

# Standardizing the Law on Working Animals

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## INTRODUCTION

Animals have lived alongside humans for longer than the span of recorded history.<sup>1</sup> Over the course of this age-old relationship, animals have been used by humans for their benefit in various capacities.<sup>2</sup> Some of the most common historical uses of animals arose from their physical attributes: meat and other livestock products for food; hides, pelts, wool, and hair for clothing; power for farming, transportation, and military efforts; and bone for tools and utensils.<sup>3</sup> In addition to the societal benefits derived from an animal's physical characteristics, emotional and psychological aspects of the "human-animal bond" also contribute to the fulfillment of human needs.<sup>4</sup>

While the "working" animal is not a new concept in the United States ("U.S."), the use of animals—primarily canines—to assist people in their everyday lives has expanded over the last few decades,<sup>5</sup> spurred in part by the enactment of the Americans with Disabilities Act.<sup>6</sup> The increased use of working dogs has allowed

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<sup>1</sup> Barbara H. Goldman, *Highlights of Animal Law*, Mich. B.J. 24, 24 (July 2018).

<sup>2</sup> Natalie Angier, *The Creature Connection*, N.Y. TIMES (Mar. 14, 2011), <https://www.nytimes.com/2011/03/15/science/15why.html> [<https://perma.cc/S49H-LMN8>].

<sup>3</sup> *History of the Animal Science Industry*, Livestock Information, UNIVERSITY OF MISSOURI EXTENSION: ADAIR COUNTY, <https://www.avma.org/one-health/human-animal-bond> [<https://perma.cc/DJ84-QDES>].

<sup>4</sup> *Human-Animal Bond*, AM. VETERINARY MED. ASS'N, <https://www.avma.org/KB/Resources/Reference/human-animal-bond/Pages/Human-Animal-Bond-AVMA.aspx> [<https://perma.cc/FB8U-PM8P>].

<sup>5</sup> *See generally*, Rebecca J. Huss, *Why Context Matters: Defining Service Animals Under Federal Law*, 37 Pepp. L. Rev. 1163, 1166 (recognizing a "general consensus" that the number of working animals is growing, though estimates have ranged broadly).

<sup>6</sup> Americans with Disabilities Act of 1990, Pub. L. No. 101-335, 104 Stat. 327 (1990) (codified as amended in scattered sections of 42 and 47 U.S.C.) (making it unlawful to discriminate individuals on the basis of disability and requiring the Attorney General to promulgate regulations to implement the statute); *see also* 28 C.F.R. § 35.136 (2020)

Americans to function more safely and efficiently in a multitude of contexts where animals are present and active in daily life.<sup>7</sup> Today, canines are used by the military and law enforcement for assistance in explosives and narcotics detection.<sup>8</sup> Canines are also commonly used to assist people with physical disabilities such as blindness,<sup>9</sup> medical conditions like diabetes, and mental health disorders such as post-traumatic stress disorder (“PTSD”) or clinical anxiety.<sup>10</sup> Further, it is common to see working dogs in schools,<sup>11</sup> medical facilities,<sup>12</sup> airports and airplanes,<sup>13</sup> and with police officers or military personnel.<sup>14</sup>

As the use of canines and other working animals has grown, no federal authority has developed comprehensive guidance that provides instruction to breeders, trainers, interest groups,

(requiring public entities to permit disabled Americans to use service animals, including dogs and miniature horses).

<sup>7</sup> See *Benefits of Service Dogs*, CANINE PARTNERS FOR LIFE, <https://k94life.org/programs/benefits-service-dogs/> [<https://perma.cc/2KWK-9XE7>] (“Service dogs support people’s physical disabilities in a variety of ways. Often their alerts are preventative for conditions like epilepsy and dysautonomia. But many of their tasks are household actions like turning on lights and providing stability for their owner for standing, walking or transferring out of a wheelchair.”).

<sup>8</sup> *Explosives Detection Canines—Protecting the Homeland*, Science and Technology, DEP’T OF HOMELAND SEC., [https://www.dhs.gov/sites/default/files/publications/19\\_0807\\_st\\_updated-pbied-factsheet\\_508.pdf](https://www.dhs.gov/sites/default/files/publications/19_0807_st_updated-pbied-factsheet_508.pdf) [<https://perma.cc/6WKX-VV7S>] (“The explosives detection canine is one of the best, most versatile mobile explosive detection tools available for protecting the Homeland from the explosive threat.”).

<sup>9</sup> *Service Animals*, Civil Rights Division, U.S. DEP’T OF JUSTICE (July 12, 2011), [https://www.ada.gov/service\\_animals\\_2010.htm](https://www.ada.gov/service_animals_2010.htm) [<https://perma.cc/CVH6-URP4>].

<sup>10</sup> *Frequently Asked Questions about Service Animals and the ADA*, Civil Rights Division, U.S. DEP’T OF JUSTICE (July 20, 2015), [https://www.ada.gov/regs2010/service\\_animal\\_qa.pdf](https://www.ada.gov/regs2010/service_animal_qa.pdf) [<https://perma.cc/4U2F-ZZSF>].

<sup>11</sup> See generally Rebecca J. Huss, *Canines in the Classroom Revisited: Recent Developments Relating to Students’ Utilization of Service Animals at Primary and Secondary Educational Institutions*, 9 ALB. GOV’T L. REV. 1 (2016) (discussing the use of working animals by students in primary and secondary schools).

<sup>12</sup> See generally Rebecca J. Huss, *Hounds at the Hospital, Cats at the Clinic: Challenges Associated with Service Animals and Animal-Assisted Interventions in Healthcare Facilities*, 40 U. HAW. L. REV. 53 (2017) (discussing the use of working animals by patients in healthcare institutions).

<sup>13</sup> *Assistance Animals: Rights of Access and the Problem of Fraud*, AM. VETERINARY MED. ASS’N (Apr. 21, 2017), <https://www.avma.org/KB/Resources/Reports/Documents/Assistance-Animals-Rights-Access-Fraud-AVMA.pdf> [<https://perma.cc/37MN-8WQW>].

