The PETS Act and Beyond: A Critical Examination of the PETS Act and What the Future of Disaster Planning and Response for Animals Should Be

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THE PETS ACT AND BEYOND: A CRITICAL EXAMINATION OF THE PETS ACT AND WHAT THE FUTURE OF DISASTER PLANNING AND RESPONSE FOR ANIMALS SHOULD BE

Erica LaVoy

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I. INTRODUCTION

The relationship between man and animal has gone through several evolutions throughout history. This relationship has evolved from primarily hunting animals for food and raw materials in
prehistoric ages,\textsuperscript{1} to using animals as methods of transportation,\textsuperscript{2} to training animals to detect medical conditions and explosive devices.\textsuperscript{3} In addition to the practical evolutions, this relationship has gone through an emotional evolution. Studies show a consistent upward trend in pet ownership over the past two decades in the United States with sixty-eight percent of U.S. households owning at least one pet.\textsuperscript{4} In the households that do have pets, the majority of them consider their pets to be family members.\textsuperscript{5} Even though a majority of pet owners view their pets as members of the family, animals are still considered property and are not afforded the same considerations and rights that humans have.

When disaster strikes a community, members of the community may turn to the local, state, and federal governments for assistance before, during, and after the disaster. Traditionally, governments have focused disaster preparedness and recovery plans on the human members of their communities but in recent years governments have begun addressing animals in their disaster planning efforts based on the evolving nature of the relationship between humans and animals.

The most obvious change in disaster planning related to animals came after Hurricane Katrina hit New Orleans in the summer of 2005. The Pets Evacuation and Transportation Act (“PETS Act”) was passed in the aftermath of Hurricane Katrina as it became evident that disaster planning did not adequately address the needs of pet owners.\textsuperscript{6} While this is a great step forward in planning for

\begin{enumerate}
\item JAMES SERPELL, IN THE COMPANY OF ANIMALS: A STUDY OF HUMAN-ANIMAL RELATIONSHIPS 4 (1986).
\end{enumerate}
animals’ needs during disaster, this act is not without its holes and the need to address animals on a larger scale remains.

This paper will discuss the events precipitating the passage of the PETS Act and what this act means. Specifically, this paper will outline the provisions of the PETS Act and aim to clarify misconceptions about what pet owners are permitted to do with their pets in the event of natural disaster. The paper will then move on to discuss the “holes” in the PETS Act by discussing what provisions and protections are or are not in place for animals that are not pets. At this point, the paper will turn to a discussion about how farm animals are treated in the event of a natural disaster. This paper will conclude with a proposal directed at insurance carriers to include exemptions or limitations in livestock insurance policies that preclude insurance recover for violating any law, specifically animal abandonment or animal cruelty laws.

II. THE PETS ACT

In August 2005 Hurricane Katrina wreaked havoc on the southeastern United States and remains the fourth-most intense hurricane to make landfall in the United States. At its strongest, Katrina had sustained winds of nearly 174 mph and torrential amounts of rain resulting in storm surge of over twenty-five feet in areas along the Gulf Coast. Even though it is only the fourth-most intense hurricane to hit the United States, it remains the costliest. This is primarily due to the devastation experienced in New Orleans after the levees that protected the city unexpectedly broke, leaving eighty percent of the city underwater.

As rescue and recovery responses began it became clear that the emotional evolution of the human and animal relationship was stronger than ever. Many residents of New Orleans chose not to evacuate before the storm despite the evacuation orders because they would be forced to leave their pets behind. Those who chose to stay behind with their pets faced unimaginable conditions, dehydration, deprivation, and sometimes death, demonstrating the depth of the emotional connection humans have with their pets.

Even after the storm passed, survivors in New Orleans refused to leave their pets behind despite rescuers’ attempts to relocate survivors from the devastated areas of New Orleans. Survivors were faced with a gut-wrenching decision when told that the shelter they were being evacuated to did not accept pets and had to leave their pets behind, or when upon arrival to an evacuation shelter they were told their pets were not permitted inside. One image taken during the days after the levees broke in New Orleans was of a child whose dog, Snowball, was confiscated by a police officer before the child was evacuated. The child cried so hard he made himself sick. Separating humans and their pets was pretty common in the aftermath of Katrina and some dogs were left tied to bridges because pets were not permitted on the buses that their owners had to take to evacuate the city. An estimated 100,000 companion animals were separated from their families during and after the storm.

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10.  *Hurricane Katrina: Perceptions of the Affected*, FRITZ INSTITUTE, 1, 4 (2011), [http://www.fritzinstitute.org/PDFs/findings/HurricaneKatrina_Perceptions.pdf](http://www.fritzinstitute.org/PDFs/findings/HurricaneKatrina_Perceptions.pdf) [https://perma.cc/5XLN-S8H8]. The study conducted at the Fritz Institute found that of those who chose not to evacuate, forty-four percent said it was because they would have to leave their pets behind.
12.  Id.
13.  Id.
14.  Id.
15.  Id.
because shelters would not accept pets. Of those animals left behind, an estimated 70,000 died.

After the initial disaster response was underway it became evident that there were critical flaws in the federal disaster response plan. Then-President George W. Bush ordered a review of the federal government’s response to Hurricane Katrina. The review detailed seventeen “critical challenges” that affected the disaster response to Hurricane Katrina and provided over one hundred recommendations to address these challenges. One recommendation addressed the logistics of evacuation and provided a specific recommendation for the Department of Homeland Security to condition receipt of federal grants to state and local governments on compliance with federal evacuation activities. In order to comply with federal evacuation activities, state and local governments should “develop, implement and exercise emergency evacuation plans . . . establishing first-aid stations, tracking and coordinating movements of evacuees, evaucating pets, unaccompanied minors, the elderly and evacuating people who lack the means to leave voluntarily.”

A little over a year after Hurricane Katrina wreaked havoc on the Gulf Coast, the PETS Act adopted the above-mentioned recommendation from the review of the federal response to Katrina. Now, in order for state and local governments to receive funding or reimbursements from the federal government for their disaster response, they must have plans that “account for the needs of individuals with household pets and service animals before, during and following a major disaster or emergency.”

