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Damages for Tortious Harm to Pets: Minnesota's Market Value Approach Severely Undercompensates Plaintiffs

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**DAMAGES FOR TORTIOUS HARM TO PETS: MINNESOTA'S
MARKET VALUE APPROACH SEVERELY UNDERCOMPENSATES
PLAINTIFFS**

Morgan Phelps

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I. INTRODUCTION

Since the start of the COVID-19 pandemic, the world has experienced immense loss: loss of normalcy, loss of human interaction, and loss of good health to name a few. For an estimated twenty-three million American households, however, it was also a time of something gained. Many families celebrated a new, four-legged family member—a pandemic pet.¹ American pet ownership reached new highs during the pandemic with over ninety million households owning pets by early 2022.² Of those ninety million households, sixty-nine million own dogs, making dogs the most common household pet.³ These record-breaking numbers demonstrate society’s shared sentiment that pets bring us comfort and companionship, especially during troubling times.⁴

Accordingly, Minnesota’s current rule addressing harm to pets—which is based on the legal classification of pets as personal property—must be changed. The 136-year-old “fair market value” rule provides that when a pet is negligently or intentionally harmed, its owner is only entitled to recover the diminished market value of the pet, or the cost of restoring the pet to its pre-injury condition, whichever amount is less.⁵ Using the market value of a pet to assess damages is wholly inadequate because today, unlike historically, most domestic pets are kept for companionship rather than for

¹ See Sara Coleman, *The Cost of Owning a Pet in 2022*, BANKRATE (Mar. 31, 2022) (citing *New ASPCA Survey Shows Overwhelming Majority of Dogs and Cats Acquired During the Pandemic Are Still in Their Homes*, ASPCA (May 26, 2021), <https://www.aspcanet.org/about-us/press-releases/new-aspcanet-survey-shows-overwhelming-majority-dogs-and-cats-acquired-during> [<https://perma.cc/U6Q9-U8M7>]), <https://www.bankrate.com/insurance/homeowners-insurance/pet-ownership-cost-statistics/#stats> [<https://perma.cc/6DJP-2NV7>] (“Recent pet ownership statistics show that one in five U.S. households invited a new cat or dog into their home during the COVID-19 pandemic.”).

² *Pet Industry Market Size, Trends & Ownership Statistics*, AM. PET PRODS. ASS’N, https://www.americanpetproducts.org/press_industrytrends.asp [<https://perma.cc/SWJ2-PXU3>] [hereinafter *Pet Industry*]; see also *ASPCA Pandemic Pet Ownership Survey*, AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS (May 26, 2021), <https://aspcanet.org/app.box.com/s/v4t7yrwalwk39mf71a857ivqoxnv2x3d> [<https://perma.cc/HWZ2-A2DR>] (“During March 2020 to May 2021, approximately 1 in 5 respondents (19%)—from a nationally representative sample of American households—acquired a dog or cat”).

³ *Pet Industry*, *supra* note 2. Cats and freshwater fish are the second and third most owned pets in America: 45.3 million U.S. households own cats, and 11.9 million households own freshwater fish. *Id.*

⁴ See Helen Louise Brooks et al., *The Power of Support from Companion Animals for People Living with Mental Health Problems: A Systematic Review and Narrative Synthesis of the Evidence*, BMC PSYCHIATRY, Feb. 5, 2018, at 1, 6 (“By providing unconditional positive regard, pets promoted emotional stability through the regulation of feelings, management of stress and helping people to cope with difficult life events. For people living alone, pets provided a source of ‘connectedness,’ reassurance, and normalcy.” (citations omitted)).

⁵ See *Rinkel v. Lee’s Plumbing & Heating Co.*, 99 N.W.2d 779, 783 (Minn. 1959).

utility or economic purposes.⁶ Under this antiquated law, the original purchase price of a pet is generally the maximum amount its owner can recover when a pet is negligently or intentionally injured.⁷ Consequently, when tortious injury occurs, pet owners are often faced with a difficult decision: obtain adequate medical treatment for their pet and risk bearing all veterinary expenses, or make an economical decision, opt out of treatment, and watch their pet suffer or die.⁸ Minnesota's fair market value rule has far-reaching, real-world implications, and it must be reformed to provide fair and adequate compensation for victims of tortious conduct.

Part II of this Note begins by explaining the century-old rule that governs how Minnesota measures damages for injuries to pets and then illustrates the rule's impact on pets and their owners.⁹ It introduces readers to Jack, Jakey, and their human families who were all harmed by another's wrongful act, yet have not received adequate justice due to the harsh implications of the rule.¹⁰ Part III describes the historical background of how animals are treated under Minnesota law.¹¹ It discusses the common law legal classification of animals as personal property and how this classification has lost its functionality in modern society.¹² It then details the formation of Minnesota's fair market value rule and provides a historical analysis of Minnesota state court decisions that have consistently reaffirmed this rule, regardless of major changes in society and other areas of the law.¹³ Part IV identifies other approaches to assessing damages for negligent injuries to pets.¹⁴ It addresses how many states have evolved to adopt modernized rules, either through judicial interpretation of the law or by way of the legislature.¹⁵ It proposes a solution that will more fairly compensate pet owners and improve the quality of life for pets.¹⁶ In sum, this Note suggests that if a pet is injured by a tortfeasor, the owner should be able to recover damages for (1) the cost of any reasonable veterinary care that is administered to restore the pet's health, (2) noneconomic damages for the infliction of emotional distress, and (3) punitive damages.¹⁷

⁶ See *Harrow v. St. Paul & Duluth R.R. Co.*, 44 N.W. 881, 881 (Minn. 1890) (holding the purchase price of an animal is prima facie evidence of its "market value"); see also Janice M. Pintar, *Negligent Infliction of Emotional Distress and the Fair Market Value Approach in Wisconsin: The Case for Extending Tort Protection to Companion Animals and Their Owners*, 2002 WIS. L. REV. 735, 738 (2002) (arguing the social role and subsequent bond between pets and their owners should be considered when determining reasonable compensation for injured animals).

⁷ See *Harrow*, 44 N.W. at 881.

⁸ See *infra* Section II.B (noting the Wilson family had to choose between saving their dog's life at high monetary cost and ending it); see also Part IV (discussing how the fair market value rule is a flawed way to measure damages).

⁹ See *infra* Part II.

¹⁰ See *infra* Section II.B.

¹¹ See *infra* Part III.

¹² See *infra* Section III.A.

¹³ See *infra* Sections III.B–E.

¹⁴ See *infra* Part IV.

¹⁵ See *infra* Part IV.

¹⁶ See *infra* Section IV.B.

¹⁷ See *infra* Part IV.

II. THE PROBLEM

A. Minnesota's Current Rule

Before delving into the history of the law, it is critical to review the current governing rule and illustrate why it is problematic. If a pet is negligently or intentionally harmed, Minnesota law limits the recoverable damages to either (1) the diminished fair market value of the pet or (2) the cost of restoring the pet to its pre-accident condition.¹⁸ If the cost to restore the pet to good health is less than the pet's fair market value, courts will award damages based on restoration costs. In cases where restoration costs exceed a pet's market value, courts limit damages to the pet's fair market value. Courts determine which of these two metrics to use in any given case based on which value has the lower monetary cost.¹⁹ This becomes the maximum amount a plaintiff can recover in damages for their pet's injury.²⁰ The rule was derived from traditional property law as applied in a case involving injured workhorses,²¹ but the approach is an ineffective way to measure damages when the harm is inflicted on a household pet.²² Consider an object, such as the computer you are probably using to read this Note. If damaged, your computer can be replaced or repaired, and you will be left with a near-perfect replica of your original item. Now consider a living, breathing animal, such as a dog. If harmed, any efforts made to replace or repair the dog will always fall short because all dogs are unique in nature. The "living" nature of pets is one of the reasons they are so special to humans. At the root of the rule's issue is the failure to acknowledge the inherent differences between computers and dogs.

As Americans, we love our pets: we take them on vacation, throw them birthday parties, dress them up in outfits, push them around in pet strollers, and feed them high quality organic food.²³ On average, the initial

¹⁸ *Keyes v. Minneapolis & St. Louis Ry. Co.*, 30 N.W. 888, 890 (Minn. 1886); *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 633 (Minn. 2012).

¹⁹ *Sawh*, 823 N.W.2d at 633.

²⁰ *Id.* Minnesota courts have allowed the total damages to exceed the property's market value in cases where plaintiffs prove they are entitled to compensation for the "loss of use" of the property. *See Kopischke v. Chi., St. Paul, Minneapolis & Omaha Ry. Co.*, 40 N.W.2d 834, 840 (Minn. 1950) (allowing total damages to exceed a truck's market value to compensate for the plaintiff's loss of use of the utility vehicle). Because most pets do not have a utility value, the loss of use of a pet is exceedingly difficult to prove.

²¹ *Keyes*, 30 N.W. at 888.

²² *See infra* Section III.A (discussing pets as property).

