

2010

Abuse Under the Big Top: Seeking Legal Protection for Circus Elephants after ASPCA v. Ringling Brothers

Emily A. Beverage

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Emily A. Beverage, Abuse Under the Big Top: Seeking Legal Protection for Circus Elephants after ASPCA v. Ringling Brothers, 13 *Vanderbilt Journal of Entertainment and Technology Law* 155 (2020)
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Emily A. Beverage, Abuse under the Big Top: Seeking Legal Protection for Circus Elephants after ASPCA v. Ringling Brothers, 13 VAND. J. ENT. & TECH. L. 155 (2010).

ALWD 7th ed.

Emily A. Beverage, Abuse under the Big Top: Seeking Legal Protection for Circus Elephants after ASPCA v. Ringling Brothers, 13 Vand. J. Ent. & Tech. L. 155 (2010).

APA 7th ed.

Beverage, E. A. (2010). Abuse under the big top: seeking legal protection for circus elephants after aspc v. ringling brothers. Vanderbilt Journal of Entertainment and Technology Law, 13(1), 155-184.

Chicago 17th ed.

Emily A. Beverage, "Abuse under the Big Top: Seeking Legal Protection for Circus Elephants after ASPCA v. Ringling Brothers," Vanderbilt Journal of Entertainment and Technology Law 13, no. 1 (Fall 2010): 155-184

McGill Guide 9th ed.

Emily A. Beverage, "Abuse under the Big Top: Seeking Legal Protection for Circus Elephants after ASPCA v. Ringling Brothers" (2010) 13:1 Vand J Ent & Tech L 155.

AGLC 4th ed.

Emily A. Beverage, 'Abuse under the Big Top: Seeking Legal Protection for Circus Elephants after ASPCA v. Ringling Brothers' (2010) 13(1) Vanderbilt Journal of Entertainment and Technology Law 155

MLA 9th ed.

Beverage, Emily A. "Abuse under the Big Top: Seeking Legal Protection for Circus Elephants after ASPCA v. Ringling Brothers." Vanderbilt Journal of Entertainment and Technology Law, vol. 13, no. 1, Fall 2010, pp. 155-184. HeinOnline.

OSCOLA 4th ed.

Emily A. Beverage, 'Abuse under the Big Top: Seeking Legal Protection for Circus Elephants after ASPCA v. Ringling Brothers' (2010) 13 Vand J Ent & Tech L 155

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Abuse Under the Big Top: Seeking Legal Protection for Circus Elephants after *ASPCA v. Ringling Brothers*

ABSTRACT

The Asian elephants featured in the Ringling Brothers and Barnum & Bailey Circus are theoretically guaranteed humane treatment by the Animal Welfare Act, which ostensibly protects animals in exhibition, and by the Endangered Species Act, which covers the treatment of animals designated endangered species, including Asian elephants. Nevertheless, circus elephants have suffered extensive abuse because the agencies responsible for implementing the laws—the United States Departments of Agriculture and the Interior, respectively—have not done so aggressively, and because animal advocates have been unable to compel their enforcement or to establish standing to sue private parties. In 2000, animal welfare organizations, including the American Society for Prevention of Cruelty to Animals, invoked the citizen-suit provision of the Endangered Species Act to sue Ringling for alleged violations of the Act. Joined by former Ringling “barn man” Tom Rider, the plaintiffs survived the defendant’s motion to dismiss for lack of constitutional standing by claiming that Ringling’s treatment of its elephants caused Rider emotional harm. Ultimately, nine years after the plaintiffs filed their complaint, the court dismissed the case without reaching the merits of the abuse claims. Characterizing Rider as a paid plaintiff, the court determined he could not prove an emotional attachment to Ringling’s elephants or that the court could redress his alleged injury.

This Note examines the statutory enforcement gaps highlighted by the Ringling litigation and proposes strategies for closing those gaps with legislation and litigation. After exploring the statutory backdrop against which the Ringling case arose and evaluating the successes and failures of the lawsuit, this Note suggests amending the Animal Welfare Act to ensure its diligent enforcement. Proposed changes include adding guidelines that would constrain the broad enforcement discretion the Secretary of Agriculture currently exercises and supplementing the Act with a limited citizen-suit provision. This Note

also recommends the enactment of state anti-cruelty laws that would prohibit certain circus training tools—such as the bull hook. As the Ringling litigation demonstrated, animal advocates face a formidable hurdle—constitutional standing—when suing on behalf of animals. As such, this Note advocates further strategic litigation, implementing two promising standing theories: informational injury and economic harm to an organization.

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The Asian elephants used in the Ringling Brothers and Barnum & Bailey Circus (Ringling) are theoretically guaranteed humane treatment by the Animal Welfare Act (AWA),¹ which governs the treatment of animals in exhibition, and by the Endangered Species Act (ESA),² which governs the treatment of animals designated endangered species, including Asian elephants.³ Nevertheless, circus

1. Animal Welfare Act, 7 U.S.C. §§ 2131–2159 (2010) (originally enacted as Laboratory Animal Welfare Act).

2. Endangered Species Act, 16 U.S.C. §§ 1531–1544 (2010).

3. *Id.*; ASPCA v. Feld Entm't, Inc., 677 F. Supp. 2d 55, 58 (D.D.C. 2009); Endangered and Threatened Wildlife and Plants, 50 C.F.R. § 17.11 (2010), available at http://ecos.fws.gov/tess_public/SpeciesReport.do.

elephants have been subjected to extensive abuse⁴ because the agencies responsible for implementing the laws have not aggressively enforced them,⁵ and because animal advocates have been unable to compel enforcement or to establish standing to sue private parties.⁶

Over the course of a ten-year litigation (culminating in a six-week non-jury trial in December 2009) animal welfare advocates, including the American Society for the Prevention of Cruelty to Animals (ASPCA), sought to enjoin Ringling and its parent company Feld Entertainment, Inc. (Feld)—owners of the largest group of captive Asian elephants in the United States—from abusing their elephants.⁷ Although the plaintiffs eventually lost on constitutional standing grounds, the litigation succeeded in illuminating shortcomings in the statutory framework governing the treatment of circus elephants, demonstrated the difficulties associated with invoking statutory protections for animals through litigation, and increased public awareness regarding circus elephant abuse.⁸

This Note examines the successes and failures of ASPCA's suit, under ESA, against Ringling and Feld and proposes solutions for closing the gaps in circus elephant protection exposed by the case. Part I examines the legal framework under which the suit arose and presents evidence of elephant abuse. Part II observes the enforcement gaps in AWA and analyses the successes and failures ASPCA met by suing Ringling and Feld under ESA. Part III explains how animal advocates may achieve effective legal protection for circus elephants through state and federal legislation and additional strategic litigation.

4. ASPCA, GOVERNMENT SANCTIONED ABUSE: HOW THE UNITED STATES DEPARTMENT OF AGRICULTURE ALLOWS RINGLING BROTHERS CIRCUS TO SYSTEMATICALLY MISTREAT ELEPHANTS (2003) [hereinafter ASPCA Report], available at <http://www.awionline.org/www.awionline.org/wildlife/elephants/fullrpt.pdf> (analyzing USDA inspection documents regarding Ringling's abuse of its elephants).

5. See *id.*

6. E.g., *Humane Soc'y of the U.S. v. Babbitt*, 46 F.3d 93, 98 (D.C. Cir. 1998); *Animal Legal Def. Fund, Inc. v. Glickman*, 943 F. Supp. 44, 63 (D.D.C. 1996).

7. *Performing Animal Welfare Soc'y v. Ringling Bros. & Barnum & Bailey Circus*, No. 1:00CV01641, 2001 U.S. Dist. LEXIS 12203 (D.D.C. Jun. 29, 2001), *rev'd sub nom.* *ASPCA v. Ringling Bros. & Barnum & Bailey Circus*, 317 F.3d 334 (D.C. Cir. 2003), *judgment for defendants sub nom.* *Feld Entm't*, 677 F. Supp. 2d 55.

8. *Id.*

I. STATUTORY FRAMEWORK AND VIOLATIONS AT THE CIRCUS

A. *The Animal Welfare Act*

In 1966, Congress enacted the Laboratory Animal Welfare Act,⁹ the first federal law protecting research animals in the United States.¹⁰ Renamed the Animal Welfare Act, in 1970 Congress amended the Act to extend its protections to animals used “for exhibition purposes.”¹¹ In its expanded form, the statute purports to guarantee the “humane care and treatment”¹² of a wide array of animals, including those employed in “carnivals, circuses, and zoos.”¹³ Regulations promulgated under the Act by the United States Department of Agriculture (USDA) require that covered animals be handled in a manner that does not “cause trauma, . . . behavioral stress, physical harm, or unnecessary discomfort,”¹⁴ and that physical abuse not be used to “train, work, or otherwise handle animals.”¹⁵ Additionally, exhibited animals must have sufficient space “to make normal postural and social adjustments with adequate freedom of movement.”¹⁶

The Act’s grant of broad enforcement discretion to the Secretary of Agriculture, however, undermines the laudable mandates of AWA.¹⁷ In addition to authorizing the Secretary to license exhibitors¹⁸ and promulgate regulations,¹⁹ the Act provides the Secretary with discretion to “make such investigations or inspections as he deems necessary” to determine whether the statute or regulations are being violated.²⁰ As he sees fit, the Secretary may suspend or revoke exhibition licenses,²¹ institute criminal

9. Animal Welfare Act, 7 U.S.C. §§ 2131–2159 (2010) (originally enacted as Laboratory Animal Welfare Act); SONIA S. WAISMAN, PAMELA D. FRASCH & BRUCE A. WAGMAN, *ANIMAL LAW CASES AND MATERIALS* 374 (Gary J. Simson et al. eds., 3d ed. 2006).

