in public."<sup>177</sup> The plaintiffs argued this created two different classes of animal owners: those that owned exotic animals, and those that owned dangerous dogs.<sup>178</sup> Further, the plaintiffs claimed the ordinance discriminated against exotic pet owners because the ordinance did not allow exotic pet owners to comply with a similar licensing scheme.<sup>179</sup> The plaintiffs cited a Washington State Su-

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169. *See id.* (noting effect local ordinance had on petitioner's ability to operate business).

170. *See DeHart*, 39 F.3d at 724 (holding takings analysis unwarranted because plaintiff did not lose licenses).

171. *See id.* (citing holding of case).

172. *See Rhoades v. City of Battle Ground*, 63 P.3d 142, 152-53 (Wash. Ct. App. 2002) (discussing takings analysis for movable property).

173. *Id.* at 148 (holding ordinance did not violate Equal Protection Clause by banning exotic animals, but not banning dangerous dogs).

174. *See id.* at 145 n.3 (assuming petitioners' animals met ordinance's exotic animals definition).

175. *See id.* (discussing types of pets petitioner owned).

176. *See Rhoades*, 63 P.3d at 147 (noting petitioners' claim that regulating some animals but not others violated Equal Protection rights).

177. *See id.* (describing city ordinance distinguishing between dangerous dogs and exotic animals).

178. *See id.* (explaining petitioners' claim that ordinance discriminated against exotic animal owners).

179. *See id.* (noting licensing scheme permitted owning dangerous dogs, but not exotic animals).

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preme Court decision that noted “a vicious dog and a wild animal are equally dangerous.”<sup>180</sup>

The Washington Court of Appeals was not persuaded by this argument, and instead found the city council had a legitimate interest in distinguishing between dangerous dogs and exotic animals.<sup>181</sup> The court further held “a determination that exotic animals are more dangerous than dogs adjudged ‘dangerous’ is sufficient-on rational basis review-to justify the disparate treatment between these classes of pet owners.”<sup>182</sup>

## V. SUGGESTIONS AND SOLUTIONS

A uniform nationwide law regulating the ownership of exotic pets is the most favorable option for the well-being of the general public, the animals, and the environment.<sup>183</sup> The differing laws among states result in confusion and loopholes, especially for states that border one another and have laws ranging from total bans to a complete lack of regulation.<sup>184</sup> A Spending Clause approach could conceivably allow the federal government to persuade states to uniformly regulate under constitutionally accepted principles.<sup>185</sup>

By tying a percentage of federal highway money to a state’s voluntary compliance with the twenty-one year drinking age, the government successfully used the Spending Clause to persuade states to uniformly regulate a national drinking age in *South Dakota v. Dole*.<sup>186</sup> In *Dole*, the Court held the federal government’s power to regulate in this area was constitutional, as long as the condition promoted the general welfare, and the funds related to a “federal interest in particular national programs or projects.”<sup>187</sup> Thus, *Dole* indicates the federal government can successfully use the Spending Clause to incentivize compliance with regulations aiming to redress

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180. See *id.* at 147-48 (describing Washington State Supreme Court case indicating dangerous dogs and wild animals are equally dangerous).

181. See *Rhoades*, 63 P.3d at 148 (noting state’s legitimate interest in protecting citizens from exotic animals).

182. See *id.* (holding petitioners’ argument failed to establish equal protection violation).

183. See *supra* notes 48-96 and accompanying text (noting shortcomings resulting from state by state regulation of exotic animal ownership).

184. See *id.* (discussing disparity among states’ exotic animal regulations and problems resulting therefrom).

185. See *South Dakota v. Dole*, 483 U.S. 203, 206 (1987) (holding Congress can deny federal funds to states refusing to comply with federal regulations).

186. See *id.* at 205 (noting regulation at issue).

187. See *id.* at 208 (holding Congress may use spending power to redress general welfare problems that are interstate in nature).