<sup>14</sup> See Monica Fazekas, *Pawing Their Way to the Supreme Court: The Evidence Required to Prove a Narcotic Detection Dog’s Reliability*, 32 N. ILL. U. L. REV. 473, 475 (2012) (explaining the rationale for the historical use of canines in police and military affairs); see also *Rodriguez v. United States*, 135 S. Ct. 1609 (2015) (discussing the use of canines for narcotics detection during traffic stops).

placement organizations, handlers, owners, or the public at large on a controlling definition of working animals. Lack of direction on proper training for working animals or how to identify legitimate working animals amid threats of fraud, misuse, and misrepresentation compounds the issues posed by nonuniform definitions.<sup>15</sup> This absence of clear standards has begun to wreak havoc, especially among members of the public who may be forced to risk their animal's health and safety or even their own health and safety when encountering fraudulent or inadequately trained animals.<sup>16</sup>

Some definitions and standards for working animals are established in legal authorities including the Americans With Disabilities Act ("ADA"), the Fair Housing Act ("FHA"), the Air Carrier Access Act ("ACAA"), and various provisions of the Code of Federal Regulations ("CFR").<sup>17</sup> However, because each of these sources has a different purpose,<sup>18</sup> there is no consistent, complete authority that imposes standard regulations or provides centralized support for the working animal industry. The many individuals and groups claiming to breed, train, certify, or require working animals are largely left to supervise themselves.<sup>19</sup> Such a system, or lack thereof, threatens public confidence and trust in working animals, promotes black markets, and, perhaps most importantly, threatens public health and safety.<sup>20</sup> Thus, as the use of legitimate working animals rises, so too does the number of fraudulent working animals.<sup>21</sup>

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<sup>15</sup> AM. VETERINARY MED. ASS'N, *supra* note 1313, at 3 ("The ADA does not require any standardized training or certification program for service animals, nor does it require the handler to provide any form of documentation stating the necessity for a service animal. Such documentation is considered a barrier or unreasonable burden that could limit access to a service animal.").

<sup>16</sup> *See, e.g., Illegal Fake Service Dogs Pose Dangers to Many*, CBS NEWS (Oct. 11, 2013, 11:13 AM), <https://www.cbsnews.com/news/illegal-fake-service-dogs-pose-dangers-to-many/> [<https://perma.cc/7YWK-644Z>] (discussing the account of a service dog owner who has experienced the safety issues consequential to fraudulent service animals).

<sup>17</sup> *See* AMERICAN VETERINARY MED. ASS'N, *supra* note 13, at 5–6 (providing a synopsis of various definitions of working animal types in pertinent statutory authorities).

<sup>18</sup> *See id.*

<sup>19</sup> *See id.* at 3.

<sup>20</sup> *Id.* at 11 ("Because the ADA does not specify training standards for service dogs and ESAs, there is a market for falsely 'certifying' pets as an assistance animal. There are countless online sources that will, for the right price, 'certify' a pet as an assistance animal after a brief, online questionnaire. The organization will then send that person a certificate, harness, etc. so the pet will appear like an assistance animal.").

<sup>21</sup> *Id.* at 11.

Because states have attempted to remedy federal statutory and regulatory silence by enacting laws of their own, the requirements for working animals and their owners and handlers and the protections offered to them vary widely from state to state.<sup>22</sup> Consequently, individuals traveling across state lines with working animals must confront the burden of complying with states's differing rules. Although the Constitution vests in Congress the authority to regulate interstate commerce,<sup>23</sup> and state laws cannot burden interstate commerce, states may nonetheless pass laws that affect interstate commerce where they are not expressly or impliedly preempted.<sup>24</sup> As illustrated by the language of the ADA, Congress has not preempted state legal provisions that confer protections equal to or greater than federal law.<sup>25</sup> Thus, any argument that a state law on working animals unconstitutionally burdens interstate commerce concerning disabled Americans would most likely fail.<sup>26</sup> Because of this, there is no clear remedy available for individuals who experience the burdensome effects of inconsistent state laws. The existing patchwork of inconsistent provisions burdens Americans with disabilities and other users of working animals and leaves the public without accountability mechanisms to ensure public safety.<sup>27</sup> Without uniform standards by which to assess a working animal's validity, meaningful recourse is unavailable for persons

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<sup>22</sup> Rebecca F. Wisch, *Table of State Service Animal Laws*, ANIMAL LEGAL & HIST. CTR. (2019), <https://www.animallaw.info/topic/table-state-assistance-animal-laws> [<https://perma.cc/9TQ7-6U6V>].

<sup>23</sup> U.S. CONST. art. I, § 8, cl. 3.

<sup>24</sup> *Southern Pac. Co. v. Arizona ex rel. Sullivan*, 325 U.S. 768, 769 (1945) (“Congress has the undoubted power to redefine the distribution of power over interstate commerce. It may either permit the states to regulate commerce in a manner which would otherwise not be permissible or exclude state regulation of matters of peculiarly local concern which nevertheless affect interstate commerce.”) (citations omitted).

<sup>25</sup> Americans with Disabilities Act, 42 U.S.C. § 12201(b) (2020) (“Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter.”).

<sup>26</sup> See *Southern Pac. Co.*, 325 U.S. at 769.

<sup>27</sup> See Michael Ollove, *Tightening the Leash on Fake Service Dogs*, PEW CHARITABLE TRUSTS (Oct. 16, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/10/16/tightening-the-leash-on-fake-service-dogs> [<https://perma.cc/NJY3-DNRG>] (explaining that the lack of national certification or registry programs makes it hard to enforce state laws that prohibit misrepresenting an animal as a valid service animal in cases where untrained or illegitimate animals cause harm to other animals or members of the public).

whose safety or health are jeopardized by animals that do not have appropriate training, have not received proper veterinary care, or otherwise cannot function in public without risking harm to people and other animals.<sup>28</sup>

Focusing on canine working animals, this Note argues that to best protect citizens from the threats posed by a lack of oversight on working animals in the United States, the federal government must develop statutory and regulatory guidelines that preempt state provisions and restructure the system for publicly recognizing valid working animals. Part I provides an overview of existing legal provisions for working animals, including an examination of federal provisions such as the Americans with Disabilities Act of 1990 and the Fair Housing Act. This Note also reviews sample state provisions. Considered briefly are some of the most pressing issues with current statutory authorities, including inconsistency between federal and state statutes and inconsistency among state statutes. Part II examines ongoing and looming concerns in the working animal industry and encourages the establishment of preemptive terminology. Additionally, this section considers existing definitions, gaps in current provisions, issues that have arisen, and issues that likely will arise because of ongoing deficiencies. The three primary issues identified with the current state of legal rules include (1) a lack of national uniformity in working animal standards, (2) the ease with which parties throughout the supply chain can commit fraud, and (3) threats to public health and safety. Part III discusses why nationally embraced standard definitions and training guidelines are needed. This section also examines some existing training programs and organizations and proposes a framework for certifying working animals. This part also briefly addresses the means through which the federal and state governments can implement included proposals and considers which executive agencies are best situated to promulgate regulations for working animal programs, oversee such regulations' implementation, and administer guidance for individuals and groups seeking to comply with the established rules. This part also explores the possibility of developing

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<sup>28</sup> AM. VETERINARY MED. ASS'N, *supra* note 13, at 11 (“A pet, for instance, may react negatively to a stimulus, such as a wheelchair, if it has never come in contact with one before. Service animals, conversely, have been trained, for the most part, to be accustomed to wheelchairs and not react when encountering one.”).

identification mechanisms to verify the legitimacy of a working animal and its owner or handler. Finally, this Note concludes with a summary and recommended next steps.

