



Suing on Behalf of Animals: New Case

For many years ISAR has received requests for information about how concerned individuals and humane societies can bring legal action against local animal shelters that are not being run properly. Unfortunately, there are many ways in which shelters can be derelict in their statutory, humane and moral responsibilities to the unfortunate dogs and cats that come into their custody.

As we consistently point out, there are several difficult hurdles “outsiders” have to clear in order to bring such lawsuits, some of them practical (e.g., cost, capable counsel, entrenched political obstacles) and other of them legal (e.g., proof, legal theory, a fair judge).

The greatest problem, however, has always been what lawyers call “standing to sue”—the legal requirement that the lawsuit be brought by the appropriate plaintiff.

In both the federal and state legal systems, not just anyone can start a lawsuit against either a private party or the government. Generally speaking, the person (or entity) who would sue (the plaintiff) must have some connection with the grievance and with whomever the lawsuit is directed against (the defendant). This requirement is the standing to sue requirement.

For about the past fifty years, the Supreme Court of the United States for the federal system, and the highest courts of the states for the non-federal system, have crafted increasingly complex rules to regulate standing to sue. These rules are of crucial importance to would-be litigants, because they control access to the courts. (To view a lengthy article on standing to sue visit ISAR’s website http://www.isaronline.citymax.com/f/animals_and_standing_to_sue.pdf.)

There are two ways for would-be plaintiffs to obtain standing to sue.

The hard way, and the easy way.

As to the hard way, for an individual, a group, or an organization to possess standing to sue—to be able to get into court and ask that it resolve the alleged dispute—the plaintiff must have suffered (or soon will suffer) some injury reasonably caused by the defendant, an injury that will be redressed if the plaintiff wins in court.

The corollary of this standing requirement is that the plaintiff usually can't raise the claims of others (though there are exceptions), the plaintiff can't raise claims that are common to everyone else (e.g., taxpayers; though, again, there are exceptions), and the plaintiff can't sue for violation of a statute unless he (or it) is someone intended by the statute to be protected or is otherwise affected.

These standing to sue requirements, as difficult to understand and apply in "normal" cases, have become all the more problematic since the 1950s when activists of all kinds—e.g., civil rights, abortion, anti-war—have turned from the legislatures to the courts to implement their agendas, be they political, moral, social, economic, or whatever.

And nowhere has the standing to sue problem proved more thorny than as regarding "Animal Rights."

However, there is an easy (or at least easier) way.

That way is exemplified by a lawsuit recently brought in North Carolina by two animal welfare organizations against a county sheriff and other county and state officials seeking to end the use of a gas chamber at the county animal shelter.

Rather than paraphrase the plaintiffs' complaint, here it is:

State of North Carolina)	In the General Court of Justice DISTRICT
)	Court Division
Union County)	08-CVS-
)	
NORTH CAROLINA COALITION FOR)	
HUMANE EUTHANASIA and THE)	
HUMANE SOCIETY OF UNION COUNTY,)	
)	
Plaintiffs,)	
)	
v.)	
)	
EDDIE CATHEY, SHERIFF OF UNION)	Verified complaint for MANDATORY
COUNTY, NC, LT. MICHELLE STARNES,)	INJUNCTION AND OTHER RELIEF
ANIMAL SERVICES OFFICER OF UNION)	
COUNTY, NC, PHILLIP TARTE, LOCAL)	
HEALTH DIRECTOR FOR UNION)	
COUNTY, NC, and DEMPSEY E. BENTON,)	
SECRETARY OF THE NORTH CAROLINA)	
DEPARTMENT OF HEALTH AND HUMAN)	
SERVICES,)	
)	
Defendants.)	