10. Benjamin Adams & Jean Larson, *Legislative History of the Animal Welfare Act—Introduction*, NATIONAL AGRICULTURAL LIBRARY, <http://www.nal.usda.gov/awic/pubs/AWA2007/intro.shtml> (last modified Feb. 17, 2010).

11. 7 U.S.C. § 2131; WAISMAN, FRASCH & WAGMAN, *supra* note 9, at 374.

12. 7 U.S.C. § 2131.

13. *Id.* § 2132(h).

14. Handling of Animals, 9 C.F.R. § 2.131(b)(1) (2010).

15. *Id.* § 2.131(b)(2)(i).

16. Space Requirements, 9 C.F.R. § 3.128 (2010).

17. See, e.g., 7 U.S.C. § 2149 (permitting, but not requiring, the Secretary to suspend licenses or assess civil penalties).

18. *Id.* § 2133.

19. *Id.* § 2151.

20. *Id.* § 2146.

21. *Id.* § 2149(a).

prosecutions,²² assess civil fines, and issue cease-and-desist orders.²³ Because the statute lacks a citizen-suit provision, which would enable private parties to bring claims under the Act,²⁴ and courts have refused to imply such a private cause of action,²⁵ the Secretary's enforcement discretion is essentially unchecked.

As a result of the Secretary's extensive discretion, AWA's humane mandates often go unenforced.²⁶ An ASPCA report analyzing USDA documents obtained pursuant to the Freedom of Information Act (FOIA) presents multiple examples of lenient USDA enforcement.²⁷ In one case, USDA investigators responding to allegations of elephant abuse brought by a former Ringling employee made an *announced* visit to a Ringling facility, where they observed a bloody hole above one elephant's ear²⁸ consistent with a bull hook puncture wound.²⁹ Although investigators also recorded testimony of witnesses describing beatings of multiple elephants,³⁰ the investigation closed with no action due to "insufficient evidence."³¹ Seven months later, one of the subjects of the closed investigation, a baby elephant named Benjamin, suffered a heart attack while swimming and drowned.³² Benjamin had no preexisting heart condition.³³ Witnesses informed a USDA investigator that Benjamin repeatedly swam away from his trainer when "poked" with the bull hook.³⁴ The investigator recommended charging Ringling with AWA violations, concluding that "the elephant seeing and/or being 'touched' or 'poked' by [the trainer] caused behavioral stress and trauma which

22. *Id.* § 2149(c).

23. *Id.* § 2149(b).

24. *See, e.g.,* Int'l Primate Protection League v. Inst. for Behavioral Research, Inc., 799 F.2d 943, 939 (4th Cir. 1986); Performing Animal Welfare Soc'y v. U.S. Dep't of Agric., No. 95-4719, 1996 WL 524333, at *2 (E.D. Penn. Sept. 9, 1996).

25. *Id.*

26. *See* ASPCA Report, *supra* note 4, at i-ii ("[T]he U.S. Department of Agriculture . . . routinely looks the other way when the Ringling Brothers [and] Barnum [&] Bailey circus beats and otherwise mistreats the elephants in its circus," and when the USDA fails to enforce the AWA, "it makes a mockery of the statute's intent to protect animals from inhumane treatment"); Joseph Mendelson, III, *Should Animals Have Standing? A Review of Standing Under the Animal Welfare Act*, 24 B.C. ENVTL. AFF. L. REV. 795, 795-96 (1997) (concluding that "there is a general consensus that the statute has failed to fulfill its potential in fostering the humane treatment of animals," which has been attributed, *inter alia*, to "inadequate regulatory implementation by the United States Department of Agriculture").

27. APSCA Report, *supra* note 4, at ii.

28. *Id.* at 29.

29. *Id.* at 31-32.

30. *Id.* at 30.

31. *Id.* at 38.

32. *Id.* at 103.

33. *Id.*

34. *Id.* at 101, 111.

precipitated in the physical harm and ultimate death of the animal.”³⁵ Nevertheless, the agency closed the case without addressing the investigator’s conclusions,³⁶ finding an “insufficient basis to support prosecution.”³⁷

B. The Endangered Species Act

ESA protects endangered animals by prohibiting the “taking” of any member of an endangered species³⁸—including any such animal held in captivity³⁹—and by authorizing any person to bring a civil suit to enjoin alleged violations of the Act.⁴⁰ Through its definition of “take,” the statute prohibits, *inter alia*, harassing, harming, or attempting to harass or harm any endangered animal.⁴¹ An individual may not “harass” an endangered creature by “annoying” the animal “to such an extent as to significantly disrupt normal behavioral patterns,” including “breeding, feeding, or sheltering.”⁴² Additionally, a person may not “harm” an endangered animal by killing or injuring it—either directly or indirectly—such as by “significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”⁴³ However, an individual may use “generally accepted” breeding procedures or provide veterinary care to a captive animal as long as minimum standards required by AWA are satisfied and such actions are not likely to injure the animal.⁴⁴ Additionally, the Secretary of the Interior may issue permits authorizing certain takings that “enhance the propagation or survival of the affected species.”⁴⁵

ESA’s citizen-suit provision enables private parties to play an active role in the enforcement of the statute.⁴⁶ Under the provision, “any person” may file a civil suit to enjoin “any person” alleged to be in violation of the Act or its regulations and may sue to compel the Secretary of the Interior to apply certain prohibitions regarding the

35. *Id.* at 102.

36. *Id.* at 104.

37. *Id.* at 103.

38. Endangered Species Act, 16 U.S.C. § 1538(a)(1) (2010).

39. Endangered and Threatened Wildlife and Plants—Definitions, 50 C.F.R. § 17.3 (2010).

40. 16 U.S.C. § 1540(g)(1)(A).

41. *Id.* § 1532(19).

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* § 1539(a)(1)(A).

46. Patricia M. Wald, *The Role of the Judiciary in Environmental Protection*, 19 B.C. ENVTL. AFF. L. REV. 519, 525 (1992).

“taking” of endangered or threatened species.⁴⁷ Congress authorized ESA suits by “private attorneys general”⁴⁸ because legislators are aware that federal regulators and the entities they oversee “may work out ‘agreements’ that are not necessarily true to the spirit of the environmental law in question.”⁴⁹ Congress intended that citizen suits would encourage enforcement in such cases.⁵⁰

Nevertheless, an ESA enforcement gap similar to that of AWA reduces the protection available for captive endangered animals. Although the Department of the Interior, through the Fish and Wildlife Service (FWS), must notify the public and accept comments before *issuing* permits for takings designed to “enhance the propagation or survival” of an endangered species,⁵¹ private citizens have no recourse to ensure the provisions of those permits are actually followed.⁵² Because the ESA citizen-suit provision has been interpreted not to encompass private enforcement of permits, the conditions of captive-bred wildlife permits may go unenforced.⁵³

C. Standing

Regardless of which statute a plaintiff invokes, a person seeking to employ the judicial process to protect animals routinely runs into the barrier of lacking standing.⁵⁴ To bring a claim in federal court, a plaintiff must satisfy the standing requirements derived from Article III of the Constitution⁵⁵ as well as judicially-created prudential limitations on standing.⁵⁶ In order to establish that a set of facts presents a “case or controversy” under Article III, a plaintiff must show

47. Endangered Species Act, 16 U.S.C. § 1540(g)(1)(A) (2010).

48. *Bennett v. Spear*, 520 U.S. 154, 165 (1997).

49. Wald, *supra* note 46, at 525.

50. Plaintiffs’ Memorandum Regarding Relevant Statutory Authority and Regulatory Authority at 3, *ASPCA v. Feld Entm’t, Inc.*, 677 F. Supp. 2d 55 (D.D.C. 2009), *available at* http://www.bornfreeusa.org/a1a6a_courtdocuments.php (quoting Wald, *supra* note 46, at 525).

51. Endangered Species Act, 16 U.S.C. § 1539(c)–(d) (2010); Prohibitions, 50 C.F.R. § 17.21(g)(ii) (2010); Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking, 50 C.F.R. § 17.22(a)(1) (2010).

52. *ASPCA v. Ringling Bros. & Barnum & Bailey Circus*, 502 F. Supp. 2d 103, 111–12 (D.D.C. 2007).

53. *Id.*

54. See Michael J. Ritter, *Standing in the Way of Animal Welfare: A Reconsideration of the Zone-of-Interest “Gloss” on the Administrative Procedures Act*, 29 REV. LITIG. 951, 972–79 (2010) (examining the standing challenges plaintiffs faces in various ESA and AWA cases).

55. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992).

56. *Performing Animal Welfare Soc’y v. Ringling Bros. & Barnum & Bailey Circus*, No. 1:00CV01641, 2001 U.S. Dist. LEXIS 12203, at *1 (D.D.C. Jun. 29, 2001), *rev’d sub nom.* *ASPCA v. Ringling Bros. & Barnum & Bailey Circus*, 317 F.3d 334, 335–37 (D.C. Cir. 2003), *judgment for defendants sub nom.* *Feld Entm’t, Inc.*, 677 F. Supp. 2d 55.

that (1) he has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and, (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.⁵⁷

Additionally, prudential limitations on standing prevent a plaintiff from asserting a grievance held by the public generally⁵⁸ or a claim belonging to a third party.⁵⁹ A plaintiff asserting her own particularized injury must also demonstrate that the injury is "arguably within the zone of interest" to be protected by the statute at issue.⁶⁰

Plaintiffs seeking to redress harm to animals often fail to demonstrate particularized injury, since the animals rather than the human plaintiffs suffer the physical harm. However, a plaintiff may satisfy constitutional standing requirements by alleging injuries that "reflect 'aesthetic, conservational, and recreational' as well as economic values."⁶¹ Furthermore, Congress may create a statutory right—such as the right to information—that gives rise to a cognizable injury.⁶² Finally, when Congress specifies that "any person" may sue under a given statute, a plaintiff suing under that statute automatically satisfies the prudential zone of interest requirement.⁶³

D. Statutory Violations at the Circus

Elephant abuse has been documented at Ringling on numerous occasions.⁶⁴ Customary methods of training and housing circus elephants include striking elephants with a sharp implement (the bull hook) to train and discipline them,⁶⁵ confining elephants for hours on short chains during transit and while housed in barns between

57. *Feld Entm't, Inc.*, 677 F. Supp. 2d 55, 64–65 (restating the standing requirements set forth in *Lujan*, 504 U.S. 555, 560–61).