## I. STATUTORY AND REGULATORY AUTHORITY ON WORKING ANIMALS

### *A. Federal Guidelines*

Multiple statutes and regulations, both at the state and federal levels, address working animals.<sup>29</sup> The federal legislation most commonly cited by practitioners and academics when discussing working animals is the Americans with Disabilities Act of 1990.<sup>30</sup> The ADA was enacted, in part, “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”<sup>31</sup> The Act forbids discrimination against Americans with physical or mental impairments that manifest “in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.”<sup>32</sup> One regulation that enforces this provision of the ADA requires that public entities permit the use of service animals by individuals with disabilities.<sup>33</sup> The same portion of the ADA defines disability as “a physical or mental impairment that substantially limits one or more of the major life activities.”<sup>34</sup>

The term “service animals” refers to, in pertinent part, animals that are “individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.”<sup>35</sup> Service animals may assist in providing physical guidance to deaf or blind persons, aiding those who suffer from diabetes or seizures, and performing tasks like pulling wheelchairs

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<sup>29</sup> *Id.* at 7–11.

<sup>30</sup> Americans with Disabilities Act, Pub. L. No. 101-335, 104 Stat. 327.

<sup>31</sup> Americans with Disabilities Act, 42 U.S.C. § 12101(b)(1) (2020).

<sup>32</sup> *What is the Americans with Disabilities Act (ADA)?*, ADA NAT'L NETWORK, <https://adata.org/learn-about-ada> [<https://perma.cc/8PXW-W3X9>].

<sup>33</sup> 28 C.F.R. § 35.136 (2020).

<sup>34</sup> 28 C.F.R. § 35.108(a)(1)(i) (2020).

<sup>35</sup> 28 C.F.R. § 35.104 (2020).

or retrieving items.<sup>36</sup> Under the ADA, service animals may only be canines or miniature horses.<sup>37</sup>

Although the definitions that follow from the ADA are straightforward and relatively simple, public entities are unable to confirm the validity of working animals because the law only allows agents of public entities to ask those in possession of animals two specific questions: (1) whether the animal serves a specific purpose for a disability, and (2) what trained functions the animal can accomplish.<sup>38</sup> However, agents of public entities may only ask these questions when it is not clear whether the animal is assisting a disabled person.<sup>39</sup> Further, the regulation expressly forbids any public entity from requesting documentation that an animal “has been certified, trained, or licensed as a service animal.”<sup>40</sup>

While the ADA governs “service animals” used by disabled citizens, other federal statutes govern working animals that serve similar purposes in different environments.<sup>41</sup> The Fair Housing Act and Section 504 of the Rehabilitation Act protect the use of working animals under a more expansive definition than the definition of “service animal” under the ADA.<sup>42</sup> In conjunction with their implementing regulations, the FHA and Section 504 require housing providers to allow the habitation of animals—even if the housing provider has a “no-pet policy”—when a disabled person claims a working animal is necessary to perform tasks, provide emotional support, or otherwise assist in easing the burdens of a disability.<sup>43</sup> While the ADA terms working animals that fall under its authority “service animals,”<sup>44</sup> the FHA and Section 504 term animals within their scope “assistance animals.”<sup>45</sup> If an owner claims that the animal does indeed perform tasks, provide

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<sup>36</sup> AM. VETERINARY MED. ASS'N, *supra* note 13, at 5.

<sup>37</sup> Jacquie Brennan, *Service Animals and Emotional Support Animals*, ADA NAT'L NETWORK <https://adata.org/publication/service-animals-booklet> [https://perma.cc/YY2A-RBNQ].

<sup>38</sup> 28 C.F.R. § 35.136(f) (2020).

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

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

<sup>41</sup> Brennan, *supra* note 37.

<sup>42</sup> Compare U.S. DEP'T OF HOUS. AND URBAN DEV., FHEO-2013-01, SERVICE ANIMALS AND ASSISTANCE FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS, at 1, 4, 6 (2013) with 28 C.F.R. § 35.104 (2020).

<sup>43</sup> U.S. DEP'T OF HOUSING AND URBAN DEV., *supra* note 42, at 3.

<sup>44</sup> 28 C.F.R. § 35.104 (2020).

<sup>45</sup> U.S. DEP'T OF HOUSING AND URBAN DEV., *supra* note 42, at 2.

emotional support, or otherwise assist, the animal satisfies the FHA and Section 504 definition of “assistance animal.”<sup>46</sup> Absent a recognized exception such as undue burden on the housing provider, the provider must permit the resident to possess the animal in the given housing facility.<sup>47</sup> As is the case with the ADA, the animal need not meet any particular standards of training, veterinary care, or certification.<sup>48</sup>

The Air Carrier Access Act is the remaining major piece of federal legislation that governs the use of working animals in a public place.<sup>49</sup> Like the ADA, the ACAA employs the term “service animals” for working animals used in airports and on airplanes.<sup>50</sup> Under the ACAA definition, service animals are “individually trained or able to provide assistance to a person with a disability; or any animal that assists persons with disabilities by providing emotional support.”<sup>51</sup> Though this definition uses the phrase “emotional support,” the ACAA further recognizes animals needed for psychiatric support as “emotional support animals.”<sup>52</sup> Unlike service animals or assistance animals, handlers of emotional support animals can be required by law to produce documentation that demonstrates a legitimate need for the use of the animal.<sup>53</sup> Airlines may also require travelers to provide advance notice of intent to bring an emotional support animal onboard a flight.<sup>54</sup> Determining whether a given animal is a service animal or an emotional support animal can be difficult for airline employees who must rely on the integrity of the public to honestly report the need for and status of an animal.<sup>55</sup> Guidance provided by the U.S. Department of Transportation states that airline employees can determine whether an animal is authentic by assessing “[t]he credible verbal assurances of an individual with a disability using

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<sup>46</sup> *Id.* at 3.

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

<sup>48</sup> *Id.*

<sup>49</sup> 99 Pub. Law. 435, 100 Stat. 1080; *see also* AM. VETERINARY MED. ASS’N, *supra* note 13, at 5–6, 8–9.

<sup>50</sup> *Service Animals (Including Emotional Support Animals)*, U.S. DEP’T OF TRANSP., <https://www.transportation.gov/individuals/aviation-consumer-protection/service-animals-including-emotional-support-animals> [<https://perma.cc/9FHH-VMDJ>].

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

<sup>52</sup> AM. VETERINARY MED. ASS’N, *supra* note 13, at 5.