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18. Id.
20. Id. at 100.
21. Id. (emphasis added).
23. The PETS Act, supra note 22; ANIMAL LEGAL DEFENSE FUND, supra note 17.
PETS Act was passed in October 2006, more than thirty states have amended their disaster response plans to account for the needs of people with pets and service animals.\textsuperscript{24} State disaster response plans differ from state-to-state, but many require animals be sheltered and evacuated during an emergency in addition to caring for pets, implementing state animal response teams, sheltering of animals and identification of recovered animals.\textsuperscript{25}

\textit{A. The PETS Act in Action}

While states have implemented their own plans, there is consistent confusion around what rights the PETS Act provides for pets and their owners. The PETS Act amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act to require state and local emergency preparedness plans to include the needs of individuals with pets and service animals. Effective implementation of the PETS Act requires the support of the National Response Framework (“NRF”) and the Post-Katrina Emergency Management Reform Act (“PKEMRA”).\textsuperscript{26}

The NRF is a guide to how the federal government, through the Federal Emergency Management Agency (“FEMA”), will “respond[] to all types of disasters and emergencies” \textsuperscript{27} by establishing a “comprehensive, national, all-hazards approach” to disaster relief.\textsuperscript{28} In providing a comprehensive outline for disaster response, the NRF describes how local, state, and the federal government as well as private-sector and non-governmental entities interact to coordinate an organized emergency response.\textsuperscript{29} The NRF stresses the need for communities to take an active role in disaster

\begin{footnotes}
\item[25] \textit{Id.} Some states have gone further than adopting plans and have passed laws directed towards evacuation and sheltering of pets during a natural disaster. \textit{See Map of States with Disaster Planning Laws}, Animal Legal & Historical Ctr., https://www.animallaw.info/content/map-states-disaster-planning-laws [https://perma.cc/X5EY-5X9Z].
\item[26] PETS Act (FAQ), American Veterinary Medical Ass’n, https://www.avma.org/KB/Resources/Reference/disaster/Pages/PETS-Act-FAQ.aspx [https://perma.cc/MN3U-TP3A].
\item[27] United States Department of Homeland Security, National Response Framework 1 (2nd ed. 2013) [hereinafter NRF].
\item[28] American Veterinary Medical Ass’n, \textit{supra} note 26.
\item[29] \textit{Id.}
\end{footnotes}
preparedness but also articulates that “emergency management staff in all jurisdictions have a fundamental responsibility to consider the needs of all members of the whole community.”30 In particular, the NRF states that emergency management staff must also consider individuals who own or have responsibility for animals, including household pets, service or assistance animals, working dogs, livestock, as well as animals housed in zoos, research facilities, or shelter.31

The PKEMRA was passed in 2006 as a direct response to the lessons learned from the federal disaster response failure that occurred after Hurricane Katrina destroyed the Gulf Coast. A major point of embarrassment during the Katrina disaster response was the lack of communication between the federal government and the local and state governments.32 Recognizing this problem, a major provision of the PKEMRA allows FEMA to send accelerated federal assistance to affected areas after a major disaster occurs or an emergency declaration is made even in the absence of a specific request by a state.33 The PKEMRA allows FEMA to focus on saving lives and preventing suffering without waiting for a specific request from a state by expanding and strengthening FEMA’s operational framework and coordination capabilities.34 In expanding FEMA’s framework and capabilities, FEMA became the sole primary federal agency for responding to disasters.35 As the primary federal agency for responding to disasters, FEMA gained additional authorities and responsibilities which include, among others, ensuring that pets are rescued and providing shelter and care to pets.36

30. NRF, supra note 27, at 8.
31. Id.
34. Id.; AM. VETERINARY MED. ASS’N, supra note 26.
35. AM. VETERINARY MED. ASS’N, supra note 26.
36. Id.
1. What the PETS Act Does

When the president makes a federal disaster declaration, FEMA is allowed to exercise its recently expanded powers under the PKEMRA without waiting for a state to ask for assistance, which also triggers the PETS Act. The PETS Act primarily operates by providing a reimbursement scheme for non-profit and private companies and state and local governments for their work done in conjunction with evacuating and rescuing animals in response to a disaster. The reimbursement scheme developed by FEMA is called the “Eligible Costs Related to Pet Evacuations and Sheltering” and provides specific guidelines on expenses that may or may not be reimbursable to companies and governments that expend resources rescuing and sheltering pets during disaster responses. Some items that might be reimbursed include: use of facilities, supplies, commodities and labor used in sheltering operations, cleaning and maintenance of the shelter, safety and security of the shelter, and cataloguing and tracking systems used for pets that are rescued.

In addition to providing reimbursements for expenditures, the PETS Act allows FEMA to act proactively by providing funding to state and local governments for the creation, operation, and maintenance of pet-friendly emergency shelters. Because of the PETS Act, it is now more likely than ever before that you will be able to find an emergency shelter in your area that permits not only service animals, but also family pets. However, it is still important to research beforehand on whether your local emergency disaster shelter accepts pets; some shelters may ask that you provide proof that your animals are up to date with their vaccinations in addition to providing an appropriate crate and food for your pet.

37. Id.
38. Id.
40. ANIMAL LEGAL DEFENSE FUND, supra note 17.
41. Id.
42. Id.
2. Hurricane Harvey and the PETS Act

Over a decade after Hurricane Katrina revealed a major gap in disaster preparedness and response, Hurricane Harvey would provide the first major instance of the PETS Act in action during the summer of 2017. Texas is one of the states that has required state officials to create disaster response plans that include evacuating and providing temporary shelter to service animals and pets during a disaster.\(^{43}\) While some news outlets reported that the PETS Act was being implemented without issue, it is clear that there are still some kinks to be worked out.

Prior to Hurricane Harvey making landfall, animal shelters in its path proactively evacuated animals to safer areas.\(^{44}\) After Harvey went through Houston, there were reports of first responders returning to evacuate pets after evacuating their owners.\(^{45}\) Clearly, the lessons and images from Katrina had made an impact and yet issues still arose regarding pets. Indeed, at first evacuees with pets were not allowed to enter the George R. Brown Convention Center until an official stated that both humans and animals were welcomed at Houston’s evacuation center.\(^{46}\)

In a study performed shortly after Hurricane Harvey, a researcher conducted interviews with six key officials involved in the disaster response of Harvey and how the PETS Act operated in their response. The study demonstrated that plans required under the PETS Act were severely underdeveloped and many of the problems associated with animal disaster response remain.\(^{47}\) In fact, only a minority of those surveyed had specific knowledge of the PETS Act and even those individuals who had specific knowledge admitted that the PETS Act was more of an idea people supported after the

\(^{43}\) David Grimm, *How Pets of Hurricane Harvey are Benefiting from the Lessons of Katrina*, HUFFINGTON POST (Sept. 5, 2018, 6:47 PM) [https://www.huffingtonpost.com/entry/how-pets-of-hurricane-harvey-are-benefiting-from-the-lessons-of-katrina_us_59af1f02e4b0b5e53101cf02](https://perma.cc/QP4Q-PKEU).