58. *United States v. Richardson*, 418 U.S. 166, 176–77 (1974).

59. *United States v. Raines*, 362 U.S. 17, 21 (1960).

60. Cass R. Sunstein, *A Tribute to Kenneth L. Karst: Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. REV. 1333, 1343 (2000) [hereinafter *Standing for Animals*].

61. *Sierra Club v. Morton*, 405 U.S. 727, 738 (1972) (quoting *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 154 (1970)).

62. *FEC v. Akins*, 524 U.S. 11, 24–5 (1998); *Standing for Animals*, *supra* note 60, at 1343.

63. *ASPCA v. Ringling Bros. & Barnum & Bailey Circus*, 317 F.3d 334, 336 (D.C. Cir. 2003), *judgment for defendants sub nom. ASPCA v. Feld Entm't, Inc.*, 677 F. Supp. 2d 55, 64 (D.D.C. 2009) (citing *Bennett v. Spear*, 520 U.S. 154, 163–65 (1997)).

64. See generally ASPCA Report, *supra* note 4.

65. See Plaintiffs' Pre-Trial Proposed Findings of Fact and Conclusions of Law at 13, *Feld Entm't, Inc.*, 677 F. Supp. 2d 55 (No. 03–2006), available at http://www.bornfreeusa.org/a1a6a_courtdocuments.php [hereinafter Findings of Fact] (citing deposition testimony describing the bull hook and its use).

performances,⁶⁶ and forcibly removing infant calves from their mothers unnaturally early to begin training them to perform in the circus.⁶⁷ These practices violate both AWA and ESA.⁶⁸

The most graphic accounts of abuse involve the bull hook, a two- to three-foot-long metal or fiberglass rod with a steel hook and point at one end that trainers use to control circus elephants.⁶⁹ Kenneth Feld, Chief Executive Officer of Feld Entertainment, has stated, “it can be very appropriate to ‘correct’ an elephant with a bull hook,” and has acknowledged that Ringling employees often “strike” or “prod” elephants with the hooked end of the implement in order to coerce them to perform.⁷⁰ Striving to control elephants that weigh up to twelve thousand pounds,⁷¹ trainers often seriously injure the animals.⁷² For example, one former Ringling employee admitted beating an elephant with a bull hook for fifteen minutes after the animal knocked him to the ground.⁷³ The effects of bull hook abuse have also been documented in internal Ringling memoranda⁷⁴ and in USDA investigative documents.⁷⁵

Another form of abuse consists of chaining elephants on hard surfaces for extended periods of time. One Ringling employee’s sworn

66. See *id.* at 21 (reporting deposition testimony of Gary Jacobson, general manager of Ringling’s Center for Elephant Conservation, regarding the amount of time elephants spend in chains at the center).

67. See David Montgomery, *PETA, Ringling Bros. at Odds Over the Treatment of Baby Circus Elephants*, WASH. POST, Dec. 16, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/15/AR2009121504988.html> (reporting former Ringling employee Sammy Haddock’s description of eighteen to twenty month-old elephants being torn from their mothers, while the mothers are chained to a wall, and quoting baby animal specialist Phyllis Lee’s statement that baby elephants in the wild stay with their mothers until age five or six).

68. See generally Complaint for Declaratory and Injunctive Relief, Feld Entm’t, Inc., 677 F. Supp. 2d 55 (No. 03-2006), available at http://www.bornfreeusa.org/ala6a_courtdocuments.php.

69. See Findings of Fact, *supra* note 65, at 13 (citing deposition testimony describing the bull hook and its use).

70. Designated Deposition Transcript of Kenneth Feld at 97, Feld Entm’t, Inc., 677 F. Supp. 2d 55 (No. 03-2006), available at http://www.bornfreeusa.org/ala6a_highlight_h.php.

71. See *Fascinating Facts*, RINGLING BROS. AND BARNUM & BAILEY, <http://www.ringling.com/TextContent.aspx?id=12336&parentID=320&assetFolderID=448> (last visited Sept. 10, 2010) (stating that an average male Asian elephant weighs between 10,000 and 12,000 pounds).

72. See, e.g., Findings of Fact, *supra* note 65, at 24–25 (quoting Ringling internal documents regarding bull hook “puncture wounds” and an elephant “dripping blood all over the arena” after being hooked).

73. Montgomery, *supra* note 67 (quoting Sammy Haddock’s declaration). The same former employee described a 1977 incident where an elephant knocked him unconscious, and upon regaining consciousness, the employee grabbed an electric prod and “fried [the elephant] for about ten minutes,” after which the elephant “was screaming and regurgitating water.” *Id.* See also ASPCA Report, *supra* note 4, at 29.

74. E.g., Findings of Fact, *supra* note 65, at 24–25.

75. E.g., ASPCA Report, *supra* note 4, at 29, 35, 111.

affidavit to a USDA investigator states that, “as a general rule, the elephants [are] kept chained at all times, except when performing.”⁷⁶ As a matter of “common practice” elephants remain chained for twenty to one hundred hours at a time when they travel between shows.⁷⁷ Moreover, according to the manager of Ringling’s breeding facility, the “Center for Elephant Conservation,” elephants spend a minimum of sixteen hours per day chained on concrete surfaces while at the center.⁷⁸ Standing on hard surfaces for long periods causes the elephants extensive foot, leg, and joint injuries.⁷⁹ Confining elephants to chains so short they cannot “take a full step forward or backward”⁸⁰ significantly impairs their “essential and normal behavioral patterns.”⁸¹

Finally, elephant calves as young as eighteen months old are forcibly separated from their mothers long before the age of five or six, when calves would be weaned in the wild.⁸² The separation, achieved by chaining the mother to a wall while six or seven staff members pull the baby away with ropes,⁸³ often physically injures the elephants⁸⁴ and stresses both mother and calf.⁸⁵ Although Ringling claims to have stopped using the abrupt separation process in the late 1990s, an employee who worked with Ringling’s elephants until 2005 has suggested otherwise.⁸⁶

76. *E.g., id.* at 59.

77. Plaintiffs’ Amended Pre-Trial Statement at 6, *ASPCA v. Feld Entm’t, Inc.*, 677 F. Supp. 2d 55, 64 (D.D.C. 2009) (No. 03-2006), *available at* http://www.bornfreeusa.org/a1a6a_courtdocuments.php.

78. Findings of Fact, *supra* note 65, at 19.

79. *E.g.* Nicole Paquette, *Undeniable Evidence: Federal Trial Exposes Evidence of Ringling’s Mistreatment of Elephants*, ENCYCLOPAEDIA BRITANNICA’S ADVOCACY FOR ANIMALS (Aug. 17, 2009), <http://advocacy.britannica.com/blog/advocacy/2009/08/undeniable-evidence-federal-trial-exposes-ringlings-mistreatment-of-elephants/> [hereinafter *Undeniable Evidence*].

80. Findings of Fact, *supra* note 65, at 19.

81. Plaintiffs’ Second Amended Pre-Trial Statement, *supra* note 77, at 7.

82. *See* Montgomery, *supra* note 67.

83. *Id.*

84. ASPCA Report, *supra* note 4, at 71.

85. *Id.* at 72 (stating the opinion of experts, who “[d]on’t recommend separation until at least 2 years,” and commenting that the approach used by Ringling is “traumatic, stressful, cause[s] physical harm and unnecessary discomfort”).

86. Montgomery, *supra* note 67.

II. STATUTORY ENFORCEMENT GAPS AND THE SUCCESSES AND FAILURES OF THE RINGLING LITIGATION

A. Enforcement Gaps in the Animal Welfare Act

Although AWA exists “to insure that animals intended for use in . . . exhibition . . . are provided humane care and treatment,”⁸⁷ the Act has failed to protect circus elephants from abuse primarily for two reasons: (1) the statute lacks a citizen-suit provision, and (2) it grants the Secretary of Agriculture broad enforcement discretion. Without a citizen-suit provision, ASPCA could not sue Ringling for its AWA violations;⁸⁸ and yet, with broad discretion granted to the Secretary, when the USDA neglected to enforce the Act against Ringling, ASPCA could not sue the agency to compel enforcement.⁸⁹

ASPCA could not sue Ringling for its AWA violations because, although animal advocates have argued in favor of amending AWA to include a citizen-suit provision⁹⁰ and bills have been introduced in Congress advocating the same,⁹¹ these efforts have been unsuccessful and courts have refused to imply a private cause of action.⁹² The Fourth Circuit’s opinion in the Silver Spring Monkey Case demonstrates why animal advocates have failed to procure an AWA citizen-suit provision. The court expressed concern that a private cause of action would draw courts lacking expertise in the biomedical field into the “supervision and regulation of laboratory research”⁹³ and that a flood of private litigation under the Act “would impede advances made by medical science in the alleviation of human suffering.”⁹⁴ Finally, it reasoned that the statutory scheme through which Congress had given the USDA broad enforcement discretion left no place for AWA suits by private plaintiffs.⁹⁵

ASPCA also could not sue the USDA to compel enforcement against Ringling because agency decisions not to bring enforcement

87. Animal Welfare Act, 7 U.S.C. § 2131 (2010).

88. *Int’l Primate Protection League v. Inst. for Behavioral Research, Inc.*, 799 F.2d 934, 940 (4th Cir. 1986).