²³ *See, e.g.*, Michael Goldstein, *Americans Spending Billions on Pet Travel and Boarding*, FORBES (Feb. 22, 2019), <https://www.forbes.com/sites/michaelgoldstein/2019/02/22/americans-spending-billions-on-pet-travel-and-boarding/?sh=14cac41824f7> [<https://perma.cc/4DDM-5WBW>]; Aly Walansky & Megan Wood, *15 Paw-some Dog Birthday Party Ideas*, TASTE OF HOME (May 11, 2022), <https://www.tasteofhome.com/collection/dog-birthday-party-ideas/> [<https://perma.cc/V7EE-DAHH>]; Ryan McBride, *7 Best Dog and Pet Strollers in 2022*, GADGET REVIEW (June 27, 2022), <https://www.gadgetreview.com/best-dog-stroller> [<https://perma.cc/9W9W-822S>]; Amber Smith, *20 Best Organic Dog Foods This Year*,

fees for a dog range from \$300 to upwards of \$4,000 depending on the breed, size, and age, as well as whether the dog is adopted from a shelter or purchased from a breeder.²⁴ In addition to purchase fees, dog ownership also comes with recurring costs, including food, grooming, vaccines, vet visits, and pet sitting/boarding.²⁵ Despite these expenses, pet ownership continues to rise, which suggests that Americans believe the benefits of owning a pet outweigh the costs.²⁶ Along with this increase in pet ownership, Americans' spending on their pets has more than doubled over the past decade.²⁷ According to a recent survey of one thousand American pet owners, nearly half reported that they spend the same or more on their pet's health care compared to their own.²⁸ Moreover, almost one-quarter of respondents reported going into debt to pay for pet costs.²⁹ Thus, it is no surprise that when American pet owners are faced with the decision of whether to perform lifesaving surgery on their wrongfully injured pet, the answer will most often be a resounding "yes."³⁰

B. The Rule's Implications

1. Negligent Injury: Jack the Dog

The Wilsons rescued Jack, an Australian Cattle Dog mix, from the Humane Society when he was six months old.³¹ Jack had been in good health since his adoption.³² He was a playful and loving member of the Wilson family.³³ Then one day, a negligent driver collided with Ms. Wilson's vehicle while Jack was riding along, fracturing Jack's C3-4 neck vertebrae.³⁴

DISCOVER MAGAZINE (Oct. 22, 2022), <https://www.discovermagazine.com/lifestyle/20-best-organic-dog-foods-this-year> [https://perma.cc/WSQ4-6SZS].

²⁴ See Coleman, *supra* note 1 (estimating initial dog fees, which generally cover expenses such as physical exams, spaying or neutering, microchipping, basic vaccinations, flea and tick prevention, and heartworm tests).

²⁵ *Id.*

²⁶ See *Pet Industry*, *supra* note 2 ("According to the 2021-2022 APPA National Pet Owners Survey, 70% of U.S. households own a pet . . . In 1988, the first year the survey was conducted, 56% of U.S. households owned a pet.").

²⁷ See I. Mitic, *18 Insightful Pet Spending Statistics: Americans are Spending More on Pets Than Ever*, FORTUNLY (Nov. 1, 2022), <https://fortunly.com/statistics/pet-spending-statistics/#gref> [https://perma.cc/VTR3-ZHA5] (reporting that Americans spent \$123.6 billion on our pets in 2021).

²⁸ Ted McCarthy, *How Much Do Americans Spend on Their Pets? 45% of Pet Owners Spend the Same or More on Their Pet's Healthcare Than Their Own*, LENDEDU (June 19, 2020), <https://lendedu.com/blog/cost-of-pets> [https://perma.cc/U3FL-QQZ5].

²⁹ *Id.* Of those who reported debt, the average amount of debt incurred was \$1,566.96.

³⁰ *Id.* Of those respondents with pet insurance, 77% said it has been useful for emergency expenses like surgery and treatments. Of those respondents without pet insurance, 39% paid large pet-related expenses, like surgery, out of pocket.

³¹ Memorandum in Opposition to Defendant's Motion for Summary Judgment at 1, *Wilson v. Weigel*, No. 62-CV-16-660 (Minn. Dist. Ct. Apr. 21, 2016).

³² *Id.* at 2.

³³ *Id.*

³⁴ Order Granting in Part and Denying in Part Motions for Partial Summary Judgment at 3, *Wilson*, No. 62-CV-16-660 (Minn. Dist. Ct. May 4, 2016).

The Wilsons brought Jack to the veterinarian and were told he required spinal surgery to restore his health.³⁵ The family had to take into account the high cost of surgery when choosing whether or not to save Jack's life.³⁶ Ultimately, they determined that Jack's value to the family was greater than the projected cost of the veterinary care.³⁷ The total cost of Jack's vet care due to the driver's negligence was \$9,948.75.³⁸

The Wilsons filed suit to recover Jack's veterinarian costs.³⁹ The defendant brought a motion for summary judgment, arguing that Minnesota law clearly states damages must be capped at Jack's adoption price of \$250.⁴⁰ The law suggests that plaintiffs must make an economic-based decision. According to the law, the Wilsons should have opted out of surgery and ended Jack's life, even though the defendant was responsible for causing Jack's harm. The court held that damages for the harm Jack suffered should be measured by

the lesser of the difference in the dog's value before and after the accident or "the diminished market value of the animal after cure, so far as a cure may be effected, and in addition thereto such expenses as he incurred in reasonable efforts to effect a cure, together with the loss of the use of the animal while under treatment, *provided the whole does not exceed the original value of the [dog].*"⁴¹

The court granted the defendant's motion for summary judgment in part, stating that a jury would have to determine Jack's "original value" and that his purchase price of \$250 was one factor the jury could consider.⁴²

Intriguingly, the court noted the Wilsons' argument was "compelling" and acknowledged that a pet's "market value" may not correlate to the "value" the pet brings to its family.⁴³ However, the court ultimately chose to follow over a century's worth of precedent, adhering to Minnesota's market value rule.⁴⁴ After examining Minnesota case law, the court declared, "It is plain from reading the cases that the measure of damages for a living chattel [is no] different than for inanimate personal property."⁴⁵ The court continued, "[T]here is no gap in the historic

³⁵ Memorandum in Opposition to Defendant's Motion for Summary Judgment, *supra* note 31.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Complaint at 1, *Wilson*, No. 62-CV-16-660 (Minn. Dist. Ct. Mar. 7, 2016); *see generally* Summons, *Wilson*, No. 62-CV-16-660 (Minn. Dist. Ct. Mar. 7, 2016).

⁴⁰ Memorandum of Law in Support of Motions at 4, *Wilson*, No. 62-CV-16-660 (Minn. Dist. Ct. Apr. 4, 2016).

⁴¹ Order Granting in Part and Denying in Part Motions for Partial Summary Judgment, *supra* note 34, at 2 (quoting *Raski v. Great N. Ry. Co.*, 150 N.W. 618, 619 (1915)) (emphasis added).

⁴² *Id.*

⁴³ *Id.* at 7.

⁴⁴ *Id.* at 8.

⁴⁵ *Id.* at 6.

continuum that compels a new or different approach to computing damages for injury to a family pet as opposed to damages to any other chattel. The line of cases from *Keyes* to *Sawh* offers this court no room for a different outcome.”⁴⁶

In Jack the dog’s case, neither the court’s application of the law nor its reasoning was defective. The heart of the problem is precisely that the court had “no room for a different outcome.”⁴⁷ Veiled by the court’s holding are its subtle hints at the rule’s flaws. When the court admits its hands are tied, these unsettling moments call for a closer inspection of the law and compel us to consider solutions that better reflect the policy of modern times.

Ultimately, the fair market value rule severely limited the Wilsons’ damages.⁴⁸ The Wilsons shouldered thousands of dollars in out-of-pocket veterinary costs to save Jack but received a mere \$250 as compensation even though a negligent driver was liable for the harm Jack suffered.⁴⁹ This unfair result shows how the market value approach is antithetical to furthering a key purpose of tort law: ensuring injured parties are in the same financial situation as they would have been absent the tortfeasor’s actions.⁵⁰ Even if the Wilsons had purchased Jack from a breeder, they still would not have been able to recover the full cost of his vet care.⁵¹

2. *Intentional Harm: Jakey’s Story*

Another recent example demonstrating the deficiencies in Minnesota’s current law involves an Amazon delivery driver’s intentional, unprovoked act of aggression against a nine-year-old Rottweiler named Jakey.⁵² On November 1, 2022, Jakey had to be put down after sustaining

⁴⁶ *Id.* at 8; see also *infra* Part III (discussing *Keyes*, *Sawh*, and several other Minnesota cases between the years 1886 and 2012 where courts applied the fair market value rule to determine recoverable damages for injured animals).

⁴⁷ Order Granting in Part and Denying in Part Motions for Partial Summary Judgment, *supra* note 34, at 8.

⁴⁸ Notice of Entry of Judgment at 1, *Wilson*, No. 62-CV-16-660 (Minn. Dis. Ct. Apr. 3, 2017).

⁴⁹ *Id.* Jack’s adoption fee of \$250 falls within the typical fee range for rescue dogs from the Humane Society. See *Adoption Fees*, ANIMAL HUMANE SOCIETY, <https://www.animalhumanesociety.org/adoption/adoption-fees> [https://perma.cc/TPE2-FVU6] (reporting standard adoption fees are between \$129 and \$767 for dogs and puppies).

⁵⁰ Stephen J. Shapiro, *Overcoming Under-Compensation and Under-Deterrence in Intentional Tort Cases: Are Statutory Multiple Images the Best Remedy?*, 62 MERCER L. REV. 449, 450 (2011) (stating the main purpose of tort law).