\(^{44}\) *Id.*

\(^{45}\) *Id.*

\(^{46}\) *Id.*

\(^{47}\) Steve Glassey, *Did Harvey Learn from Katrina? Initial Observations of the Response to Companion Animals During Hurricane Harvey*, ANIMALS (Mar. 30, 2018). Admittedly, the research involves a very small sample size, however, the results still deserve some consideration.
horrible stories coming from the disaster response to Hurricane Katrina. While there has been a major cultural shift in how pets are handled during disaster response, the planning and coordination aspects of the PETS Act need further attention.

3. Confusion Over the PETS Act

It is important to briefly discuss a common and unfortunate misconception about the PETS Act. In preparation for a disaster, there is a constant flow of news and information but unfortunately not all of that information may be correct. One of the most common misconceptions about the PETS Act gained attention during the fall of 2017 when Hurricane Irma was headed for Florida. As Irma made its way towards Florida, the state went through one of the largest evacuations in its history and naturally, people were seeking shelter with their pets. Unfortunately, social media outlets were flooded with posts providing uninformed and entirely false information about the PETS Act.

These social media posts told evacuees that if they evacuated to a hotel and were told that the hotel did not accept pets, the evacuee simply had to say that it was against the law to not accept pets during disaster evacuations and that FEMA required the hotel to abandon its no-pets policy during a federally declared disaster. This is entirely untrue and only managed to make an extremely stressful situation more stressful for evacuees and businesses alike. As explained above, the PETS Act requires FEMA to consider the needs of pet owners and individuals with service animals when developing disaster plans and setting up emergency shelters.

48. Id.
49. Id.
51. Hurricane Irma Rumor Control, FEMA, https://www.fema.gov/hurricane-irma-rumor-control [https://perma.cc/FME3-G59M] (FEMA confirmed the reports that “all emergency shelters and hotels are required to accommodate pets for people who [] evacuated” were false.).
52. Id.
53. The PETS Act, supra note 22; Mary Jo Dilonardo, How to Evacuate Your Pet for a Hurricane, MOTHER NATURE NETWORK (Sept. 12, 2018, 12:21 PM)
no point does the PETS Act mention what hotels or motels must do during disasters regarding pets.\textsuperscript{54} Hotels and motels, however, must accept service animals regardless of any disaster status under the Americans with Disabilities Act ("ADA").\textsuperscript{55}

Some of the confusion may be based on the different classifications of support animals. The ADA only covers animals that are individually trained to perform tasks for the benefit of an individual with a disability.\textsuperscript{56} These tasks can include pulling a wheelchair, guiding a visually impaired person, alerting an individual to an impending seizure, or even applying deep pressure therapy to calm the symptoms of Post-Traumatic Stress Disorder.\textsuperscript{57} The abilities of a service animal are numerous but a defining feature is that the tasks a service animal performs must be directly related to the handler’s disabilities.\textsuperscript{58} On the other hand, an emotional support animal ("ESA") is not a pet rather it is an assistance animal that provides a therapeutic benefit to its owner who has verifiable mental or psychiatric disability.\textsuperscript{59} Specifically, an ESA is typically a dog or cat (although other species can be ESAs) that provides a “therapeutic benefit to its owner through companionship”, there is no need for individualized training to complete tasks specific to a disability.\textsuperscript{60} An ESA provides support and comfort to individuals with psychiatric or mental impairments like anxiety, depression, and panic attacks simply by being around their owner so there is no need for ESAs to be professionally trained.\textsuperscript{61}

While both service animals and ESAs provide invaluable assistance to their handlers and owners, the manner in which laws

\textsuperscript{55} Emotional Support Animal Laws, SERV. DOG CERTIFICATIONS (Nov. 11, 2016), https://www.servicedogcertifications.org/emotional-support-animal-laws/ [https://perma.cc/Q3ZT-8PFZ].
\textsuperscript{57} Id.; see also SERV. DOG CERTIFICATIONS, supra note 56.
\textsuperscript{58} SERV. DOG CERTIFICATIONS, supra note 56.
\textsuperscript{59} Wisch, supra note 57.
\textsuperscript{60} Id.
apply to each type of assistance animal varies greatly. The ADA specifically applies only to those animals that are individually trained to perform tasks directly related to their handler’s disability.62 Accordingly, even though ESAs may be used as part of some medical treatment plans, they are not considered service animals that are covered under the ADA.63 In fact, some ESAs might be used in Animal Assisted Therapy sessions to improve mental or intellectual disabilities of their owners, but that does not give them the distinction of a service animal that is protected under the ADA.64 Under the ADA, service animals may go into any public place that their handler normally goes, which includes state and local government buildings, public transportation, and businesses open to the public (including hotels and motels regardless of whether there is a disaster or not).65

On the other hand, ESAs are only granted access to housing facilities, even if the complex or landlord has a no pet policy or breed/weight discriminatory policies, and air transportation.66 While not being granted access to places of public accommodation (e.g., hotels/motels, movie theaters, stores), ESAs are permitted to bypass a “no pets policy” or weight/breed restriction based on provisions under the federal Fair Housing Act (“FHA”) and the Fair Housing Amendment Act (“FHAA”).67 Under these acts, landlords and housing communities are required to provide reasonable accommodations so that tenants have equal opportunity to use and enjoy housing.68 The FHA views ESAs as a reasonable accommodation in a housing unit designed to achieve the goal of equal opportunity for enjoyment of a housing unit.69 Additionally, the Air Carrier Access Act (“ACAA”) permits ESAs to fly with their owner in the cabin without incurring extra fees or charges.70

While a service animal and ESA might appear to perform similar functions they are fundamentally different under the law,
making how they are treated just as different. Service animals are permitted access to hotels and motels at any time, whereas ESAs are not granted access to hotels and motels because hotels are places of public accommodation, not personal residences.\(^7\) Understandably confusion is bound to occur between the two types of assistance animals, especially in times of stress, like during an evacuation from a disaster. However, hotels, as places of public accommodation, are not required to accept ESAs or other companion animals.