<sup>53</sup> U.S. DEP’T OF TRANSP., *supra* note 50.

<sup>54</sup> *Id.*

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



the animal,” recognizing visual indicators like tags or harnesses, and “observing the behavior of the animal.”<sup>56</sup>

In addition to “service animals” under the ADA and the ACAA, “assistance animals” under the FHA and Section 504, and “emotional support animals” under the FHA and the ACAA, another category of working animal, defined and endorsed by the American Veterinary Medical Association (“AVMA”), is “therapy animals.”<sup>57</sup> It is important to note that therapy animals are not defined or otherwise granted validity under federal law. However, as described by the AVMA, therapy animals can be used in either one-on-one or group settings, and they are used primarily in helping people work toward specific goals during various health-related treatment processes.<sup>58</sup> While most working animals provide services directly to their handler, therapy animals assist individuals other than the person charged with their care and handling.<sup>59</sup> Despite mixed results, pediatric cancer patients and their families often utilize therapy dogs to help lower stress and anxiety.<sup>60</sup>

Canines used for things like explosives detection and narcotics detection fall within the final category of working animals considered here.<sup>61</sup> Whether under the direction of police, military personnel, or an independent organization, various entities increasingly train and use canines in working capacities that relate to public safety and national security because of their heightened senses of sight and smell.<sup>62</sup> In addition to explosives and narcotics detection, canines are used for searches and rescues,

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<sup>56</sup> *Id.*

<sup>57</sup> See AM. VETERINARY MED. ASS’N, *supra* note 13, at 6.

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

<sup>59</sup> *Id.* at 7.

<sup>60</sup> *Therapy dogs have mixed results for childhood cancer patients, parents*, AM. VETERINARY MED. ASS’N (Feb. 15, 2018), <https://www.avma.org/News/JAVMANews/Pages/180215h.aspx> [<https://perma.cc/J8BK-8497>].

<sup>61</sup> *Types of War Dogs*, THE U.S. WAR DOGS ASS’N, <https://www.uswardogs.org/war-dog-history/types-war-dogs/> [<https://perma.cc/2UJC-Z72R>].

<sup>62</sup> *Id.* (“[Dogs] have visual and olfactory sensory abilities that are literally superhuman, can go where a soldier cannot, and can often subdue or intimidate a foe more quickly with non-lethal force. Because of these traits, they have been successfully trained for many military duties and roles by modern armies for a century.”).

event and school security, oil detection,<sup>63</sup> and cargo screening.<sup>64</sup> At present, there are no federal statutes or regulations that attempt to define such animals or otherwise standardize their handling. Consequently, the various groups that use these working animals lack uniformity in methods of training, qualifications for service, or veterinary care. While it is sensible to give police, military, and other safety and security related handlers considerable deference in the operations of their programs, including military working dogs and similar canines in the development of baseline standards for working animals is prudent. Even animals such as these, which are often handled by public officials, should be subject to some accountability measures in the interests of public health, safety, and confidence.

### *B. State Guidelines*

In addition to federal provisions, many states have developed or are developing their own definitions for the various classes of working animals.<sup>65</sup> For example, Kentucky's Penal Code makes assault on a service animal a class D felony,<sup>66</sup> and accordingly, provides a definition of "service animals" which includes bomb detection dog, narcotics detection dog, patrol dog, tracking dog, search and rescue dog, accelerant detection dog, cadaver dog, assistance dog, and police horse.<sup>67</sup> In sharp contrast, South Dakota appears to be the only state whose legislature has not attempted to define working animals in its statutes whatsoever.<sup>68</sup> Most states fall somewhere in between and classify working animals in some way, but the definitions vary widely, as do the purposes of the laws in which the definitions are found.<sup>69</sup>

In addition to the disparities that exist concerning these definitions, states have also enacted incongruous provisions

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<sup>63</sup> See, e.g., INT'L POLICE WORK DOG ASS'N, <https://www.ipwda.org/> [<https://perma.cc/GL7C-4XJS>].

<sup>64</sup> K2 SOLUTIONS, <https://k2canine.com> [<https://perma.cc/EQQ8-SRH7>].

<sup>65</sup> See Wisch, *supra* note 22.

<sup>66</sup> KY. REV. STAT. ANN. § 525.200 (West 2020).

<sup>67</sup> KY. REV. STAT. ANN. § 525.010 (West 2020).

<sup>68</sup> See Wisch, *supra* note 22.

<sup>69</sup> *Id.* ("The first column gives state definitions for an assistance animal, which can range from a 'guide dog' in Connecticut to a 'medical alert or respond dog' in Missouri").

governing working animal accommodations, penalties for harassment or interference with working animals, working animals in the context of motor vehicle operations and traffic, licensing requirements, and penalties for fraud or misrepresentation of the validity of a working animal.<sup>70</sup> Some state laws simply echo the protections of the federal authorities, similar to how many state constitutions reflect the provisions of the federal constitution.<sup>71</sup> Nonetheless, a frequent concern that arises from inconsistencies among the states is the risk that those with disabilities will not be provided the same protections or will be deprived of sufficient protections when traveling on an interstate basis.<sup>72</sup> Such an issue may arise when an individual with an state-protected emotional support travels to another state that does not recognize emotional support animals.<sup>73</sup> However, the challenge of complying with inconsistent accommodations for disabled individuals from state-to-state is not the only concern.<sup>74</sup>

It is clear that in passing their own laws, many state legislatures are also hoping to protect the public at large.<sup>75</sup> The laws for working animals in states with penalties for the misrepresentation of animals reflect an earnest effort by jurisdictions throughout the nation not only to eliminate fraud but also to provide the public the ability to recognize legitimate working animals.<sup>76</sup> Because state legislatures have not been preempted by federal authorities, blame for the issues that arise from national inconsistency should not be placed solely upon state governments, if at all. The following sections will address additional issues with the current state of the law and proposed solutions, including federal preemption.

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<sup>70</sup> *See generally id.* (including columns that classify different state laws as “Public Accommodation Law,” “Harassment or Interference Law,” “Driving Law,” “Licensing Law,” and “Service Dog Fraud Law”).

<sup>71</sup> *See id.*

<sup>72</sup> AM. VETERINARY MED. ASS’N, *supra* note 13, at 11.

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

<sup>74</sup> *See id.*

<sup>75</sup> *See* Adam Edelman, *Collared: New Laws Crack Down on Fake Service Dogs*, NBC NEWS (May 5, 2018, 12:01 PM), <https://www.nbcnews.com/politics/politics-news/collared-new-laws-crack-down-fake-service-dogs-n871541> [<https://perma.cc/KHF5-F3Y2>].

<sup>76</sup> Wisch, *supra* note 22.