89. See 7 U.S.C. § 2149 (permitting, but not requiring, the Secretary to suspend licenses or assess civil penalties); *Heckler v. Chaney*, 470 U.S. 821, 831–33 (1985).

90. Symposium, *Confronting Barriers to the Courtroom for Animal Advocates: Legal Standing for Animals and Advocates*, 13 ANIMAL L. 61 (2006) [hereinafter *Confronting Barriers*].

91. Rob Roy Smith, Note, *Standing on Their Own Four Legs: The Future of Animal Welfare Litigation After Animal Legal Defense Fund, Inc. v. Glickman*, 29 ENVTL. L. 989, 1026–27 (1999).

92. *Int’l Primate Protection League*, 799 F.2d at 940.

93. *Id.* at 935, 940.

94. *Id.* at 935.

95. *Id.* at 940.

action are presumptively unreviewable by courts.⁹⁶ The presumption may be rebutted when (1) a statute provides guidelines for the agency to follow in exercising its enforcement discretion, and (2) the agency "consciously and expressly adopt[s] a general policy" that amounts to abdication of its statutory responsibilities.⁹⁷ However, animal advocates have been unable to rebut the presumption in the AWA context, because the statute seems to require so little of the Secretary.⁹⁸

For instance, in *Animal Legal Defense Fund v. Glickman*, animal welfare advocates attempted, but failed, to compel USDA enforcement of AWA for the benefit of primates.⁹⁹ The Animal Legal Defense Fund (ALDF) claimed that the USDA abdicated its AWA enforcement responsibilities by failing to inspect research facilities and document AWA violations.¹⁰⁰ However, because the plaintiffs admitted that the agency "does engage in *some* enforcement actions" and the court determined the statute did not mandate any specific enforcement action, the court dismissed the plaintiffs' claim.¹⁰¹ While acknowledging the inconsistency of Congress' broad grant of discretion with the Act's clear purpose to ensure humane treatment of animals,¹⁰² the court determined that the Act's discretionary language provided the USDA "a free hand and a shield" against judicial review of its enforcement decisions.¹⁰³

Animal welfare advocates have also been unable to compel USDA enforcement of AWA to protect circus elephants.¹⁰⁴ The organization that later initiated the Ringling litigation, the Performing Animal Welfare Society (PAWS), sought a writ of mandamus in 1996 to compel the USDA "to exercise its discretion" and enforce AWA to protect "performing elephants from neglect and mistreatment."¹⁰⁵ PAWS alleged that a number of elephant exhibitors were in "flagrant violation" of AWA, and that the USDA failed to take

96. Heckler v. Chaney, 470 U.S. 821, 831-32 (1985).

97. *Id.* at 832-33 n.4.

98. *Animal Legal Def. Fund, Inc. v. Glickman*, 943 F. Supp. 44, 63 (D.D.C. 1996), *rev'd*, 204 F.3d 229 (D.C. Cir. 2000).

99. *Id.*

100. *Id.* at 62.

101. *Id.* at 63-64 (emphasis added).

102. *Id.* at 50 ("[W]hile Congress set forth a clear mandate of humane treatment of animals, it then took away from that mandate by granting unbridled discretion to the agency which, as past experience indicates, will do little or nothing.").

103. *Id.* at 63-64.

104. *Performing Animal Welfare Soc'y v. U.S. Dep't of Agric. Animal & Plant Health Inspection Serv.*, No. 95-4719, 1996 U.S. Dist LEXIS 13306, at *2 (E.D. Pa. Sept. 9, 1996).

105. *Id.* at *1.

action against the exhibitors after investigating violations.¹⁰⁶ However, because the Mandamus Act¹⁰⁷ provides courts authority only to compel ministerial acts owed to a plaintiff or to remedy federal officials' clear abuse of discretion,¹⁰⁸ the court dismissed the case for lack of jurisdiction. It held that the action PAWS sought to compel was not ministerial, and that the Secretary had not abused the broad discretion granted by AWA.¹⁰⁹ Furthermore, the court concluded that the plaintiff lacked standing, observing that, while "[i]t may be unfortunate that a person or group with a special interest in animal welfare does not have standing to take legal action in cases of inhumane treatment... Congress has seen fit to rely on the Secretary's discretion in such matters."¹¹⁰

B. Using the Endangered Species Act to Protect Circus Elephants: A Novel Approach

Given the limited utility of AWA, the endangered status of Asian elephants, and the existence of the ESA citizen-suit provision, animal groups turned to ESA to protect circus elephants.¹¹¹ In an early attempt to invoke ESA protections for an elephant, the Humane Society of the United States (HSUS) challenged the validity of a certificate issued by Interior Secretary Bruce Babbitt allowing a corporation to transport an elephant from a zoo in one state to a circus in another.¹¹² Because ESA prohibits the interstate transportation of endangered animals in the course of a commercial activity, HSUS alleged the certificate was invalid.¹¹³ The district court granted Babbitt summary judgment on the merits, but the District of Columbia Circuit Court vacated the decision and ordered the case dismissed because the plaintiffs lacked standing.¹¹⁴

Although the plaintiffs in *Humane Soc'y of the U.S. v. Babbitt* failed to establish standing, the appellate court's opinion signaled a

106. *Id.* at *2.

107. 28 U.S.C. 1361.

108. *Performing Animal Welfare Soc'y*, 1996 U.S. Dist LEXIS 13306, at *3-4.

109. *Id.* at *4-5.

110. *Id.* at *6-7. The court reasoned that the plaintiff had not suffered a cognizable injury because, although its members were "appalled" by the treatment of elephants, and PAWS had expended resources to rescue mistreated elephants, "an offense to one's sensibilities" was not an injury-in-fact, and voluntary expenditures did not constitute grounds for economic injury. *Id.* at *5-6.

111. See *Humane Soc'y of the U.S. v. Babbitt*, 46 F.3d 93 (D.C. Cir. 1995). Ringling Brothers was also named a defendant. *Id.*

112. *Id.* at 95.

113. *Id.*

114. *Id.* at 96.

judicial willingness to expand the scope of aesthetic injury to recognize emotional harm as a basis for constitutional standing.¹¹⁵ The court rejected claims that members of HSUS were emotionally injured by the removal of Lota the elephant from the zoo, explaining that the Society's members had not alleged specific facts in support of their injuries.¹¹⁶ However, the opinion stated

To be sure, no court has yet considered whether an emotional attachment to a particular animal (not owned by a plaintiff) based upon the animal being housed in a particular location could form the predicate of a claim of injury. . . . Although we are doubtful that it has been established here, a person who had made a particular study of Lota the elephant over a period of time might be able to claim injury from her sudden departure from the zoo.¹¹⁷

Animal welfare advocates were encouraged by the court's willingness to consider an injury based on an emotional attachment to a particular animal and believed the opinion might predict future success by an appropriate plaintiff.¹¹⁸

C. The Ringling Litigation

Shortly after the circuit court decided *Babbitt*, animal welfare groups found a plaintiff who could allege an injury based on his emotional attachment to a group of circus elephants.¹¹⁹ In 2000, animal welfare organizations including the Performing Animal Welfare Society (PAWS)¹²⁰ and ASPCA recruited former Ringling "barn man" Tom Rider to file a complaint¹²¹ in federal court seeking to invoke the protections of ESA for Ringling's fifty-four Asian elephants.¹²² Presenting the plaintiffs strongest argument for

115. *Id.* at 97–98.

116. *Id.* at 98–99.

117. *Id.*

118. David Schram, *Standing Under the Endangered Species Act*, 64 GEO. WASH. L. REV. 1244, 1252 (1996).

119. See *Performing Animal Welfare Soc'y v. Ringling Bros. & Barnum & Bailey Circus*, No. 1:00CV01641, 2001 U.S. Dist. LEXIS 12203 (Jun. 29, 2001), *rev'd sub nom.* ASPCA v. Ringling Bros. & Barnum & Bailey Circus, 317 F.3d 334 (D.C. Cir. 2003), *judgment for defendants sub nom.* ASPCA v. Feld Entm't, Inc., 677 F. Supp. 2d 55 (D.D.C. 2009).

120. PAWS left the case pursuant to a settlement agreement with Feld in late 2000, through which the organization gained possession of two of Ringling's elephants, Minnie and Rebecca. ASPCA v. Feld Entm't, Inc., 677 F. Supp. 2d 55, 74 (D.D.C. 2009); Performing Animal Welfare Society (PAWS), *Meet the Elephants*, PAWSWEB.ORG, available at http://www.pawsweb.org/meet_elephants.html.