The PETS Act only provides for what assistance the federal government may provide by either reimbursing state and local governments for the costs of evacuating and sheltering animals or by providing pet-friendly shelters. Nowhere in the PETS Act does it permit the federal government to require private hotels to abandon their no pet policies and allow non-service animal pets to enter their place of business. Claims that hotels are required to take companion animals or ESAs during a disaster are simply false and confuse the terms of the PETS Act with the requirements of the ADA.

\textbf{B. Holes in the PETS Act}

The PETS Act provides a good foundation for addressing the needs of animals during natural disasters but there are still some holes that need to be addressed before it is safe to say that animals overall will be cared for during disasters. Beyond improved awareness and execution of the PETS Act, the definition of what animals that are protected by the PETS Act should be expanded. As it stands now, the PETS Act only covers certain companion animals which are primarily service animals and those animals that FEMA has determined to be “household pets.”\(^7\) FEMA’s definition of household pets is fairly small, including only dogs, cats, birds, rabbits, rodents, and turtles while excluding any other types of reptile, fish, amphibians, farmed animals, horse, and other less traditional pets.\(^7\)

\begin{itemize}
  \item \textsuperscript{71} Wisch, \textit{supra} note 57.
  \item \textsuperscript{72} The PETS Act, \textit{supra} note 22; \textsc{Animal Legal Defense Fund}, \textit{supra} note 17.
  \item \textsuperscript{73} \textsc{Animal Legal Defense Fund}, \textit{supra} note 17.
\end{itemize}
1. Discrimination Against Certain Dog Breeds and Their Owners

While the PETS Acts provides for evacuating and sheltering a variety of pets, it does not prohibit evacuation teams and shelters from discriminating against certain breeds of animals in the process. Breed-specific legislation is a type of law or local ordinance that either restricts or altogether bans ownership of a certain breed of dog within a jurisdiction.\textsuperscript{74} Cities across the United States have enacted laws that ban specific breeds of dogs (most commonly “pit bulls”, Bull Terriers, American Pit Bull Terriers, Staffordshire Bull Terriers, and American Staffordshire Terriers) or more broadly, any dog that has “pit bull” elements or characteristics in their breeding.\textsuperscript{75} Some jurisdictions permit banned breeds of dogs to continue living in the jurisdiction, but the dog and their owners run the risk of being under further scrutiny\textsuperscript{76} while other jurisdictions justified the restrictions by returning a confiscated dog on the condition will not return to the city or because the dog was misidentified as a banned breed.\textsuperscript{77}

Breed-specific legislation has been challenged on several constitutional grounds including vagueness, procedural due process, equal protection, and substantive due process.\textsuperscript{78} Unfortunately, most courts find breed-specific legislation constitutional when the legislation names specific breeds and has


\textsuperscript{76}. Colo. Dog Fanciers, Inc. v. City and Cty. of Denver, 820 P.2d 644, 646 (Colo. 1991) (en banc) (owners of pit bulls in Denver, Colorado were permitted to keep their pets if they obtained a pit bull license, provided proof of neuter/spay and vaccination, confined and muzzled the dog and maintained a $100,000 insurance policy in the event the dog caused harm).

\textsuperscript{77}. \textit{Yakima}, 777 P.2d at 1047. Those endorsing breed-specific legislation claim that pit bulls have an inherit aggressiveness and physicality as well as an “unpredictable nature” that necessitates the restrictions to protect the public. Jamey Medlin, \textit{Pit Bull Bans and the Human Factors Affecting Canine Behavior}, 56 DEPAUL L. REV. 1285, 1293 (2007).

\textsuperscript{78}. AM. BAR ASS’N, \textit{A Lawyer’s Guide to Dangerous Dog Issues} 34–36 (Joan E. Schaffner, ed., 2009). While not the focus of this paper, a few courts have found certain jurisdiction’s breed-specific legislation to be unconstitutionally vague. \textit{Id.} at 34.
specific standards to meet when classifying a dog to prevent subjective enforcement. Based on the clear trend that breed-specific legislation is constitutional, a unique problem arises with evacuation centers during disasters.

In any jurisdiction where breed-specific legislation is enacted, it is a very real possibility that those restrictions from the breed-specific legislation would translate to the jurisdiction’s shelters, particularly shelters that are organized by the state or local government that passed the breed-specific legislation. Due to the predominate judicial opinion that breed-specific legislation is constitutional, shelters may believe they are entitled or even have a duty to prevent the banned dog breeds from entering the shelter during an evacuation in order to protect the public from these “vicious” dogs. Remember, the PETS Act is a federal law that requires state and local governments to account for the needs of pet owners if the state and local government want to receive funding or reimbursement for executing their disaster response plans. The PETS Act does not require state and local governments to enact disaster plans that do not discriminate against certain breeds of dogs, or any other species of animal included in the PETS Act.

Currently, there is no federal law that prohibits breed-specific legislation. This creates an incredibly large hole for states and local governments that do have breed-specific legislation to discriminate against not only the dog, but also the owner during disaster response. In August 2013, then-President Obama made a statement that the Obama Administration did not support breed-specific legislation after a petition against breed-specific legislation created in December 2012 gained more than 30,000 signatures. In the statement, the Obama Administration referenced a position taken by the CDC more than two decades prior to remind the country that

80. See supra Section A.1-3 for a discussion of the PETS Act.
81. The PETS Act, supra note 22. There is no prohibition against discriminating against certain breeds of dog during disaster planning and response with the PETS Act.
“research shows that bans on certain types of dogs are largely ineffective and often a waste of public resources.” 83 The statement went on to say that it is nearly impossible to accurately calculate bite rates by dog breed and furthermore research has shown that visual identification of a dog’s breed “correlates extremely poorly with DNA analysis.” 84 Indeed, even animal professionals, individuals who are trained to recognize characteristics in dog breeds, may disagree with one another when identifying, or more accurately guessing, a dog’s breed. 85

