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Constitutional Law - Opening the Doggy Door for Animal Rights and Other Issues under the Emergency Aid Exception - Commonwealth v. Duncan, 7 N.E.3D 469 (Mass. 2014)

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**CONSTITUTIONAL LAW—OPENING THE
“DOGGY DOOR” FOR ANIMAL RIGHTS AND
OTHER ISSUES UNDER THE EMERGENCY AID
EXCEPTION—*COMMONWEALTH V. DUNCAN*, 7
N.E.3D 469 (MASS. 2014).**

The Fourth Amendment of the United States Constitution was designed to protect individuals’ expectations of privacy within their homes by prohibiting unwarranted searches and seizures.¹ Not only is this right codified in the United States Constitution, but all state constitutions also promulgate similar provisions against unwarranted searches and seizures, reinforcing the importance of safeguarding this constitutional right.² This right, though fundamental, however is not an absolute right, since the touchstone of these provisions is reasonableness, creating specific exceptional circumstances where warrantless entry would be permissible.³ As logic would require, prohibiting a warrantless entry in circumstances where one’s life or safety is in jeopardy would be unreasonable and the protections are intended for *unreasonable* searches.⁴

¹ U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”).

² See MASS. CONST. pt. 1, art. XIV (“Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions.”); see also ALA. CONST. art. I, § 5; ALASKA CONST. art. I, § 14; ARIZ. CONST. art. II, § 8; CAL. CONST. art. I, § 13; COLO. CONST. art. II, § 7; CONN. CONST. art. I, § 7; DEL. CONST. art. I, § 6; FLA. CONST. art. I, § 12; GA. CONST. art. I, § 1, para. 13; HAW. CONST. art. I, § 7; IDAHO CONST. art. I, § 17; ILL. CONST. art. I, § 6; IND. CONST. art. I, § 11; IOWA CONST. art. I, § 8; KAN. CONST. art. I, § 15; KY. CONST. Bill of Rights § 10; LA. CONST. art. I, § 5; ME. CONST. art. I, § 5; MD. CONST. Declaration of Rights art. 26; MICH. CONST. art. I, § 11; MINN. CONST. art. I, § 10; MISS. CONST. art. III, § 23; MO. CONST. art. I, § 15; MONT. CONST. art. II, § 11; NEB. CONST. art. I, § 7; NEV. CONST. art. I, § 18; N.H. CONST. pt. I, art. 19; N.J. CONST. art. I, para. 7; N.M. CONST. art. II, § 10; N.Y. CONST. art. I, § 12; N.C. CONST. art. I, § 20; N.D. CONST. art. I, § 8; OHIO CONST. art. I, § 14; OKLA. CONST. art. II, § 30; OR. CONST. art. I, § 9; PA. CONST. art. I, § 8; R.I. CONST. art. I, § 6; S.C. CONST. art. I, § 10; S.D. CONST. art. VI, § 11; TENN. CONST. art. I, § 7; TEX. CONST. art. I, § 9; UTAH CONST. art. I, § 14; VT. CONST. ch. I, art. XI; VA. CONST. art. I, § 10; WASH. CONST. art. I, § 7; W. VA. CONST. art. III, § 6; WIS. CONST. art. I, § 11; WYO. CONST. art. I, § 4.

³ See *Katz v. United States*, 389 U.S. 347, 356-58 (1967) (affirming that “specifically established and well-delineated” exceptions can overcome adherence to judicial processes); see also *Root v. Gauper*, 438 F.2d 361, 363-64 (8th Cir. 1971) (discussing exceptions to search warrant requirement).

⁴ See U.S. CONST. amend. IV (prohibiting unreasonable searches and seizures); *Mincey v.*

One such exception to the warrant requirement is the emergency aid exception, a creature of the common law that permits officers to enter property without a warrant provided that they have an objectively reasonable belief that a person is in immediate need of assistance.⁵ The emergency aid doctrine was evidently intended for preservation of human life, however the propriety of its application to animal life has been a novel and uncertain issue.⁶ The Supreme Judicial Court of Massachusetts (“SJC”) confronted this question in *Commonwealth v. Duncan* and boldly answered in the affirmative by using public policy to drive their reasoning.⁷

A neighbor of the defendant, Heather Duncan, called the police to inform them that three emaciated-looking dogs were laying outside on Duncan’s property.⁸ This was particularly concerning due to the severe winter weather that day and during the week prior.⁹ The police responded to this call and upon arriving at Duncan’s property, they heard hoarse barking and whimpering.¹⁰ Since the yard was enclosed by a private fence that obstructed the officers’ view, they stepped onto a snow bank to gain a better view of the dogs and better assess the situation.¹¹ The officers observed three dogs—two appeared to be deceased and the third was barking—leashed to a fence with no food or water available to them.¹²

Arizona, 437 U.S. 385, 392 (1978) (recognizing that Fourth Amendment does not preclude “warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.”); see also Joseph L. Hubbard, Jr., Case Comment, *Expanding the Emergency Aid Doctrine in State v. Frankel: Warrantless Seizure of Privacy Interests or Justifiable Assurances of the Protection?*, 28 AM. J. TRIAL ADVOC. 213, 216 (2004) (discussing “common sense” origins of exceptions to right against warrantless searches and seizures); Akhil Reed Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757 (1994) (discussing exceptions to the warrant requirement dictated by common sense).

⁵ See *Commonwealth v. Peters*, 905 N.E.2d 1111, 1116-19 (Mass. 2009) (discussing requirements of emergency aid exception to Fourth Amendment and Article XIV); see also *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963) (explaining need for emergency aid exception because “[p]eople could well die in emergencies if people tried to act with the calm deliberation associated with the judicial process.”); *Commonwealth v. Snell*, 704 N.E.2d 236, 242-43 (Mass. 1999) (detailing the application of the emergency aid exception).

⁶ See *Shapiro v. City of Glen Cove*, 236 Fed. App’x 645, 646 (2d Cir. 2007) (explaining uncertainty of applying exigent circumstances exception to animal life); *Commonwealth v. Erickson*, 905 N.E.2d 127 (Mass. 2009).

⁷ 7 N.E.3d 469, 476 (Mass. 2014) (concluding protection of emergency aid exception should apply to animals in appropriate circumstances).

⁸ See *id.* at 472 (detailing officers’ investigation and subsequent actions).

⁹ See *id.* (describing unfavorable conditions that dogs were found in).

¹⁰ See *id.* (noting that dogs sounded in distress).

¹¹ See *Commonwealth v. Duncan*, 7 N.E.3d 469, 474 (Mass. 2014) (describing officers’ efforts to assess dogs’ condition).

¹² See *id.* at 471. (same).