Plaintiffs, North Carolina Coalition for Humane Euthanasia (“NCCHE”) and The Humane Society of Union County, Inc. (“HSUC”), each a non-profit domestic corporation, allege as follows:

SUMMARY

Plaintiffs file this Complaint to stop defendants from unlawfully killing young, geriatric, injured, sick or pregnant animals in the gas chamber in violation of North Carolina law. While plaintiffs understand that not every animal that ends up in defendants’ custody can be placed in an adoptive home and that some of them must be euthanized, defendants, as government employees charged with enforcement of the law, should themselves comply with the law. North Carolina law prohibits the use of the gas chamber to euthanize young, geriatric, injured, sick or pregnant animals. However, documents that defendants are required by law to maintain (Animal Services Complaint Report/Impound Sheets) and which they were compelled to provide to NCCHE show that they routinely use the gas chamber to do what the law prohibits them from doing—euthanize young, geriatric, sick, injured and pregnant animals in the gas chamber.

PARTIES

1. Plaintiff NCCHE is a non-profit domestic corporation organized under the provisions of N.C. Gen. Stat. Chapter 55, with its principal place of business in Chapel Hill, North Carolina. It is dedicated to the prevention of cruelty to animals.
2. Plaintiff HSUC is a non-profit domestic corporation also organized under the provisions of N.C. Gen. Stat. Chapter 55, with its principal place of business in Monroe, Union County, North Carolina. HSUC is dedicated to preventing cruelty to animals, relieving suffering among animals, and to educating the public about the humane treatment of animals.
3. Each of the Plaintiffs is a “person” as defined by N.C. Gen. Stat. 19A-1(3).
4. Defendant, Eddie Cathey, is the duly elected Sheriff of Union County and his duties include, among others, responsibility for the Union County Animal Control Division of the Union County Sheriff’s Department. Sheriff Cathey is the commanding officer of the Union County Sheriff’s Department and is being sued in his official capacity.
5. Defendant Lieutenant Michelle Starnes is an employee of Union County and reports to defendant Sheriff Cathey, who is her supervisor. Lt. Starnes’ duties include operation of the Union County Animal Control division. Lt. Starnes is being sued in her official capacity.
6. Defendant Phillip Tarte is the Local Health Director for Union County North Carolina. As the local health director, Mr. Tarte has the statutory obligation to

“administer the programs of the local health department and enforce the rules of the local board of health.” N.C. Gen. Stat. § 130A-4(a). Mr. Tarte is being sued in his official capacity.

7. Defendant Dempsey E. Benton is the Secretary of the N.C. Department of Health and Human Services (“Secretary”). As the Secretary, Mr. Benton has the statutory obligation to “administer and enforce the provisions of [Chapter 130 of the North Carolina General Statutes] and the rules of the Commission. N.C.” Gen. Stat. § 130A-4(a). Mr. Benton is being sued in his official capacity.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to N.C. Gen. Stat. §§ 19A-1 through 19A-4.

9. This Court has personal jurisdiction over defendants because each of them is a real party-in-interest pursuant to N.C. Gen. Stat. § 19A-2. Specifically, Defendants Cathey and Starnes have possession of animals in Union County by virtue of their responsibility for animal control functions in Union County, including operation of the Union County Animal Shelter. Defendants Tarte and Benton have possession of animals and are responsible for their treatment because, among other reasons, of their statutory responsibilities to administer the provisions of Chapter 130A of the North Carolina General Statutes and the programs of the local health department, which responsibilities include the duties imposed pursuant to N.C. Gen. Stat. § 130A-192 to impound and hold for 72 hours certain animals and provide for proper disposition.

10. Venue is proper pursuant to N.C. Gen. Stat. §§ 19A-1 through 19A-4 because Union County is the county in which the Defendants cruelly treated the animals.

FACTS

Acceptable methods of euthanizing animals are dictated by statute in North Carolina.

11. N.C. Gen. Stat. 19A-23(9) provides a statutory definition of “euthanasia,” as follows:

“Euthanasia” means the humane destruction of an animal accomplished by a method that involves rapid unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness and death during such loss of consciousness.

N.C. Gen. Stat. 19A-24(5) provides that “[a]n animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association.”

12. There are many different methods of euthanizing animals. These include inhalants, such as carbon monoxide gas (CO), and non-inhalant pharmaceutical agents, such as pentobarbital.