121. Complaint for Declaratory and Injunctive Relief, *supra* note 69.

122. *Performing Animal Welfare Soc'y v. Ringling Bros. & Barnum & Bailey Circus*, No. 1:00CV01641, 2001 U.S. Dist. LEXIS 12203 (D.D.C. Jun. 29, 2001), *rev'd sub nom.* ASPCA v. Ringling Bros. & Barnum & Bailey Circus, 317 F.3d 334 (D.C. Cir. 2003), *judgment for defendants sub nom.* Feld Entm't, Inc., 677 F. Supp. 2d 55. See Feld Entm't, Inc., 677 F. Supp. 2d 55, 58–59 (discussing the history of the case).

standing,¹²³ Rider alleged that he suffered aesthetic injury during the nearly two years he worked for Ringling, when he witnessed Ringling employees abuse elephants to which he felt a strong emotional connection.¹²⁴ He claimed ongoing injuries because, having quit his job with the circus to stop witnessing abuse, he could not visit or work with the animals again, without suffering additional injury, until the mistreatment ended.¹²⁵ The district court disagreed: Because Rider had left his job with Ringling two years before filing suit and did not continue to witness the alleged mistreatment during the suit's pendency, the court determined that Rider failed to allege an aesthetic injury that was presently or imminently suffered.¹²⁶ Additionally, while Rider asserted that he wished to work with the elephants again, the court deemed this claim too "speculative and uncertain" to constitute an imminently threatened injury-in-fact.¹²⁷

The court similarly rebuffed the standing arguments urged by the organizational plaintiffs, who alleged informational and aesthetic injuries.¹²⁸ The groups argued that Ringling's failure to apply for a permit each time it abused its elephants—thus "taking" endangered animals without permission¹²⁹—deprived the organizations of information they were entitled to receive under the ESA public notice and comment procedures.¹³⁰ Additionally, the plaintiffs alleged an aesthetic injury "due to the harm defendants ha[d] inflicted upon the elephants,"¹³¹ and the plaintiffs claimed they continued to suffer as a result of their knowledge that Ringling continued to abuse its elephants.¹³² According to the court, however, the alleged informational injury could only be brought against the agency that failed to follow notice and comment procedures; it could not be pursued against a party that failed to apply for a permit.¹³³ Additionally, the court rejected the plaintiffs' argument that they suffered an aesthetic injury because "general emotional 'harm,' no matter how deeply felt cannot suffice for injury-in-fact for standing

123. *ASPCA v. Ringling Bros. & Barnum & Bailey Circus*, 317 F.3d 334, 336 (D.C. Cir. 2003), *judgment for defendants sub nom. Feld Entm't, Inc.*, 677 F. Supp. 2d 55, 59–60.

124. *Performing Animal Welfare Soc'y*, 2001 U.S. Dist. LEXIS 12203, at *4.

125. *Id.* For additional analysis of the parties' standing arguments, see Mark Eichelman, *Ringling Brothers on Trial: Circus Elephants and the Endangered Species Act*, 16 *ANIMAL L.* 153, 160–62 (2009).

126. *Id.* at *7.

127. *Id.*

128. *Id.* at *11–13.

129. Endangered Species Act, 16 U.S.C. §§ 1538(a)(1), 1539 (2010).

130. *Performing Animal Welfare Soc'y*, 2001 U.S. Dist. LEXIS 12203, *Id.* at *13.

131. *Id.* at *3.

132. *Id.* at *4.

133. *Id.* at *14–15.

purposes.”¹³⁴ After rejecting each argument for standing, the district court dismissed the case.¹³⁵

In a significant victory for the plaintiffs, the Court of Appeals for the District of Columbia Circuit reversed the district court’s decision in 2003, holding that Rider had alleged facts sufficient to support standing.¹³⁶ The court determined that “emotional attachment to a particular animal . . . could form the predicate of a claim of injury,”¹³⁷ and that Rider had alleged a “strong, personal attachment” to the elephants with which he worked at Ringling.¹³⁸ Likening Rider’s injury to that alleged by the plaintiffs in *Friends of the Earth, Inc. v. Laidlaw Environmental Services (Laidlaw)*, the court determined that Rider’s injury was sufficiently imminent to satisfy constitutional standing requirements.¹³⁹ Although the *Laidlaw* plaintiffs who stopped using a polluted river for recreational purposes did not establish when they would return to the river if the pollution stopped, the Supreme Court deemed their injury sufficiently imminent.¹⁴⁰ Likewise, although Rider was unlikely to work with the elephants again, the court reasoned that he could view them at any time by purchasing a ticket to the circus.¹⁴¹ Because Rider had experience working with the elephants, the court reasoned that during a visit to the circus Rider would be able to detect behavioral manifestations of any ongoing abuse, which would cause him continued aesthetic injuries.¹⁴²

Although the appellate court’s standing decision enabled the plaintiffs to proceed to trial, Ringling succeeded in reducing the number of elephants and forms of abuse that would be affected by the outcome of the case through pre-trial motions.¹⁴³ In 2007, the district

134. *Id.* at *10 (quoting *Humane Soc’y of the U.S. v. Babbitt*, 46 F.3d 93, 98 (D.C. Cir. 1998)).

135. *Performing Animal Welfare Soc’y*, 2001 U.S. Dist. LEXIS 12203, at *4.

136. *ASPCA v. Ringling Bros. & Barnum & Bailey Circus*, 317 F.3d 334, 336 (D.C. Cir. 2003), *judgment for defendants sub nom.* *ASPCA v. Feld Entm’t, Inc.*, 677 F. Supp. 2d 55 (D.D.C. 2009).

137. *Ringling Bros.*, 317 F.3d at 337 (citing *Babbitt*, 46 F.3d at 98).

138. *Id.* at 335.

139. *Id.* at 337–38.

140. *Id.* at 337 (citing *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs.*, 528 U.S. 167, 184 (2000)).

141. *Id.*

142. *Id.* The court held with minimal discussion that the other elements of standing were satisfied: Rider’s alleged injury was caused by Ringling’s actions and would be redressed by a favorable decision. *Id.* at 338. The court did not address whether the other plaintiffs had standing because they sought relief identical to that sought by Rider. *Id.* Prudential standing was not an issue because the ESA enables “any person” to sue under the statute. *Id.* at 336.

143. *See, e.g., ASPCA v. Ringling Bros. & Barnum & Bailey Circus*, 502 F. Supp. 2d 103, 105, 111–14 (D.D.C. 2007).

court granted Ringling summary judgment with respect to the twenty-one elephants for which Ringling possessed valid, captive-bred wildlife permits.¹⁴⁴ The court held that treatment of elephants kept subject to captive-bred wildlife permits could not be addressed in private litigation because the Act reserved permit enforcement actions for the Secretary of the Interior.¹⁴⁵ Because Ringling's youngest elephants—all held under captive-bred wildlife permits—were no longer at issue in the case, the plaintiffs' claims regarding forceful separation of elephant calves from their mothers could not be addressed at trial.¹⁴⁶ Through additional motions, Ringling eventually reduced the number of elephants at issue in the case to only seven.¹⁴⁷

The trial began in February 2009, nearly a decade after the complaint was filed.¹⁴⁸ Approximately thirty witnesses testified and hundreds of documents were admitted into evidence over the course of a six-week, non-jury trial.¹⁴⁹ However, the court declined to reach the merits of the case.¹⁵⁰ Because the court considered Rider "essentially a paid plaintiff and fact witness who [was] not credible,"¹⁵¹ the court entered judgment for the defendants, finding that Rider failed to prove the facts in support of standing that the appellate court had accepted as true for purposes of the motion to dismiss.¹⁵² The court found that the organizational plaintiffs, and the law firm representing them, paid Rider to participate in the case, thus undermining his credibility.¹⁵³ According to the court, Rider began receiving compensation from PAWS when he gave a sworn statement about Ringling's elephant abuse in 2000, and over the course of the Ringling litigation, Rider received funds totaling \$185,000 from other participants in the case.¹⁵⁴ Although the payments may have been for Rider's participation in the "public education campaign" that was intertwined with the Ringling litigation, the court believed the primary purpose of the payments was to keep Rider involved in the case.¹⁵⁵

144. *Id.* at 105. The court denied Ringling's motion for summary judgment with regard to thirty-four of Ringling's elephants, whose captivity predated their classification as an endangered species. Ringling had argued that this distinction exempted them from the ESA's "takings" provision. *Id.* at 107–10.

145. *Id.* at 113.

146. *ASPCA v. Feld Entm't, Inc.*, 677 F. Supp. 2d 55, 59 n.4 (D.D.C. 2009).

147. *Id.* at 58 n.2.

148. *Id.* at 57.

149. *Id.*

150. *Id.* at 66.

151. *Id.* at 67.

152. *Id.* at 66.

153. *Id.* at 72–73.

154. *Id.* at 73, 78–79.

155. *Id.* at 80–81.

Furthermore, evidence at trial discredited Rider's claim that he suffered aesthetic injuries due to Ringling's abuse of elephants with which he had a strong personal attachment.¹⁵⁶ Because Rider never complained to Feld executives, veterinarians, or USDA inspectors prior to the Ringling litigation,¹⁵⁷ the court concluded that Rider either did not witness mistreatment, or that "any mistreatment he did witness did not affect him to the extent that he suffered an aesthetic or emotional injury."¹⁵⁸ Similarly, Rider's failure to visit the elephants outside the circus, despite numerous opportunities to do so during the course of the Ringling litigation, undermined his claim of strong personal attachment to the elephants.¹⁵⁹

Finally, even if Rider had suffered an injury, the court determined it could not redress the injury, because enjoining the defendants from using bull hooks and chains could not guarantee the outcome Rider desired—to see the elephants again, free from abuse.¹⁶⁰ During the decade of litigation, Ringling had retired five elephants at issue in the case to its private facility, and trial testimony revealed that Rider would never gain access to that property.¹⁶¹ Moreover, Feld executives testified that if they could not use bull hooks and chains on the other elephants at issue in the case, those elephants would also be retired from the circus.¹⁶² Because the court, therefore, could not guarantee that Rider would see the elephants again, free from abuse, the judge determined he could not redress Rider's alleged injury.¹⁶³

D. Successes and Failures of the Ringling Litigation

Although ASPCA ultimately lost its case against Ringling,¹⁶⁴ animal activists may consider the Ringling litigation a success in many respects. The circuit court's expansion of the category of "aesthetic injury," for example, may provide animal advocates greater access to the courtroom in the future.¹⁶⁵ Additionally, by surviving Ringling's motion to dismiss, ASPCA gained a five-year pre-trial

156. *Id.* at 88–91.

157. *Id.* at 68–69.

158. *Id.* at 69.

159. *Id.* at 84.

160. *Id.* at 87–88, 91–94.