The padlocked fence prevented officers from gaining access and rendering aid to the dogs.¹³ The responding officers attempted to contact the property's residents by using the air horn on their police cruiser, as well as searching for the registered property owner's contact information through the water and sewer directory.¹⁴ Despite their various attempts and efforts, the responding officers were unsuccessful in contacting the property owners.¹⁵ Ultimately, the officers resorted to contacting the fire department to request that they remove the lock on the fence, pursuant to the protocol for handling emergencies involving animals.¹⁶ Once the lock was removed, they entered the yard and removed the dogs.¹⁷

Duncan was subsequently charged with three counts of animal cruelty.¹⁸ At the trial level, the court granted Duncan's motion to suppress evidence based on the officers' warrantless entry, rendering the seizure of the dogs improper.¹⁹ Although the motion was allowed, the judge submitted a question of law to the Massachusetts Appeals Court.²⁰ This case was one of first impression with significant implications, prompting the Massachusetts Appeals Court to submit it to the SJC for direct appellate review.²¹ On review, the SJC interpreted the doctrine to encompass situations where animal life was in danger and thus, concluded that the motion to suppress was improperly granted.²² Their reasoning underlying this conclusion was that this application would further the legislature's heavy policy interests in protecting animals and preventing cruelty.²³

The Fourth Amendment of the United States Constitution and Article 14 of the Massachusetts Constitution are coterminous in relation to the protections they provide against warrantless entry into an individual's

¹³ *See id.* (same).

¹⁴ *See id.* at 471-72 (describing officers' efforts to address situation prior to entering Duncan's yard).

¹⁵ *Id.* at 472.

¹⁶ *See* *Commonwealth v. Duncan*, 7 N.E.3d 469, 471-72 (Mass. 2014) (outlining officers' further actions to provide aid to dogs).

¹⁷ *Id.*

¹⁸ *See id.*; *see also* MASS. GEN. LAWS ch. 272, § 77 (2014) (proscribing cruelty to animals).

¹⁹ *See Duncan*, 7 N.E.3d at 471-72 (noting District Court judge's allowance of motion to suppress evidence of emaciated dogs).

²⁰ *See id.* (questioning application of emergency aid doctrine to animal life). The situation in question did indeed rise to the level of being an exigency, but the issue here was whether this exact type of exigency, specifically one involving animals, fell within the ambit of the doctrine. *Id.*

²¹ *See id.* at 471 (addressing whether warrantless entry to aid animals should be included in emergency aid exception).

²² *See id.* at 474-75 (holding that certain situations permit warrantless entry to protect animal life).

²³ *See id.* at 474 (explaining policy interest in prevention of animal cruelty).

home.²⁴ This fundamental right stemming from the adage that “every man’s home is his castle” has been deeply rooted within the Constitution.²⁵ Now encoded in the United States Constitution and all state constitutions, this axiomatic right was a product of the colonials’ experience and their struggles against British authority.²⁶ Resentful of the tyrannical British authority, the amendment was designed to safeguard privacy rights and prevent arbitrary governmental intrusions.²⁷ Throughout American history, a vast array of case law has developed that confirms courts’ interests in protecting this right.²⁸

The expectation of privacy within one’s own home may be a Constitutional right, however there are exceptions when warrantless entries by government officials are permissible.²⁹ Since the text of the amendment

²⁴ See U.S. CONST. amend. IV (protecting public from unwarranted searches and seizures by government actors); MASS. CONST. pt. 1, art. XIV (same); see also Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 MICH. L. REV. 547, 577-79 (1999) (discussing Framers’ intent and beliefs regarding search warrants).

²⁵ See *Weeks v. United States*, 232 U.S. 383, 390 (1914) (explaining common law maxim’s influence in American law); *Entick v. Carrington*, 19 Howell’s State Trials 1029, 95 Eng. 807 (1765) (describing men’s right to be secure in their property); see also Jonathan L. Hafetz, “A Man’s Home is His Castle?”: *Reflections on the Home, the Family, and Privacy During the Late Nineteenth and Early Twentieth Centuries*, 8 WM. & MARY J. WOMEN & L. 174, 182-83 (2002) (discussing British tyranny’s influence on Fourth Amendment’s creation).

²⁶ See Hafetz, *supra* note 25, at 182-83 (discussing colonial origins and history of Fourth Amendment); see also *See Constitution of the United States of America: Analysis, and Interpretation—Centennial Edition—Interim Fourth Amendment—Search and Seizure*, U.S. Government Publishing Office 1199, 1199-1200 (July 1, 2014), <http://www.gpo.gov/fdsys/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-10-5.pdf> (explaining British tyranny’s influence on Framers). In the colonies, British officers were granted writs of assistance, which operated like general search warrants, allowing their holders to enter any property for the purposes of search and seizure. See U.S. Government Publishing Office, *supra*, at 1200. This type of oppression influenced the Framers to craft the Fourth Amendment. See *id.*; see also Hafetz, *supra* note 25, at 182-83.

²⁷ See U.S. Government Publishing Office, *supra* note 26, at 1200; Hafetz, *supra* note 25, at 182-83. The Fourth Amendment posits importance on the warrant requirement and the threshold that must be satisfied to justify searches and seizures. See U.S. CONST. amend. IV. The importance of obtaining a search warrant prior to entry into one’s private home is also emphasized in Article 14 of the Massachusetts Constitution. MASS. CONST. pt. 1, art. XIV.

²⁸ See *Camara v. Mun. Ct. of San Francisco*, 387 U.S. 523, 528-34 (granting general administrative search warrant violated Fourth Amendment protection of privacy); see also *Katz v. United States*, 389 U.S. 347, 357 (1967) (“[Requiring] deliberate, impartial judgment of a judicial officer ... be interposed between the citizen[s] and the police”); *Smith v. Maryland*, 442 U.S. 735, 740 (1979) (establishing two-pronged test for Fourth Amendment violation analysis); *Stoner v. California*, 376 U.S. 483, 490 (1964) (averring that warrantless searches violate one’s reasonable expectation of privacy).

²⁹ See *Davis v. State*, 907 N.E.2d 1043, 1050 (Ind. Ct. App. 2009) (explaining warrantless entry is not violation when police have legitimate investigatory reason for entry); *Commonwealth v. Peters*, 905 N.E.2d 1111, 1114 (Mass. 2009) (justifying warrantless entry by police with narrow category of exceptions); *Commonwealth v. Knowles*, 883 N.E.2d 941, 948 (Mass. 2008)

only guards the right against “unreasonable” searches and seizures, it logically follows that carefully delineated exceptions exist, such as the emergency aid exception and the plain view doctrine.³⁰ The emergency aid doctrine is a common law exception that allows for officers to enter individuals’ property contingent on there being an objectively reasonable belief that a person is in need of immediate assistance.³¹ At its inception, the clear intent of this doctrine’s application was to preserve *human* life, however its application in the realm of animal life remains largely uncharted territory.³²

All states have enacted laws that proscribe animal cruelty, a crime which a majority of states have elevated to felony status.³³ In Massachusetts, section 77 of chapter 272 was promulgated in the 1870s to criminalize animal cruelty.³⁴ The statute was subsequently amended to expand the

(holding that “[t]oo broad an application of this exception would undercut the important principle that intrusions on a citizen’s liberty”); *see also* Mary Elisabeth Naumann, Note, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, 26 AM. J. CRIM. L. 325, 331-40 (1999) (describing Fourth Amendment and its exceptions).