13. Inhalants are frequently administered to multiple animals which have been placed in a gas chamber. The gas chamber is flooded with the chosen inhalant, usually CO, resulting in the eventual death from hypoxia of the animals in the gas chamber. The American Veterinary Medical Association, the Humane Society of the United States, and the American Humane Association all address the subject of gas chamber use.

14. In regard to euthanasia of young animals, the American Veterinary Medical Association Guidelines on Euthanasia provide:

Neonatal animals appear to be resistant to hypoxia, and because all inhalant agents ultimately cause hypoxia, neonatal animals take longer to die than adults. ... The panel recommended that **inhalant agents not be used alone in animals less than 16 weeks old** except to induce loss of consciousness, followed by the use of some other method to kill the animal.

See **Exhibit 1**.

15. Likewise, the Statement on Euthanasia Methods for Dogs and Cats published by the Humane Society of the United States provides:

It is always unacceptable to use CO for the euthanasia of dogs and cats who are:

Geriatric;
Under the age of four months;
Sick or injured; or
(Obviously) pregnant.

Old, sick, or injured animals may have poor blood pressure or weak hearts, which may delay the effects of CO, causing them to experience distress prior to unconsciousness. Animals under the age of four months may not have the lung capacity to inhale enough CO to be effective. In pregnant animals, it is likely that the mother will die from exposure to CO before the unborn puppies/kittens. Consequently, it is possible that the puppies/kittens will die as a result of the mother's death (by suffocating to death) rather than from exposure to CO. **The HSUS condemns using CO for animals meeting the above criteria.**

See **Exhibit 2** (emphasis added).

16. Finally, the American Humane Association "considers euthanasia by **injection of sodium pentobarbital (EPI) to be the only acceptable method of euthanasia** of dogs and cats in animal shelters," regardless of age. See **Exhibit 3** (emphasis in original).

17. Evidencing her understanding of the reason for the law, defendant Starnes has commented to the media that kittens and puppies should only be euthanized by injections of pentobarbital because the gas would take a cruelly long time to knock them out.

18. On information and belief, Union County uses a gas chamber and gas to euthanize almost all of the animals it euthanizes, including puppies and kittens, geriatric, injured, sick and pregnant animals.

Union County Animal Control officials have the statutory obligation to maintain certain records relating to the animals of Union County Animal Control impounds

19. N.C. Gen. Stat. § 130A-192 requires, among other things, that the county Animal Control Officer “shall maintain a record of all animals impounded under this section which shall include the date of impoundment, the length of impoundment, the method of disposal of the animal and the name of the person or institution to whom any animal has been released.”

20. Subchapter 52J .0100 of the North Carolina Administrative Code (January 1, 2006) mandates that operators of all animal shelters shall maintain records on all dogs and cats showing the: (i) origin of animals (including names and addresses of consignors) and the date animals were received; (ii) description of animals including species, age, sex, breed, and color markings; (iii) location of animal if not kept at the licensed or registered facility; (iv) disposition of animals including name and address of person to whom an animal is sold, traded or adopted and the date of such transaction; in the event of death, the record shall show the date, signs of illness, or cause of death if identified; if euthanized, the record shall show date and type of euthanasia; and (v) record of veterinary care including treatments, immunization and date, time, description of medication (including name and dosage), and initials of person administering any product or procedure.”

NCCHE requested documents relating to the Union County Animal Shelter

21. On February 14, 2007, pursuant to the North Carolina Public Records Act, N.C. Gen. Stat. 132-1 et seq. (“PRA”), Attorney Marguerite E. Huggins, acting on behalf of plaintiff NCCHE, mailed a PRA request to the following people: (i) the County Manager for Union County, (ii) the County Attorney for Union County, (iii) defendant Sheriff Cathey, and (iv) Union County Animal Control Officer Bill Tucker (collectively, the “PRA Recipients”).

22. NCCHE requested from the PRA Recipients, for the period beginning January 1, 2006 through the date of the first PRA request, copies of all animal impoundment records they are required to maintain pursuant to N.C. Gen. Stat. § 130A-192 and Subchapter 52J .0100 of the North Carolina Administrative Code.