## II. ONGOING AND LOOMING ISSUES AND STATUTORY WEAKNESSES

One of the issues facing the working animal industry at large is an inconsistency in the various titles given to working animals. Few of the organizations that place animals with end-users appear to agree about how various categories of working animals are defined and distinguished.<sup>77</sup> This lack of congruence among market players is also prevalent throughout existing statutory authorities; not only are the federal provisions, including the ADA, the FHA, Section 504, and the ACAA inconsistent with one another, but the enacted state provisions are far from uniform in their references to “service,” “therapy,” and “emotional support” animals.<sup>78</sup> Before coherence can develop in training requirements, certification options, or identification mechanisms, legislators and key industry players must agree on definitions for animals that can apply across disciplines. Broadly endorsed standard definitions are needed not merely for the sake of uniformity, but to mitigate the issues that arise because of inconsistency.

As previously discussed, descriptions of and protections for working animals and their owners vary depending on context and location.<sup>79</sup> Variations in state protections and the incompleteness of the federal government’s statutory guidance present several problems. The primary issues within the scope of this Note that have resulted or likely will result from the existing statutory conflicts and deficiencies include unnecessary compliance burdens on disabled or otherwise disadvantaged individuals, fraud and

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<sup>77</sup> See, e.g., *Frequently Asked Questions*, 4 PAWS FOR ABILITY, <https://4pawsforability.org/faq/> [<https://perma.cc/V5WH-7ZXH>] (describing types of service dogs as “hearing ear dogs,” “autism assistance dogs,” “mobility assistance dogs,” “seizure alert dogs,” “diabetic alert dogs,” etc.). *But see*, e.g., *Service Dogs*, SERVICE DOGS FOR AMERICA, <http://www.servicedogsforamerica.org/about-us/service-dogs/> [<https://perma.cc/SL36-SN8A>] (describing types of service dogs as “mobility assistance dogs,” “emergency medical response dogs,” “PTSD dogs,” “facility dogs,” etc.).

<sup>78</sup> AM. VETERINARY MED. ASS’N, *supra* note 13, at 5–6; *see also* Wisch, *supra* note 22.

<sup>79</sup> Edelman, *supra* note 75 (“There is no uniform nationwide certification or registration process for legitimate service animals — which receive up to several years of specialized training — making it easy for people to scam a non-existent system. And the easy availability online of ‘service dog’ harnesses and vests is all too tempting for animal-owners who want company running errands and going out.”); *see also* Wisch, *supra* note 22.

misrepresentation of working animals, and threats to public health and safety.<sup>80</sup>

### *A. Compliance Burdens*

The ADA expressly permits states to build upon the provisions of the ADA.<sup>81</sup> Section 12201(b) of the ADA states, in part, “[n]othing in this Act shall be construed to invalidate or limit the remedies, rights, and procedures of any . . . State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act.”<sup>82</sup> Like the ADA, neither the FHA, Section 504, nor the ACAA impose preemptive restrictions on state legislatures.<sup>83</sup> One of the classes of working animals that states are handling differently as a result of this legislative liberty is emotional support animals (“ESAs”).<sup>84</sup> ESAs “provide emotional, physical, or psychological support through companionship.”<sup>85</sup> Because ESAs are used principally for comfort or friendship, their skill level is generally comparable to that of an average household pet.<sup>86</sup> Some states, including Maine, New Mexico, Utah, and Virginia, expressly exclude animals that provide emotional support from their definitions of valid working or assistance animals.<sup>87</sup> However, the restrictions on ESAs are lax in some states, so they are often permitted access to educational institutions, healthcare facilities, and businesses.<sup>88</sup> Because ESAs provide valuable companionship services,<sup>89</sup> individuals that truly need ESAs can benefit greatly from their use. Ensuring that those with mental or physical conditions who require ESAs have access from state-to-state is seemingly impossible under the current laws because only the FHA and the ACAA validate the use of such

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<sup>80</sup> See AM. VETERINARY MED. ASS’N, *supra* note 13, at 2–3.

<sup>81</sup> 42 U.S.C. § 12201(b) (2020).

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

<sup>83</sup> See AM. VETERINARY MED. ASS’N, *supra* note 13, at 9–11.

<sup>84</sup> *Id.* at 8–9.

<sup>85</sup> *Id.* at 9.

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

<sup>87</sup> Wisch, *supra* note 22.

<sup>88</sup> AM. VETERINARY MED. ASS’N, *supra* note 13, at 7.

<sup>89</sup> *Id.* at 2, 5–6.

working animals.<sup>90</sup> In other words, ESAs are only approved by federal law in the contexts of housing and air travel.<sup>91</sup>

Emotional support animals are just one example of a class of working animals that, in many cases, legitimately needs but is denied equal or sufficient protections across the nation. Therapy animals as defined by the AVMA are another class of working animals that can play an integral role in human health and wellness, but do not have meaningful legal recognition or protection.<sup>92</sup> Though working animals attempt to ease burdens in the lives of those suffering from physical and mental impairments, state and federal law is currently failing to fulfill that purpose by creating additional hurdles for the owners and handlers of working animals who may need their working animal in various locations. Statutory solutions must, at the very least, provide definitions for identified classes of working animals that are imposed on the states and uniform nationwide. Only through widespread consistency will the burdens on those using working animals fall away.

### *B. Fraud, Public Confidence, and Public Health and Safety*

The most pressing threat posed by federal statutory insufficiency and state statutory inconsistency is the threat to the health and safety of humans and animals. Without nationally embraced working animal definitions, training requirements, certification processes, or means of identification, individuals and organizations can largely decide for themselves whether animals are qualified to serve as assistance animals, therapy animals, emotional support animals, and so on.<sup>93</sup> Not only is the lack of governmental guidance detrimental to public confidence in the legitimacy of true working animals, but it enables bad actors to take advantage of limited market regulation.<sup>94</sup> These issues most

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<sup>90</sup> *Id.* at 9–11.

<sup>91</sup> *Id.* at 8–9.

<sup>92</sup> *Id.* at 6.

<sup>93</sup> *Id.* at 11 (“Because the ADA does not specify training standards for service dogs and ESAs, there is a market for falsely ‘certifying’ pets as an assistance animal. There are countless online sources that will, for the right price, ‘certify’ a pet as an assistance animal after a brief, online questionnaire. The organization will then send that person a certificate, harness, etc. so the pet will appear like an assistance animal.”).