³⁰ *See* *Root v. Gauper*, 438 F.2d 361,364 (8th Cir. 1971) (“It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced into evidence.”); *Commonwealth v. Tyree*, 919 N.E.2d 660, 678 (Mass. 2010) (affirming that officers can seize evidence in plain view if legally on property); *Commonwealth v. Balicki*, 762 N.E.2d 290, 297 (Mass. 2002) (concluding that evidence was admissible because in plain view); *Commonwealth v. Morrison*, 710 N.E.2d 584, 586 (Mass. 1999) (justifying warrantless entry due to exigent circumstances); *Commonwealth v. Ringgard*, 880 N.E.2d 814, 818 (Mass. App. Ct. 2008) (“It has long been recognized that ‘a warrant is not required to ... enter a burning home to rescue occupants’”); *Davies*, *supra* note 24, at 555-60 (discussing modern definition of reasonableness under Fourth Amendment).

³¹ *See* *Mincey v. Arizona*, 437 U.S. 385, 392-93 (1978) (recognizing that protecting lives is justifiable exception to warrant requirement); *Commonwealth v. Forde*, 329 N.E.2d 717, 719-20 (Mass. 1975) (explaining that warrantless entry must be motivated by safety concerns and may not be investigatory).

³² *See* Brief for Appellee, *Commonwealth v. Duncan*, 7 N.E.3d 469 (Mass. 2014) (No. SJC-11373), 2013 WL 8022602, at *23-24 [hereinafter *Brief for Appellee*] (contending that Massachusetts has never applied emergency aid doctrine to animals); *see also* *Massachusetts Soc’y for the Prevention of Cruelty to Animals v. Comm’r of Pub. Health*, 158 N.E.2d 487, 495 (Mass. 1959) (explaining that rights of animals not protected by constitution unlike rights of persons); *Brief for Appellee*, *supra*, at *24 (explicating that animals are regarded as property and not considered when calculating tort damages).

³³ *See* ARIZ. REV. STAT. ANN. § 13-2910 (2014) (proscribing cruel treatment to animals); CAL. PENAL CODE § 597 (2014); CONN. GEN. STAT. § 53-247 (2015); DEL. CODE ANN. tit. 11, § 1325(b) (2014); FLA. STAT. § 828.12(2) (2014); IDAHO CODE ANN. § 25-3503 (2014); LA. REV. STAT. ANN. § 14:102.1(B)(4) (2014); MISS. CODE ANN. § 97-41-15 (2014); MO. REV. STAT. § 578.012 (2014); NEB. REV. STAT. § 28-1009(2) (2014); N.H. REV. STAT. ANN. § 644:8(III-a) (2014); N.C. GEN. STAT. § 14-360(b) (2014); OKLA. STAT. tit. 21, § 1685 (2014); R.I. GEN. LAWS § 4-1-5(a) (2014); VT. STAT. ANN. tit. 13, §§ 352a, 353 (2014); WASH. REV. CODE § 16.52.205(2) (2014); WIS. STAT. § 951.18 (2014).

³⁴ *See* MASS. GEN. LAWS ch. 272, § 77 (2012) (proscribing cruel treatment of animals); *see also* *Commonwealth v. Turner*, 14 N.E. 130, 132 (Mass. 1887) (holding that captive fox was

conduct encompassed and increase the severity of penalties for those found in violation.³⁵ Since this statute's enactment, case law has shaped the law surrounding animal rights and cruelty prevention.³⁶

Gradual expansion of animal rights introduced the inquiry of whether the emergency aid doctrine applies to animals and has progressed to a point where several state courts have confronted this question, with some that have answered in the affirmative.³⁷ On the issue of interpreting the

within definition of "animal" for purposes of section 77); BLACK'S LAW DICTIONARY 80 (5th ed. 1979) (defining animal as "non-human, animate being which is endowed with the power of voluntary motion"). There has been a long-standing interest in protecting animals and existing statutes designed to prevent animal abuse have been expanded. *See* *Commonwealth v. Tilton*, 49 Mass. (8 Met.) 232, 234-35 (1844). Where the defendant contended that his engaging in rooster fighting was not proscribed by the statute and that there was no statute on point proscribing the specific act of rooster fighting, the court analogized and molded the facts to fall within the purview of other statutes. *See id.* at 234. Ultimately, the common thread was that these acts of cruelty harming animals were against humanity and therefore, no different. *See id.*

³⁵ *See* MASS. GEN. LAWS ch. 272, §§ 77, 89, 94-95 (2012) (enacting laws designed to prevent animals from being used for fighting). From the extensive legislation designed to protect animals, an inference that the legislature has taken significant interest in this issue can be drawn. *See* Brief & Record App'x for the Commonwealth, *Commonwealth v. Duncan*, 7 N.E.3d 469 (Mass. 2014) (No. SJC-11373) 2012 WL 10669000, at *43 [hereinafter *Commonwealth's Brief*]; Brief of Amicus Curiae the Soc'y for Prevention of Cruelty to Animals, at 6-8, *Commonwealth v. Duncan*, 7 N.E.3d 469 (No. SJC-11373), 2013 WL6051368, at *6-8 (expounding that legislative history is indicative of salient policy concerns regarding preventing animal cruelty). In 2012, the legislature passed an act to further regulate animal control, suggesting that treatment of animals is of concern. *See* 2012 Mass. Acts 193, § 174E(a)-(b); *see also* Laura Hagen, *Legislative Review: 2012 Legislative Review*, 19 ANIMAL L. 497, 533-36 (2013) (illustrating changes and purpose of amendment to section 77). The Act specifically regulates standards of conditions that dog owners shall comply with. *See* 2012 Mass. Acts 193, § 174E(a)-(b).

³⁶ *See* *Commonwealth v. Magoon*, 51 N.E. 1082, 1082-83 (Mass. 1898) (convicting defendant of cruelty, regardless of intent because cruelty in fact occurred); *Commonwealth v. Curry*, 23 N.E. 212, 213 (Mass. 1890) (holding leaving horse harnessed outside without sustenance and shelter constitutes cruelty); *Turner*, 14 N.E. at 132 (applying anti-cruelty statute to fox because defendant's actions were against public morals); *Commonwealth v. Zalesky*, 906 N.E.2d 349, 351 (Mass. App. Ct. 2009) (defining animal cruelty as "unnecessary cruelty" and "[s]evere pain ... without any justifiable cause"); *see also* 2012 U.S. Animal Protection Laws Rankings, ANIMAL LEGAL DEFENSE FUND (Dec. 17, 2012), <http://aldf.org/press-room/press-releases/2012-u-s-animal-protection-laws-rankings/> (showing Massachusetts ranks in top tier of country for animal protection laws); *The HSUS Releases Annual Ranking of State Animal Protection Laws*, THE HUMANE SOCIETY OF THE UNITED STATES (Jan. 15, 2013), http://www.humanesociety.org/news/press_releases/2013/01/humane-state-ranking-report-2012-011513.html (ranking Massachusetts second for state animal protection laws).