23. In response to the first PRA request, in approximately the last week of February, 2007, Lt. Michelle Starnes produced to NCCHE over 300 pages of documents (the “PRA1 Documents”). Included among the PRA1 Documents were hundreds of Union

County Sheriff's Office Animal Services Complaint Report/Impound Sheets ("Impound Sheets") reflecting the disposition of animals impounded by Union County Animal Services.

24. On November 2, 2007, pursuant to the North Carolina Public Records Act, N.C. Gen. Stat. 132-1 et seq., Michele King, on behalf of plaintiff NCCHE, e-mailed a second PRA request to Union County Animal Control Officer, Captain Bill Tucker.

25. NCCHE requested from Captain Tucker, for the period beginning March 1, 2007, through the date of the second PRA request, inter alia, copies of all animal impoundment records they are required to maintain pursuant to N.C. Gen. Stat. § 130A-192 and Subchapter 52J .0100 of the North Carolina Administrative Code.

26. In response to the second PRA request, in approximately the last week of November 2007, Captain Tucker produced to NCCHE over 3000 pages of documents (the "PRA2 Documents"). Included among the PRA2 Documents were thousands of Impound Sheets reflecting the disposition of animals impounded by Union County Animal Services. Most of the Impound Sheets did not reflect the age of the animal as required by Subchapter 52J 0.100 of the North Carolina Administrative Code or the health or pregnancy status of the animal.

Union County is euthanizing neonatal, geriatric, injured, sick and pregnant animals in the gas chamber and in violation of state law.

27. As reflected on the Impound Sheets that Lt. Starnes and Captain Tucker produced in response to the PRA1 and PRA2 requests, Union County routinely euthanizes puppies and kittens under 16 weeks of age, as well as pregnant, sick, injured, and geriatric animals, by means of the gas chamber.

28. Attached hereto as **Exhibit 4** are Impound Sheets which demonstrate a pattern and practice by the Union County Sheriff's office of euthanizing puppies and kittens under 16 weeks of age in the gas chamber. For Example:

- a. **Exhibit 4.1** is an Impound Sheet bearing reference number 72512, dated 10/2/06, and documenting the disposition of a 3-week-old "feral" kitten as "chamber."
- b. **Exhibit 4.2** is an Impound Sheet bearing reference number 72745, dated 10/21/06, and documenting the disposition of a 2-week-old kitten as "chamber."
- c. **Exhibit 4.3** is an Impound Sheet bearing reference number 71243, dated 6/26/06, and documenting the disposition of a one-month-old kitten as "chamber."
- d. **Exhibit 4.4** is an Impound Sheet bearing reference number 70871, dated 5/25/06, and documenting the disposition of a 5-week-old kitten as "chamber."

- e. **Exhibit 4.5** is an Impound Sheet bearing reference number AS07001295, dated 6/30/07, and documenting the disposition of a 2-4 month-old cat as “chamber.”
- f. **Exhibit 4.6** is an Impound Sheet bearing reference number AS07000785, dated 4/28/07, and documenting the disposition of a baby/whelping cat as “chamber.”
- g. **Exhibit 4.7** is an Impound Sheet bearing reference number AS07001056, dated 6/5/07, and documenting on p. 2 the disposition of a baby/whelping cat as “chamber.”
- h. **Exhibit 4.8** is an Impound Sheet bearing reference number AS07001101, dated 6/11/07, and documenting the disposition of an under 2-month-old dog as “chamber.”
- i. **Exhibit 4.9** is an Impound Sheet bearing reference number AS07001145, dated 6/15/07, and documenting the disposition of an under-2-month-old dog as “chamber.”
- j. **Exhibit 4.10** is an Impound Sheet bearing reference number AS07001205, dated 6/21/07, and documenting the disposition of a 2-4 month-old dog as “chamber.”
- k. **Exhibit 4.11** is an Impound Sheet bearing reference number SO07043677, dated 8/27/07, and documenting on pp. 3-4 the disposition of an under 2-month-old cat as “chamber.”
- l. **Exhibit 4.12** is an Impound Sheet bearing reference number AS07002352, dated 10/27/07, and documenting the disposition of an under-2-month-old cat as “chamber.”
- m. **Exhibit 4.13** is an Impound Sheet bearing reference number AS07002408, dated 11/01/07, and documenting the disposition of an under-2-month-old cat as “chamber.”