In making this statement, the Obama administration, along with the CDC, gave support for a “community-based approach” to dog bite prevention as recommended by the American Veterinary Medical Association’s (“AVMA”) Task Force on Canine Aggression and Human–Canine Interaction. 86 In addition to the Obama administration, the CDC, and the AVMA, breed-specific legislation is opposed by many national organizations including the Humane Society of the United States, the American Society for the Prevention of Cruelty to Animals, Best Friends Animal Society, the National Animal Control Association, the American Kennel Club, and even the United Kennel Club (an international organization). 87 Admittedly, all of these organizations are animal friendly, and arguably inherently against breed-specific legislation, but even the American Bar Association’s (“ABA”) House of Delegates passed a resolution in 2012 that urged “all state, territorial, and local legislative bodies and government agencies” to repeal any breed-specific legislation currently in place in favor of “comprehensive breed-neutral” laws regulating dogs and dog ownership. 88

The resolution passed by the ABA’s House of Delegates discussed a variety of issues related to breed-specific legislation, such as potential due process violations, the economics of enforcing bans and restrictions, as well as a general failure of breed-specific legislation in other countries to make a difference in the rates of dog

83. Id.
84. Id.
85. Id.
86. Id.
87. NAT’L CANINE RESEARCH COUNCIL, supra note 82.
bites. Interestingly, one of the final issues the House of Delegates addressed in its resolution was the effect of breed-specific legislation on individuals with service animals that may be categorized, correctly or incorrectly, as a banned breed. Despite their categorization as vicious, pit bulls, or other dog breeds that may be targeted by breed-specific legislation, can be trained as service dogs just like other non-vicious dog breeds are trained to assist individuals with disabilities.

a. Breed-Specific Legislation Effect on Individuals with Disabilities During Disaster Response

Training a dog, of any breed, to be a service animal is a very time consuming, labor-intensive, and expensive process. Simply replacing a service dog is not always an option for a person with a disability that comes into contact with breed-specific legislation targeting their service dog. Despite vast amounts of training and commitment to their role in assisting their handler, service animals belonging to a banned or restricted breed are rarely provided exemptions in jurisdictions with breed-specific legislation. In fact, a recent class action suit was brought against the cities of Denver and Aurora, Colorado, that both have breed-specific legislation targeting “pit bull” type dogs, but make no exception for service dogs. The United States District Court of Colorado did not directly address the constitutionality of the cities’ breed-specific legislation, but this case highlights the conflict between breed-specific legislation and protections for people with disabilities.

Recently, the Department of Justice (“DOJ”) enacted guidelines interpreting the ADA and the potential effect of breed-specific legislation on the rights of individuals with dogs banned under certain breed-specific legislation. The DOJ stated that “it is

89. Id.
90. Id. at 8.
91. Id.
92. Id.
93. ABA HOUSE OF DELEGATES, supra note 88, at 8.
94. Id.
95. Id.
[n]either appropriate [n]or consistent with the ADA to defer to local 
laws that ban or restrict certain breeds of dogs . . .”

Giving deference to state and local restrictions would effectively limit the 
rights guaranteed to individuals under the ADA who use certain 
breeds of service animals based on where they live, and the local 
regulations to which they are subject, rather than whether the 
particular animal is a potential threat to public health.

The guidelines promulgated by the DOJ allow governmental 
entities the ability to determine, on a case-by-case basis, whether a 
particular service animal may be excluded from the reach of breed-
specific legislation, even when the jurisdiction does not provide an 
exemption for service animals. When making its case-by-case 
determination, the governmental entity should consider that 
particular service animal’s “actual behavior or history” and not base 
its decision on “fears or generalizations about and entire breed or 
breeds of dogs.”

While granting exceptions to service animals targeted by breed-
specific legislation is a step in the right direction, it is entirely 
unrealistic to ask a shelter established in preparation for, or in 
response to, a disaster to conduct this type of analysis. It adds 
another layer of stress to both the animal and their handler in an 
already stressful environment. Additionally, it is unfair to ask 
volunteers or the individuals organizing and coordinating the shelter 
to make this determination on behalf of the government. Without 
a clear prohibition against breed-specific legislation in either the 
PETS Act or from the federal government, individuals with 
disabilities who use service dogs may be prohibited from entering 
disaster response shelters if their service animal is a breed targeted 
by a jurisdiction’s breed-specific legislation. It is surprising that 
with the massive national support against breed-specific legislation 
that a more inclusive amendment has not been added to the PETS

97. Id. at 56194.
98. ABA HOUSE OF DELEGATES, supra note 88, at 8–9.
99. Id.
100. Id. (citing Nondiscrimination on the Basis of Disability in State and Local 
28 C.F.R. Pts 35 and 36)).
101. Amy Cattafi, Breed Specific Legislation: The Gap in Emergency 
Preparedness Provisions for Household Pets, 32 SETON HALL LEGIS. J. 351, 356– 
57 (2008).
Act to prohibit discriminating against certain breeds of animals the PETS Act purportedly covers.

b. Breed-Specific Legislation’s Effect on Owners of the Targeted Breeds During Disaster Response

Beyond addressing the problems breed-specific legislation creates for individuals with disabilities during a disaster, breed-specific legislation may negatively impact the affected general population. In enacting breed-specific legislation, jurisdictions may either attempt to completely remove certain breeds from its city or impose heavy restrictions on those choosing to own the targeted breeds. However, it is likely that people will own one of the banned breeds—or not be in compliance with the increased regulations for their ownership of a particular breed—not necessarily in defiance of the breed-specific legislation, but simply because the owner does not categorize their dog as being one of the targeted breeds. Additionally, an individual may move from an area that did not have breed-specific legislation to an area where breed-specific legislation is in effect and is not aware their pet is illegal in their new city.

What happens when these owners show up at the city’s or municipality’s shelter only to be told their pet is illegal and will not be allowed to enter? Will the owner be turned away or will the dog be set loose to endure the disaster alone? The latter of those two options cannot be the right choice, especially because proponents of breed-specific legislation believe the legislation prevents dog bites and damage to property. A dog of any breed running loose and unsupervised during a disaster is more likely to cause injury, or suffer injury itself, than a dog who is properly kenneled in a shelter and under the supervision of their owner.

