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Ensuring Animal Welfare: Who's In Charge Here?

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Major Statutes

Animal Health and Disease Research, 7 U.S.C. §§ 3191-3201

Animal Welfare Act, 7 U.S.C. §§ 2131-2159

Fishery Conservation and Management, 16 U.S.C. §§ 1801-1891

Endangered Species Act, 16 U.S.C. §§ 1531-4



Today's Presentation:



**Ensuring Animal Welfare: Who's in
Charge Here?**

Police Power



- “Police power” is the power of a government to regulate behavior and enforce order to protect the public’s health, safety and welfare.
- This power is outlined and defined in laws passed by legislative bodies.
- The enforcement is applied by members of law enforcement against individuals who violate the laws.
- As representatives of the government’s police power, law enforcement members are held to a high standard, because they (and their actions) are on behalf of the government.
 - Since they are standing in for the state, their actions ARE the government’s actions.

Animal Welfare Laws



- **Purpose:**
 - To protect the welfare of animals
 - ✦ Criminalizes the neglect & abuse of animals
 - ✦ Allows for prosecution of individuals who violate the laws

The Basic Question



- In enforcing animal welfare laws, who has “police power”?
 - It depends on the state!
- Why?
 - In the mid-1800s, in New York, Henry Bergh was instrumental in forming the American Society for the Protection of Animals.
 - Part of its stated purpose was to “enforce all laws ... enacted for the protection of animals and to secure ... the arrest and conviction of all persons violating such laws.”
 - The next year, the NY state legislature passed new animal cruelty bill in which ASPCA was officially given power to:
 - ✦ Enter onto private property to care for abused animals;
 - ✦ Arrest violators of the anti-cruelty statute; and
 - ✦ Recover all fines collected from the defendants.
- And so it began!
 - Since then, 41 states and the District of Columbia based their animal cruelty laws on the NY 1867 statute

Currently.....



A LOOK AT THE DELEGATED AUTHORITY

A Nebraska Example



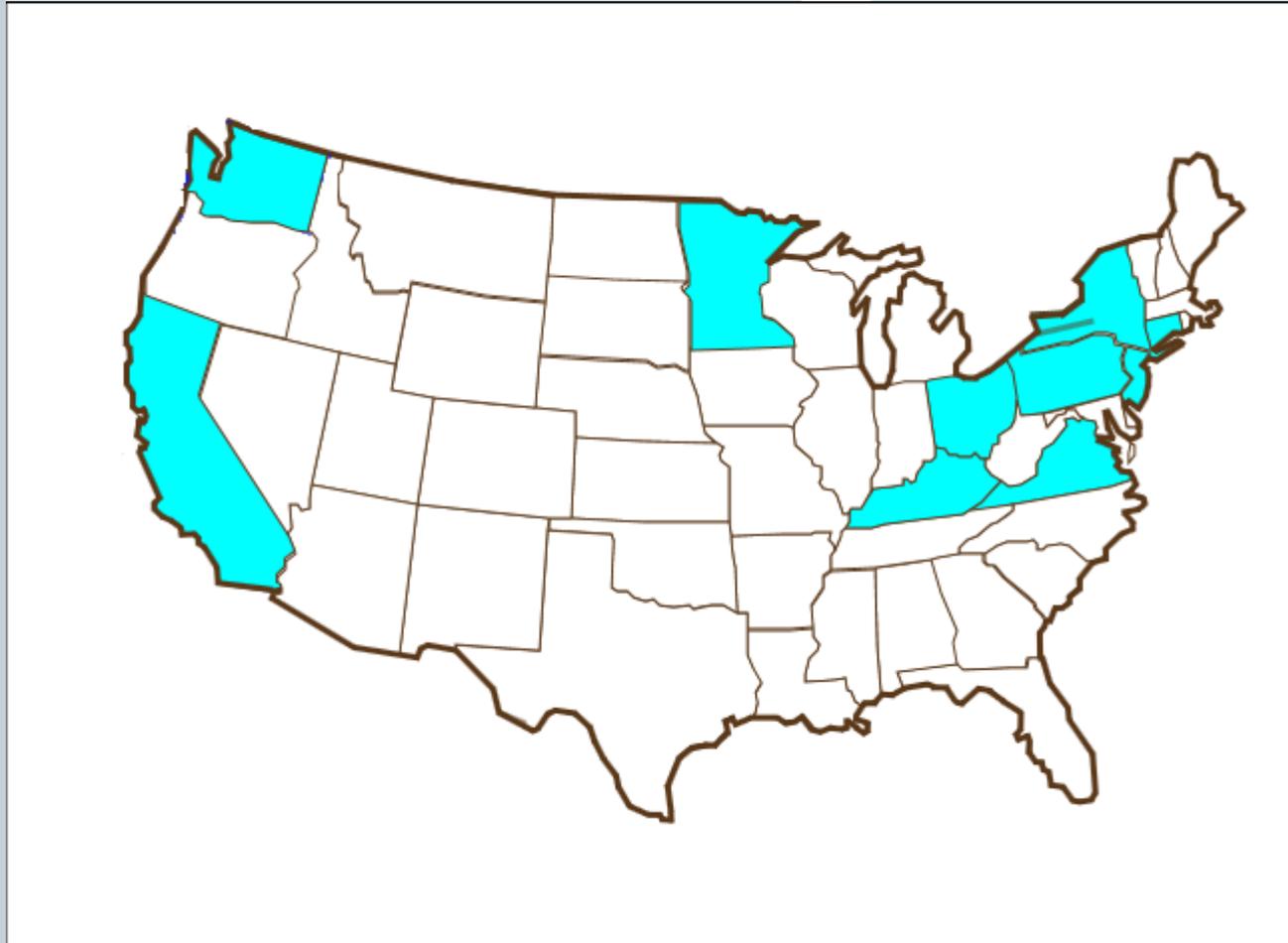
- Law enforcement authority is given to:
 - *Any member of the Nebraska State Patrol;*
 - *Any county or deputy sheriff;*
 - *Any member of the police force of any city or village; or*
 - *Any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances.*

NOTE



- While authority is limited to members of “law enforcement,” the statutes don’t prohibit the animal control officer from also being the head of (or involved with) the local humane society.
 - Also, they don’t necessarily prohibit members of law enforcement from working with members of local humane societies.
- In other words: the “law enforcement only” states do not associate an individual’s law enforcement authority with membership in some form of “humane society.”