161. *Id.* at 87, 92. At this stage of the litigation, the plaintiffs no longer sought forfeiture of the elephants. *Id.* at 91.

162. *Id.* at 87.

163. *Id.* at 91–92.

164. *Id.* at 67.

165. Developments in the Law—Access to Courts, *Aesthetic Injuries, Animal Rights, and Anthropomorphism*, 122 HARV. L. REV. 1204, 1210 (2009) [hereinafter *Access to Courts*].

discovery period,¹⁶⁶ during which it obtained significant information about elephant abuse at the circus.¹⁶⁷ Furthermore, the case served to educate the public about the outrageous treatment of endangered elephants and about the failures of the statutes intended to protect them.¹⁶⁸ As former Chief Judge Wald has opined, “[l]itigation serves to point out the ambiguities and counterproductive provisions in a particular law, [as well as] the gaps and loopholes in its regulatory scheme.”¹⁶⁹

On the other hand, the Ringling litigation consumed a significant amount of attorneys’ and judges’ time¹⁷⁰ and animal advocates’ money,¹⁷¹ while the legal objective of the suit—protecting elephants from abuse—remains largely unaccomplished.¹⁷² Furthermore, as the opinion concluding the ten-year litigation demonstrates, the theory of standing developed in the case may be of limited future utility because it requires the plaintiff to witness the effects of animal abuse, which the abuser will often hide.¹⁷³ Additionally, less costly means might have achieved the educational benefits gleaned from the litigation.¹⁷⁴

1. Standing

“For animal advocates, one of the most significant barriers to the courtroom is standing.”¹⁷⁵ Thus, the appellate court’s holding that “an emotional attachment to a particular animal could form the predicate of a claim of injury”¹⁷⁶ has enabled a promising paradigm for those striving to use the legal system to protect animals. In so holding, the court enlarged the scope of injury that could be recognized as an “aesthetic injury,” which should ease the burden on future

166. *Feld Entm’t, Inc.*, 677 F. Supp. 2d at 59 n.5.

167. *Undeniable Evidence*, *supra* note 79.

168. *Id.*

169. Wald, *supra* note 46, at 520.

170. *E.g.*, *Feld Entm’t, Inc.*, 677 F. Supp. 2d at 59 n.5 (“Significant judicial resources were expended, particularly during the more than five years of discovery in this matter, in order to advance this litigation to trial.”).

171. *E.g.*, *id.* at 78–79 (concluding that, over a ten-year period, the organizational plaintiffs paid Tom Rider at least \$190,000 for the primary purpose “to keep Mr. Rider involved with the litigation”).

172. *Id.* at 89–90.

173. *Id.* at 92–93.

174. For example, by distributing information obtained from the USDA under the Freedom of Information Act. *See, e.g.*, ASPCA Report, *supra* note 4.

175. *Confronting Barriers*, *supra* note 90, at 61.

176. *ASPCA v. Ringling Bros. & Barnum & Bailey Circus*, 317 F.3d 334, 337 (D.C. Cir. 2003) (quoting *Humane Soc’y of the U.S. v. Babbitt*, 46 F.3d 93, 98 (D.C. Cir. 1998)).

plaintiffs suing for the protection of animals.¹⁷⁷ Citing *Laidlaw*, the appellate court reasoned that a plaintiff with an attachment to a particular animal could suffer an aesthetic injury as a result of abuse to that animal, in the same way that a plaintiff who enjoys using a particular river suffers from pollution to that river.¹⁷⁸ The court stated: "A person may derive great pleasure from visiting a certain river; the pleasure may be described as an emotional attachment stemming from the river's pristine beauty."¹⁷⁹ Just as the *Laidlaw* plaintiffs suffered a cognizable injury, so too could a plaintiff with an emotional attachment to an animal.¹⁸⁰

Although the Supreme Court has not ruled on this novel theory of standing, the emotional injury appears to pass constitutional muster.¹⁸¹ A plaintiff will likely satisfy constitutional standing requirements if the defendant's harm to a particular animal demonstrably caused the plaintiff's emotional injury.¹⁸² In any event, until the Supreme Court rules otherwise, a plaintiff suing in the District of Columbia Circuit will survive a motion to dismiss for lack of standing by alleging an emotional injury,¹⁸³ thus enabling animal advocates to gain valuable information about the treatment of animals through discovery.¹⁸⁴

The expansion of aesthetic injury to encompass the emotional injuries of individuals who share an attachment with particular animals also may presage a judicial move toward recognizing that individual animals have rights.¹⁸⁵ Although Congress enacted ESA to conserve entire species,¹⁸⁶ the appellate court in the Ringling litigation recognized that individual members of those species have certain rights—at least the right to be free from abuse that emotionally injures a human.¹⁸⁷ Although the distinction may seem insignificant, the court's recognition that individual animals have any rights at all foreshadows that animals may enjoy greater access to judicial protections in the future.¹⁸⁸

177. Access to Courts, *supra* note 165, at 1210.

178. *Ringling Bros.*, 317 F.3d at 338.

179. *Id.*

180. *Id.*

181. Jonathan Krieger, *Emotions and Standing for Animal Advocates After ASPCA v. Ringling Bros. & Barnum & Bailey Circus*, 22 LAW & INEQ. 385, 400 (2004).

182. *Id.*

183. *Ringling Bros.*, 317 F.3d at 338.

184. *Undeniable Evidence*, *supra* note 79.

185. Access to Courts, *supra* note 165, at 1211.

186. Endangered Species Act, 16 U.S.C. § 1531(b) (2010) (declaration of purposes and policy).

187. Access to Courts, *supra* note 165, at 1212.

188. *Id.* at 1216.

Despite its potential benefits, however, the emotional injury theory may fall short in practice. For instance, in the circus context, the only plaintiff likely to prove an emotional injury is someone who has worked with a particular animal.¹⁸⁹ Such a plaintiff would likely jeopardize a career as a trainer or handler to come forward and implicate an employer in abusive conduct.¹⁹⁰ Furthermore, because plaintiffs cannot establish standing by alleging a past injury, the employee would have to witness the mistreatment on an ongoing basis.¹⁹¹ Finally, even in the rare case in which a plaintiff could establish standing, any remedy the court offered would only protect the few animals to which the plaintiff could prove an emotional attachment.¹⁹²

The district court's opinion regarding Tom Rider's lack of standing in the Ringling litigation illustrates problems with this theory.¹⁹³ Because the organizational plaintiffs did not have an emotional attachment to Ringling's elephants, and the district court rejected their informational injury claim, they had to rely upon Rider's alleged emotional injury to gain standing to bring the case.¹⁹⁴ However, because Rider accepted large amounts of money from the organizational plaintiffs and never complained about the mistreatment of Ringling's elephants prior to his involvement in the litigation,¹⁹⁵ he could not to prove that Ringling's alleged elephant abuse caused him emotional injury.¹⁹⁶ Furthermore, because an injunction against abuse can only remedy an emotional injury if the plaintiff is able to "enjoy the fauna again after cessation of the challenged actions," Rider's alleged injury was not redressable, because Ringling would not allow Rider to see its elephants again.¹⁹⁷

Given the difficulties associated with finding a plaintiff who can prove an emotional injury and establishing that the injury can be redressed by the court, the organizational plaintiffs' informational injury theory may offer more promise for future animal protection

189. See *Hagan v. Feld Entm't Inc.*, 365 F. Supp. 2d 700, 705 (E.D. Va. 2005) for a case involving a circus employee fired from his job as a Ringling lion handler after he told USDA inspectors about AWA violations that resulted in the death of a circus lion.

190. *Id.*

191. *ASPCA v. Feld Entm't, Inc.*, 677 F. Supp. 2d 55, 91 (D.D.C. 2009); see also *Access to Courts*, *supra* note 165, at 1213.

192. *Feld Entm't*, 677 F. Supp. 2d at 62 (limiting plaintiffs' standing to those elephants with which Rider worked and to which any remedy would apply).

193. *Id.* at 96.

194. *Id.* at 96–97.

195. *Id.* at 89, 94.

196. *Id.* at 94.

197. *Id.* at 91–92. The court also found no basis in ESA to compel Feld to allow Rider access to that facility. *Id.* at 92.

cases than the emotional injury theory. Had ASPCA succeeded in demonstrating an informational injury, the organization would not have had to rely upon Rider, and whatever relief the organization could obtain would apply to all of Ringling's elephants rather than the few with which Rider allegedly shared an emotional connection. Unfortunately, the informational injury theory failed in this case because Congress did not create a statutory right to information under ESA.¹⁹⁸ Although the Act provides for public notice and comment procedures when a person applies for a permit to "take" an endangered animal, ASPCA would have been entitled to the procedures only if Ringling had applied for permits to take its elephants.¹⁹⁹ Because Fish and Wildlife Service did not require Ringling to apply for permits, ASPCA's alleged injury resulted from inaction by FWS—a nonparty.²⁰⁰

2. Information and Education

Although each theory of standing ultimately failed at trial, surviving Ringling's motion to dismiss enabled ASPCA to gather valuable information through discovery and trial, which the group used in a public education campaign.²⁰¹ Over the course of a five-year discovery period and a six-week trial, the plaintiffs obtained information about Ringling's abuse and its impact on the elephants' health directly from Feld executives and company documents.²⁰² As information spread through websites and news media, the litigation presumably turned public opinion against the circus and its practice of using wild animals in exhibition.²⁰³ In time, Ringling may face economic pressure if the public stops attending circuses that abuse animals, and legislators may face political pressure to amend laws that have been largely ineffective at preventing abuse.²⁰⁴

The information that the plaintiffs procured through discovery and the manner in which it came out—through video footage and

198. *Id.* at 99.

199. *Id.* at 98.