⁵¹ For example, if the Wilsons originally purchased Jack for \$4,000, which is the high end of dog breeder pricing, the law still would have left them \$6,000 short of full compensation. See Coleman, *supra* note 1 and accompanying text.

⁵² See Rose Schmidt, *Minnesota Family’s Dog Had to Be Put Down After They Say She Was Kicked, Punched During Amazon Delivery*, FOX 9 (Nov. 2, 2022), <https://www.fox9.com/news/minnesota-family-mourns-dog-they-say-was-kicked-punched-during-amazon-delivery> [https://perma.cc/33ZN-62JL]. In an interview with Fox 9, Jakey’s owner Katrina Frank stated that the dog was not jumping up or provoking the delivery person in any way. *Id.* In fact, Jakey was a gentle and loving therapy dog who would accompany Frank, a nurse, to hospitals and nursing homes. *Id.*

injuries from an Amazon delivery driver who kicked and threw rocks at her, causing internal bleeding.⁵³ After the assault, Jakey's family submitted a complaint to Amazon, to which the company responded by applying a meager \$5 Amazon credit to their account.⁵⁴ It was not until a local news station contacted Amazon about the story that the company decided to offer the family \$5,000 in compensation for Jakey's loss.⁵⁵ Jakey's family declined the money, as no amount would bring back their beloved family member.⁵⁶ Instead, the family began sharing the story in an effort to hold Amazon accountable for the harm it caused and pressure Amazon to implement training programs for its delivery drivers to help ensure the proper treatment of animals.⁵⁷ Unfortunately, this was not the first time Amazon drivers have caused injury and death to animals.⁵⁸ After seeing Jakey's story, several people who have experienced similar situations reached out to the family.⁵⁹ Currently, Amazon is able to get away with its careless treatment of pets because the law allows it.⁶⁰ If victims had meaningful recourse under the law, Amazon could be held accountable for its tortious conduct, which may prompt the company to increase its level of care to pets.

⁵³ *Id.*

⁵⁴ The family contacted Amazon not because they sought monetary compensation from the company, but out of caution and fear that the delivery person would hurt another family's dog. See Katrina Frank, FACEBOOK (Nov. 3, 2022), <https://www.facebook.com/katrina.frank.7/posts/pfbid02nE6DG2o1CAYLHZeuPXweRTzZNiz4wj4xRmw9jZ3UynEvKC5z89cYz9EGdgqneQDwl> ("I have begged Amazon for more training for their employees. I've stated multiple times I do not want money. I want to know the person that did this is fired . . . and I want to know what their new employee training will be."). Notably, the Facebook post has been shared by more than 170 people. *Id.*

⁵⁵ *Id.*; Schmidt, *supra* note 52.

⁵⁶ See Katrina Frank, FACEBOOK (Nov. 3, 2022), <https://www.facebook.com/katrina.frank.7/posts/pfbid02nE6DG2o1CAYLHZeuPXweRTzZNiz4wj4xRmw9jZ3UynEvKC5z89cYz9EGdgqneQDwl>; Schmidt, *supra* note 52 (reporting that Katrina Frank's five children have taken Jakey's death the hardest and noting her 8- and 6-year-old do not "want to come home from school to a house without Jake[y] because they never have").

⁵⁷ See Katrina Frank, FACEBOOK (Nov. 3, 2022), <https://www.facebook.com/katrina.frank.7/posts/pfbid02nE6DG2o1CAYLHZeuPXweRTzZNiz4wj4xRmw9jZ3UynEvKC5z89cYz9EGdgqneQDwl>; Schmidt, *supra* note 52. Note that while Jakey's family may wish to see Amazon face criminal charges for the cruel treatment of their pet, it is ultimately up to the prosecutor whether to pursue the case. See *infra* Section III.A (discussing criminal animal cruelty laws).

⁵⁸ Babs Santos, *St. Paul Park Family Grieves After Dog Hit by Amazon Driver*, FOX 9 (June 27, 2022), https://www.fox9.com/news/st-paul-family-grieves-after-dog-hit-by-amazon-driver?fbclid=IwAR2wcHw96yOHSRm_fhk8xLufV1C2dvKyQkr9eUufPIBr5t3HBEor2iFY17s [https://perma.cc/JV68-SEUJ] (U.S. Marine Veteran's emotional support animal, a 3-year-old pit bull mix, was hit and killed by an Amazon driver); Katrina Frank, FACEBOOK (Nov. 3, 2022), <https://www.facebook.com/photo/?fbid=10105651201384481&set=a.10100712407192631> (reporting how Amazon driver hit and killed a family's turkey in their driveway).

⁵⁹ Katrina Frank, FACEBOOK (Nov. 3, 2022), <https://www.facebook.com/photo/?fbid=10105651201384481&set=a.10100712407192631>.

⁶⁰ See *infra* Part IV (providing legislative recommendations on addressing damages for tortious injuries to pets).

III. HISTORY OF THE FAIR MARKET VALUE RULE FROM *KEYES* TO *SAWH*

A. *Pets as Property*

It is well established that, with respect to tort law, dogs are classified as mere “item[s] of personal property.”⁶¹ Nonetheless, the United States Supreme Court has acknowledged, “Property in dogs is of an imperfect or qualified nature”⁶² Moreover, Minnesota courts have recognized that pets occupy a “special place in society” and are different from other types of personal property.⁶³ However, this classification remains the law and basis for how Minnesota measures damages for injuries to pets.⁶⁴

Notably, some areas of Minnesota law seem to contradict the notion that animals are nothing more than property.⁶⁵ For example, the Minnesota Legislature has outlawed animal cruelty and abandonment.⁶⁶ It enacted the Pet and Companion Animal Welfare Act, requiring veterinarians and animal boarding facilities to take proper care of animals by providing them with sufficient food and water, periodic exercise, and a clean environment.⁶⁷ Additionally, the legislature made it a crime to leave a dog or cat unattended in a motor vehicle if doing so endangers the pet’s health or safety.⁶⁸ In determining that animals must be treated humanely, the legislature has effectively acknowledged that, from a criminal law standpoint, animals are something more than “item[s] of personal property.”⁶⁹ Yet, these improvements in the law appear less significant when

⁶¹ *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 633 (Minn. 2012).

⁶² *Nicchia v. New York*, 254 U.S. 228, 230 (1920).

⁶³ *Soucek v. Banham*, 524 N.W.2d 478, 481 (Minn. Ct. App. 1994).

⁶⁴ *Id.*

⁶⁵ In a recent article that discusses the legal classification of animals as property, the authors point out that, over time, “legal personhood” has been expanded to include groups that were once deemed property, such as children and slaves. Jane Kotzmann & Nick Pendergrast, *Animal Rights: Time to State Unpacking What Rights and for Whom*, 46 MITCHELL HAMLINE L. REV. 157, 191 (2019). “The law in these contexts operated as part of the problem by marginalizing vulnerable groups and legitimizing the unethical treatment of them.” *Id.* The authors argue animal exploitation and maltreatment would decrease if the law moved away from the classification of animals as property and began to formally acknowledge that animals are rights-holders and have “personhood.” *Id.*

⁶⁶ MINN. STAT. § 343.21, subdvs. 4, 7 (2022). All fifty states have enacted anticruelty statutes. See Lisa Borten, *States with the Best and Worst Animal Protection Laws*, STACKER (Aug. 12, 2019), <https://stacker.com/your-state/states-best-and-worst-animal-protection-laws#:~:text=Animal%20cruelty%20is%20considered%20a,to%20Animals%20Los%20Angles%20website> [https://perma.cc/Y56E-6FX4]. Additionally, the Animal Welfare Act signed into law by the President in 1966 regulates the treatment of animals in scientific research. Animal Welfare Act, 7 U.S.C. §§ 2131–2160.

⁶⁷ Pet and Companion Animal Welfare Act, MINN. STAT. §§ 346.35–346.44 (2022).

⁶⁸ *Id.* § 346.57. This statute also allows authorized personnel to forcibly enter the motor vehicle to remove the endangered pet. *Id.* § 346.57, subd. 2. Notably, other types of “personal property” do not have similar neglect/safety laws, yet there are laws prohibiting child neglect. See *id.* § 609.378. Pet safety laws seem to signify that pets are not like other types of property and are more comparable to children.

⁶⁹ *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 633 (Minn. 2012).

considering how inadequately the law provides for pets harmed by tortfeasors.⁷⁰ Only the state can bring an action under these criminal statutes, so an aggrieved pet owner cannot receive monetary compensation.⁷¹ Furthermore, given prosecutors' limited resources, anticruelty charges are not likely to be pursued aggressively.⁷² Ultimately, the injured pet's owner, the party with the greatest interest in justice, has tort law as an alternative recourse. Under current Minnesota law, however, a civil cause of action will also prove ineffective.