<sup>94</sup> See AM. VETERINARY MED. ASS’N, *supra* note 13, at 11.

commonly arise through fraud or misrepresentation, and this problem is pervasive throughout the working animal industry.<sup>95</sup>

Fraud and misrepresentation of working animal qualifications exists even at the first point in the supply chain: with breeders.<sup>96</sup> In addition to the growing problem of fraudulent online breeders claiming to have puppies for sale,<sup>97</sup> many individuals falsely claim to breed animals that have traits ideal for working animals, whether or not those traits are authentically characteristic of their pedigree.<sup>98</sup> Dog breeders can represent that their animals have certain qualities like docility, calmness, obedience, superior speed, or an exceptional ability to smell, among others.<sup>99</sup> Without any kind of regulatory check or body overseeing the legitimacy of the “product” that such breeders are selling, buyers in the marketplace can be fooled or taken advantage of easily with little to no recourse.<sup>100</sup>

As one may imagine, this problem flows down through the supply chain. As animals come into the hands of new owners and handlers, they are at risk of placement with trainers who claim to have the skill and expertise to train animals for certain purposes such as emotional support, when in fact, those trainers do not have the expertise they purport to have.<sup>101</sup> Absent any checks on

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

<sup>96</sup> See *Puppy Scams: How to Protect Yourself from Fake Online Pet Sellers*, INT’L ASS’N OF BETTER BUS. BUREAUS (June 12, 2019), <https://www.bbb.org/article/scams/14213-puppy-scams-how-to-protect-yourself-from-fake-online-pet-sellers> [https://perma.cc/2J2G-PW2X]; see also Katie Burns, *AVMA Passes Policy on Responsible Pet Breeding*, AM. VETERINARY MED. ASS’N (Feb. 15, 2017), <https://www.avma.org/News/JAVMANews/Pages/170301c.aspx> [https://perma.cc/W3QC-FR2G].

<sup>97</sup> Karin Brulliard, *How Much is that Doggy on the Website? It Might Not Even Exist*, WASH. POST (Sept. 28, 2017, 12:48 PM), [https://www.washingtonpost.com/news/animalia/wp/2017/09/28/how-much-is-that-doggy-on-the-website-it-might-not-even-exist/?utm\\_term=.22c7f3378df7](https://www.washingtonpost.com/news/animalia/wp/2017/09/28/how-much-is-that-doggy-on-the-website-it-might-not-even-exist/?utm_term=.22c7f3378df7) [https://perma.cc/VYS9-K9AR].

<sup>98</sup> Burns, *supra* note 96.

<sup>99</sup> See, e.g., *The AKC and Dog Breeders: Partners in Crime*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <https://www.peta.org/issues/animal-companion-issues/animal-companion-factsheets/akc-dog-breeders-partners-crime/> [https://perma.cc/SA7R-6KET] (“Potential buyers might be swayed by talk of ‘papers’ and ‘AKC registration,’ but these papers only mean that both parents belong to the same breed—they don’t ensure a dog’s good temperament or good health.”).

<sup>100</sup> *Id.*

<sup>101</sup> *How Does Someone Become a Service Dog Trainer?*, ANYTHING PAWSABLE (Aug. 20, 2011), <https://www.anythingpawsable.com/how-does-someone-become-a-service-dog-trainer/> [https://perma.cc/8MRF-SZ73].

whether such trainers and programs are operating to fulfill the promises they make, downstream buyers—including disabled persons—can be exploited.<sup>102</sup> Placement organizations may acquire animals from unqualified trainers with inadequate training programs without knowing that such animals will not meet the needs of eventual owners.<sup>103</sup> While placement organizations may have their own standards for trainers and training programs that dogs must meet to qualify for eligibility,<sup>104</sup> it may nonetheless be a challenge to ensure that placement organizations will have a remedy when the animals or trainers do not meet their expectations. Arguably, the most disheartening consideration concerning fraud in the supply chain is that end-users with legitimate physical, mental, or emotional disabilities that truly need and could significantly benefit from the assistance of an animal have little to no way to confirm that a given animal has been properly bred, trained, or qualified for placement.

As breeders, trainers, and placement organizations issue working animals to individual owners, and those individuals take the animals into public, such animals can pose threats to other humans and animals.<sup>105</sup> The first of these threats is safety.<sup>106</sup> For example, if an animal purportedly being trained for a specific purpose has not received the proper training to withstand frightening stimuli, the dog may react in a way that endangers the people around it.<sup>107</sup> In one account, a disabled woman bound to her

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<sup>102</sup> *See id.*

<sup>103</sup> *See id.*

<sup>104</sup> *See, e.g., Guide Dog Training*, GUIDE DOGS FOR THE BLIND, <https://www.guidedogs.com/meet-gdb/dog-programs/guide-dog-training> [<https://perma.cc/W9CB-JUPQ>] (describing the skills required of Guide Dogs for the Blind canines).

<sup>105</sup> *See Illegal fake service dogs pose dangers to many*, CBS NEWS (Oct. 11, 2013, 11:13 AM), <https://www.cbsnews.com/news/illegal-fake-service-dogs-pose-dangers-to-many/> [<https://perma.cc/5KS9-6TK8>]; *see also Fact Sheet: Service Animals in Business and Public Spaces*, DISABILITY RIGHTS CAL. (Apr. 12, 2018), <https://www.disabilityrightsca.org/publications/fact-sheet-service-animals-in-business-and-public-spaces> [<https://perma.cc/3CJ8-YKVT>] (discussing how working animals can be considered a “direct threat,” like if a dog were to bite someone).

<sup>106</sup> *See, e.g., CBS NEWS, supra note 105; Edelman, supra note 75; AM. VETERINARY MED. ASS'N, supra note 13, at 11.*

<sup>107</sup> Edelman, *supra note 75* (providing the anecdotal account of a performance venue volunteer who has seen fraudulent service dogs misbehaving, and in one instance going as far as to hump the legs of a person who was not the dog’s owner); *see also AM. VETERINARY MED. ASS'N, supra note 13, at 11* (“A pet, for instance, may react negatively to a stimulus, such as a wheelchair, if it has never come in contact with one before. Service animals, conversely, have been trained, for the most part, to be accustomed to wheelchairs



wheelchair was in an elevator with her service dog, a yellow lab, when it was attacked and injured by the miniature poodle owned by another individual who entered the elevator.<sup>108</sup> The poodle's owner first claimed that the poodle was a service dog and then said it was an emotional support animal.<sup>109</sup> In fact, the poodle was merely a pet, brought into the building by its owner for no good reason.<sup>110</sup> Similarly, another wheelchair-bound individual suffering from dystonia attested to needing to interfere multiple times between her legitimate service dog and other untrained animals, putting her safety at risk, when untrained animals have become aggressive or have responded erratically to unfamiliar stimuli.<sup>111</sup>

A lack of standards and accountability concerning veterinary care among the working dog population exaggerates the risks posed by working dogs to public health and safety.<sup>112</sup> An animal that has not received appropriate veterinary care may go completely unchecked, risking the health of the people and animals it encounters.<sup>113</sup> Groups especially susceptible to contracting a zoonotic disease include young children, the elderly, and individuals with weak immune systems.<sup>114</sup> Regardless of the age or health status of the individuals to whom a working dog is exposed, the law must do more to curtail the looming threat of negligent veterinary care. Ideally, government-sanctioned certification would include a requirement that owners and handlers continually submit documentation showing that their animal has undergone periodic evaluations by a veterinarian. This should include physical examinations of the animal, vaccinations, and any treatment otherwise necessary for the animal to be used safely in public environments.