Humane Society Members with Training



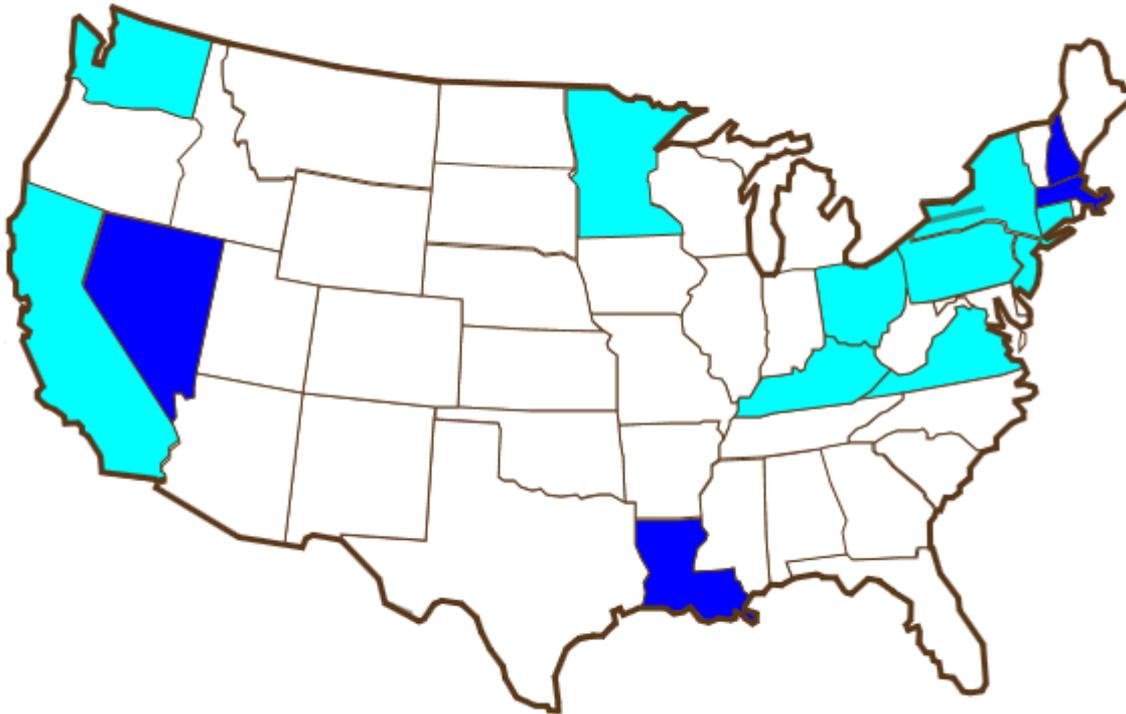
**Some training
required**

A Minnesota Example



- The state federation of county and district societies for the prevention of cruelty to animals may:
 - “*Appoint agents for the purpose of investigating* or otherwise assisting lawfully empowered officials in the prosecution of persons charged with cruelty to animals.”
- Agents must have:
 - “*Training and experience in activities relating to prevention of cruelty to animals* or enforcement of laws relating to cruelty to animals.”

Appoint & Confirm



**Some training
required**

**Appointment/
confirmation
required**

Louisiana & Nevada



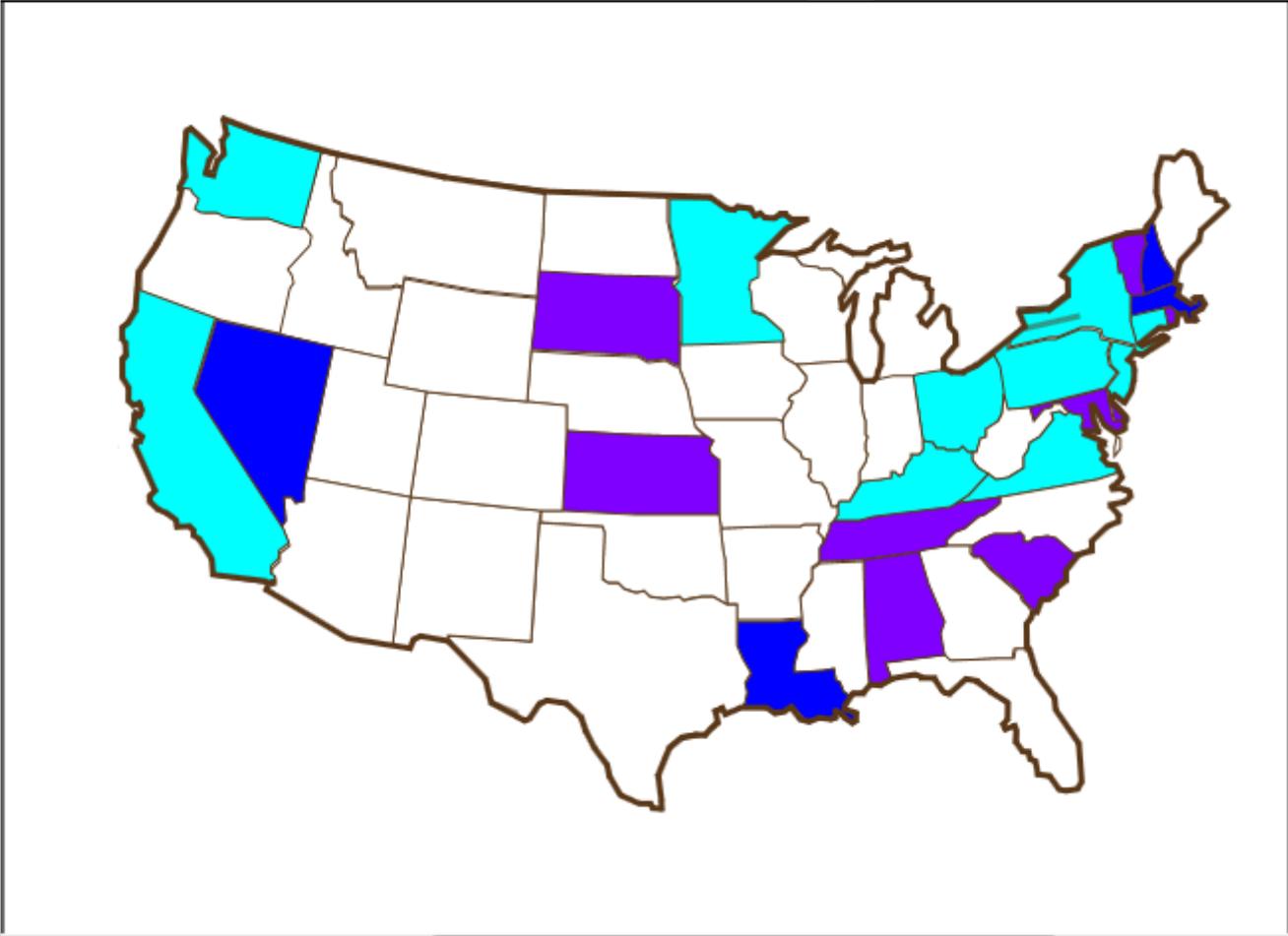
- Louisiana:

- A “*corporation for the prevention of cruelty to animals*” nominates agents.
- The “*mayor of the city or town and the police jury of the parish*” **shall** appoint and commission the agents.