³⁷ *See, e.g., State v. Fessenden*, 310 P.3d 1163, 1168 (Or. Ct. App. 2013) (holding that emergency aid doctrine extends to animal life); *see also* *Morgan v. State*, 656 S.E.2d 857, 860 (Ga. Ct. App. 2008) (concluding that warrantless entry to aid animals in distress permissible under exigent circumstances); *State v. Berry*, 92 S.W.3d 823, 830 (Mo. Ct. App. 2003) (acknowledging circumstances can justify warrantless entry to aid suffering animals, despite not applying it here); *State v. Goulet*, 21 A.3d 302, 314-15 (R.I. 2011) (establishing that officers did not impinge on rights by checking on dog's welfare); *State v. Bauer*, 379 N.W.2d 895, 899-900 (Wis. Ct. App. 1985) (allowing warrantless entry to rescue horse).

doctrine in light of animal protection, only thirteen courts have taken decisive stances, while others, including the Massachusetts Appeals Court, have adroitly circumvented it, seemingly to avoid directly confronting the query.³⁸ In previous cases where the question has surfaced, courts were reluctant and successfully evaded this issue by finding alternative routes to apply the doctrine to preservation of human life or not applying it altogether.³⁹ The issue has proven to be a battle between old and modern views of animal law, as well as one between preservation of Fourth Amendment rights and animal cruelty prevention.⁴⁰ Like thirteen other state courts have elected to do, the SJC in *Duncan* unanimously rejected

³⁸ See *Commonwealth v. Erickson*, 905 N.E.2d 127, 130 (Mass. App. Ct. 2009) (using less restrictive reasoning when court had opportunity to address issue). The Appeals Court confined their decision to whether the officers' entering the defendant's property without a warrant was proper given their knowledge of dead dogs on the property. *Id.* Instead of interpreting the emergency aid doctrine to extend to animals, though they acknowledged the issue, the court ultimately avoided it completely by reasoning that the officers had an objectively reasonable belief that a human corpse was on the property. See *id.*; see also *Shapiro v. City of Glen Cove*, 236 F. App'x. 645, 646 (2d Cir. 2007) (suggesting possibility that doctrine could apply to animals); *Siebert v. Serverino*, 256 F.3d 648, 657 (7th Cir. 2001) (intimating, without deciding, that "[e]xigent circumstances may justify a warrantless seizure of animals"); *DiCesare v. Stuart*, 12 F.3d 973, 977-78 (10th Cir. 1993).

³⁹ See *Commonwealth v. Hurd*, 743 N.E.2d 841, 845 (Mass. App. Ct. 2001) (addressing application to animals unnecessary because officers were unable to conclude that exigency existed); see also *Shapiro*, 236 F. App'x. at 647 (concluding that officer's facts not supportive of emergency situation's existence, thus inquiry ends there); *Erickson*, 905 N.E.2d at 130 ("[It was] ... clear that the officer was justified in his belief that the tenant could be inside the apartment and was injured, dying, or dead.").

⁴⁰ See *Brief for Appellee*, *supra* note 32, at *23-24 (upholding traditional application to humans and emphasizing animals' inferior status in law). But see *Commonwealth's Brief*, *supra* note 35, at *43-44 (arguing for heightened status for animals and tying argument to betterment of human society). *Duncan* reiterated that the conventional views that animals are regarded as property in the eyes of the law and moved for adherence to these longstanding laws. See *Brief for Appellee*, *supra* note 32, at *23-24; see also *Massachusetts Soc'y for the Prevention of Cruelty to Animals v. Comm'r of Pub. Health*, 158 N.E.2d 487, 495 (Mass. 1959) (affirming that rights of animals are not protected by Constitution); *Commonwealth v. Higgins*, 178 N.E. 536, 537 (Mass. 1931) (imparting that despite policy interest in animal cruelty prevention, such acts only violate moral standards). Conversely, the Commonwealth contended that public policy favors expansion of animal rights, not just exclusively for the reason of protection animal life, but also to improve society. *Commonwealth's Brief*, *supra* note 35, at *41-44; see *Higgins*, 178 N.E. at 537 (discussing statute was intended to support state's policy of suppressing unnecessary suffering of animals); *Commonwealth v. Tilton*, 49 Mass. (8 Met.) 232, 234-35 (1844) (holding defendant was rightfully convicted because cock-fighting is cruel and inhumane). The Commonwealth counters *Duncan*'s argument that acts of cruelty as only being against public morals by arguing that this enforcement of animal rights is necessary to assist in preservation public morals, ultimately leading to a better society. See *Commonwealth's Brief*, *supra* note 35, at *41-42. To further justify their contention, the Commonwealth also argued that this new application will serve the purpose of preserving human life because animal cruelty has been linked to interpersonal violence. *Id.* at *44; see also PAMELA CARLISLE-FRANK & TOM FLANAGAN, SILENT VICTIMS: RECOGNIZING AND STOPPING ABUSE OF THE FAMILY PET 25 (2006).

traditional views on animal rights and unequivocally read the exception to apply to animal life.⁴¹

In this interpretation, the SJC in *Duncan* relied primarily on public policy to account for the dearth of controlling case law.⁴² The issue here was not whether an emergency existed, but rather, whether this particular type of emergency, specifically one involving animals in need of care, invokes the doctrine.⁴³ To establish a basis for their opinion, the SJC borrowed pieces from cases furthering protection of animal rights in tandem with public policy considerations.⁴⁴ By analyzing the legislative history behind chapter 272 section 77, as well as other cruelty prevention statutes, it was inferred that the Legislature has taken a prominent interest in the advancement of animal rights.⁴⁵ The SJC's conclusion was that the officers' warrantless entry to provide aid to dogs in need comported with this important policy interest evinced by lawmakers.⁴⁶

⁴¹ See *Commonwealth v. Duncan*, 7 N.E.3d 469, 475 (holding that emergency aid exception can be applied to animal life); *Fessenden* 310 P.3d at 1168 (applying doctrine to animals); *Goulet*, 21 A.3d at 314-15 (reasoning that warrantless entry to aid animals was not intrusion on privacy right); see also Scott Heiser, *The Rule of Reason Prevails—Emergency Aid Exception Applies to Save the Life of Animals*, ANIMAL LEGAL DEFENSE FUND, (Sept. 6, 2013), <http://aldf.org/blog/the-rule-of-reason-prevails-emergency-aid-exception-applies-to-save-the-life-of-animals/> (discussing emergence of doctrine's application to animals in courts).