Assuming proponents of breed-specific legislation are willing to accept that “vicious” dogs may be turned loose during times of disasters because they are unwelcome in the shelter, the problem still remains in positively identifying dogs as the breed the legislation is targeting. As mentioned above, identifying a dog’s specific breed is no easy task. It would be an unfair responsibility and burden to place on a disaster response official, who is supposed

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102. *Id.* at 369.
103. *Id.* at 370.
104. *Id.*
to be overseeing and coordinating critical disaster response efforts, to make this determination. Visually identifying a dog’s breed is more art than science. There is no objective way for a disaster response official to determine the exact breed of a dog, and consequently not only the fate of the dog but also the fate of the owner, based on just a brief visual survey. Indeed, “any short-haired, floppy-eared dog is labeled a Lab-mix; any prick-eared dog with black and tan markings is a shepherd [sic] mix; and any muscular short-haired dog is a pit bull mix.”

Even when a jurisdiction provides a description of what a banned breed looks like, the description is not a bright-line rule making it difficult for disaster response officials to apply the restriction in the chaos of a disaster. Without a bright line rule for disaster response officials to follow, dogs will inevitably be accused of being a breed that they are not, be deemed illegal, and therefore not covered in disaster response efforts. Owners will be faced with the decision of either staying behind with their “illegal” dog or letting their dog loose to fend for itself during the disaster, both of which are reminiscent of issues surrounding the emergency disaster response to Hurricane Katrina which is the event that spurred the creation of the PETS Act. Failing to initially include, or subsequently including, an anti-breed discrimination in the PETS Act leaves open the possibility of individuals, and those breeds targeted by breed-specific legislation, facing the same horrors that survivors of Katrina suffered.

c. Inherent Discrimination of Owners of the Targeted Breeds During Disaster Response

Interestingly enough, the Stafford Act of 1988 initially prohibited discrimination during disaster relief and assistance activities. The Stafford Act states that during a disaster, “relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency,

105. Id. at 371.
or economic status.” In 2006 the PKEMRA did not narrow the classes protected against discrimination rather the PKEMRA, arguably, expanded the classes by specifically including children, the elderly, and those individuals with pets.

The vast majority of breed-specific legislation targets “pit bulls” or dogs with similar characteristics; these dogs have strong cultural ties with the African American and Latino communities. Reports of attacks by “pit bulls” and other similar dogs are described as being owned by “people whom ‘average citizens’ might find dangerous.” Indeed, these reports describe “pit bull” owners as “white thugs or poor urban blacks and Latinos who keep their dogs in dope dens and fed them raw meat to make them as mean as possible.” While actual ownership data is not available, research shows that people of color are more likely to own the breed of dog that is traditionally targeted by breed-specific legislation.

In a study conducted to measure cultural connections between dog breeds and their owners (not actual ownership rates), participants were given photos of six different dog breeds: golden retrievers, dachshunds, Maltese, American pit bull terriers, collies, and German shepherds. As participants were shown a picture, they were asked a series of three questions:

1. Who do you think is the most likely owner of this breed of dog—male or female?

2. Who do you think is the most likely owner of this breed of dog—a white person, black or African American person, American Indian person, Asian person, Hispanic person, or a person of a race/ethnicity not named above?

108. PKEMRA, supra note 33.
111. Id.
112. Id. supra note 109, at 52.
113. Id. at 59–60.
(3) How old do you think the most likely owner of this breed of dog is—young (15-35), middle aged (35-65), or senior (65+)?\textsuperscript{114}

The results showed that “pit bulls” were commonly perceived as belonging to people of color, specifically, young black males while the other five breeds were perceived as predominately belonging to middle-aged, white females.\textsuperscript{115} Admittedly, this study does not represent actual ownership of dog breeds, but it is still highly demonstrative of underlying biases that may have influenced the creation\textsuperscript{116} and enforcement of breed-specific legislation, which would unfortunately translate over to disaster response.

Based on this limited research, it is likely that an owner of a banned breed is a minority, in which case they run the risk of being turned away from a shelter or transportation that is evacuating survivors of a disaster. This result is in direct contradiction with the anti-discrimination provisions in the 1988 Stafford Act and the expanded scope of anti-discrimination included in the PKMRA and the PETS Act. Failure to include an anti-breed specific legislation provision in the PETS Act creates a loophole in which minority groups (both by race and socioeconomic status) may be impermissibly discriminated against during disaster response. By permitting this loophole to exist in the PETS Act, state and local governments with breed-specific legislation directed towards “pit bulls” and similar breeds of dogs are inherently discriminating against their owners who, according to research, are predominantly those individuals that anti-discrimination laws are designed to protect during disaster recovery.

2. Narrow Definition of What “Pets” are Covered

As mentioned above, the PETS Act only requires states and local governments to consider the needs of individuals with specific types of pets, in addition to service animals, deemed by FEMA to be “household” pets in their disaster response planning.\textsuperscript{117} FEMA’s

\textsuperscript{114} Id.
\textsuperscript{115} Id. at 53.
\textsuperscript{116} Id. at 60–61.
\textsuperscript{117} The PETS Act, supra note 22; ANIMAL LEGAL DEFENSE FUND, supra note 17.
definition of household pets is fairly small and includes only dogs, cats, birds, rabbits, rodents and turtles, but excludes any other types of reptiles, fish, amphibians, farmed animals, horse and other less traditional pets.\footnote{118} Generally, the vast majority of individuals with pets have either a cat or dog, but there are also large numbers of pet owners of horses, reptiles, poultry, livestock, and various other reptiles.\footnote{119}

Failing to include a wide variety of pets in state and local disaster response plans, while permissible under the PETS Act, can lead to unequal treatment of pet owners, particularly in communities where ownership of non-traditional “household” pets is more common, for instance in rural farming communities. Failure to include less traditional types of pets allows for marginalized communities, which are most likely the neediest communities after a disaster strikes, to be treated in a different manner than those individuals who own traditional household pets. In addition to expanding the definition of animals that are covered by the PETS Act, there needs to be a shift in how farmed animals and animals living in zoos are handled during a disaster.