- Nevada:

- “*Members, agents or local or district officers*” must submit fingerprints for a criminal history/background check.
- An application, including the criminal history report, is *submitted to the district judge* for approval
- When approved, they are “*sworn in the same manner as peace officers*”

No Training



Some training required

Appointment/confirmation required

No training required

Examples



- Rhode Island:
 - *The general agent of the Rhode Island society for the prevention of cruelty to animals and any number of special agents as may be appointed by that society*

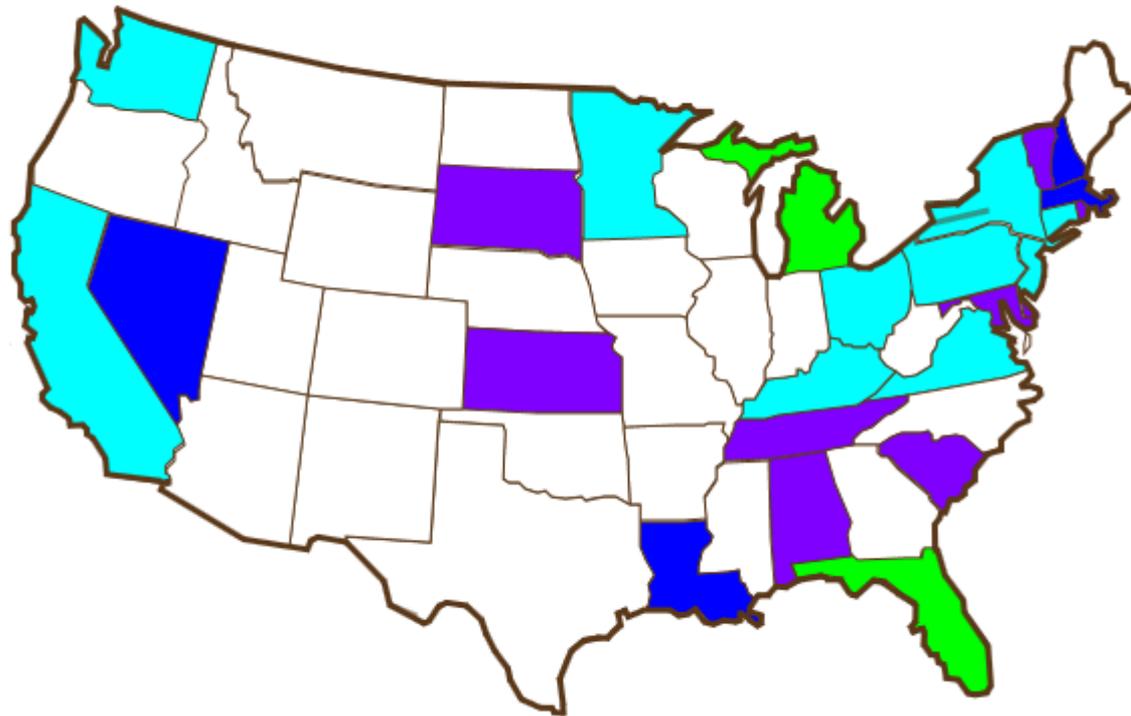
- South Carolina:
 - *Any agent of any county or of the South Carolina Society for the Prevention of Cruelty to Animals, or any society incorporated for that purpose*

Examples



- Rhode Island:
 - *The general agent of the Rhode Island society for the prevention of cruelty to animals and any number of special agents as may be appointed by that society*
- South Carolina:
 - *Any agent of any county or of the South Carolina Society for the Prevention of Cruelty to Animals, or **any society incorporated for that purpose***