One should note that in addition to the authorities on working animals that pertain to Americans with disabilities, there

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and not react when encountering one.”). Other stimuli may include loud, alarming noises, large crowds, traffic, gunfire, or interaction with other people and animals.

<sup>108</sup> Ollove, *supra* note 27.

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

<sup>110</sup> *Id.*

<sup>111</sup> CBS NEWS, *supra* note 105.

<sup>112</sup> See *Zoonotic Diseases*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html> [https://perma.cc/8VZD-A2ZR] (defining types of dangerous germs that can spread between humans and animals).

<sup>113</sup> *Id.*

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

is no standardized training, certification, or other rules or guidelines at the federal level for police or military working animals.<sup>115</sup> In federal criminal cases where a police officer claims that his dog has indicated the presence of drugs, officers need only assert that adequate training of the animal occurred to establish probable cause to conduct a reasonable search or seizure under the Fourth Amendment, whether conducted pursuant to a warrant or not.<sup>116</sup> On the contrary, state courts have not been nearly as deferential to police as have federal courts.<sup>117</sup> While the stricter standards to which police dogs are held among state courts is encouraging, the federal court interpretations will likely be more persuasive to federal lawmakers.

National consistency in recognition of common types of working animals is an ideal place to start to improve the American system of working dogs. Providing working dog owners and the general public with the ability to know whether a service animal is genuine or fraudulent begins by identifying the various classes of working animals that society wants to recognize as legitimate and enforcing those parameters on a national scale. Once national uniformity is achieved with respect to the classes of working animals to be recognized, fraud throughout the supply chain can end. Breeders, trainers, placement organizations, final owners, and all parties in between will have the ability to identify what kinds of animals qualify as working animals under the law. Inhibiting continued fraud will, in turn, reduce threats to public health and safety, because only legitimate animals will interface with the public. Only working dogs that are sufficiently trained, well cared for, genuinely needed, and satisfy the criteria of standard definitions should be able to engage with the public.

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<sup>115</sup> Fazekas, *supra* note 14, at 474, n.6 (collecting federal cases that illustrate the incredible deference the courts have afforded to police officers in asserting that their drug detection dogs were appropriately trained for, sufficiently capable of, and/or reliably accurate in the performing their tasks so as to establish probable cause for search warrants in Fourth Amendment search and seizure cases).

<sup>116</sup> *United States v. Sundby*, 186 F.3d 873, 876 (1999) (“To establish the dog’s reliability, the affidavit need only state the dog has been trained and certified to detect drugs”).

<sup>117</sup> *See* Fazekas, *supra* note 14, at 484 (“State courts have held the more rigorous standard of establishing a dog’s reliability requires states to produce evidence including: training and certification records, an explanation of that certification, recertification records, field performance records, and evidence of the handler’s training.”).

### III. STATUTORILY MANDATED DEFINITIONS, TRAINING REQUIREMENTS, AND CERTIFICATION

#### *A. Definitions*

The terms that federal legal authorities use to describe working animals include “assistance animal,” “service animal,” and “emotional support animal.”<sup>118</sup> Further, the AVMA supports a class of service animal known as “therapy animals.”<sup>119</sup> States, on the other hand, define various classes of working animals differently.<sup>120</sup> Kentucky’s legislature, for example, elected to include many different types of working animals under the definition of “service animal” and has, therefore, protected such working animals under this broad definition.<sup>121</sup> The statute does not merely list different types of working animals to be included under service animal, but also provides definitions for each type of working animal as well.<sup>122</sup> To illustrate, three of the types of working animals listed under “service animal,” include “tracking dog,” “search and rescue dog,” and “accelerant detection dog.”<sup>123</sup> “Tracking dog” is defined as “a dog that is trained to track and find a missing person, escaped inmate, or fleeing felon.”<sup>124</sup> “Search and rescue dog” is defined as “a dog that is trained to locate lost or missing persons, victims of natural or man-made disasters, and human bodies.”<sup>125</sup> “Accelerant detection dog” is defined as “a dog that is trained for accelerant detection, commonly referred to as arson canines.”<sup>126</sup>

A simpler framework is set forth by the Ohio state legislature, which recognizes four classes of working dogs: “assistance dog,” “guide dog,” “hearing dog,” and “service dog.”<sup>127</sup> Regardless of the terminology used, a sensible framework for defining working animals would paint with a broad brush, and

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<sup>118</sup> AM. VETERINARY MED. ASS’N, *supra* note 13, at 5–6.

<sup>119</sup> *Id.* at 6.

<sup>120</sup> Wisch, *supra* note 22.

<sup>121</sup> KY. REV. STAT. ANN. § 525.010 (West 2020); KY. REV. STAT. ANN. § 258.500 (West 2020); *see also* Wisch, *supra* note 22.

<sup>122</sup> KY. REV. STAT. ANN. § 525.010 (West 2020).

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

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

<sup>125</sup> *Id.*

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

<sup>127</sup> OHIO REV. CODE ANN. § 955.011 (West 2020); *see also* Wisch, *supra* note 22.

accordingly, adopt a structure similar to the one developed by the Kentucky state legislature. Defining working animal broadly will ensure that the greatest number of animals falls under the applicable federal legislative authority. Instead of defining “service animal,” “assistance animal,” “therapy animal,” and others separately, employing “working animal” as a broad term—the term used in this writing—would include the greatest number of classes of working animals. Using a term like “working animal” and incorporating the various definitions provided by the ADA, FHA, Section 504, the ACAA, and the AVMA would ensure a comprehensive framework.<sup>128</sup>

Ideally, a broad federal definition would also include military working animals and police canines, which the Kentucky provisions illustrate through the inclusion of definitions of “bomb detection dog,” “narcotic detection dog,” and “patrol dog.”<sup>129</sup> Regardless, employing the broadest possible language will ensure the greatest number of animals is captured. Further, the federal authority—presumably, a statute or regulation—that creates the framework for a working animal definition must preempt the states by enforcing the definition it adopts upon the states.<sup>130</sup>

### *B. Training and Certification*

Once coordinated definitions used to refer to various types of working animals exist, the logical next step is to establish guidelines for the training of working animals which set out procedures required during training which are individualized for each type of working animal. Another option is to create a system in which private individuals and organizations can themselves seek verification as trainers. A framework like this could function similarly to other government oversight programs that require certification. One such example under the authority of the United States Department of Agriculture is the USDA Organic

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<sup>128</sup> See AM. VETERINARY MED. ASS'N, *supra* note 13, at 5–6.