29. Attached here to as **Exhibit 5** are Impound Sheets which demonstrate a pattern and practice by the Union County Sheriff’s office of euthanizing old and sick animals in the gas chamber. For Example:

- a. **Exhibit 5.1** is an Impound Sheet bearing reference number 70488, dated 4/11/06, and documenting the disposition of an old, blind and sick dog as “chamber.”
- b. **Exhibit 5.2** is an Impound Sheet bearing reference number 71022, dated 6/8/06, and documenting the disposition of an old and sick dog as “chamber.”

- c. **Exhibit 5.3** is an Impound Sheet bearing reference number 70167, dated 3/9/06, and documenting the disposition of a sick dog with a possible respiratory infection as “chamber.”
- d. **Exhibit 5.4** is an Impound Sheet bearing reference number 72526, dated 10/3/06, and documenting the disposition of a very small and young, sick kitten as “chamber.”
- e. **Exhibit 5.5** is an Impound Sheet bearing reference number 71720, dated 7/29/06, and documenting the disposition of three puppies with parvo as “chamber.”
- f. **Exhibit 5.6** is an Impound Sheet bearing reference number AS07000856, dated 5/10/07, and documenting the disposition of a “senior” dog as “chamber.”
- g. **Exhibit 5.7** is an Impound Sheet bearing reference number AS07000948, dated 5/22/07, and documenting the disposition of a “senior” dog as “chamber.”
- h. **Exhibit 5.8** is an Impound Sheet bearing reference number AS07002190, dated 10/6/07, and documenting the disposition of a dog sick with parvo as “chamber.”
- i. **Exhibit 5.9** is an Impound Sheet bearing reference number AS07001363, dated 7/9/07, and documenting the disposition of a dog sick with heartworm as “chamber.”
- j. **Exhibit 5.10** is an Impound Sheet bearing reference number AS07002301, dated 10/19/07, and documenting the disposition of a cat that “does not appear healthy” as “chamber.”

30. Attached here to as **Exhibit 6** are Impound Sheets which demonstrate a pattern and practice by the Union County Sheriff’s office of euthanizing injured animals in the gas chamber. For Example:

- a. **Exhibit 6.1** is an Impound Sheet bearing reference number 70338, dated 3/29/06, and documenting the disposition of a badly injured cat as “chamber.”
- b. **Exhibit 6.2** is an Impound Sheet bearing reference number 71213, dated 6/23/06, and documenting the disposition of an injured kitten as “chamber.”
- c. **Exhibit 6.3** is an Impound Sheet bearing reference number 71378, dated 7/11/06, and documenting the disposition of an injured puppy as “chamber.”

- d. **Exhibit 6.4** is an Impound Sheet bearing reference number 72709, dated 10/18/06, and documenting the disposition of an injured puppy as “chamber.”
- e. **Exhibit 6.5** is an Impound Sheet bearing reference number 71682, dated 1/26/06, and documenting the disposition of an old, sick and injured dog as “chamber.”
- f. **Exhibit 6.6** is an Impound Sheet bearing reference number AS07000407, dated 3/3/07, and documenting the disposition of an injured cat as “chamber.”
- g. **Exhibit 6.7** is an Impound Sheet bearing reference number AS07001231, dated 6/25/07, and documenting the disposition of a dog whose “back end is broken will not eat or drink” as “chamber.”
- h. **Exhibit 6.8** is an Impound Sheet bearing reference number AS07001409, dated 7/13/07, and documenting the disposition of an injured cat as “chamber.”