⁴² See *Duncan*, 7 N.E.3d at 473 (using doctrine's application to nonhuman life to address legislative concern for animal cruelty); see also Ruth Payne, *Animal Welfare, Animal Rights, and the Path to Social Reform: One Movement's Struggle for Coherency in the Quest for Change*, 9 VA. J. SOC. POL'Y & L. 587, 619-22 (2002) (discussing court's role in determining progress of animal rights reformation).

⁴³ See *Duncan*, 7 N.E.3d at 474 (explaining that issue at hand is question of law not fact).

⁴⁴ See *id.* at 473-74 (inferring public policy considerations from applicable statutes); see also Paula J. Frasso, Note, *The Massachusetts Anti-Cruelty Statute: A Real Dog-A Proposal for a Re-Draft of the Current Law*, 35 NEW. ENG. L. REV. 1003, 1006-08 (2001) (explicating need for animal cruelty statutes to advance animal rights). In Massachusetts, the SJC laid the foundation for which future animal rights advocates can use to bolster their positions, creating a more powerful mechanism that can be used by animal rights advocates. See *Duncan*, 7 N.E.3d at 473-74 (providing framework for public policy against animal cruelty).

⁴⁵ See *Duncan*, 7 N.E.3d at 473 (noting statutory focus on intentional and negligent animal cruelty); see also *Tuck v. United States*, 477 A.2d 1115, 1120 (D.C. 1984) (reasoning that public policy interest in cruelty prevention requires degree of flexibility with warrant requirement); *Commonwealth v. Yee*, 281 N.E.2d 248, 252 (Mass. 1972) ("[P]ublic policy is a basic source of law when no previous decision or rule of law is applicable."); *State v. Fessenden*, 310 P.3d 1163, 1168 (Or. Ct. App. 2013) (explaining public policy concerns are embedded in statutes therefore court must further animal rights accordingly); *Pine v. State*, 889 S.W.2d 625, 631 (Tex. Ct. App. 1994) (holding that emergency aid doctrine permitted officer's warrantless entry to rescue mistreated colt); *State v. Bauer*, 379 N.W.2d 895, 899-900 (Wis. Ct. App. 1985) (ruling in favor of providing aid to animals in need driven by statutory intent); see also Hagen, *supra* note 36 at 533-36 (illustrating rationale driving modifications to section 77).

⁴⁶ See *Duncan*, 7 N.E.3d at 474 (reasoning necessity of applying exception to animals in order for police to effectively perform duties); see also *Morgan v. State*, 656 S.E.2d 857, 859-60 (2008) (permitting warrantless search and seizure to rescue starving dogs); *State v. Stone*, 92 P.3d

The SJC decisively stood with the appellant in the struggle between adhering to the status quo or expanding the law, completely rejecting Duncan's arguments.⁴⁷ Maintaining the law in its current form was too unforgiving, giving way to a more policy-oriented approach.⁴⁸ In addition to the bold policy arguments, the SJC's decision also furthers the statute's purpose by giving more teeth to it.⁴⁹ The concern that this application would result in a gradual atrophy of individuals' exception of privacy under the Fourth Amendment and Article 14 was pacified by the court's explanation that this holding was not so much an expansion, but more so a separate, new application.⁵⁰ Therefore, the Constitutional

1178, 1183-84 (Mont. 2004) (holding warrantless search justifiable to prevent animal suffering); *People v. Rogers*, 708 N.Y.S.2d 795, 797 (N.Y. App. Div. 2000) ("The fact that no human life was in danger does not vitiate the urgency of the rescue.").

⁴⁷ See *Duncan*, 7 N.E.3d at 473 (deciding that animal rights law must be expanded in accordance with statutory intent); see also *Commonwealth Brief*, *supra* note 35, at *39-40 (noting SJC has long recognized numerous statutes indicative of policy prohibiting animal cruelty); *Brief for Appellee*, *supra* note 32, at *27 (arguing animals are considered property and not afforded constitutional protections like people). Though the court completely departed from the law as it stood, they did not extend as far as the Appellant's argument about relating the doctrine's application to animals in the context of interpersonal violence. See *Commonwealth's Brief*, *supra* note 35, at *43-44 (explaining body of scientific evidence linking animal cruelty to interpersonal violence and abuse within families); see also Sherry Ramsey, Mary Lou Randour, Nancy Blaney & Maya Gupta, *Protecting Domestic Violence Victims by Protecting Their Pets*, JUVENILE AND FAMILY JUSTICE TODAY 2012, at 16-17, available at <http://www.ahimsahouse.org/sites/default/files/spring2010feature.pdf> (researching statistics linking animal abuse to domestic violence).

⁴⁸ See *Duncan*, 7 N.E.3d at 474 (illustrating that warrantless searches to protect animals is consistent with public policy against animal mistreatment). Duncan argued that traditional law viewing animals as chattel precluded animal life from being encompassed within the scope of the small category of exceptions to the Fourth Amendment and Article Fourteen. See *Brief for Appellee*, *supra* note 32, at *22 (arguing that emergency aid doctrine has never applied to animals). However, the SJC reasoned that application to nonhuman life was reasonable in light of the strong societal interest in preventing harm to animals inflicted by humans. See *Duncan*, 7 N.E.3d at 476.

⁴⁹ See *Duncan*, 7 N.E.3d at 474 (explaining that hindering officers' ability to take proactive action would be illogical); see also Brief of Amicus Curiae Massachusetts Chiefs of Police Ass'n, Inc., *Commonwealth v. Duncan*, 7 N.E.3d 469 (Mass. 2014) (No. SJC-11373), 2013 WL 5888476, at *29-30 [hereinafter *Chiefs of Police*] (contending that police require extension of doctrine to animals in order to effectively fulfill duties). Unless the responding officers have the tool given by this interpretation of the doctrine, action seeking to hold those who engage in acts of cruelty accountable can only be taken after the harm has occurred. See *Duncan*, 7 N.E.3d at 474. A contrary holding would not be conducive to proactive action to protect the welfare of animals, thereby frustrating the intent behind the statute. *Id.*

⁵⁰ See *Duncan*, 7 N.E.3d at 474-76 (considering factors to weigh when applying exception to animal life); see also *Davis v. State*, 907 N.E.2d 1043, 1050 (Ind. Ct. App. 2009) (holding that animal cruelty caused by humans created emergency circumstances to support warrantless search); *Fessenden*, 310 P.3d at 1169 (stating that species of animal is to be considered). By performing the analysis on a case-by-case basis to decide whether application is proper, the privacy right would not be arbitrarily infringed upon. See *Duncan*, 7 N.E.3d at 475. A criterion

protection against arbitrary governmental searches and seizures would remain well-preserved.⁵¹