Less Training than Animal Control



**Some training
required**

**Appointment/
confirmation
required**

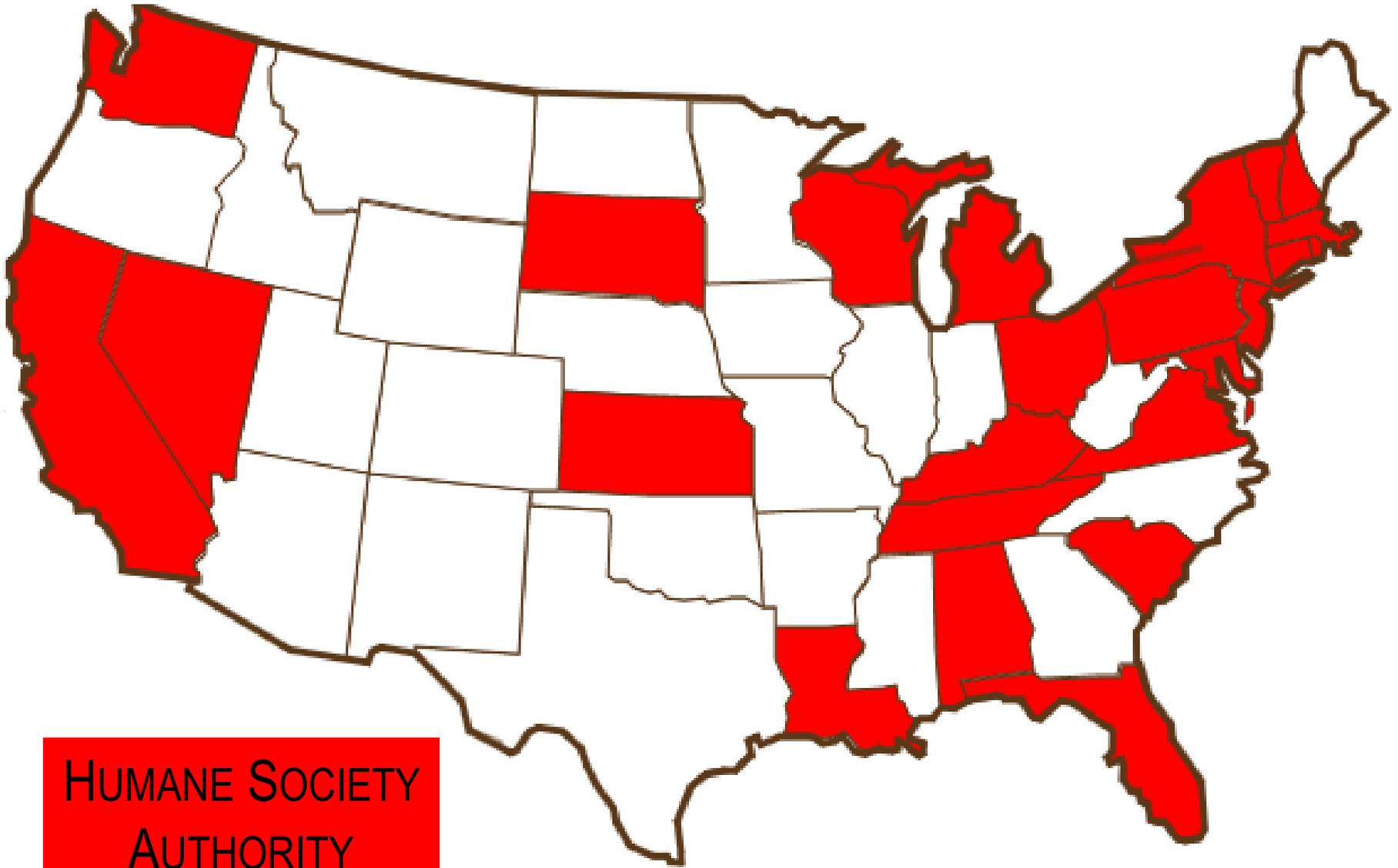
**No training
required**

**Less training
than animal
control**

Michigan



- Minimum standards for humane society members:
 - *Nomination* by society and *subsequent appointment* by the county sheriff
- Minimum standards for county animal control
 - Physical, educational, mental and moral fitness
 - Minimum course of study of *not less than* 100 instructional hours.



**HUMANE SOCIETY
AUTHORITY**

Maryland



“THE FREE STATE”

Maryland



- **Authority:**
 - “If an officer of a humane society sees a person committing a misdemeanor that involves cruelty to an animal, the officer shall arrest and bring before the District Court the person committing the misdemeanor.”
- **Definition:**
 - *Humane society* = any “society or association incorporated in Maryland for the prevention of cruelty to animals.”

What Does This Mean?



Harold

Susan

Ursula

Sam

The Next Step



ARTICLES OF ORGANIZATION

of creating a Maryland Limited Liability Company files the

for

(1)

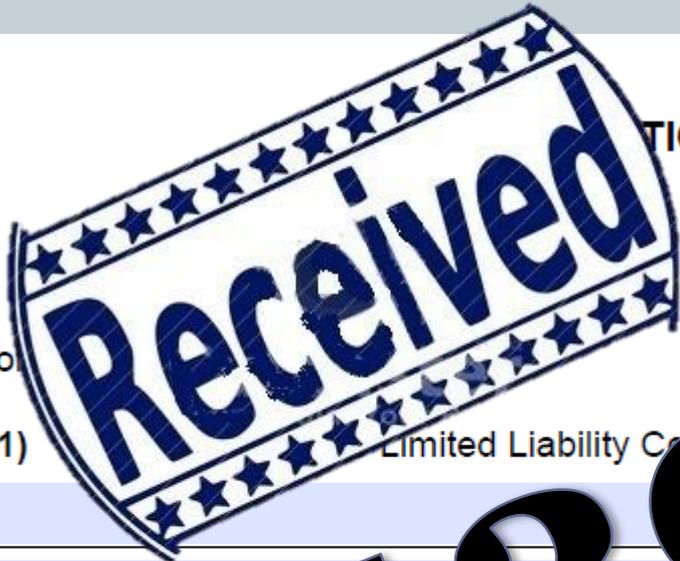
Limited Liability Company:

We Love Puppies and Kitties LL.C.

(2)

The fee for which the Limited Liability Company is filed is as follows:

To prevent cruelty to animals.



\$120

Training & Authority



- Additional training required:
 - None
- Authority:
 - Power to arrest
 - Power of entry onto land
 - Power to seize animals*



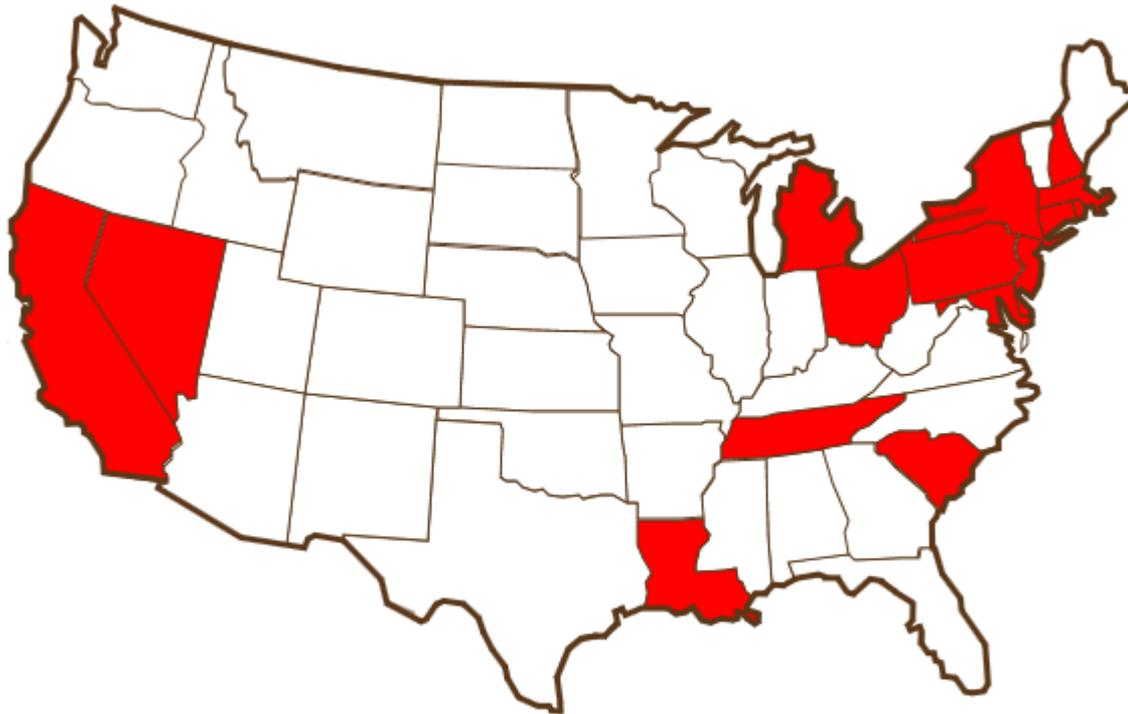
* To seize farm animals in Maryland, a veterinarian's approval is also required.