<sup>129</sup> KY. REV. STAT. ANN. § 525.010 (West 2020); *see also* Wisch, *supra* note 22.

<sup>130</sup> See, e.g., *Preemption*, PUB. HEALTH LAW CTR., <https://www.publichealthlawcenter.org/topics/commercial-tobacco-control/preemption> [<https://perma.cc/UQH8-89R5>] (recognizing the positive power of preemption in public health contexts and stating that “airline safety and health issues are best regulated at the federal level”).

Program.<sup>131</sup> Not only does this system allow producers to apply with the USDA to become certified as operations producing standardized organic farm products, it also allows individuals to apply to become certifying agents.<sup>132</sup> In fulfilling that interest, there is a streamlined process for registering with USDA if one desires either to become a certified seller of organic produce or livestock or to become an agent—essentially an “auditor”—of organic operations.<sup>133</sup> A similar system could function well in the context of working animals.

A regulated structure where either organizations or individuals in the working animal industry could seek and obtain government-sanctioned approval would inspire public confidence in the validity of the industry because it would create uniformity in training and health standards. The idea is that trainers would have to demonstrate their practices as compliant with federal standards before the animals they sell can enter the marketplace. This approach would also help to protect Americans with disabilities because buyers would have confidence that the purchased animal is compliant with national, government-endorsed training standards. Such a structure could function effectively not only for organizations focused on training dogs to serve individuals with disabilities, but it could also function effectively for law enforcement and military canines that interface with the public. While the development of the regulations to operate such a system will be time-consuming and expensive, creating a more standard system is essential to help protect vulnerable members of society and ease the burdens they bear. The development of the USDA Organic program was similarly daunting but has proven especially valuable to improving public confidence in food safety.<sup>134</sup>

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<sup>131</sup> *USDA Organic*, U.S. DEP’T OF AGRIC., <https://www.usda.gov/topics/organic> [<https://perma.cc/V5B6-ND8F>].

<sup>132</sup> *FAQ: Becoming a Certifying Agent*, U.S. DEP’T OF AGRIC., <https://www.ams.usda.gov/services/organic-certification/faq-becoming-certifying-agent> [<https://perma.cc/8YH2-9BB2>].

<sup>133</sup> *Id.*

<sup>134</sup> See Miles McEvoy, *Organic 101: What the USDA Organic Label Means*, U.S. DEP’T OF AGRIC. (Mar. 22, 2012), <https://www.usda.gov/media/blog/2012/03/22/organic-101-what-usda-organic-label-means> [<https://perma.cc/R3WW-UVYN>] (“Becoming familiar with the USDA organic label and understanding its claims empower consumers to make informed decisions about the food they purchase. While there are many marketing claims

Many established organizations claim to be proficient in training animals to perform services for various groups, and especially for the disabled.<sup>135</sup> Among these organizations, one of the most well-established and broadly respected is Guide Dogs for the Blind.<sup>136</sup> The organization, established in 1942, trains dogs to assist individuals who are visually impaired or blind.<sup>137</sup> To ensure the public can be confident in the legitimacy of working animals, especially when used in public environments like schools, airports, and other government buildings, a certification program or process should be developed and overseen either by an administrative agency or a qualified private organization. Combining the input of long-established and well-respected stakeholders like Guide Dogs for the Blind with the efforts of lawmakers across the country will help yield useful and effective statutory guidance.

### *C. Means of Identification*

One of the best ways to guarantee that actors throughout the supply chain, owners, and handlers comply with established guidelines will be to develop standard means of identification that allow for quick and easy verification, similar to driver's licenses. Some state laws already require the use of ID cards for working animals, much like driver's licenses.<sup>138</sup> Such a system would apply across the board to animals used by individuals, organizations utilizing animal intervention systems, military personnel, and law enforcement.

National recognition can be achieved by incorporating the issuance of the IDs at the training level. Training individuals or training organizations that have been certified under government standards would be required to generate ID cards for the animals they train, and the ID information would be submitted to the overseeing agency for national registration. When an owner or handler receives an animal, the agency would have the authority

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that add value to foods, consumers can be assured that USDA organic products are verified organic at all steps between the farm and the store.”).

<sup>135</sup> Laurie Rappeport, *Organizations That Help Disabled People Get a Service Dog*, POCKETSENSE (Dec. 12, 2019), <https://pocketsense.com/organizations-disabled-people-service-dog-5518.html> [<https://perma.cc/Z6QH-VKZU>].

<sup>136</sup> GUIDE DOGS FOR THE BLIND, *supra* note 104.

<sup>137</sup> *Id.*

<sup>138</sup> Wisch, *supra* note 22.

to issue the ID Card with the owner or handler's identification. Importantly, regardless of the stage in the supply chain, an ID should not be issued unless the animal has been deemed compliant with federal law. Developing a system with widespread uniform recognition will maximize public confidence in working animal legitimacy, improve public health and safety, and mitigate the threats posed by fraud.

### CONCLUSION

The current state of the working animal industry in the United States may be described as flawed, at best. While newspaper articles, legal journals, and multitudes of anecdotal accounts highlight fraud and other issues concerning working animals in the United States,<sup>139</sup> it is unlikely that lasting change will result unless organizations and affected individuals resolve to take action at the federal level.

In order to improve issues that exist in the industry, including burdens on disabled Americans, threats to public health and safety, and public confidence in the system, federal statutory and regulatory guidance must be introduced to provide comprehensive means of legitimizing service animals. Nationally enforced guidance should include a broad definition of working animals, baseline training and maintenance standards, a process for becoming a certifying agent, a certified owner, or a certified institution within the industry, and penalties for fraud and misrepresentation. Despite arguments that developing working dog requirements will only create more burdens for disabled Americans,<sup>140</sup> developing standards will help better protect Americans with disabilities and the public at large. Because many state legislatures have begun to enact laws of their own to curtail the problem of fraud,<sup>141</sup> states can serve as valuable resources to federal lawmakers. Organizations like the American Veterinary

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<sup>139</sup> See, e.g., Edelman, *supra* note 75.

<sup>140</sup> AM. VETERINARY MED. ASS'N, *supra* note 13, at 3 ("The ADA does not require any standardized training or certification program for service animals, nor does it require the handler to provide any form of documentation stating the necessity for a service animal. Such documentation is considered a barrier or unreasonable burden that could limit access to a service animal.").

<sup>141</sup> See Wisch, *supra* note 22.

Medical Association can also play an important role in garnering political and legislative support.