This new application of the exception to animal life appears to be purely grounded in public policy and although it is novel, it was not intended to be an expansion or alteration, but a separate facet in itself.⁵² Though the SJC's final conclusion was correct because the spirit and rationale that drove the opinion was righteous, they left little guidance for future application of with their articulation of such an amorphous standard.⁵³ The decision in *Duncan* lays the groundwork for future decisions regarding animal rights to build upon, but many holes to be filled by future decisions remain as a consequence of this reticent approach.⁵⁴ Subsequent cases

with more factors to consider should be utilized, which furthers the societal interest in cruelty prevention, while safeguarding this Constitutional right. *See id.* Rather than sweeping more circumstances under the doctrine, this application is to exist separately and distinctly from the application as traditionally applied. *See id.* The threshold for this inquiry is heightened with the additional considerations, such as the nature of the property interest, whether the harm resulted from human acts, the extent of the intrusion, and efforts to obtain consent of the property owner, which will serve as defenses against attrition of the right of expectation to privacy. *See id.* at 476.

⁵¹ *See Duncan*, 7 N.E.3d at 475 (concluding essential framework for determining warrantless search not altered by application to animals).

⁵² *See Duncan*, 7 N.E.3d at 475 (“[A]pplication to nonhuman animals does not expand the exception or alter the essential framework for determining when a warrantless police search of the home is permissible under it.”). To apply the emergency aid exception, officers must have objective reason to believe that an injury exists or that there is imminent danger of physical harm. *Id.* The decision in *Duncan* adds more consideration to the “essential framework” when dealing with emergencies involving animal life, intended to curtail the expansion and maintain the narrowness of exceptions to the warrant requirement. *See id.* at 475-76 (mentioning factors to apply when applying search warrant exception to animals).

⁵³ *See id.* at 475-76 (outlining factors to consider when applying exception to animals, but not providing bright-line rule); *see also* Frasso, *supra* note 44, at 1010 (suggesting need to strengthen statutes designed to counter animal cruelty); Payne, *supra* note 42, 601-02 (discussing courts’ role in advancing policy interest in animal rights). Absent strong statutes with adequate penalties aimed at animal cruelty prevention, animal rights movements will suffer due to lack of enforcement. *See Payne*, *supra* note 42, at 603. Here, the SJC has provided the necessary enforcement to advance this interest by creating a tool for officers that enables them to effectively utilize proactive measures in protecting animal welfare. *See Duncan*, 7 N.E.3d at 473 (emphasizing need for preventative measures).

⁵⁴ *See Duncan*, 7 N.E.3d at 475-76 (explaining that inquiries involving animals done on case-by-case basis accounting additional considerations). One prominent factor in the analysis of whether the suffering resulted from human action because this is directly in accordance with the rationale of the statute. *See id.* at 475. The driving rationale behind the animal cruelty statute is to protect animals in vulnerable conditions stemming from mistreatment by humans, therefore if this factor is present, application of the emergency aid exception to animals is more favorable. *See id.* at 475-76; *see also* Davis, 907 N.E.2d at 1050 (concluding animal cruelty caused by humans creates exigent circumstances to permit warrantless search). Because a prominent rationale in this decision was the preservation of society’s interest in cruelty prevention and preservation of public morals, human-caused cruelty has a significantly lower threshold than emergencies resulting from accident. *See Duncan*, 7 N.E.3d at 476; *Commonwealth v. Higgins*, 178 N.E. 536, 538 (Mass. 1931) (reasoning that cruel and barbarous acts of animal cruelty tend to

addressing this issue will be faced with the task of coloring in the lines of the emergency aid doctrine's application to animals using the guidance provided in this decision.⁵⁵ The fine-tuning of test, such as to which species of animals shall be included and the reasonable extent of intrusion, will devolve to later cases to determine how the Constitutional rights of the individual will be balanced against policy interests in order to minimize interference with privacy rights of individuals.⁵⁶ Ultimately, the question as to when the emergency aid exception's application to animal emergencies ceases to be reasonable has yet to unfold.⁵⁷

corrupt public morals). When applying a totality of circumstances inquiry to emergencies involving animals, factors to analyze include the species of the animal, the nature of the privacy interest, what efforts, if any were made to contact the property owner prior to entry, as well as the extent of the intrusion, however this list is merely illustrative, not exhaustive. *See Duncan*, 7 N.E.3d at 476; *see also* *Suss v. Am. Soc'y for Prevention of Cruelty to Animals*, 823 F. Supp. 181, 187 (S.D.N.Y. 1993) (discussing varying levels of protections to different property types with highest level afforded to dwellings); *Fessenden*, 310 P.3d at 1169 (imparting that warrantless entry to rescue horse suffering from starvation was permissible). The ultimate inquiry that the application of the emergency aid exception turns on whether the entry was reasonable, which this tentative list of factors is to assist in determining. *See Duncan*, 7 N.E.3d at 475; *Commonwealth v. Townsend*, 902 N.E.2d 388, 397 (Mass. 2009) (affirming that "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'"). The several factors mentioned are to be considered in the totality of the circumstances assessment of the emergency, however this may not provide sufficient guidance to address future unforeseen situations, rendering its application difficult. *See Duncan*, 7 N.E.3d at 476 (discussing possible factors to weigh).

⁵⁵ *See Duncan*, 7 N.E.3d at 475-76 (discussing factors to consider when applying exception to animals but not announcing bright-line standards).

⁵⁶ *See id.* at 475-76 (explaining "other factors appropriately enter the calculus in determining whether such entry is justified"); *see also Fessenden*, 333 P.3d at 283 (recognizing importance of "a clear, workable, and consistent" application for emergencies involving animals). The standard articulated by the SJC presents an illustrative list of factors that may contribute to the analysis, however this test is far from a "clear, workable, and consistent" exception. *See Duncan*, 7 N.E.3d at 475-76. One such issue preventing this standard from being consistent and workable is the broad meaning behind the term, "animal." *See Commonwealth v. Turner*, 14 N.E. 130, 132 (Mass. 1887) (concluding that "animal" includes all "irrational beings"); *Knox v. Mass. Soc'y for Prevention of Cruelty to Animals*, 425 N.E.2d 393, 396 (Mass. App. Ct. 1981) (determining that goldfish were within definition of "animal"; *see also* BLACK'S LAW DICTIONARY 80 (5th ed. 1979) (defining "animal" as "non-human, animate being which is endowed with the power of voluntary motion").