Currently.....



A LOOK AT THE DELEGATED AUTHORITY

The Power to Arrest

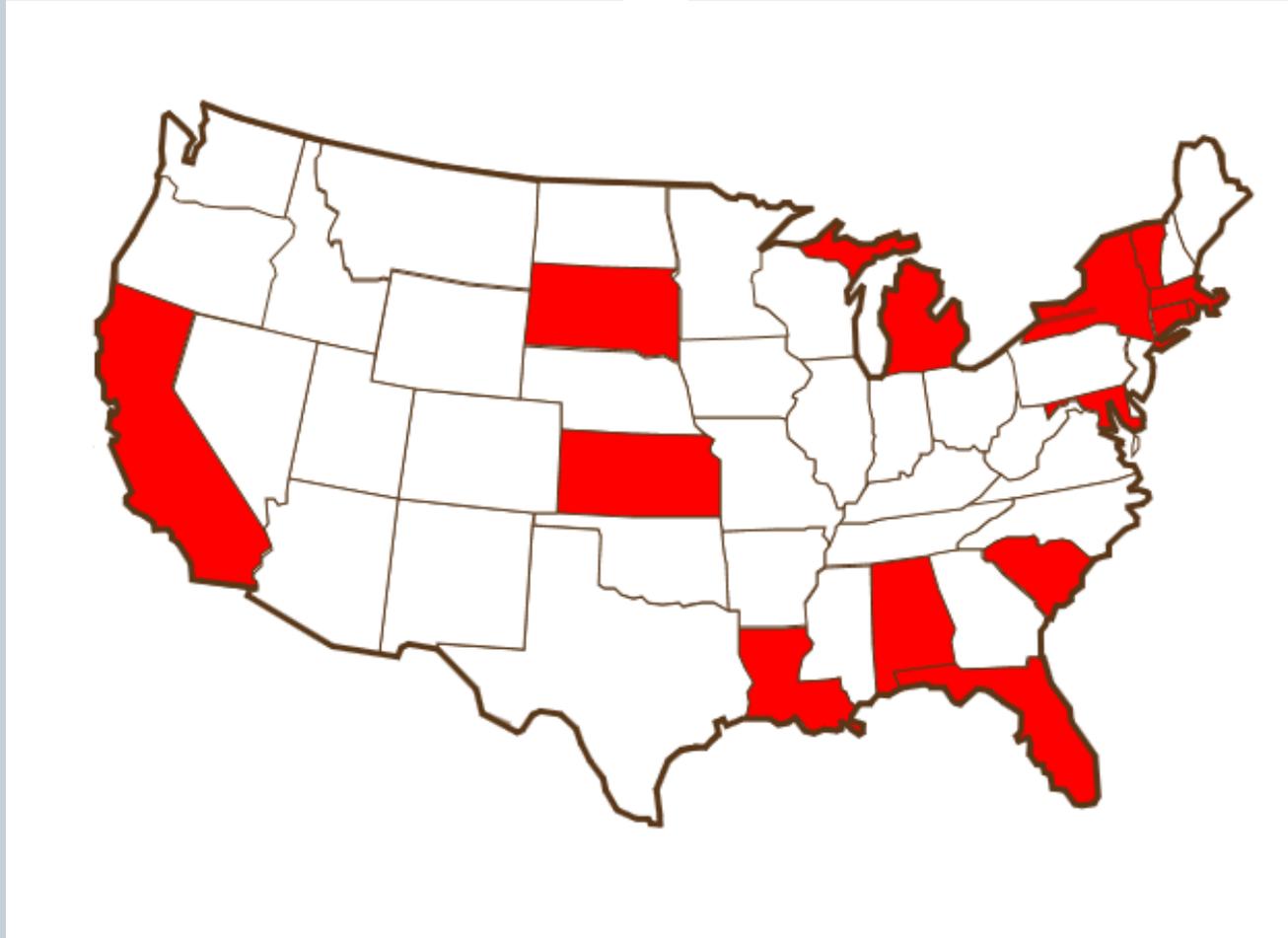


A Maryland Example



- If an “*officer of a humane society sees a person committing a misdemeanor* that involves cruelty to an animal, *the officer shall arrest and bring before the District Court the person committing the misdemeanor.*”