a. Zoos and Menageries

Animals living in accredited zoos are a little better off because the Association of Zoos and Aquariums requires accredited zoos to have disaster plans in place.\footnote{120} However, “smaller zoos and roadside menageries” are required to have disaster plans in place under the Animal Welfare Act (“AWA”), which is a federally enforced law that sets the “minimum standards zoos and other animal facilities” must follow, however enforcement of the standards in the AWA is subpar.\footnote{121} In addition to subpar enforcement, smaller zoos in general lack the resources and infrastructure to clean up and recover one the disaster passes resulting in animals either dying or escaping.\footnote{122}

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\footnote{118}{The PETS Act, \textit{supra} note 22.}
\footnote{120}{\textit{ANIMAL LEGAL DEFENSE FUND}, \textit{supra} note 17.}
\footnote{121}{\textit{Id.}}
\footnote{122}{\textit{Id.}; See also Shelby Reynolds, Alligators? Check. Naples Zoo starts recovery from Hurricane Irma, USA TODAY NETWORK (Sept. 14, 2017, 12:50}
b. Farmed Animals

The AWA represents “the only federal law that regulates the treatment of animals in research, exhibition, transport, and by dealers” and is the minimum standard for humane treatment of animals in the United States. The Animal Welfare Act defines an “animal” as:

[A]ny live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; . . . but other farm animals, such as, but not limited to livestock or poultry used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. . . .

Specifically, the Animal Welfare Act sets the standard for humane care and treatment of certain animals that are kept in zoos, sold as pets, used in research or transported for other commercial purposes. Under the Animal Welfare Act, facilities that have regulated animals under their control are required to provide “adequate housing, sanitation, nutrition, water and veterinary care, and [ ] must protect their animals form extreme weather and temperatures.” Unfortunately, animals used for or intended to be used for food are specifically precluded from protection under the Animal Welfare Act based on the definition above. The Animal Welfare Regulations go on to define “farm animals” as:

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126. Id.
Any domestic species of cattle, sheep, swine, goats, llamas, or horses which are normally and have historically, been kept and raised on farms in the United States, and [are] used or intended for use as food or fiber, or for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. This term also includes animals such as rabbits, mink, and chinchilla, when they are used solely for purposes of meat or fur, and animals such as horses and llamas when used solely as work and pack animals.\(^{127}\)

Going forward, any reference to “farmed animals” in this paper can be read as including the animal species identified in the Animal Welfare Regulation’s definition of “farm animals.”

While there are laws in effect for transporting farmed animals\(^ {128}\) and the slaughter of farmed animals\(^ {129}\) there are no laws currently in place “protecting farmed animals in emergencies or natural disasters” despite the importance farmed animals have in the United States.\(^ {130}\) According to FEMA, farms are a “major concern” during disaster because

- The safety of the human food supply depends on the health of food-producing animals
- Owners have personal and financial investments in their animals
- Farm owners may be injured or killed attempting to rescue their animals in disasters
- For many states and businesses, livestock, poultry and horses are a vital source of revenue.\(^ {131}\)

FEMA states that “[p]rotecting and saving human life is the first priority [during] disaster relief” while protecting property is secondary.\(^ {132}\) Based on this hierarchy, “emergency management officials are not trained to deal with animals” during disaster response plans nor with the restoration of animal-related activities.

\(^{129}\) Humane Slaughter Act, 7 U.S.C. § 1902.
\(^{130}\) ANIMAL LEGAL DEFENSE FUND, supra note 17.
\(^{132}\) Id.
businesses. Farm owners are encouraged to “work with their emergency management agency and other groups before a disaster” because “the care of and responsibility for all animals lies with [the animals’] owner or designated care provider.”

With this extremely hands-off approach, farm owners are left to decide what to do with the animals left in their care when a disaster is coming or suddenly occurs. Relatively small farm owners may be able to coordinate evacuation or relief efforts with family, friends or neighbors but large-scale animal farms may turn to a different option: livestock insurance.

Livestock insurance is designed to protect farmers against “those unexpected events and accidents that can decimate [a farmer’s] animals and [their] livelihood[s]” because raising livestock and poultry can be “unpredictable and risky.” There are a variety of livestock insurance policies available that can provide individual coverage to each farmed animal individually, herd coverage for an entire group of farmed animals or to include livestock in a blanket policy that covers all of a farmer’s property (e.g., livestock, equipment, structures). Besides the types of livestock insurance policies available, the types of coverage under a policy may vary. The coverage may be comprehensive and cover a broad spectrum of events including:

- Several types of accidents: drowning, shooting, loading/unloading, falling objects, fire, smoke, electrocution, explosions;
- Weather and natural disasters: flooding, lighting, wind, hail, earthquakes, volcanic eruptions, sinkholes;
- Theft/vandalism;
- Dog and wild animal attacks;
- Collision or other accidental death while transporting.

133. Id.
134. Id.
137. TRUSTED CHOICE, supra note 135; NATIONWIDE, supra note 136.
While livestock insurance provides security to farm owners, it is ripe for abuse, particularly when preparing for major weather events such as hurricanes or wildfires. As recently as September 2018 when North and South Carolina were preparing for Hurricane Florence farmed animals were abandoned leading up to Hurricane Florence’s landfall.\textsuperscript{138} As Hurricane Florence took aim for North Carolina, thousands of families, along with their pets, loaded up and fled to safer areas but more than 3.5 million farmed animals were left to face the storm.\textsuperscript{139} As the flood waters began to rise, more than 3.5 million chickens, pigs, cows and other farmed animals struggled to stay alive in the cages they were left in when the farmers who were responsible for them fled for safety.\textsuperscript{140} 

The ‘vast majority’ of the 3.5 million farmed animals left behind died despite the efforts of individuals and animal rescue groups.\textsuperscript{141} These farming businesses, possibly, had some type of livestock insurance so it was just a better business move to let the animals drown in their cages than attempt to evacuate them, let them free to try and survive on their own, or humanely butcher as many as they could before Hurricane Florence hit. Loss of a farmed animal life in this manner is simply a financial loss for a business so the farmers decided they would rather keep them locked in their cages. Even assuming the farmers did not have livestock insurance, the U.S. Department of Agriculture is permitting the farming companies to write-off the loss of their livestock and even ‘plans to use state tax dollar to ‘compost’ the [dead] animals . . .’\textsuperscript{142}

In fact, as Hurricane Florence headed towards North Carolina many farmers rushed to harvest their corn and tobacco crops but left their livestock to die in flood water.\textsuperscript{143} Even though North Carolina


\textsuperscript{140} \textit{Id.}

\textsuperscript{141} \textit{Id.}

\textsuperscript{142} \textit{Id.}

\textsuperscript{143} Polansek & Huffstutter, \textit{supra} note 138.
lifted transportation rules to help farmers relocate their livestock, it was, apparently, “impossible” to relocate their livestock inventory. The best option appeared to be to lower the levels of waste so the farms are “in pretty good shape to handle the rain” but Hurricane Florence was expected to bring “as much as 20 inches of rain[].” With an estimated 9 trillion gallons of water dumped into North Carolina by Hurricane Florence it is unlikely the minimal efforts made by many farmers was sufficient to protect the farmed animals in their care.