200. *Id.*

201. *Id.* at 80; see also *Undeniable Evidence*, *supra* note 79.

202. *Undeniable Evidence*, *supra* note 79.

203. See, e.g., *Ringling Trial News Stories*, BORN FREE USA, http://www.bornfreeusa.org/ala6g_press.php (last visited Sept. 10, 2010) (listing newspaper articles covering the Ringling trial).

204. See, e.g., Benjamin Adams & Jean Larson, *Legislative History of the Animal Welfare Act—Introduction*, NAT'L AGRIC. LIBRARY, <http://www.nal.usda.gov/awic/pubs/AWA2007/intro.shtml> (last modified Feb. 17, 2010) (explaining that articles in *Life* and *Sports Illustrated* about the use of dogs in laboratory research "stimulated such a public outcry that Congress eventually wrote and passed the Laboratory Animal Welfare Act in 1966").

testimony by executives and expert witnesses—likely affected the public psyche in a way that simply distributing USDA investigative reports could not.²⁰⁵ Although ASPCA had already uncovered evidence of abuse in USDA investigative reports, the hours of video footage entered into evidence at trial, which showed Ringling's elephants in chains and being hit with bull hooks confirmed the suffering in a visceral way.²⁰⁶ Testimony from Feld executives and Ringling employees established that abuse occurred not only in isolated incidents investigated by the USDA, but as a matter of course. For instance, Kenneth Feld admitted in a sworn deposition that Ringling employees “strike” elephants²⁰⁷ and “prod” them with the hooked end of the bull hook,²⁰⁸ and the manager of Ringling's “conservation center” testified that elephants there—including those retired from the circus—spent an average of twelve hours a day in chains.²⁰⁹ Finally, the medical records of Ringling's elephants showed that all thirty-eight of its adult elephants and fourteen of its sixteen baby elephants suffered from foot-related problems, which an expert witness testified resulted from the elephants spending the majority of their lives chained on hard surfaces.²¹⁰

Because advocates of animal welfare and animal rights publicized this information on their websites²¹¹ and major newspapers covered the legal battle,²¹² the litigation had an educational impact likely to affect both circus attendance and lawmaking. Given that educational efforts of a more limited scope have successfully decreased circus attendance in the past,²¹³ the Ringling litigation may also spur a national decline in circus attendance. Alternatively, circus patrons now cognizant of animal abuse may satisfy their desire for

205. ASPCA Report, *supra* note 4.

206. *Id.*

207. Designated Deposition Transcript of Kenneth Feld at 97, ASPCA v. Feld Entm't, Inc., 677 F. Supp. 2d 55 (D.D.C. 2009) (No. 03-2006), *available at* http://www.bornfreeusa.org/a1a6a_highlight_h.php.

208. *Id.* at 98.

209. Designated Deposition Transcript of Gary Jacobson at 154, Feld Entm't, Inc., 677 F. Supp. 2d 55 (No. 03-2006), *available at* http://www.bornfreeusa.org/a1a6a8_exhibits.php.

210. *Undeniable Evidence*, *supra* note 79.

211. *E.g.*, Press Release, ASPCA, Animal Protection Groups Ask Federal Court to Halt Ringling Bros.' Cruel Chaining and Confinement of Endangered Asian Elephants (May 21, 2008) *available at* <http://www.awionline.org/ht/display/ReleaseDetails/i/1782/pid/232>; *Ringling Trial Court Documents and Exhibits*, BORN FREE USA, http://www.bornfreeusa.org/a1a6a_courtdocuments.php (last visited Sept. 10, 2010).

212. *See, e.g.*, *Ringling Trial News Stories*, BORN FREE USA, http://www.bornfreeusa.org/a1a6g_press.php (last visited Sept. 10, 2010) (listing newspaper articles covering the Ringling trial).

213. Rachel L. Einwohner, *Practices, Opportunity, and Protest Effectiveness: Illustrations from Four Animal Rights Campaigns*, 46:2 SOC. PROBS. 169, 177 (1999).

entertainment with spectacles such as Cirque du Soleil or circuses that employ lasers and electronics instead of exotic animals.²¹⁴ The increased public awareness raised by the litigation may also translate into legislative action. For example, Congress enacted AWA largely in response to magazine articles exposing the treatment of laboratory dogs,²¹⁵ and 1985 amendments to protect primate well-being followed the highly publicized Silver Spring Monkey Case.²¹⁶ Several countries and municipalities have even banned the use of wild animals in circuses in response to public reaction to animal abuse.²¹⁷

3. Halting Elephant Abuse

Although judicial relief eluded ASPCA, the group's attempts to halt Ringling's abusive practices likely contributed to a decrease in elephant abuse. For instance, the Ringling litigation put economic pressure on circus producers to reconsider their use of wild animals in entertainment by imposing litigation costs on Ringling, and by producing negative publicity that will likely decrease circus attendance.²¹⁸ Additionally, the spotlight the litigation cast on agency non-enforcement of AWA and ESA may encourage regulators to take enforcement action more frequently. Finally, while many elephants may well spend the rest of their lives in chains,²¹⁹ the litigation directly saved two elephants from the circus through a 2002 settlement agreement between Ringling and PAWS.²²⁰

214. *Id.*

215. See Benjamin Adams & Jean Larson, *Legislative History of the Animal Welfare Act—Introduction*, NAT'L AGRIC. LIBRARY, available at <http://www.nal.usda.gov/awic/pubs/AWA2007/intro.shtml> (last modified Feb. 17, 2010).

216. *Id.*

217. See, e.g., *Circuses Facing Ban on Wild Animals*, BBC NEWS, http://news.bbc.co.uk/2/hi/uk_news/8588332.stm (last visited Sept. 10, 2010) (discussing a potential ban on wild animals in circuses in the United Kingdom); *Exotic Animal Incidents*, BORN FREE USA http://www.bornfreeusa.org/popups/ala_exhibited_circus_incidents.php (last visited Sept. 10, 2010) (listing numerous attacks on humans by circus animals since 1990); *Wild Animals in Circuses? Questions and Answers*, ANIMAL DEFENDERS INTERNATIONAL, http://www.ad-international.org/animals_in_entertainment/go.php?id=1484&ssi=10 (last visited Sept. 10, 2010) (listing countries that have banned using wild animals in circuses).

218. Rachel L. Einwohner, *Practices, Opportunity, and Protest Effectiveness: Illustrations from Four Animal Rights Campaigns*, 46:2 SOC. PROBS. 169, 177 (1999).

219. See *Udeniable Evidence*, *supra* note 79.

220. *Meet the Elephants*, PERFORMING ANIMAL WELFARE SOCIETY (PAWS), http://www.pawsweb.org/meet_elephants.html (last visited Sept. 10, 2010).

III. FILLING THE STATUTORY ENFORCEMENT GAPS: LEGISLATION AND LITIGATION

A. Federal and State Legislation

While suing for the protection of circus elephants under ESA was an innovative litigation strategy, ASPCA's suit ultimately revealed the shortcomings of the statutory scheme designed to protect animals in exhibition. As an attorney for the plaintiffs in the Ringling litigation recognized, "the work really has to be done in the legislature."²²¹ At the federal level, Congress must strengthen AWA, which at present may be little more than "a statement of good intentions, delivering far more on paper than in the world."²²² At the state level, legislatures should enact statutes to prohibit the use of bull hooks, the practice of chaining circus animals for extended periods of time, and the premature removal of baby elephants from their mothers.

Congress should revise AWA to give the Secretary of Agriculture less discretion over enforcement decisions. At the very least, the statute should require, rather than simply permit, the Secretary to suspend the license of anyone found to be in violation of the statute.²²³ Additionally, statutory guidelines should constrain the agency's discretion in determining whether a regulated party is in violation of the statute. For example, provisions of the Act should require the USDA to consult with an independent veterinarian when agency investigators find wounds consistent with regular striking or chaining of an animal. If the veterinarian confirms that abuse caused the injuries, the Act should require the USDA to revoke the exhibitor's license.

Furthermore, a citizen-suit provision would provide a potent mechanism to effect real change. For years, animal advocates have fought for a citizen-suit provision to increase oversight of animal exhibitors and researchers and to encourage regulators to enforce the law.²²⁴ Bills proposing a citizen-suit provision have failed in Congress on multiple occasions,²²⁵ probably because of the inherent difficulty in gaining political support to amend a law that covers a vast number of

221. *Confronting Barriers*, *supra* note 90, at 65.

222. *Standing for Animals*, *supra* note 60, at 1342.

223. Animal Welfare Act, 7 U.S.C. § 2149(a) (2010).

224. Rob Roy Smith, Note, *Standing on Their Own Four Legs: the Future of Animal Welfare Litigation After Animal Legal Defense Fund, Inc. v. Glickman*, 29 ENVTL. L. 989, 1026 (1999).

225. *Confronting Barriers*, *supra* note 90, at 65; *Standing for Animals*, *supra* note 60, at 1366.

animals in disparate industries.²²⁶ Therefore, to overcome political resistance, animal advocates should propose a limited citizen-suit provision that targets specific animal industries or restricts the cause of action to a narrow class of potential plaintiffs.