31. Attached hereto as **Exhibit 7** are Impound Sheets which demonstrate a pattern and practice by the Union County Sheriff’s office of euthanizing pregnant animals in the gas chamber. For Example:

- a. **Exhibit 7.1** is an Impound Sheet bearing reference number 70942, dated 6/1/06, and documenting the disposition of a injured and pregnant cat as “chamber.”
- b. **Exhibit 7.2** is an Impound Sheet bearing reference number 70254, dated 3/18/06, and documenting the disposition of a pregnant cat as “chamber.”
- c. **Exhibit 7.3** is an Impound Sheet bearing reference number 71963, dated 8/17/06, and documenting the disposition of a pregnant cat as “chamber.”
- d. **Exhibit 7.4** is an Impound Sheet bearing reference number 71159, dated 6/19/06, and documenting the disposition of a potentially pregnant cat as “chamber.”

FIRST CLAIM FOR RELIEF

Violations of N.C. Gen. Stat. 19A-24(5) by All Defendants

32. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs.

33. Defendants, in their capacity as public servants, were required to know, enforce, and comply with the law regarding the care and disposition of animals under their control.

34. N.C. Gen. Stat. § 19A-1(2) defines “animals” to include every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings. Cats and dogs, being non-human vertebrates, are “animals” for purposes of Chapter 19A.

35. N.C. Gen. Stat. § 19A-1(2) defines cruelty as “every act, omission, or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted.”

36. N.C. Gen. Stat. § 19A 1.1, identifies several types of conduct to which the proscriptions of Chapter 1 of Article 19A do not apply. That list includes “[t]he *lawful* destruction of any animal for the purposes of protecting the public, other animals, or the public health.” (Emphasis added.) By necessary implication, the *unlawful* destruction of any animal, even if for the purposes of protecting the public, other animals, or the public health, is not exempt from the proscriptions of Chapter 1 of Article 19A.

37. Defendants have demonstrated a pattern and practice of subjecting animals in their possession to “cruelty” and “cruel treatment” in that, through their intentional acts in their official capacities, they caused those animals to suffer unjustifiable physical pain and suffering and death.

38. Specifically,

- a. defendants are unlawfully causing the suffering and death of puppies and kittens by killing them in a gas chamber in direct contravention of N.C. Gen. Stat. 19A-24(5);
- b. defendants are unlawfully causing the suffering and death of old and sick animals by killing them in a gas chamber in direct contravention of N.C. Gen. Stat. 19A-24(5);
- c. defendants are unlawfully causing the suffering and death of injured animals by killing them in a gas chamber in direct contravention of N.C. Gen. Stat. 19A-24(5); and
- d. defendants are unlawfully causing the suffering and death of pregnant animals and their unborn offspring by killing them in a gas chamber in direct contravention of N.C. Gen. Stat. 19A-24(5).

39. Based on the foregoing evidence and the evidence that will be presented, plaintiffs request that the Court issue a preliminary injunction in accordance with the procedures set forth in N.C.G.S. § 1A-1, Rule 65 and that such preliminary injunction order defendants to comply with North Carolina law as it relates to euthanizing animals. Specifically, plaintiffs request that the Court order defendants Cathey and Starnes to require their employees to comply with the law of the state and not to employ the use of inhalants to euthanize (i) puppies, kittens or other mammals younger than 16 weeks of

age, (ii) injured or sick animals, (iii) geriatric animals, or (iv) pregnant animals. Additionally, plaintiffs request that the Court order defendants Tarte and Benton to require the Union County Sheriff's Department and Union County Animal Services to comply with the law of the state and not to employ the use of inhalants to euthanize (i) puppies, kittens or other mammals younger than 16 weeks of age, (ii) injured or sick animals, (iii) geriatric animals, or (iv) pregnant animals, and to monitor the Union County Sheriff's Department and Union County Animal Services and their compliance with this Court's order.