North Carolina is the country’s “second biggest producer of hogs and [is a] major poultry producer” with two-thirds of North Carolina’s farm income based on poultry and livestock. Instead of looking for any possible alternative to spare their farmed animals from slow and painful deaths, farm owners chose to subject the animals they are responsible for to inhumane treatment because they would be able to recover, at least in part, some of the cost of their “investment.”

II. BEYOND THE PETS ACT

A. Expand the PETS Act to Cover More Species of Pets

As it stands now, the PETS Act covers a very limited number of species (dogs, cats, birds, rabbits, rodents and turtles) that individuals may have as pets. While this does cover a large
section of the population because it includes the most common species of pets, it is still remarkably exclusionary especially considering one of the most common species of pet owned in the United States is not protected under the PETS Act: fish. Additionally, reports show that a sizeable amount of the population own horses, poultry, snakes, lizards and other reptiles and livestock animals, all of which are not currently protected under the PETS Act.

Admittedly, expanding the PETS Act to provide coverage to more species of animals individuals have as pets may create more responsibility for state and local governments when creating and executing disaster response plans. However, the actual effect would be minimal. While individuals do keep “non-traditional” species as pets, the amount that do so is relatively small because they are indeed “non-traditional pets. This means that while state and local governments may need to include these species of non-traditional household pets in their disaster planning and response the outlay of resources is likely to be minimal because ownership of these “non-traditional” species of pets is less common than those species already protected under the PETS Act.

Expanding the definition of what pets are protected under the PETS Act is not likely to cause state and local governments much additional work in their emergency planning because they are already accounting for the needs of most common pet owners. The chances they encounter an individual with a “non-traditional” household pet is less likely but many of the preparations they made for owners of traditional pets will easily transfer to owners of “non-traditional” pets. Including more species of pets that are protected under the PETS Act will allow state and local governments as well as FEMA to preserve more human lives because it is more inclusive and representative of the people that live in the United States.

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149. Leslie Darling, *5 Most Common House Pets*, THE NEST (Nov. 8, 2018), https://pets.thenest.com/5-common-house-pets-4759.html [https://perma.cc/N82Z-2GZ3]. Four of the five most common species of pets are covered under the PETS Act but the most common species is still not included: fish.

150. AM. VETERINARY MED. ASS’N, supra note 119.
B. Anti-Discrimination Exceptions in the PETS Act to Counteract any Jurisdictional Specific Breed-Specific Legislation

To address a potential conflict between state/local law and federal law, the PETS Act should include an anti-discrimination provision for animals. Conflicts may arise when an individual evacuating their home has an animal that is a banned or restricted breed in an area to which they are evacuating, particularly when that animal is a service animal protected under the ADA. A disaster official will be tasked with deciding, on the spot, whether that animal is indeed of the breed that is banned consequently forcing the owner to decide whether to leave their beloved pet and evacuate to safety or stay behind and risk injury during the disaster or disaster recovery. Neither option is appealing and both were instigators to the PETS Act being passed after people saw the treatment of pets and their owners in the wake of Hurricane Katrina.

The PETS Act must be amended to include a blanket non-discriminatory clause that prohibits pets, and by extension their owners, from being turned away or separated during evacuation processes simply because of their breed. It also takes the responsibility off disaster response officials to make a snap judgement during an already chaotic and stressful situation so that they are able to focus on their job: coordinating the disaster response.

C. Insurance Companies Can Include Exemptions and Limitations for Violating Animal Cruelty or Abandonment Laws

Livestock insurance policies provide much needed protection for farm owners for unexpected emergencies however when there is more time to prepare for an emergency or disaster these insurance plans are greatly abused. As discussed above, when farm owners knew that Hurricane Florence was approaching, they chose to abandon their “inventory” of farmed animals to die in flood waters. More likely than not these farm owners had livestock insurance that covered floods and received, or are in the process of receiving, insurance payouts from their “loss of inventory.” Permitting farm owners to abandon their livestock rather than attempt any other type of plan to prepare their farmed animals for the disaster because they will get insurance payouts is entirely unacceptable.
Providers of livestock insurance plans need to include exclusions or limitations for recovery in instances where farm owners violate animal cruelty or animal abandonment laws. States do have their own individual animal cruelty or animal abandonment laws so a farm owner should not be able to profit from leaving the animals on their farms to die cruelly when they are reasonably able to make plans to evacuate or provide the animals the best chance at survival by releasing them from their cages and pens. Animals are smart and intuitive and given the opportunity will be able to seek shelter from an oncoming disaster to the best of their abilities.

Allowing farm owners to profit from the senseless, and more likely than not, preventable deaths of their farmed animals gives the farm owners perverse incentives to let their farmed animals perish without looking for possible alternatives. Admittedly, this proposed limitation to livestock insurance would not be applicable to sudden disasters (like earthquakes) but when a farm owner is able to make plans to evacuate their family and pets, they should be able to prepare their farmed animals for the disaster too rather than leaving them locked up to die.

III. CONCLUSION

Ultimately, the PETS Act is a great beginning to protecting animals during disasters, but it is not without its faults. Specifically, the PETS Act could be more inclusive with regards to both the species and breeds it protects. Additionally, the changes to how livestock are treated during disaster needs to come with a shift in how farmed animals are generally considered. They are not simply “investments” that can be disposed of because they are insured, they are living beings and their lives should not just be thrown away. Creating exclusions or limitations in livestock insurance policies for will force farm owners to consider the interests of their animals during preparations for incoming disasters as well as potentially create less payouts for insurance providers.