⁵⁷ *See Turner*, 14 N.E. at 132 (including all "irrational beings" within definition of "animal"); *Knox*, 425 N.E.2d at 396 (concluding that goldfish are animals); BLACK'S LAW DICTIONARY 80 (5th ed. 1979) (defining "animal" as "non-human, animate being which is endowed with the power of voluntary motion"); *see also Brigham City*, 547 U.S. at 403 (averring that the "ultimate touchstone of the Fourth Amendment is 'reasonableness'"). Though the term "animal" may encompass basically all living creatures, it does not sensibly follow that all animals are to receive equal treatment, as this would be unreasonable under the Fourth Amendment and Article Fourteen. *See Brigham City*, 547 U.S. at 403; *see also Turner*, 14 N.E. at 132. Applying the doctrine to a warrantless entry to rescue a goldfish may be hyperbolic, but the question to what extent this application extends to different species remains unanswered because the SJC stated that the species of the animal shall be considered. *See Duncan*, 7 N.E.3d at 474-75; *see*

The variance within the term “animal” is not the only open-ended issue here, but this decision leaves room for other complications that may cloud the righteousness of this holding, including implications for the plain view doctrine, as well as family law.⁵⁸ Application of the emergency aid doctrine would create more situations for officers to lawfully be on private property, which in turn creates more possibilities for situations that could trigger the plain view doctrine.⁵⁹ Because Duncan was charged with

also *Knox*, 425 N.E.2d at 396 (holding goldfish to be considered animals). The SJC provided that the extent of the intrusion should be considered in determining whether a warrantless entry was reasonable. See *Duncan*, 7 N.E.3d at 476 (stating extent of intrusion shall be analyzed). Because officers entered Duncan’s yard to seize the dogs, this issue of reasonableness did not surface, however it is unclear when a warrantless entry encroaches onto unreasonableness. See *Suss*, 823 F. Supp. at 187 (explaining breaking through wall to save cat accidentally trapped outside scope of emergency aid doctrine); *Duncan*, 7 N.E.3d at 470 (noting officers entered yard); see also *Tuck v. United States*, 477 A.2d 1115, 1120 (D.C. 1984) (requiring flexibility of warrant requirement in order to preserve life). Although reasonableness, the touchstone of the Fourth Amendment, requires flexibility for emergencies, a standard that is too amorphous may lead to unreasonable applications of the exception. See *Duncan*, 7 N.E.3d at 474-75 (setting up factors to be analyzed); *Tuck*, 447 A.2d at 1120 (reasoning warrant requirement should retain some flexibility).

⁵⁸ See *Corso Dog & Cat Hosp., Inc.*, 415 N.Y.S.2d 182, 183 (N.Y. Cir. Ct. 1979) (“[A] pet is not just a thing but occupies a special place somewhere between a person and a piece of personal property.”); *Fessenden*, 333 P.3d at 284 (explicating some statutes show “some animals, such as pets, occupy a unique position in people’s hearts and in the law.”); *Morgan v. Kroupa*, 702 A.2d 630, 632-33 (Vt. 1997) (reasoning dog is companion and thus should be treated differently from chattel). The court in *Kroupa* distinguished a pet from livestock by focusing on the fact that pets are companions to humans, which evidences that there are different classes of animals. See *Kroupa*, 702 A.2d at 632. *Duncan* has left the framework for application of the emergency aid doctrine indefinite in regards to which species are animals are protected because the SJC imparting that the species of the animal shall be included in the equation, while providing limited guidance for which species fall beyond reasonableness. See *Duncan*, 7 N.E.3d at 474. Due to the elevated status of pets as companions, they are among the intended class of animals for which this interpretation has been fashioned. See *id.* at 474-75; see also *Fessenden*, 310 P.3d at 1169 (reasoning species of animal is consideration). This case involved cruelty to dogs, which as companions, are entitled to elevated status. See *id.* at 474-75; *Fessenden*, 333 P.3d at 284; *Corso Dog & Cat Hosp. Inc.*, 415 N.Y.S.2d at 183; See also *Chiefs of Police*, *supra* note 49, at *3-4 (describing relationship of companionship humans have with dogs and cats). From this analysis, it would follow that a distinction between classes of animals, such as pets, livestock, and game, exists and that they will receive differential treatment under the exception. See *Duncan*, 7 N.E.3d at 474-75; *Fessenden*, 310 P.3d at 1169. While it is settled that dogs are clearly within the exception, the application to other classes and species are undetermined. See *Duncan*, 7 N.E.3d at 474-75; *Fessenden*, 310 P.3d at 1169. By distinguishing between the species of animals, the SJC is clarifying that the doctrine does not apply to all animal life, thereby minimizing the abridgement of privacy rights under the Fourth Amendment and Article Fourteen. See *Duncan*, 7 N.E.3d at 474-75; *Fessenden*, 310 P.3d at 1169. However, there is no guidance on how to analyze which species fall within a class covered by the doctrine, which could result in confusing ramifications. See *Duncan*, 7 N.E.3d at 474-75.

⁵⁹ See *Root v. Gauper*, 438 F.2d 361, 363 (8th Cir. 1971) (“[I]t has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence.”); *Commonwealth v. Balicki*, 762

animal cruelty, a crime related directly to the evidence seized (i.e. the dogs), the implications surrounding the plain view doctrine, if any, are unclear.⁶⁰ Another area of law that may be potentially affected is family law, specifically circumstances surrounding domestic violence, because of the nexus between the propensity to commit acts of animal cruelty and interpersonal violence.⁶¹ In recognizing this connection, several state

N.E.2d 290, 296-97 (Mass. 2002) (applying plain view doctrine to evidence seized); *Commonwealth v. Tyree*, 919 N.E.2d 660, 677-78 (Mass. 2010) (discussing components of plain view doctrine's application).

⁶⁰ See *Root*, 438 F.2d at 363 (explaining circumstances when plain view doctrine can be utilized). With the advent of the emergency aid exception's application to animals, officers are now permitted to lawfully be on private property for the purposes of aiding suffering animals. See *Duncan*, 7 N.E.3d at 476. If an officer meets the requirements to lawfully be on private property for purposes of rendering aid to animals, then seizure of any other unlawful possession in plain view will be proper. See *Root*, 438 F.2d at 364-65 (explaining requirements for plain view seizure to be proper); *Balicki*, 762 N.E.2d at 296-97 (noting Massachusetts requires police to come across item inadvertently for plain view doctrine to apply); *Tyree*, 919 N.E.2d at 678 ("Under the plain view doctrine, 'if police are lawfully in a position from which they can view an object, if its incriminating character is immediately apparent, and if the officers have lawful right to access object, they may seize it without a warrant.'"). Issues with applying the plain view doctrine are foreseeable and could be problematic due to the insufficient guidance for the application of the emergency aid exception to animals in the *Duncan* opinion. See *Duncan*, 7 N.E.3d at 476 (listing factors to consider in analysis but not providing clear rule). In *Goulet*, such a situation arose when officers responded to an emergency situation involving animal cruelty and seized illegal weapons found in plain view. See *State v. Goulet*, 21 A.3d 302, 305 (R.I. 2011). Without a clearer standard for application of the emergency aid doctrine to animal life, determinations of whether officers were lawfully permitted to be on private property to rescue suffering animals will be inconsistent, giving way to potential misuses of the plain view doctrine. See *id.* (establishing protean standard of application); see also *Root*, 438 F.2d at 363 (stating that officer may seize evidence in plain view if lawfully on property); *Goulet*, 21 A.3d at 313-14 (holding officers properly on property to aid dogs thus seizure of saw-off shotgun was proper).