B. Keyes: Establishing the Standard

In 1886, the Minnesota Supreme Court first articulated its diminished fair market value rule in *Keyes v. Minneapolis & St. Louis Railway Co.*⁷³ Writing for the court, Justice William Mitchell instituted the rule that has been reaffirmed by Minnesota courts for more than a century and still applies today:

In a case like the present the owner is entitled to recover for the diminished market value of the animals after cure, so far as a cure was effected, and, in addition thereto, such expenses as he incurred in reasonable attempts to effect a cure, and a reasonable sum or compensation for the loss of the use of the horses while under treatment, provided the whole damages do not exceed the original value of the property.⁷⁴

⁷⁰ See Corwin R. Kruse, *Baby Steps: Minnesota Raises Certain Forms of Animal Cruelty to Felony Status*, 28 WM. MITCHELL L. REV. 1649, 1675 (2002) ("There are a number of reasons for this tendency to see the abuse of animals as an issue of little concern. Perhaps the most basic factor is the . . . property status of animals."); Charles E. Friend, *Animal Cruelty Laws: The Case for Reform*, 8 U. RICH. L. REV. 201, 201 (1974) ("The primary reason for this legal vacuum was the common law view that all animals were property belonging absolutely to the human owner and therefore subject to his slightest whim.").

⁷¹ MINN. STAT. §§ 343.21, 346.39 (2022).

⁷² See Kruse, *supra* note 70, at 1678 (explaining that animal cruelty cases are typically given low priority and often viewed by prosecutors as a waste of resources).

⁷³ *Keyes v. Minneapolis & St. Louis Ry. Co.*, 30 N.W. 888, 890 (Minn. 1886).

⁷⁴ *Id.* In pronouncing this rule, the court relied on several state and federal court decisions where plaintiffs were allowed to recover "repair" costs or costs incurred to affect a "cure." *Id.* at 890 (first citing *Gillett v. Western R.R. Co.*, 90 Mass. 560 (1864); then citing *Wheeler v. Townsend*, 42 Vt. 15 (1869); then citing *Streett v. Laumier*, 34 Mo. 469 (1864); then citing *Johnson v. Holyoke*, 105 Mass. 80 (1870); then citing *Oleson v. Brown*, 41 Wis. 413 (1877); then citing *Shelbyville R.R. Co. v. Lewark*, 4 Ind. 471 (1853); then citing *New Haven Steam-boat Co. v. Vanderbilt*, 16 Conn. 420 (1844); and then citing *Williamson v. Barrett*, 54, U.S. 101 (1851)) (citations edited). Interestingly, several of the state courts Justice Mitchell cited to as authority for the rule have since evolved away from the fair market value approach. For example, Massachusetts once used the same market value rule articulated in *Keyes*, yet its jurisprudence has since adapted and expanded recoverable damages to include reasonable cost of veterinary expenses. See *Irwin v. Degtiarov*, 8 N.E.3d 296, 302 (Mass. App. Ct. 2014).

In *Keyes*, the defendant “unlawfully and negligently” placed a barbed-wired fence across a public road.⁷⁵ The plaintiff was driving along the road when suddenly his carriage collided with the fence, causing injuries to himself and his horses.⁷⁶ Although the court did not allow the plaintiff to recover for the mental anguish he experienced as he feared for the safety of his wife and daughter who were riding in the carriage with him, the court’s holding was ultimately quite favorable to the plaintiff.⁷⁷ In fact, he was able to recover (1) the cost of the horses’ treatment, (2) “a reasonable sum” for the lost use of the horses during treatment for their injuries, and (3) the difference in the horses’ market value after treatment.⁷⁸ Of course, the plaintiff’s compensation could not exceed the “original value of the property,”⁷⁹ which would have been roughly \$150 per horse.⁸⁰

Notably, the court’s tone throughout the opinion seems sympathetic to the plaintiff. In its reasoning for allowing the plaintiff to recover for the horses’ loss of use while they underwent medical treatment, the court stated, “Compensation is what the law aims to give in such cases.”⁸¹ Although the market value rule from *Keyes* is still used by Minnesota courts, its application in modern times is at odds with the policy reasoning offered by Justice Mitchell. Today, compensation is far from what the law provides.

C. Early Applications of the Rule

At the turn of the twentieth century, in *Smith v. St. Paul City Railway Co.*, the Minnesota Supreme Court affirmed a verdict in favor of compensating the plaintiff when his “valuable dog” was killed by a tortious driver in what was essentially a hit-and-run.⁸² The defendant was travelling ten miles per hour above the speed limit when he struck and killed the plaintiff’s dog, who had run across the street.⁸³ The defendant admitted that he saw the dog and had sufficient time to stop his car and avoid hitting the dog but that he decided not to do so.⁸⁴ Although the court affirmed the verdict in favor of the plaintiff, it made sure to limit the implications of its holding: “We do not hold that a street-car company must stop its cars, when running at a legal or reasonable rate of speed, to avoid collisions with dogs. Ordinarily dogs may be presumed to take care of themselves, and the motoneer may act on such presumption.”⁸⁵ The court’s rather callous

⁷⁵ *Keyes*, 30 N.W. at 888.

⁷⁶ *Id.*

⁷⁷ *Id.* at 890.

⁷⁸ *Id.*

⁷⁹ *Id.* Note the opinion does not discuss any costs specific to the case, such as the initial purchase price of the horses, their purported market value at the time of injury, or the cost to treat them. *See id.*

⁸⁰ U.S. DEPT OF AGRIC., STATISTICAL BULLETIN NO. 5, HORSES, MULES, AND MOTOR VEHICLES 39 (1925) (stating \$162.67 was the average price per head for horses in 1910).

⁸¹ *Keyes*, 30 N.W. at 890.

⁸² *Smith v. St. Paul City Ry. Co.*, 82 N.W. 577, 578 (Minn. 1900).

⁸³ *Id.* at 578.

⁸⁴ *Id.*

⁸⁵ *Id.*

attitude toward dogs is apparent in this excerpt. This brashness coupled with the fact that the court specified the dog in the case was “valuable”⁸⁶ (which is why the plaintiff was entitled to damages) perhaps reflects a time when stray dogs and other “nonvaluable” animals were seen as nuisances and disease carriers, thus generally not getting much sympathy or protection from courts.

In 1915, the Minnesota Supreme Court reiterated the *Keyes* rule in *Raski v. Great North Railway Co.*⁸⁷ The court in *Raski* determined the trial court erred in its instructions to the jury by omitting the final, critical clause in the *Keyes* rule: “provided the whole does not exceed the original value of the property.”⁸⁸ Because this clause was left out of its instructions, the jury awarded the plaintiff damages for both the diminished value of the animals and the expenses the plaintiff incurred for their medical treatment.⁸⁹ The court in *Raski* took the opportunity to clarify that “the owner in a case of this kind cannot have both the diminished value . . . and also the expense of treatment.”⁹⁰ Rather than granting the defendant a new trial, the court simply deducted the medical treatment expenses from the plaintiff’s damages award.⁹¹

D. The Restatement: Allowing Plaintiffs Slightly More Compensation

In 1950, the Minnesota Supreme Court provided an overview of the law governing damages to property in *Kopischke v. Chicago*.⁹² In addition to its detailed analysis of precedent cases, the court acknowledged an applicable section of the Restatement (First) of Torts:

Where a person is entitled to a judgment for harm to chattels not amounting to a total destruction in value, the damages include compensation for

⁸⁶ The court noted the dog was “highly bred, large in size, and of substantial money value” and that prior to the accident, the plaintiff’s wife “had a number of dogs . . . for exhibition to third parties.” *Id.* at 577. The court’s descriptions insinuate the dog was used for breeding purposes, which perhaps is why the court deemed it valuable.

⁸⁷ *Raski v. Great N. Ry. Co.*, 150 N.W. 618, 619 (Minn. 1915).

⁸⁸ *Id.* The jury was instructed, “Upon the issue of damages for injury to the horses the court instructed the jury that plaintiff was entitled to recover the difference in value before and immediately after the injury, in the condition in which the injury left them, and, in addition thereto ‘such sum as you believe to be reasonable for plaintiff’s time and expenses in attempting to cure the horses’ of the injuries so inflicted.” *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* During trial, the defendant insisted that the “diminished value” should be measured by the condition of the horses before and immediately after the injury. *Id.* To the defendant’s own detriment, this statement of the rule was erroneous. *Id.* The proper way to determine the diminished value would have been to compare the condition of the horses before the injury to their condition once they had been treated and healed from the injury. *Id.* This would have reduced the amount the defendant owed the plaintiff. However, the high court did not allow the defendant to correct his error and ultimately used the jury’s findings on diminished value from trial. *Id.*

⁹¹ *Id.*

⁹² *Kopischke v. Chi., St. Paul, Minneapolis & Omaha Ry. Co.*, 40 N.W.2d 834, 839 (Minn. 1950).

(a) the difference between the value of the chattel before the harm and the value after the harm or, at the plaintiff's election, the reasonable cost of repair or restoration where feasible, with due allowance for any difference between the original value and the value after repairs, and

(b) the loss of use.⁹³

Differing from preceding Minnesota decisions where the total damage award was limited by the property's fair market value, the Restatement provides that the loss of use can be recovered even if the total damage award would exceed the property's market value. In *Kopischke*, the plaintiff's new truck was damaged by the defendant's freight train.⁹⁴ Although the plaintiff testified that the value of the truck prior to the accident was \$2,100, the court affirmed the jury's verdict of \$2,200.⁹⁵ The defendant argued this verdict was excessive to the extent of \$100, since "the whole damages [could] not exceed the original value of the property."⁹⁶ The court determined that the jury's award was proper because the plaintiff was entitled to compensation for the diminished value of his truck and also for the plaintiff's loss of use of the truck while it was undergoing repairs.⁹⁷ The court reconciled its holding with its decision in *Raski* by explaining that allowing plaintiffs to recover for the loss of use in addition to the diminished value or the cost of repairs does not result in the same "duplication of recovery" that was at issue in *Raski*.⁹⁸

Kopischke interprets *Keyes* broadly: while it is true that, in *Keyes*, the plaintiff was allowed to recover the horses' diminished market value, the cost of treatment, and loss of use, he was only able to do so because the total sum of these expenses was still less than the horses' "original value."⁹⁹ Thus, the outcome in *Kopischke* is not necessarily consistent with the law in *Keyes* because the plaintiff was allowed to recover *more* in damages than the truck's original value.¹⁰⁰ Notably, to support its holding, the court in *Kopischke* did not cite Minnesota case law but rather used case law from other states, and the Restatement, as authority.¹⁰¹

⁹³ RESTATEMENT (FIRST) OF TORTS § 928 (AM. L. INST. 1939).