The Power to Seize Animals

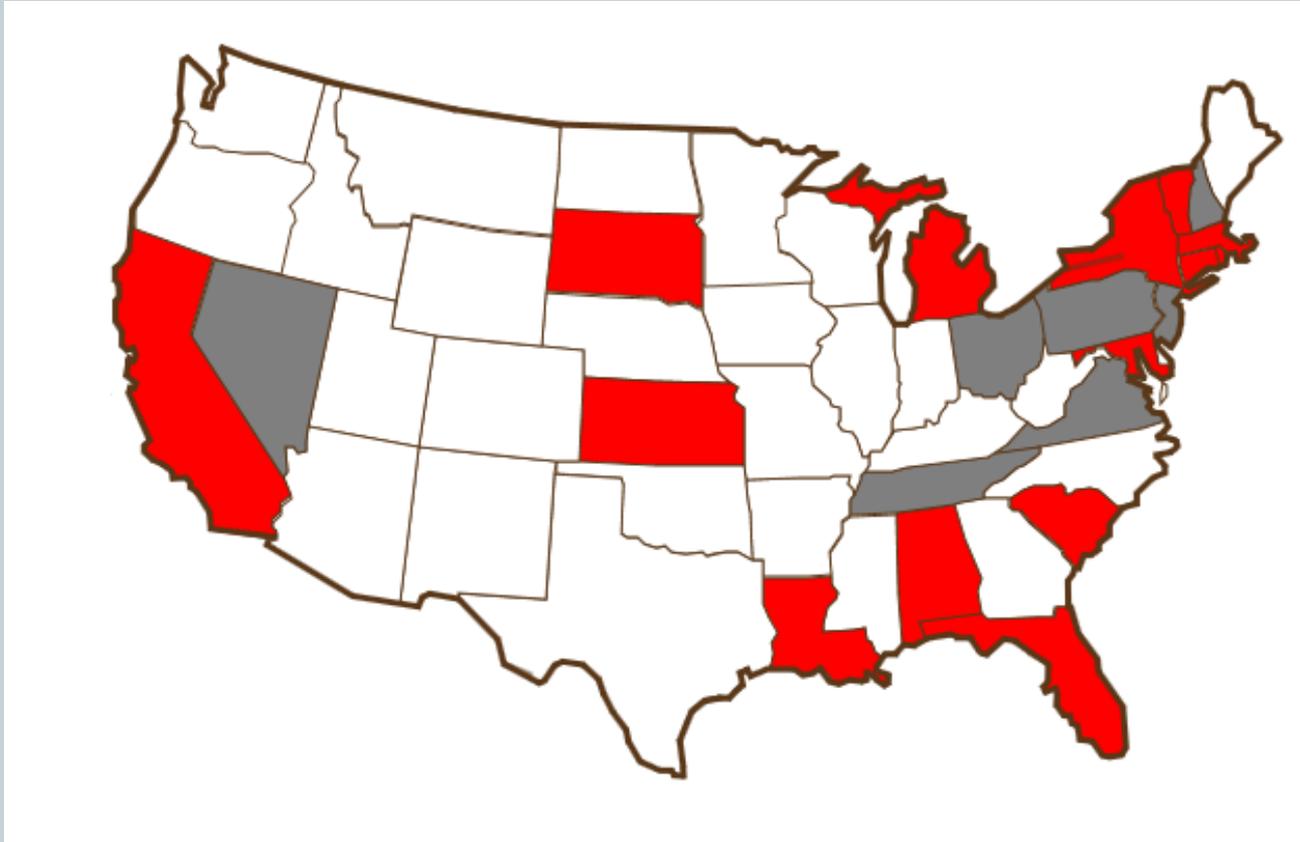


A Kansas Example



- “Any ... *officer or agent* of an incorporated humane society ... may *take into custody* any animal, upon either *private or public property*, which clearly shows evidence of cruelty to animals.”

The Power to Seize *Some* Animals

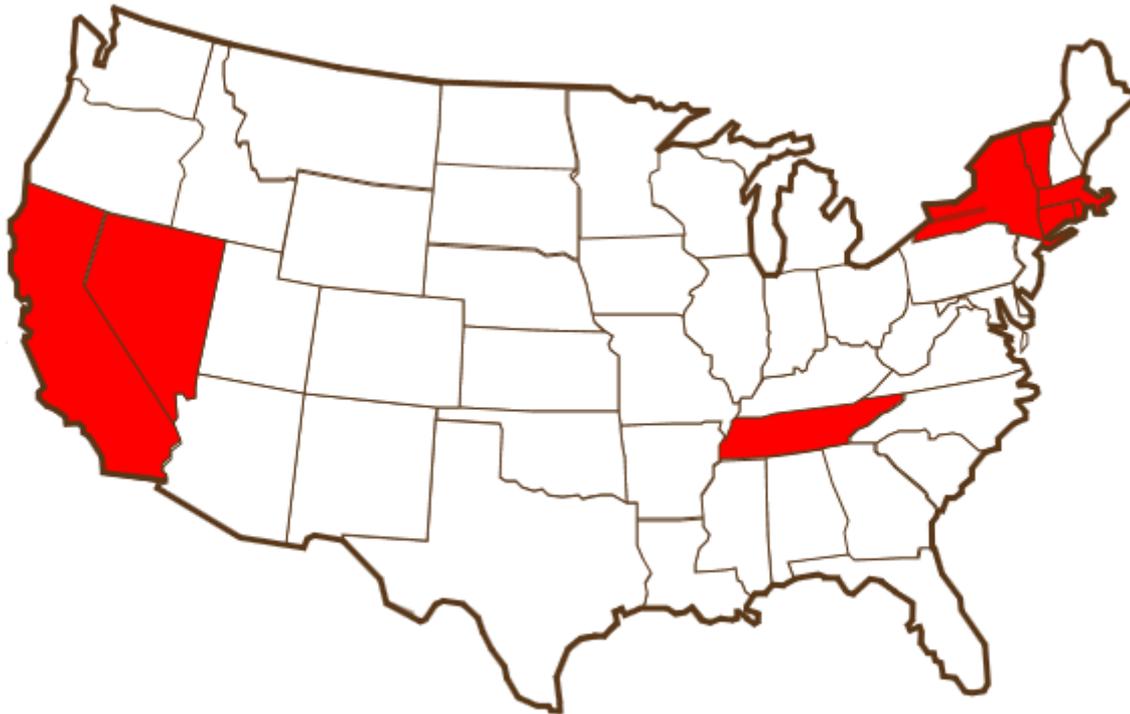


Livestock Exceptions



- *Virginia*
 - Before seizing livestock, the *state veterinarian must recommend the most appropriate disposition* of the animal.
- *Tennessee*
 - Humane officers have *no power at all* in regards to livestock
- *New Hampshire*
 - In order to seize livestock, a *veterinarian must be present*.