WHEREFORE, Plaintiffs pray judgment of the Court as follows:

- (a) that the Court issue a Temporary Restraining Order and Preliminary Injunction restraining Defendants Cathey and Starnes, under the supervision of Defendants Tarte and Benton, from euthanizing animals under 16 weeks of age, as well as pregnant, sick, injured and geriatric animals, by use of the gas chamber;
- (b) that the Court grant their Complaint for a Mandatory Injunction directing Defendant Eddie Cathey and Defendant Michelle Starnes, under the supervision of Defendant Phillip Tarte and Defendant Dempsey E. Benton, to euthanize puppies and kittens under 16 weeks of age, pregnant, sick, injured and geriatric animals by intravenous (or where impractical or impossible, intraperitoneal) injection of a nonirritating euthanasia agent or other approved means other than the gas chamber and consistent with the guidelines set out by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association and as required by N.C. Gen. Stat. 19A-24(b)(5);
- (c) that the Court order Defendants Cathey and Starnes, under the supervision of Defendant Phillip Tarte and Defendant Dempsey E. Benton, to submit to this honorable court a plan for euthanizing all animals, including animals under 16 weeks of age, pregnant, sick, injured and geriatric animals, consistent with the guidelines set out by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association and as required by N.C. Gen. Stat. 19A-24(b)(5), including a plan to allow for monitoring the compliance therewith;
- (d) that the Court order Defendants Cathey and Starnes, under the supervision of Defendants Tarte and Benton, as part of the monitoring plan, to keep complete records of impounded animals pursuant to 02 NCAC 52J.0101, including, *inter alia*, the noting on Impound Sheets of euthanized animals, the age of animals and the specific means, mode, and route of administration of euthanasia used; specifically, the killing agent used, other drugs administered pre-euthanasia, and the route of administration;
- (e) that the court order Defendants Cathey and Starnes, under the supervision of Defendants Tarte and Benton, to implement this plan within a reasonable time;
- (f) that the costs of this action be taxed against the Defendants; and

- (g) that Plaintiffs have such other and further relief as this honorable court may deem just and proper, as is provided for in N.C. Gen. Stat. 19A-4.

This the ____ day of March 2008.

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COUNTY

The Plaintiffs' lawyers—the outstanding international law firm of Mayer Brown LLP—have done a first-rate job of presenting the relevant facts and applying them against the existing statute, leading to the conclusion that the law is being violated and that redress is necessary.

But how do the North Carolina Coalition for Humane Euthanasia and The Humane Society of Union County have “standing to sue”?

The answer is found in three paragraphs of the second major section of the complaint (“PARTIES”);

1. Plaintiff NCCHE is a non-profit domestic corporation organized under the provisions of N.C. Gen. Stat. Chapter 55, with its principal place of business in Chapel Hill, North Carolina. It is dedicated to the prevention of cruelty to animals.
2. Plaintiff HSUC is a non-profit domestic corporation organized under the provisions of N.C. Gen. Stat. Chapter 55, with its principal place of business in Monroe, Union County, North Carolina. HSUC is dedicated to preventing cruelty to animals, relieving suffering among animals, and to educating the public about the humane treatment of animals.

3. Each of the Plaintiffs is a “person” as defined by N.C. Gen. Stat. 19A-1(3).

That section is contained in the North Carolina General Statutes, which contain an article providing for a “Civil Remedy for Protection of Animals”:

§ 19A-1. Definitions

The following definitions apply in this Article:

- (1) The term "animals" includes every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings.
- (2) The terms "cruelty" and "cruel treatment" include every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.
- (3) The term "person" has the same meaning as in [G.S. 12-3](#) [individuals and “bodies politic and corporate”].

§ 19A-1.1. Exemptions

This Article shall not apply to the following:

- (1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this Article applies to those birds exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to [G.S. 113-129\(15a\)](#).
- (2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.
- (3) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.
- (4) Activities conducted for lawful veterinary purposes.
- (5) The lawful destruction of any animal for the purposes of protecting the public, other animals, or the public health.
- (6) Lawful activities for sport.