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interstate issues affecting general public welfare.<sup>188</sup> In the exotic animal context, Congress could connect a percentage of federally granted environmental funds to enforce a uniform exotic pet regulation.<sup>189</sup> This incentive would be constitutionally permissible under the Spending Clause because exotic pets that escape or are released present an interstate threat to general public welfare and to the environment.<sup>190</sup>

If Congress enacted such a federal law, it would need to establish classes of regulated animals, similar to New Jersey's regulation.<sup>191</sup> This would be beneficial in providing every state with classifications for which animals are and are not regulated by their neighbors.<sup>192</sup> Second, the law should provide that a person must pass a background check in order to obtain a permit to keep any animal that falls under the regulation.<sup>193</sup> Keeping an exotic animal should be a privilege and only people who are responsible enough should be afforded that privilege.<sup>194</sup> Background checks will identify felons and those with poor financial credit who may be too irresponsible to provide the proper physical, mental, or financial support necessary to care for exotic pets.<sup>195</sup>

Next, as states such as Missouri have done, the nationwide law should require veterinarians to implant all exotic animals with microchips.<sup>196</sup> This provides a layer of accountability if the animal should escape or cross state lines.<sup>197</sup> The microchips would also provide a means for every state to track the amount and types of

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188. See generally *id.* (noting holding in *Dole*). A similarity exists between conditioning federal highway funds and conditioning environmental funds. See generally *id.*

189. See *id.* (noting Congress may use spending power to encourage state compliance with federal regulations).

190. See *supra* notes 185, 187 and accompanying text (explaining Congress can use spending power to encourage state compliance with federal regulations aimed at redressing interstate public welfare problems).

191. See N.J. ADMIN. CODE § 7:25-4.8, 7:25-4.9 (1991) (classifying animals taxonomically); *supra* notes 119-121 and accompanying text (describing New Jersey exotic pet regulations).

192. See *supra* notes 116-154 and accompanying text (noting disparity among state animal regulations).

193. See *supra* note 6 and accompanying text (describing Terry Thompson's criminal past before releasing his exotic pets in Zanesville, Ohio).

194. See *id.* (noting criminal history of pet owner responsible for Zanesville massacre).

195. See *id.* (noting dangers posed by irresponsible exotic pet owners).

196. See MO. REV. STAT. § 578.604 (West 2012) (describing new Missouri regulations mandating microchip placement in exotic animals). For a further discussion, see *supra* note 145 and accompanying text.

197. See *id.* at §578.600-624 (inferring reasons behind regulation).

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animals currently within its borders.<sup>198</sup> Likewise, states should limit the amount of permits an individual owner can obtain in order to ensure owners can meet the demands necessary to continue to care for their animals.<sup>199</sup> As imposed in Florida, a yearly permit fee should apply to each animal in order to further ensure that all financial demands are met.<sup>200</sup>

Finally, as outlined in the current Ohio regulation, caging requirements should be specified based on the type and size of the animal.<sup>201</sup> This would ensure that each animal has the proper amount of room to thrive, as well as ensure that the animals cannot easily escape.<sup>202</sup> A yearly inspection by a federal wildlife official should also be required to certify that all standards are continually upheld.<sup>203</sup>

Although not as ideal as an outright federal ban, the proposed nationwide law would provide a baseline for all states to properly regulate citizens housing an exotic pet.<sup>204</sup> In addition, and perhaps most importantly, the act would serve as a minimum for state regulation.<sup>205</sup> Each state would still be free to totally or partially ban all or certain animals from each regulated class.<sup>206</sup> Likewise, federal regulations such as the Animal Welfare Act and the Captive Wildlife Safety Act would continue to operate and regulate exotic pets cross-

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198. *See id.* (noting regulation's benefits).

199. *See id.* (suggesting possible benefits to additional legislation).

200. *See* FLA. STAT. ANN. § 379.373 (West 2008) (noting yearly permit fee required to keep reptiles of concern).

201. *See* OHIO REV. CODE ANN. § 935.17 (West 2012) (describing current Ohio exotic pet regulation).

202. *See id.* (noting animal welfare benefits resulting from caging regulations).

203. *See* Animal Welfare Act, 7 U.S.C.A. § 2143 (West 2007) (discussing annual inspection requirement).

204. *See* Deborah Zabarenko, *US EPA approves California auto emissions standard*, REUTERS (June 30, 2009), <http://www.reuters.com/article/2009/06/30/autos-epa-california-idUSN3044688920090630> (describing how California enacted heightened emissions standards as compared to federal EPA standards). The Obama administration has interpreted the Clean Air Act to allow California to enact more stringent emissions standards as compared to national standards. *Id.*

205. *See id.* (noting states can regulate more stringently than federal government).

206. *See id.* (depicting how states can enact regulations to supplement federal regulations).

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ing state lines.<sup>207</sup> By taking these measures, tragedies such as the massacre in Zanesville may be prevented.<sup>208</sup>

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207. *See generally supra* notes 98-115 and accompanying text (discussing federal animal regulations that could remain in effect to aid future regulation).

208. *See supra* notes 185-208 and accompanying text (proposing federal regulations to prevent exotic animal disasters).

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