⁹⁴ *Kopischke*, 40 N.W.2d at 835.

⁹⁵ *Id.* at 840.

⁹⁶ *Id.* (citing *Keyes v. Minneapolis & St. Louis Ry. Co.*, 30 N.W. 888, 890 (Minn. 1886)).

⁹⁷ *Id.*

⁹⁸ *Id.* ("Recovery for diminished value and for loss of use contain no element of duplication of recovery.").

⁹⁹ See *Keyes*, 30 N.W. at 890.

¹⁰⁰ *Id.*; *Kopischke*, 40 N.W.2d at 840.

¹⁰¹ *Kopischke*, 40 N.W.2d at 840 ("In Restatement, Torts, § 928, heretofore quoted, no ceiling is placed on the amount of recovery under the rules of damages discussed in this case. Some late cases follow the view we have stated. Among them are *Cnty. Pub. Serv. Co. v. Gray*, 107 S.W.2d 495 (Tex. App. 1937); *Adam v. English*, 21 So. 2d 633 (La. Ct. App. 1945); *Louisville & Nashville R.R. Co. v. Blanton*, 200 S.W.2d 133 (Ky. Ct. App. 1947); see also *Doolittle v. Otis Elevator Co.*, 118 A. 818 (Conn. 1922); *Hawkins v. Garford Trucking Co.*, 114 A. 94 (Conn. 1921)." (citations edited)).

The court's reasoning in *Kopischke* embraces *Keyes* in a small, yet profound, way: "To limit recovery under facts such as here to the market value of the truck at the time of the damage would in many instances be a denial of full compensation for the owner's loss."¹⁰² This reasoning is similar to the court's rationale in *Keyes*: "Compensation is what the law aims to give in such cases."¹⁰³ After *Kopischke*, while a property owner can elect to recover either the property's diminished value or its cost to repair, the owner is also entitled to damages for the loss of use.¹⁰⁴

In 1959, the Minnesota Supreme Court decided *Rinkel v. Lee's Plumbing & Heating Co.*, which involved a claim for water damage to the plaintiff's home caused by the negligence of a plumbing company.¹⁰⁵ The trial court ordered judgment for both the cost of repairs and the deterioration in value because, although repairs to the house were made, the value of the home still decreased due to the damage.¹⁰⁶ The defendant argued the plaintiff was only entitled to damages for either the repairs or the difference in market value of the home, but not both.¹⁰⁷ However, the court held that damages were properly assessed and the plaintiff was entitled to compensation for both amounts.¹⁰⁸ The court stated, "Ordinarily the measure of damages for injuries to property . . . which is not totally destroyed is the difference in value before and after, or the cost of restoration, whichever is the lower amount. However, we do not believe that under all circumstances this rule is exclusive."¹⁰⁹ The court held that the plaintiff could recover both costs, so long as the total compensation was not greater than the cost of replacement.¹¹⁰ Unlike *Kopischke*, the court's decision in *Rinkel* was consistent with *Keyes* since "the whole damages [did] not exceed the original value of the property."¹¹¹

E. The Rule's Harsh Persistence in Recent Years

In 1994, the Minnesota Court of Appeals decided *Soucek v. Banham*.¹¹² The issue in *Soucek* was whether a dog owner could recover when police officers intentionally shot and killed his dog.¹¹³ The plaintiff conceded that under Minnesota law, compensatory damages for causing death to a pet are generally measured by the pet's fair market value.¹¹⁴ The plaintiff dog owner argued, however, that this rule should be changed to

¹⁰² *Id.*

¹⁰³ *Keyes*, 30 N.W. at 890.

¹⁰⁴ *Id.*

¹⁰⁵ *Rinkel v. Lee's Plumbing & Heating Co.*, 99 N.W.2d 779, 780 (Minn. 1959).

¹⁰⁶ *Id.* at 783.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*; *Keyes v. Minneapolis & St. Louis Ry. Co.*, 30 N.W. 888, 890 (Minn. 1886).

¹¹² *Soucek v. Banham*, 524 N.W.2d 478 (Minn. Ct. App. 1994), *abrogated by* *Molenaar v. United Cattel Co.*, 553 N.W.2d 424 (Minn. Ct. App. 1996).

¹¹³ *Id.* at 479.

¹¹⁴ *Id.* at 481.

compensate plaintiffs based on the “intrinsic value of the pet to the owner.”¹¹⁵

The court of appeals sympathized with the plaintiff and his argument: “Soucek argues persuasively that pets have a special place in society. Unlike other personal property, pets provide companionship to their owners. When a pet is lost, its owner frequently cares least about the amount of money it will cost to replace the pet.”¹¹⁶ However, the court ultimately affirmed the fair market value rule:

But Minnesota law treats pets as property. . . . Intrinsic value of a pet to its owner is not currently included in damages that may be recovered for intentionally killing a pet. . . . Compensatory damages for the loss of Soucek’s pet are limited to the fair market value of the animal.¹¹⁷

After *Soucek*, the law became crystal clear. Regardless of the emotional value of a pet to its owner and family, when a tortfeasor injures or kills a pet, any damages sought will be limited to the pet’s market value.¹¹⁸

Finally, in 2012, the Minnesota Supreme Court echoed the sentiment of *Soucek* in *Sawh v. City of Lino Lakes*.¹¹⁹ The court reaffirmed precedent while briefly acknowledging that the market value approach does not account for any emotional value the owner attributes to the pet:

Under Minnesota law, a dog is an item of personal property, and the loss of a dog is measured by its fair market value. . . . Thus, while animal owners have considerable sentimental attachment to their pets, Minnesota law treats an animal like any other item of tangible personal property.¹²⁰

As this survey of relevant cases confirms, the law is well-settled. Higher courts in Minnesota have not addressed this principle since *Sawh* in 2012. Additionally, it is unlikely that the issue has received much attention even at the district court level because any damages claim greater than a pet’s original purchase price would be dismissed on summary judgment, as depicted in the case of Jack the dog.¹²¹ Moreover, knowing that courts have

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 633 (Minn. 2012). The facts and issues of this case differ from the other cases discussed in this Note. *Sawh* involved the intentional destruction of a “dangerous dog” by law enforcement due to public safety concerns. *Id.* Yet in its analysis, the court still evoked the same property law principles and rule from *Keyes*. See generally *Keyes v. Minneapolis & St. Louis Ry. Co.*, 30 N.W. 888 (Minn. 1886).

¹²⁰ *Id.* (internal citations omitted).

¹²¹ Order Granting in Part and Denying in Part Motions for Partial Summary Judgment, *supra* note 34, at 8 (“[T]here is no gap in the historic continuum that compels a new or different approach to computing damages for injury to a family pet as opposed to damages to any other chattel. The line of cases from *Keyes* to *Sawh* offers this court no room for a different outcome.”).

consistently limited damages for injuries to pets to the pet's market value, there is little reason for a plaintiff's attorney to take on such cases where only minimal recovery is possible. Because the courts have not been willing to reject precedent and declare a new rule, it appears that the best way to reform this unfair law is through legislation.¹²²

IV. THE SOLUTION

As explained, damages for general types of property loss are measured by the property's fair market value at the time of destruction or the cost of repairing the property, unless the cost to repair is greater than its fair market value.¹²³ Thus, the market value of the property determines the maximum amount of damages a property owner can recover.¹²⁴ The *Keyes* rule may have been a fair way to compensate the plaintiffs in that case, but the animals injured in *Keyes* were not "pets"; they were horses kept for transportation purposes.¹²⁵ As such, the horses had true economic or market value.¹²⁶ However, it was not long after *Keyes* that Minnesota courts began extending and applying the market value rule to cases involving injuries to animals that have little to no ascertainable economic value.¹²⁷ The *Keyes* rule made sense for its time, as it sought to protect an economic investment in working animals.¹²⁸ Today, however, this rule leaves pet owners grossly under compensated as our personal valuation of pets runs much deeper than their mere economic utility.¹²⁹ Once based in sound policy, the fair market value rule as applied to tortious injuries to pets no longer has a place in modern society.¹³⁰ Although the fair market value rule is the default method of measuring property damages, when the harmed property involves animals, some states have recognized the rule's deficiencies and have carved out exceptions that compensate pet owners more adequately.

A. Other Methods

1. The Actual Value Approach

Because the market value approach often fails to fairly compensate plaintiffs for the harm caused to their pet, some courts have elected to assess damages based on the "actual value" of the pet to its owner.¹³¹ Rather than placing strict limitations on recoverable damages, this approach relies on a several-factor analysis, which may include the original cost of the pet (usually

¹²² See *infra* Section IV.B.