An AWA citizen-suit provision could, for instance, apply exclusively to claims involving animals in exhibition. A provision that affects only exhibitors (primarily circuses, carnivals, and zoos) would likely receive far less political resistance than a provision that would involve the courts in regulating research.²²⁷ Alternatively, a citizen-suit provision could apply to a limited class of plaintiffs. In contrast with the ESA's broad "any person" language,²²⁸ an AWA citizen-suit provision could simply authorize suit by any animal protection organization. Many states already authorize humane associations to litigate on behalf of animals.²²⁹ The District of Columbia Circuit has also recognized the wisdom of such a system, reasoning that when a law purports to ensure "humaneness toward animals, who are uniquely incapable of defending their own interests in court, it strikes us as eminently logical to allow groups specifically concerned with animal welfare to invoke the aid of courts in enforcing the statute."²³⁰

Enacting state laws that prohibit specific abusive practices used²³¹ to train elephants is another necessary step toward ending circus elephant abuse, and public reaction to the Ringling Brothers case may provide popular support for such laws. For example, after an incident at the San Diego Zoo in which zookeepers beat an elephant over the head with an ax handle, using what one abuser described as "home run swings," the public outcry prompted the state to enact an elephant abuse law.²³² The California law made it a misdemeanor to "discipline" an elephant by, *inter alia*, the use of "[p]hysical punishment resulting in damage, scarring, or breakage of skin."²³³ In

226. APHIS, *Animal Welfare Act Information*, http://www.aphis.usda.gov/animal_welfare/awa_info.shtml (last modified April 10, 2010). The Act covers animals in exhibition, animals in research, animals transported commercially, and certain animals bred for commercial sale. *Id.*

227. *Int'l Primate Protection League v. Inst. for Behavioral Research, Inc.*, 799 F.2d 943, 940 (4th Cir. 1986).

228. Endangered Species Act, 16 U.S.C. § 1540(g)(1)(A) (2010).

229. *Confronting Barriers*, *supra* note 90, at 66.

230. *Animal Welfare Inst. v. Kreps*, 561 F.2d 1002, 1007 (D.C. Cir. 1977).

231. See Steven Otto, *State Animal Protection Laws—The Next Generation*, 11 ANIMAL L. 131, 142 (2005) (discussing an elephant cruelty case that demonstrates why state anti-cruelty statutes need to be written in specific, objective terms).

232. WAISMAN, FRASCH & WAGMAN, *supra* note 9, at 418.

233. CAL. PENAL CODE § 596.5(c) (2009) (abusive behavior towards elephant); WAISMAN, FRASCH & WAGMAN, *supra* note 9, at 418.

response to the same incident, the USDA did nothing more than fine the zoo for its violations of AWA.²³⁴

Although Ringling's elephants frequently travel from state to state, a law banning specific abusive practices in Florida, where Ringling's elephants are currently bred, trained, and retired,²³⁵ would make it difficult for the owner of America's largest Asian elephant population to abuse its animals.²³⁶ If Ringling's employees cannot use bull hooks to control elephants, for example, they may lack any means to train those elephants to perform. In that case, Ringling might need to reconsider exploiting twelve-thousand pound exotic creatures in its shows or, at the very least, endure the cost of moving its breeding and training facility to another state. Although the state's animal protection laws are not as comprehensive as California's, Florida's citizens may be receptive to an elephant abuse law, for the state amended its constitution by voter initiative in 2002 to prohibit a particular form of animal cruelty used by hog farmers.²³⁷

B. Standing

While animal welfare groups would welcome the addition of a citizen-suit provision to AWA, the Ringling litigation demonstrates that even when a statute contains a citizen-suit provision, animal advocates may be unable to satisfy constitutional standing requirements.²³⁸ For litigation to effectively protect animals, advocates must clear the standing barrier. Litigants may successfully surmount this hurdle by pursuing two promising standing theories: informational injury and economic harm to an organization.

First, Congress should create clear statutory rights to information in animal protection statutes so that individuals denied information have standing to sue.²³⁹ For instance, AWA and the ESA could be amended to require that exhibitors governed by the statutes make their animals' medical records available to the public. Such a requirement would serve as the basis for constitutional standing whenever an exhibitor failed to provide information, making it easier

234. WAISMAN, FRASCH & WAGMAN, *supra* note 9, at 418.

235. *About the Center for Elephant Conservation*, RINGLING BROS. AND BARNUM & BAILEY CIRCUS, <http://www.elephantcenter.com/?id=3624> (last visited Sept. 10, 2010).

236. *ASPCA v. Feld Entm't, Inc.*, 677 F. Supp. 2d 55, 58 (D.D.C. 2009) (stating that Feld owns fifty-four Asian elephants, the largest captive group in the United States).

237. *Florida Gestation Crate Amendment Passes*, PORKNET, (Nov. 7, 2002), <http://www.porknet.com/archive/110702.html#96977> (discussing the amendment banning gestation crates which are used to confine pregnant pigs).

238. *Feld Entm't, Inc.*, 677 F. Supp. 2d at 66.

239. *FEC v. Akins*, 524 U.S. 11, 24–25 (1998); *Confronting Barriers*, *supra* note 90, at 66; *Standing for Animals*, *supra* note 60, at 1344.

for animal advocates to establish standing.²⁴⁰ A disclosure requirement might provide the additional benefits of shaming abusers into taking better care of their animals and providing access to information that may pertain to public health; for example, many of Ringling's elephants have had tuberculosis, a disease communicable to humans.²⁴¹

Second, animal welfare groups should continue to develop theories of standing like the economic injury theory successfully developed in *Humane Society of the United States v. United States Postal Service*.²⁴² In that case, HSUS alleged that the postal service caused the organization economic injury when it violated AWA by mailing a periodical that primarily served to advertise cockfighting supplies and illegal fights.²⁴³ The court held that the organization had standing because it spent hundreds of thousands of dollars providing emergency care to animals seized from illegal fights.²⁴⁴ Although a plaintiff generally cannot allege an economic injury on the basis of voluntary expenditures, the court concluded that, if the mailings increased "the need to care for animals on an emergency basis," the financial injury HSUS suffered was "neither voluntary nor self-inflicted."²⁴⁵ While the court's decision depended significantly on the emergency nature of the care provided, organizations like PAWS at least arguably suffer economic injury from the inhumane treatment of circus elephants. Although PAWS rescues elephants voluntarily, the financial burden it encounters increases significantly when elephants that have suffered abuse come to its sanctuary "physically and psychologically damaged—requiring round-the-clock monitoring and specialized care often for the remainder of their lives."²⁴⁶

240. See, e.g., *Akins*, 524 U.S. at 21 (stating that a plaintiff suffers an injury in fact when the plaintiff does not receive information that a statute requires to be disclosed).

241. Plaintiffs Will-Call Exhibit 102A-1, *Feld Entm't, Inc.*, 677 F. Supp. 2d 55 (No. 03-2006), available at http://www.bornfreeusa.org/a1a6a_highlight_c.php (last visited Sept. 10, 2010).

242. *Humane Soc'y of the U.S. v. U.S. Postal Serv.*, 609 F. Supp. 2d 85 (D.D.C. 2009).

243. *Id.* at 88–9.

244. *Id.*

245. *Id.* The court also determined that the defendant's mailing caused the injury by increasing the number of fights and therefore the number of injured animals for which the society had to provide emergency care. *Id.*

246. *About our Sanctuaries*, PERFORMING ANIMAL WELFARE SOCIETY, http://www.pawsweb.org/about_our_sanctuaries.html (last visited Sept. 10, 2010).

IV. CONCLUSION

Although ASPCA lost its suit against Ringling, the litigation focused attention on many problems impeding the successful protection of circus elephants. The case highlighted the failure of AWA to achieve Congress' purpose—to guarantee humane treatment of animals—because the statute remains largely unenforced and plaintiffs cannot compel enforcement. Additionally, the Ringling litigation exemplified the recurrent difficulty animal advocates face when attempting to overcome the standing barrier, even when Congress has created a citizen-suit provision to grant standing to a broad class of plaintiffs.²⁴⁷

Despite the legal obstacles that prevented ASPCA from succeeding at trial, the Ringling litigation taught a number of valuable lessons. The suit developed standing jurisprudence by expanding the scope of aesthetic injury to include emotional harm, even though the court, in dismissing the case, ultimately exposed the limitations of the theory. The litigation raised public awareness about animal abuse at the circus as numerous news articles covered the case and websites provided access to evidence presented at trial.²⁴⁸ To the extent that attendance at traditional circuses declines as a result of increased awareness of animal abuse, the litigation may also alleviate elephants suffering.²⁴⁹

Ultimately, the litigation is a call to action for animal rights lawyers and advocates. When the protracted lawsuit concluded without a decision on the merits, it became all the more clear that alternative strategies for protecting performing elephants are desperately needed. Legislative action at the federal and state level is needed to overcome constitutional standing requirements that make access to courts so elusive for representatives of animals. Such action should include amending AWA to allow the USDA less enforcement discretion and to include a citizen-suit provision, creating specific state anti-cruelty laws, and providing statutory rights to information in federal animal protection laws. Additionally, plaintiffs should continue to pursue the novel standing theories—economic harm and

247. ASPCA v. Feld Entm't, Inc., 677 F. Supp. 2d 55, 66 (D.D.C. 2009).

248. See, e.g., Press Release, ASPCA, Animal Protection Groups Ask Federal Court to Halt Ringling Bros.' Cruel Chaining and Confinement of Endangered Asian Elephants (May 21, 2008) available at <http://www.awionline.org/ht/display/ReleaseDetails/i/1782/pid/232>; *Ringling Trial Court Documents and Exhibits*, BORN FREE USA, http://www.bornfreeusa.org/a1a6a_courtdocuments.php (last visited Sept. 10, 2010); *Ringling Trial News Stories*, BORN FREE USA, http://www.bornfreeusa.org/a1a6g_press.php (last visited Sept. 10, 2010) (listing newspaper articles covering the Ringling trial).

249. *Undeniable Evidence*, *supra* note 79.

informational injury—advanced, respectively, by HSUS²⁵⁰ and ASPCA.²⁵¹

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250. Humane Soc'y of the U.S. v. U.S. Postal Service, 609 F. Supp. 2d 85, 88–91 (D.D.C. 2009).

251. *Feld Entm't, Inc.*, 677 F. Supp. 2d at 98.

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