Resisting and Obstructing Charges



Examples



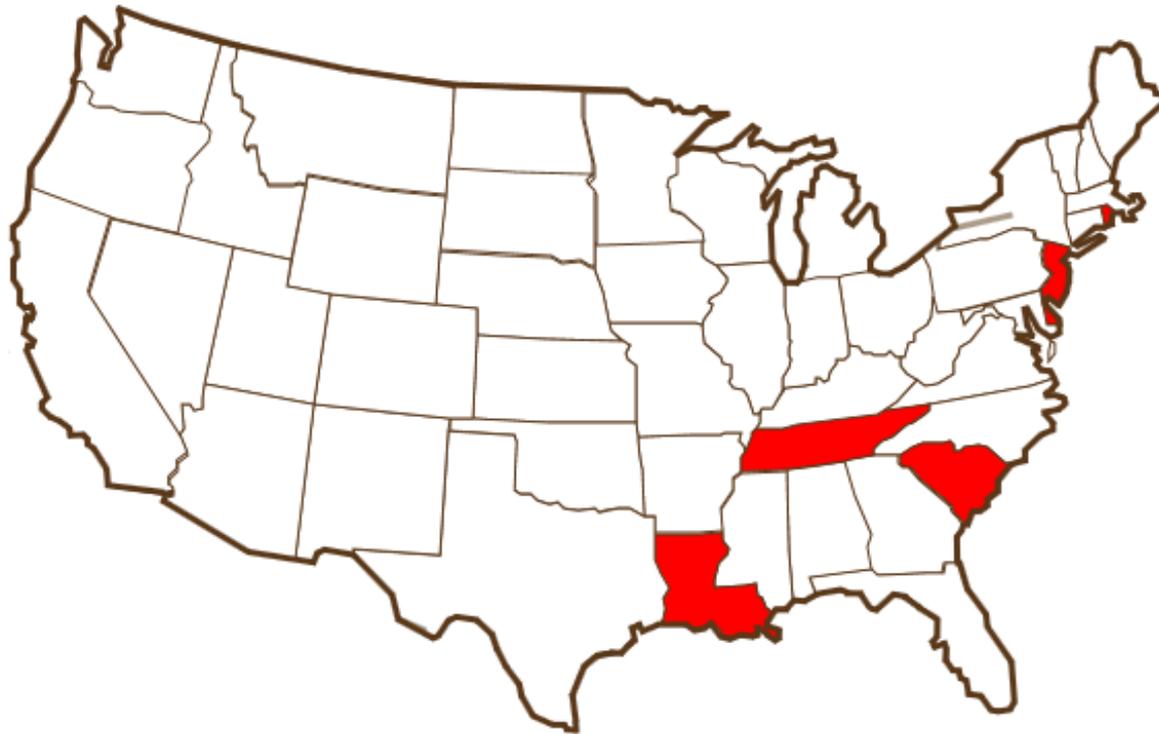
- California

- Any person *resisting a humane officer in the performance of his or her duty* as provided in this section is guilty of a misdemeanor.

- Connecticut

- Any person who *interferes with or obstructs or resists* any such officer or agent in the discharge of his duty shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Who Gets the Money?

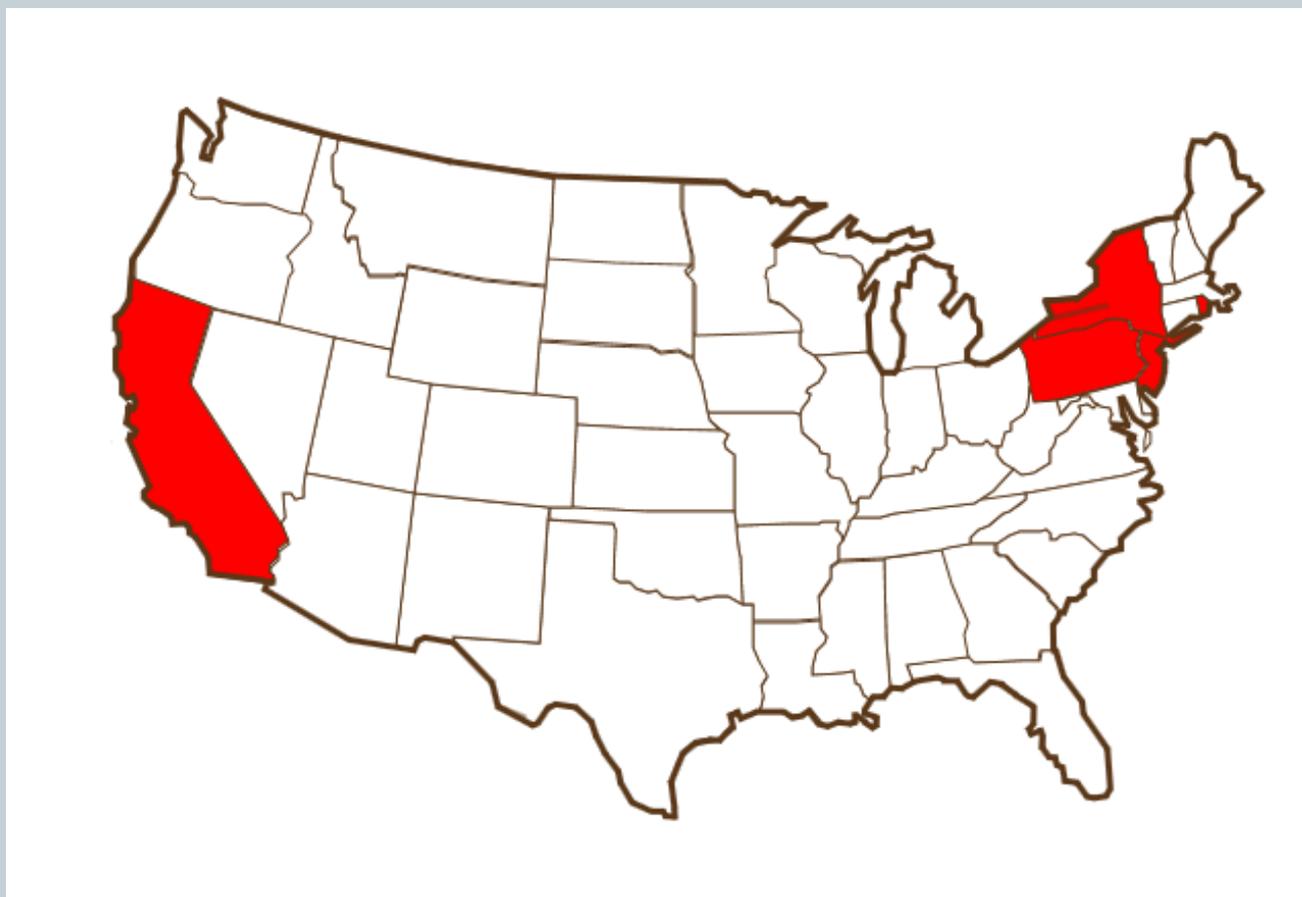


Examples



- Washington DC & Louisiana-
 - *Half the fines* collected are given to the humane societies
- Tennessee & New Jersey-
 - *All the fines* collected are given to the humane societies
- Delaware, South Carolina & Rhode Island-
 - The fines collected are given to the humane societies *only if they are involved in the investigation itself.*

Carrying Firearms... In the “Line of Duty”



Examples



- New Jersey
 - *Requirements*
 - ✦ Commissioned by the Superintendent of State Police
 - ✦ Complete a firearms training course
 - *Authority*
 - ✦ May “*possess, carry, or use a firearm* while enforcing any law or ordinance for the protection of animals.”
- Pennsylvania
 - *Requirements*
 - ✦ Training “of sufficient scope and duration as to provide the participant with *basic training* in the use and handling of firearms.”
 - *Authority*
 - ✦ May “carry, possess or use a firearm” in the performance of their duties.