¹²³ See *Keyes*, 30 N.W. at 890; *Sawh*, 823 N.W.2d at 633.

¹²⁴ See *Soucek v. Banham*, 524 N.W.2d 478, 481 (Minn. Ct. App. 1994).

¹²⁵ *Keyes*, 30 N.W. at 890.

¹²⁶ *Id.*

¹²⁷ *Smith v. St. Paul City Ry. Co.*, 82 N.W. 577, 578 (1900) (applying the *Keyes* fair market value rule in the case of a plaintiff's injured pet dog).

¹²⁸ See *supra* Section II.B (illustrating recent applications of the *Keyes* rule).

¹²⁹ See *supra* Section II.B (illustrating recent applications of the *Keyes* rule).

¹³⁰ See *supra* Section II.B (illustrating recent applications of the *Keyes* rule).

¹³¹ 4 AM.JUR. 2D *Animals* § 116, Westlaw (database updated Nov. 2022).

adjusted for the amount it had depreciated from the time of purchase to immediately before the time of loss), the cost of replacement, and the cost of repair.¹³² Sentimental attachment is usually excluded from an actual value analysis.¹³³

In 2001, Alaska adopted the actual value approach in *Mitchell v. Heinrichs*.¹³⁴ In *Mitchell*, the plaintiff sought compensatory, emotional, and punitive damages for her dog who was shot and killed by the defendant while on defendant's property.¹³⁵ To reach its holding, the Alaska Supreme Court analyzed a prior Alaska case involving a plaintiff's lost photographs and videotapes.¹³⁶ The court in *Mitchell* recognized the "value to the owner" is the appropriate measure of damages when the destroyed property has no real market value, or where the value of the property to the owner is greater than its market value.¹³⁷ The court then offered several factors that should be considered when assessing the "actual value" of a pet.¹³⁸ Critically, the court stated that "a pet's actual value to the owner may exceed its fair market value."¹³⁹ While the market value of the dog in *Mitchell* was zero, the court held that the plaintiff could still recover damages.¹⁴⁰

Although the actual value approach makes great strides in the law, in practice, using a factor analysis to quantify a pet's actual value is highly subjective. Even if this method were more quantifiable, Minnesota law currently offers no room for such a rule to exist unless the courts reject precedent or the legislature enacts a more encompassing statute.¹⁴¹ Again, because the courts have demonstrated they are not willing to embrace reform, we need to turn to the legislature. Legislative efforts to reform Minnesota's current law are better spent on advocating for a solution that eliminates discrepancy by imposing a clear formula to measure damages.

¹³² *Id.* ("While actual value may not include the owner's feelings, it can include a range of other factors such as purchase price, reasonable replacement costs, breeding potential, special training, veterinary expenses related to the negligent injury, and so on.").

¹³³ *Id.*

¹³⁴ *Mitchell v. Heinrichs*, 27 P.3d 309, 313 (Alaska 2001) ("We agree with those courts that recognize that the actual value of the pet to the owner, rather than the fair market value, is sometimes the proper measure of the pet's value.").

¹³⁵ *Id.*

¹³⁶ *Id.* (citing *Landers v. Mun. of Anchorage*, 915 P.2d 614 (Alaska 1996)). Note that while some courts have created other methods of assessing damages for harmed animals, these courts have done so without disrupting the well-established legal classification of animals as property. *See id.* Rather than creating a new hybrid-property category for animals, courts compare pets to unique types of tangible property, such as photographs and heirlooms, which may be valuable to owners, but have little to no market value for anyone else. *See id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 313-14.

¹³⁹ *Id.* at 314.

¹⁴⁰ *Id.*

¹⁴¹ *See Soucek v. Banham*, 524 N.W.2d 478, 481 (Minn. Ct. App. 1994) (expressly rejecting the argument that Minnesota should adopt a measure of damages that includes the intrinsic or actual value of the pet to the owner).

2. *Reasonable Medical or Veterinary Costs*

Several states permit pet owners to recover reasonable and necessary veterinary treatment and costs. In 2016 (the same year the Wilson family was limited to damages of \$250 for Jack's injuries in Minnesota district court), the Georgia Supreme Court decided *Barking Hound Village, LLC v. Monyak*.¹⁴² The issue in *Barking Hound Village* was whether the untimely death of a dog precluded the plaintiff from recovering the cost of reasonable veterinary care.¹⁴³ The court held "the proper measure of damages recoverable by the Monyaks for the negligent injury and death of their dog includes both the dog's fair market value plus interest *and* any reasonable medical costs and other expenses they incurred in treating the animal for its injuries."¹⁴⁴ The court explained how Georgia has historically applied a unique approach to measuring damages in tort cases involving injured animals that is based upon a nineteenth century legal treatise:

[I]n cases of injury to animals . . . the plaintiff ought to recover for expenses reasonably incurred in efforts to cure them, in addition to the depreciation in their value, or to their whole value where they are finally lost. The law would be *inhuman in its tendency* if it should prescribe a different rule, even where the animal eventually dies, since it would then offer an *inducement to the owner to neglect its suffering*.¹⁴⁵

In other words, injured pets are more likely to receive necessary veterinary treatment when the tortfeasor bears the burden of paying the veterinary costs. This passage precisely articulates the pitfalls of applying the fair market value rule in modern pet injury cases.¹⁴⁶

The rule established in *Barking Hound Village* seems logical, fair, and grounded in sound policy. It achieves a dual purpose of providing fair compensation to injured plaintiffs and holding negligent tortfeasors accountable for their actions. If this case had been decided in Minnesota, the Monyaks' recovery would have been limited to the fair market value of the dog. This outcome would have encouraged the Monyaks to neglect their dog's suffering, and therein lies the reason why Minnesota's law must be reformed. In addition to Georgia, other state and district courts have also allowed plaintiffs to recover reasonable veterinary expenses, including New

¹⁴² *Barking Hound Vill., LLC v. Monyak*, 787 S.E.2d 191 (Ga. 2016).

¹⁴³ *Id.* at 193.

¹⁴⁴ *Id.* at 197.

¹⁴⁵ *Id.* at 196 (quoting SHEARMAN & REDFIELD, A TREATISE ON THE LAW OF NEGLIGENCE § 603, at 681 (2nd ed. 1870) (alteration in original) (emphasis added)).

¹⁴⁶ *Id.*

Jersey,¹⁴⁷ Kansas,¹⁴⁸ Illinois,¹⁴⁹ California,¹⁵⁰ Massachusetts,¹⁵¹ and the District of Columbia.¹⁵²

B. Recommendations

1. Statutory Action

The best path to changing this law in Minnesota appears to be through the legislature. The forthcoming suggestions in this section provide a practical starting point.

Two states have successfully enacted statutes that allow damages to exceed a pet's market value. First, Nevada enacted a law in 2007 titled "Damages for which person who kills or injures pet of another person is liable; punitive and noneconomic damages may not be awarded; limitation on amount of damages; exceptions."¹⁵³ The Nevada law provides:

1. Except as otherwise provided in subsection 4, if a natural person intentionally, willfully, recklessly or negligently injures or kills the pet of another natural person, the person is liable for the following:

- (a) The cost of veterinary care incurred by the owner because of the injury or death of the pet.
- (b) If the pet is injured, any reduction in the market value of the pet caused by the injury.
- (c) If the pet is killed, the market value of the pet and reasonable burial expenses.
- (d) Reasonable attorney's fees and costs incurred by the owner in bringing an action pursuant to this section.

¹⁴⁷ See *Hyland v. Borrás*, 719 A.2d 662, 663–64 (N.J. Super. Ct. App. Div. 1998) (applying a "flexible" rather than "mechanical" approach to measuring damages to find defendants are responsible for "reimbursing plaintiff for the necessary and reasonable expenses she incurred to restore the dog to its condition before the attack").

¹⁴⁸ See *Burgess v. Shampooch Pet Indus., Inc.*, 131 P.3d 1248, 1252 (Kan. Ct. App. 2006) ("[W]hen an injured pet dog with no discernable market value is restored to its previous health, the measure of damages may include, but is not limited to, the reasonable and customary cost of necessary veterinary care and treatment.").

¹⁴⁹ See *Leith v. Frost*, 899 N.E.2d 635, 641 (Ill. App. Ct. 2008) (adopting the court's rationale in *Burgess*, 131 P.3d at 1252).

¹⁵⁰ See *Martinez v. Robledo*, 147 Cal. Rptr. 3d 921, 927 (Cal. Ct. App. 2012) ("[A]llowing an injured pet's owner to recover the reasonable and necessary costs incurred in the treatment and care of the animal attributable to the injury is a rational and appropriate measure of damages.").

¹⁵¹ See *Irwin v. Degtiarov*, 8 N.E.3d 296, 300 (Mass. App. Ct. 2014) ("Although the common law considers dogs (like other animals) to be property . . . we have never limited recovery for animals that are injured (but not immediately killed) to diminution in market value.").

¹⁵² See *Kaiser v. United States*, 761 F. Supp. 150, 156 (D.D.C. 1991) (holding plaintiffs were entitled to recover veterinary expenses when United States Capitol Police Officer negligently shot their dog).

¹⁵³ NEV. REV. STAT. § 41.740 (2007).