§ 19A-2. Purpose

It shall be the purpose of this Article to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are

available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. *A real party in interest as plaintiff shall be held to include any person even though the person does not have a possessory or ownership right in an animal*; a real party in interest as defendant shall include any person who owns or has possession of an animal. (Emphasis added)

(a) Upon the filing of a verified complaint in the district court in the county in which cruelty to an animal has allegedly occurred, the judge may, as a matter of discretion, issue a preliminary injunction in accordance with the procedures set forth in [G.S. 1A-1, Rule 65](#). Every such preliminary injunction, if the plaintiff so requests, may give the plaintiff the right to provide suitable care for the animal. If it appears on the face of the complaint that the condition giving rise to the cruel treatment of an animal requires the animal to be removed from its owner or other person who possesses it, then it shall be proper for the court in the preliminary injunction to allow the plaintiff to take possession of the animal as custodian.

(b) The plaintiff as custodian may employ a veterinarian to provide necessary medical care for the animal without any additional court order. Prior to taking such action, the plaintiff as custodian shall consult with, or attempt to consult with, the defendant in the action, but the plaintiff as custodian may authorize such care without the defendant's consent. Notwithstanding the provisions of this subsection, the plaintiff as custodian may not have an animal euthanized without written consent of the defendant or a court order that authorizes euthanasia upon the court's finding that the animal is suffering due to terminal illness or terminal injury.

(c) The plaintiff as custodian may place an animal with a foster care provider. The foster care provider shall return the animal to the plaintiff as custodian on demand.

§ 19A-4. Permanent injunction

(a) In accordance with [G.S. 1A-1, Rule 65](#), a district court judge in the county in which the original action was brought shall determine the merits of the action by trial without a jury, and upon hearing such evidence as may be presented, shall enter orders as the court deems appropriate, including a permanent injunction and dismissal of the action along with dissolution of any preliminary injunction that had been issued.

(b) If the plaintiff prevails, the court in its discretion may include the costs of food, water, shelter, and care, including medical care, provided to the animal, less any amounts deposited by the defendant under [G.S. 19A-70](#), as part of the costs allowed to the plaintiff under [G.S. 6-18](#). In addition, if the court finds by a preponderance of the evidence that even if a permanent injunction were issued there would exist a substantial risk that the animal would be subjected to further

cruelty if returned to the possession of the defendant, the court may terminate the defendant's ownership and right of possession of the animal and transfer ownership and right of possession to the plaintiff or other appropriate successor owner. For good cause shown, the court may also enjoin the defendant from acquiring new animals for a specified period of time or limit the number of animals the defendant may own or possess during a specified period of time.

(c) If the final judgment entitles the defendant to regain possession of the animal, the custodian shall return the animal, including taking any necessary steps to retrieve the animal from a foster care provider.

(d) The court shall consider and may provide for custody and care of the animal until the time to appeal expires or all appeals have been exhausted.

Although this North Carolina statute contains some objectionable features—e.g., research, farming—its important virtue, for the animals in this case and all others in the State of North Carolina, is that the law provides statutory standing to sue for individuals and entities working for the protection and humane treatment of animals.

As a matter of fact, the North Carolina appellate court noted in 2007, in a case entitled *Animal Legal Defense Fund v. Woodley*, that Section 19A “express[es] the [Legislature’s] intent that the broadest category of persons or organizations be deemed ‘[a] real party in interest’ when contesting cruelty to animals.”

There are at least four lessons to be learned from the NCCHE/HSUC case.

The first is that animal shelters are not above the law, and that their conduct can and should be scrutinized by outsiders, and certainly by the governments and/or private donors that support them.

Second, is that an irreplaceable requisite for suing an animal shelter for dereliction of its duty is competent counsel, like the lawyers at Mayer Brown who put this case together. There is no substitute for this! (ISAR can provide guidance in obtaining counsel.)

Third, is that because a crucial key to litigation in behalf of animals—whether in lawsuits against shelters or otherwise—is the ability to solve the standing to sue problem, *the entire animal protection movement must push hard for other states to enact a North Carolina-type statute giving individuals and entities the right to sue.* (ISAR can provide guidance in crafting a standing to sue statute which does not suffer from some of the infirmities of the North Carolina statute.)

Finally, the NCCHE/HSUC complaint is a template for lawsuits not only against shelters that are not following the law, but against any other individuals and entities that are disregarding their responsibilities to animals. That template should be used often—and effectively.