A Rhode Island Example



- Who is given authority?
 - The “general agent of the Rhode Island society for the prevention of cruelty to animals and any number of special agents as may be appointed by that society”
- What authority is given?
 - To “possess and carry pistols” for the purpose of carrying out their duties.
- What training is required?
 - None
- Other characteristics (*from 1956 until 7/17/13):
 - R.I. Gen. Laws §11-47-5 do not apply to humane society agents.

R.I. GEN. LAWS §11-47-5 DO NOT APPLY TO HUMANE SOCIETY AGENTS



- a) No person who has been convicted ... of a *crime of violence* or who is a *fugitive from justice* shall purchase, own, carry, transport, or have in his or her possession any firearm.
- b) ... No person convicted of an offense *punishable as a felony offense* ... shall purchase, own, carry, transport, or have in his or her possession any firearm
- c) No person who is in *community confinement* ... or who is otherwise subject to electronic *surveillance or monitoring devices as a condition of parole* shall purchase, carry, transport, or have in his or her possession any firearm.

2013 Changes to RI Law



- The law now reads “the provisions of § 11-47-8 shall not apply”
- R.I. Gen. Laws § 11-47-8 forbids
 - Carrying a pistol without a permit
 - Manufacturing/selling/purchasing/possessing a machine gun
 - Possessing a sawed-off shotgun or rifle
 - Possessing a firearm while possessing/delivering or manufacturing a controlled substance

Consequences



LIABILITY

Reminder: Police Power



- As representatives of the state's police power, law enforcement members are held to a high standard, because they (and their actions) are on behalf of the government.
 - Since they are standing in for the government, their actions ARE the government's actions.
- 42 U.S.C. §1983 allows people whose constitutional rights have been violated by government officials the opportunity to sue.

Elements of a §1983 claim



- 1) The conduct complained of was committed by a *person or persons*;
- 2) Those persons were acting *under color of state law*;
- 3) The conduct *deprived the plaintiff of rights* secured by the Constitution of the United States



“Person”



Corporations
are people
too.

- Individuals are “persons” subject to §1983 claims.
- Organizations (such as humane societies) are “persons” subject to §1983 claims.
 - *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978)
- Municipalities or local units of government are “persons” subject to §1983 claims.
 - *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989)
- A state is not a “person” subject to §1983 claims.
 - *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989)

“Color of Law”



- The humane society and its officers “are state actors for the purposes of §1983”
 - *Brunette v. H.S. of Ventura Cty.*, 294 F.3d 1205 (9th Cir. 2002)
- The “Humane Society must be considered a government actor”
 - *Daskalea v. WA Humane Soc.*, 480 F. Supp.2d 16 (D.C. 2007)
- The ‘primary purpose’ of local humane societies ‘is law enforcement, an activity traditionally reserved for the government’
 - *Studer v. Seneca County Humane Soc.*, 2000-Ohio-1823
- “Where the Society has used its statutory authority to investigate acts of animal abuse and has used this authority, further, to seize animals, it has acted as an agent of the state”
 - *Putnam H.S., Inc. v. Woodward*, 740 So.2d 1238 (FL 1999)
- “ASPCA, although a private entity, was a state actor”
 - *Suss v. ASPCA*, 823 F.Supp. 181 (1993).
- “Because the SPCA has the responsibility to enforce laws under State statutory authorization, it acts as an arm of the State.”
 - *Mesgleski v. Oraboni*, 330 N.J.Super. 10 (2000).



Deprivation of Rights



- Potential claims
 - Violations of the 4th amendment's search and seizure protections
 - Violations of the 14th amendment's due process protections
- Factors:
 - Untrained personnel
 - No governmental supervision
 - Authority to arrest
 - Authority to enter onto private property
 - Authority to seize private property
 - Authority to destroy private property
 - Authority to carry firearms
 - Financial incentive to bring charges

Does the Wild West Still Exist?

More animal seizure Dinwiddie Animal Control seizes 60 equines from horse

By Gus Thomson, Journal Staff

Humane Society hires private investigator



advocate

Written by Kathu Brown

Humane

Women Ask State For \$120K Refund In Puppy Mill Case

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ice April 23 as chief investigator for investigator located in Delta.

By Associa

Women Claim Rights Violated In Tax Seizure

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report cases of animal cruelty
Turner will investigate and write a
animal owners. The goal,
by explaining how to take care of

POSTED: 6:42 pm EDT May 10, 2012
UPDATED: 7:58 pm EDT May 10, 2012

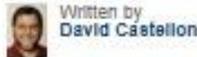
Humane Society played lead role in Goshen cockfighting investigation

'They're a private nonprofit, although they almost take on the air of being a quasi-governmental agency'

1:25 AM, Jul. 12, 2012 | 4 Comments

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Written by David Castellon

Tulare County Sheriff's officials have credited the arrest of a Goshen couple suspected of running the largest U.S. cockfighting supply operation ever uncovered to an investigation launched by the Humane Society of the United States.

And since the arrests of Carlos Gonzalez-Padilla, 53, and his wife,

the Garwoods are now asking the state for \$120,000 for the seized puppies.

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WIN
\$5,000.00
A WEEK
"FOREVER"

CAN MAKE.

“Neglected” Cattle?



“Dead” Horses?



“Starving” Dairy Cows?



The “paradigm of a society that is out-of-control, that exists for the personal benefit of some of its participants and that has wielded its authority in highly inappropriate ways.”

A “highly structured, paramilitary-style organization”

“Officers and agents exercise unbridled discretion in investigating complaints of animal cruelty and issuing civil and criminal summonses.”

“Accountable to no governmental authority.”

They “operate independently of all established law enforcement institutions and without any governmentally imposed regulations”

State of New Jersey Commission of Investigation, *Report and Recommendations Based on Investigation into the Societies for the Prevention of Cruelty to Animals*, (2000), <http://www.state.nj.us/sci/pdf/spca.pdf>.

“The issue is no longer whether or how to fix this errant group of self-appointed, self-directed and uncontrolled entities, but whether to eliminate the archaic system entirely.”



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