2. Punitive damages and noneconomic damages may not be awarded in an action brought under this section.
3. In an action brought under this section, the award of damages must not exceed \$5,000 for each pet.
4. The provisions of this section do not authorize an award of damages pursuant to subsection 1 if:
 - (a) A nonprofit organization, society for the prevention of cruelty to animals established pursuant to NRS 574.010 or governmental entity, or an employee or agent thereof, injures or kills a pet while acting in furtherance of public health or animal welfare.
 - (b) The action is based on the killing of a dog that had been or was killing or causing damage to livestock.
 - (c) The person reasonably believed that:
 - (1) The pet presented a risk to the person's safety or to the safety of another person; and
 - (2) The action was necessary to protect himself or herself or another person.
5. As used in this section:
 - (a) "Livestock" has the meaning ascribed to it in NRS 569.0085.
 - (b) "Owner" means a natural person who owns, possesses, harbors, keeps or has control or custody of a pet.
 - (c) "Pet" means any domesticated dog or cat normally maintained in or near the household of its owner.¹⁵⁴

Second, Maryland enacted a law in 2017 titled "Damages for injuries or death caused to pets."¹⁵⁵ Maryland's statute provides:

Definitions

- (a)(1) In this section the following words have the meanings indicated.
 - (2) "Compensatory damages" means:
 - (i) In the case of the death of a pet, the fair market value of the pet before death and the reasonable and necessary cost of veterinary care; and
 - (ii) In the case of an injury to a pet, the reasonable and necessary cost of veterinary care.
 - (3)(i) "Pet" means a domesticated animal.

¹⁵⁴ *Id.* § 569.0085 (defining livestock as "cattle or animals of the bovine species;" "horses, mules, burros and asses or animals of the equine species;" "swine or animals of the porcine species;" "goats or animals of the caprine species;" "sheep or animals of the ovine species;" "poultry or domesticated fowl or birds;" and "alternative livestock").

¹⁵⁵ MD. CODE ANN., CTS. & JUD. PROC. § 11-110 (West 2017).

(ii) “Pet” does not include livestock.

Compensatory damages

(b)(1) A person who tortiously causes an injury to or death of a pet while acting individually or through an animal under the person’s ownership, direction, or control is liable to the owner of the pet for compensatory damages.

(2) The damages awarded under paragraph (1) of this subsection may not exceed \$10,000.¹⁵⁶

There are similarities and distinctions between these two statutes.¹⁵⁷ Both allow pet owners to recover the cost of veterinary care in cases where pets are injured or killed.¹⁵⁸ In the case of injury, Maryland only allows for the recovery of veterinary expenses, while Nevada also allows for the recovery of any reduction in the market value of the pet.¹⁵⁹ In the case of death, both states allow recovery of the pet’s market value in addition to veterinary care expenses.¹⁶⁰ Nevada also awards burial expenses in the case of death¹⁶¹ as well as attorney’s fees for actions brought under the statute.¹⁶² Because burial expenses are an economic loss to the pet owner caused by the tortfeasor, the Minnesota legislature may want to consider including burial costs as compensable damages.

Although both laws extend recoverable damages to veterinary care, the statutes also expressly limit the damage award to a specified maximum amount.¹⁶³ Such limits could prevent exorbitant damage awards and help legislators compromise with opponents to the law.¹⁶⁴ Notably, Maryland’s

¹⁵⁶ *Id.*

¹⁵⁷ NEV. REV. STAT. § 41.740 (2007); MD. CODE ANN., CTS. & JUD. PROC. § 11-110 (West 2017).

¹⁵⁸ Compare NEV. REV. STAT. § 41.740, subdiv. 1(a) (stating the tortfeasor is liable for “[t]he cost of veterinary care incurred by the owner because of the injury or death of the pet”), with MD. CODE ANN., CTS. & JUD. PROC. § 11-110, subdiv. a(2)(i)–(ii) (stating tortfeasors’ liability includes “[i]n the case of the death of a pet . . . the reasonable and necessary cost of veterinary care; and . . . [i]n the case of an injury to a pet, the reasonable and necessary cost of veterinary care”).

¹⁵⁹ Compare MD. CODE ANN., CTS. & JUD. PROC. § 11-110, subdiv. a(2)(ii) (stating “[i]n the case of an injury to a pet, [tortfeasors are liable for] the reasonable and necessary cost of veterinary care”), with NEV. REV. STAT. § 41.740, subdiv. 1(b) (“If the pet is injured, [tortfeasors are liable for] any reduction in the market value of the pet caused by the injury.”).

¹⁶⁰ Compare NEV. REV. STAT. § 41.740, subdiv. 1(c) (“If the pet is killed, [tortfeasors are liable for] the market value of the pet . . .”), with MD. CODE ANN., CTS. & JUD. PROC. § 11-110, subdiv. a(2)(i) (“In the case of the death of a pet, [tortfeasors are liable for] the fair market value of the pet before death . . .”).

¹⁶¹ NEV. REV. STAT. § 41.740, subdiv. 1(c) (“If the pet is killed, [tortfeasors are liable for] . . . reasonable burial expenses.”).

¹⁶² *Id.* § 41.740, subdiv. 1(d) (stating damages include “[r]easonable attorney’s fees and costs incurred by the owner in bringing an action pursuant to this section”).

¹⁶³ *Id.* § 41.740, subdiv. 3; MD. CODE ANN., CTS. & JUD. PROC. § 11-110, subdiv. b(2).

¹⁶⁴ Given that insurance companies may ultimately end up shouldering the costs of veterinary care, these companies are one of the main anticipated opponents to this proposed legislation.

law allows for *double* the amount of damages Nevada's statute permits.¹⁶⁵ To understand this considerable discrepancy, further examination into the legislative history of the statutes is required. Additionally, subsection 4 of Nevada's law provides three situations in which damages cannot be recovered for a pet's injury or death: when the government injures or kills a pet to protect the safety or health of the public,¹⁶⁶ when dogs have caused damage to livestock,¹⁶⁷ and when a pet is injured or killed by a person who acted in self-defense or defense of another.¹⁶⁸

Finally, both state laws provide definitions for the word "pet"; however, the legislatures use rather distinct definitions. Nevada limits pets to dogs and cats, while Maryland states that pets are any domesticated animal excluding livestock.¹⁶⁹ In Minnesota, the legislature may want to assess whether the law would cover injuries to pets generally like Maryland, or whether it would be better to construe the law more narrowly to cover only injuries to dogs and cats.¹⁷⁰ Alternatively, the Minnesota legislature could use the same definition provided in the Pet and Companion Animal Welfare Act: "'Pet' or 'companion animal' means a nonhuman mammal, bird, or reptile impounded or held for breeding, or possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another."¹⁷¹ A narrower definition will perhaps gain the support of more legislators and thus may be easier to pass. By beginning narrowly, the legislature can assess whether the law proves effective before expanding it to cover injuries to other types of animals.

2. Punitive and Emotional Damages

Nevada's law states that punitive and noneconomic damages are excluded from the damage award, while Maryland's law is silent on the

¹⁶⁵ NEV. REV. STAT. § 41.740, subdiv. 3 ("In an action brought under this section, the award of damages must not exceed \$5,000 for each pet."); MD. CODE ANN., CTS. & JUD. PROC. § 11-110, subdiv. b(2) ("The damages awarded . . . may not exceed \$10,000.").

¹⁶⁶ NEV. REV. STAT. § 41.740, subdiv. 4(a) (stating that damages are not authorized under the statute when "[a] nonprofit organization, society for the prevention of cruelty to animals . . . or governmental entity, or an employee or agent thereof, injures or kills a pet while acting in furtherance of public health or animal welfare.").

¹⁶⁷ *Id.* § 41.740, subdiv. 4(b) (stating that damages are not authorized when "[t]he action is based on the killing of a dog that had been or was killing or causing damage to livestock.").

¹⁶⁸ *Id.* § 41.740, subdiv. 4(c) (stating that damages are not authorized when "[t]he person reasonably believed that: (1) the pet presented a risk to the person's safety or to the safety of another person; and (2) the action was necessary to protect himself or herself or another person.").

¹⁶⁹ Compare *id.* § 41.740, subdiv. 5(c) ("'Pet' means any domesticated dog or cat normally maintained in or near the household of its owner."), with MD. CODE ANN., CTS. & JUD. PROC. § 11-110, subdiv. a(3)(i)-(ii) ("'Pet' means a domesticated animal. 'Pet' does not include livestock.").

¹⁷⁰ See NEV. REV. STAT. § 41.740, subdiv. 5(c); MD. CODE ANN., CTS. & JUD. PROC. §§ 11-110, subdiv. a(3)(i)-(ii).

¹⁷¹ MINN. STAT. § 346.36, subdiv. 6 (2022). Note that the legislature's definition states that pets are held for personal "enjoyment" and does not describe pets as having any economic or utility purpose. *Id.* This again shows why limiting damages to a pet's market value is flawed.

matter.¹⁷² An explicit prohibition on punitive and noneconomic damages seems contrary to the purposes of tort law.¹⁷³ There are foreseeable situations where a tortfeasor's repeated misconduct or intentional or malicious harm to a pet may warrant additional punishment.¹⁷⁴ Minnesota could simply adopt its existing statute that allows a party to bring a claim for punitive damages in "civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others."¹⁷⁵ Notably, punitive damages are not handed out lightly and several safeguards exist before punitive damages are awarded. First, a party must make a motion to amend the pleadings to claim punitive damages and succeed on this motion.¹⁷⁶ Next, a party must convince a jury by clear and convincing evidence that punitive damages are appropriate.¹⁷⁷ Finally, the court may conduct a judicial review of the jury's punitive damages determination and can limit the award if appropriate.¹⁷⁸

If a pet's death or injury impacts its owner emotionally, damages could be assessed in a similar manner to cases involving the wrongful death of a child and cases involving negligent or intentional infliction of emotional distress. Note that prior to 1961, wrongful death actions only allowed the recovery of loss of earnings, contributions, and services.¹⁷⁹ It was not until the Minnesota Supreme Court decided *Fussner v. Andert* that it expanded the recoverable elements of damages in an action for the wrongful death of a child:

[D]amages are awarded not only on the basis of contributions and such services as the evidence may establish but for those additional elements of loss within the broad definition of society and companionship which include aid, advice, comfort, and protection which the survivor might reasonably expect from the decedent and which, while not having an easily determined market value,

¹⁷² NEV. REV. STAT. § 41.740, subdiv. 2 ("Punitive damages and noneconomic damages may not be awarded in an action brought under this section.").

¹⁷³ See Shapiro, *supra* note 50, at 459–60 (stating the purpose of punitive damages is to "(1) punish the defendant for serious misconduct resulting in harm and (2) to deter the defendant and others from engaging in such conduct").

¹⁷⁴ Amazon is a prime example of a case where punitive damages should be allowed. There are several recent examples of the company acting with repeated disregard toward pets, causing them harm and death. See Schmidt, *supra* note 52; Santos, *supra* note 58 (reporting that a U.S. Marine Veteran's emotional support animal, a three-year-old pit bull mix, was hit and killed by an Amazon driver); Katrina Frank, FACEBOOK (Nov. 3, 2022), <https://www.facebook.com/photo/?fbid=10105651201384481&set=a.10100712407192631> (stating that an Amazon driver hit and killed a family's turkey in their driveway). Punitive damages may motivate Amazon to adopt new pet safety policies and train its delivery drivers to treat pets with care.

¹⁷⁵ MINN. STAT. § 549.20, subdiv. 1 (2022) (explaining the heightened pleading standard for punitive damages); *Id.* § 549.191 (explaining the procedural process for claiming punitive damages in a civil action).

¹⁷⁶ *Id.* § 549.191.

¹⁷⁷ *Id.* § 549.20, subdiv. 1.

¹⁷⁸ *Id.* § 549.20, subdiv. 5.

¹⁷⁹ See *Fussner v. Andert*, 113 N.W.2d 355, 362 (Minn. 1961).

are fully justified since they are elements of loss for which money can supply a practical substitute.¹⁸⁰

Pets, like children, do not have “an easily determined market value,” hence damages based on a pet or child’s market value do not adequately compensate owners or parents for their loss.¹⁸¹ Rather, pets, like children, provide companionship and comfort. *Fussner* acknowledged these noneconomic contributions are “additional elements of loss for which money can supply a practical substitute” and expanded recovery for the wrongful death of a child to include damages for noneconomic components of loss.¹⁸² Because pets also have primarily noneconomic value, the law should expand to allow recovery for noneconomic damages in cases involving the wrongful death of a pet.

C. Foreseeable Challenges

Enacting a law that provides appropriate compensation for Minnesota pet owners will inevitably pose challenges. First, the law will likely receive pushback from insurance companies. These concerns are mitigated by confining the scope of law to specific pets or imposing a limit on damages.¹⁸³ Next, the statute may result in increased litigation for tortious injuries to pets. This argument was articulated in a Texas case:

Several animal-welfare groups—organizations that understand the intense grief and despair occasioned by a pet’s death—insist that relational-injury damages would adversely impact pet welfare. For example, the American Kennel Club, joined by the Cat Fanciers’ Association and other pro-animal nonprofits, worry that “pet litigation will become a cottage industry,” exposing veterinarians, shelter and kennel workers, animal-rescue workers, even dog sitters, to increased liability: “Litigation would arise when pets are injured in car accidents, police actions, veterinary visits, shelter incidents, protection of livestock and pet-on-pet aggression, to name a few.”¹⁸⁴

While it is true that more individuals may be exposed to liability under a new law, plaintiffs will still have to prove their case just as they do in any tort action. A new law would not hold defendants strictly liable for harm caused to pets but simply expand plaintiffs’ recoverable damages to more accurately reflect their loss. Furthermore, the law could expressly exclude certain

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ See NEV. REV. STAT. § 41.740, subdiv. 5(c) (2007) (narrowing the law’s application to dogs and cats); MD. CODE ANN., CTS. & JUD. PROC. § 11-110, subdiv. b(2) (West 2017) (stating compensatory damages cannot exceed \$10,000).

¹⁸⁴ *Strickland v. Medlen*, 397 S.W.3d 184, 194 (Tex. 2013).

situations or individuals from liability exposure, akin to Nevada's statute.¹⁸⁵ Finally, an important principle of tort law is deterrence. Providing an appropriate remedy can deter cruel and callous behavior, thereby reducing the amount of harm suffered by plaintiffs and the number of cases.

V. CONCLUSION

In cases of tortious injury to pets, Minnesota's fair market value rule is anything but fair.¹⁸⁶ Though it may have been suitable for society in the late nineteenth century, it fails to adequately resolve present cases of injury or death to pets.¹⁸⁷ Today, there is a widespread belief that pets are more than replaceable items of personal property.¹⁸⁸ Unlike other forms of property, many pets have minimal economic value; rather, a pet's value exists in its ability to provide humans with comfort and companionship.¹⁸⁹ Limiting recovery to a pet's supposed economic value is plainly "a denial of full compensation for the owner's loss."¹⁹⁰

Jack, Jakey, and countless other pets and their families deserve to be made whole under Minnesota law.¹⁹¹ Economic losses associated with the injury or loss of a pet, such as the cost of medical treatment to restore the pet to its pre-injury condition and burial expenses, are easy to calculate. The law should be reformed to allow pet owners to recover for these reasonable costs.¹⁹² While emotional and non-economic losses may be more difficult to measure, this hardly differs from the difficult calculations juries are already tasked to determine in other personal injury actions. In some cases, punitive and emotional damages may be necessary to fully compensate owners and to prevent further maltreatment of animals.¹⁹³ After all, "[c]ompensation is what the law aims to give."¹⁹⁴

As the current Minnesota rule stands, pet owners must weigh their moral values against economic interests when deciding whether to seek treatment for their tortiously injured pet.¹⁹⁵ The current rule cannot be reconciled with other laws that protect animals from cruel treatment. It is inhumane to neglect medical care that could restore an injured pet to good

¹⁸⁵ NEV. REV. STAT. § 41.740, subd. 4 (specifying three scenarios when damages are not authorized under the statute).

¹⁸⁶ See *supra* Part II.

¹⁸⁷ See *supra* Part III.

¹⁸⁸ See Order Granting in Part and Denying in Part Motions for Partial Summary Judgment, *supra* note 34, at 7-8 (acknowledging a pet's "market value" may not correlate to the "value" the pet brings to its family). Despite the concession that pets are different than other types of property, "Minnesota law treats an animal like any other item of tangible personal property." *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 633 (Minn. 2012).

¹⁸⁹ *Soucek v. Banham*, 524 N.W.2d 478, 481 (Minn. Ct. App. 1994) ("Unlike other personal property, pets provide companionship to their owners. When a pet is lost, its owner frequently cares least about the amount of money it will cost to replace the pet.").

¹⁹⁰ *Kopischke v. Chi., St. Paul, Minneapolis & Omaha Ry. Co.*, 40 N.W.2d 834, 840 (Minn. 1950).

¹⁹¹ See *supra* Part II.

¹⁹² See *supra* Part IV.

¹⁹³ See *supra* note 178 and accompanying text.

¹⁹⁴ *Keyes v. Minneapolis & St. Louis Ry. Co.*, 30 N.W. 888, 890 (Minn. 1886).

¹⁹⁵ See *supra* Part I.

health,¹⁹⁶ and tortfeasors should be responsible for paying these costs. Minnesota is long overdue for a law that better reflects society's contemporary values and provides better justice for over one million pet-owning households.¹⁹⁷ Reforming Minnesota's current law would be a significant step toward reducing and preventing harm to our dearest companions.¹⁹⁸

¹⁹⁶ See *supra* Part III.

¹⁹⁷ See Edwin Plotts, *Pet Ownership Statistics by State, And So Much More*, PAWLICYADVISOR (2020), [https://www.pawlicy.com/blog/us-pet-ownership-statistics/\[https://perma.cc/HYT5-DBPZ\]](https://www.pawlicy.com/blog/us-pet-ownership-statistics/[https://perma.cc/HYT5-DBPZ]) (stating that "54% of Minnesota households own a pet"); Population Data 2021, MINN. STATE DEMOGRAPHIC CTR. (Aug. 2022), [https://mn.gov/admin/demography/data-by-topic/population-data/our-estimates/\[https://perma.cc/9YMR-4N2L\]](https://mn.gov/admin/demography/data-by-topic/population-data/our-estimates/[https://perma.cc/9YMR-4N2L]) (reporting an estimated 2,275,868 households in Minnesota in 2021).

¹⁹⁸ See Kruse, *supra* note 70, at 1678 (explaining that while laws punishing animal cruelty are a step in the right direction, enforcing these laws has proven difficult).