⁶¹ See CARLISLE-FRANK & FLANAGAN, *supra* note 40, at 9 (discussing link between animal abuse and domestic violence). The Commonwealth introduced the argument that the protection of animal life could be considered an ancillary purpose of this application, with the primary purpose being emphasis on public morals. See *Commonwealth's Brief*, *supra* note 35, at *43-44 (explaining scientific evidence correlating animal cruelty with domestic violence). However, the SJC abstained from addressing this argument, hinting that their intent was to focus on preservation of animal welfare. See *Duncan*, 7 N.E.3d at 469-75. Moreover, the SJC ignored altogether the Appellant-Commonwealth's contention that this application is relevant to the connection between animal abuse and interpersonal violence. *Id.* Leaving this piece of the Commonwealth's contention untouched was correct because acknowledging it would have resulted in unknown implications for domestic violence proceedings. See CARLISLE-FRANK & FLANAGAN, *supra* note 40, at 199 (discussing collaboration between law enforcement and animal protection agencies to prevent interpersonal violence); Craig U. Uchida et al. *Evaluating a Multi-Disciplinary Response to Domestic Violence: The DVERT Program in Colorado Springs, Final Report*, NAT'L INST. OF JUSTICE, at 35 (June 2001), <https://www.ncjrs.gov/pdffiles1/nij/grants/188261.pdf> (describing need for animal control officers to be part of multi-disciplinary response to domestic violence). Officers responding to aid animals in need could spill over into domestic violence proceedings because of this link between animal cruelty and domestic abuse. See Uchida et al., *supra*. If a relationship is drawn between this new application of the emergency aid doctrine, which is a tool for officers to prevent

legislatures have enacted laws that permit temporary restraining orders for pets.⁶² Emergence of the collaboration between law enforcement and animal welfare agencies could spell unclear implications for domestic violence issues when faced with emergency situations involving animal cruelty.⁶³

When presented with this new issue, the SJC decisively answered the question that some other courts have previously avoided confronting and allowed the doctrine's application to animals, despite there being more conservative approaches available.⁶⁴ Though the SJC relied on the

animal cruelty, and domestic violence, a panoply of unforeseen consequences could lead to infringement of Fourth Amendment and Article Fourteen rights. *See Commonwealth's Brief*, *supra* note 35, at *43-33 (stating that application to animals needed assist in prevention of interpersonal violence); *see also* CARLISLE-FRANK & FLANAGAN, *supra* note 40, at 199 (discussing law enforcement's role in domestic abuse prevention through partnership with animal protection agencies).

⁶² *See* MASS. GEN. LAWS ch. 209(A), § 11(a)-(c) (2012) (promulgating that temporary restraining orders can protect pets); CAL. FAM. CODE § 6320 (Deering 2014) (permitting temporary restraining orders for pets); *see also* COLO. REV. STAT. § 18-6-803.5 (protecting animals under domestic violence theory); CONN. GEN. STAT. 15 (2014) (same); HAW. REV. STAT. § 586-4 (2014) (same); 725 ILL. COMP. STAT. 5 / 112A-14 (2014) (same); LA. REV. STAT. ANN. § 46:2135 (2014) (same); ME. REV. STAT. tit. 19-A, § 4007 (2013) (same); NEV. REV. STAT. §§ 33.018 – 030 (2014) (same); N.Y. FAM. CT. ACT § 842 (Consol. 2014) (same); N.C. GEN. STAT. 50B-3 (2014) (same); TENN. CODE ANN. § 36-3-606 (West 2014) (same); VT. STAT. ANN. tit. 15, § 1103(c)(2)(G) (West 2014) (same); WASH. REV. CODE § 26.50.060 (2014) (same).

⁶³ *See* Gupta, *supra* note 47, at 19-20 (delineating statistics showing relationship between animal and domestic abuse); *see also* CARLISLE-FRANK & FLANAGAN, *supra* note 40, at 198-99 (discussing need for partnership between officers and animal welfare agencies for effective abuse prevention). In the future, given an appropriate case, the SJC might be able to utilize a similar reasoning as they did in the instant case and infer a policy rationale from chapter 209(A) that the legislature intended that pinpointing cruelty to animals shall be a tool to prevent domestic abuse; this new application of the emergency aid doctrine could provide such a prevention tool if that were the case. *See* MASS. GEN. LAWS ch. 209(A), § 11(a)-(c); *Duncan*, 7 N.E.3d at 474 (inferring policy rationale from statutes to justify reasoning); *see also* *Commonwealth v. Yee*, 281 N.E.2d 248, 252 (Mass. 1972) (“[P]ublic policy is a basic source of law when no previous decision or rule of law is applicable.”).

⁶⁴ *See* *People v. Rogers*, 708 N.Y.S.2d, 795, 796-97 (N.Y. App. Div. 2000) (encompassing animals into definition of “property” to protect them under emergency aid doctrine); *see also* *State v. Bauer*, 379 N.W.2d 895, 898 (Wis. 1985) (explaining that defendant had no privacy interest where officers could view animal from public space). The New York state court successfully protected animal life without directly stating that the emergency aid exception shall apply to animals through other avenues, such as locating the rights of animals within the definition of property. *See Rogers*, 708 N.Y.S.2d at 796 (finding that emergency aid doctrine covers protection of property and animals are property). The SJC in *Duncan* may have been reserved in this construction of a test for the doctrine's application to animals, but did not employ the same level of caution as other state courts did. *See Duncan*, 7 N.E.3d at 474 (emphasizing that doctrine protects life and property and animals are within term “life”); *cf. Rogers*, 708 N.Y.S.2d at 796-97 (finding that animals fall within the property component of the exception); *Bauer*, 379 N.W.2d at 897 (reasoning that intrusion was justified since defendant had no expectation of privacy on common driveway). More cautious approaches were used by other state courts and the SJC could have elected to fit the facts of this case into similar moderate

decisions of other state courts, they did not employ the same conservative reasonings as some did, but instead, unanimously decided to apply the exception to animal life, disregarding the more reserved alternatives.⁶⁵ This decision illustrates the rapid and progressive evolution of the law surrounding animal rights in Massachusetts.⁶⁶ *Duncan* is suggestive that the SJC is prepared to take the reins in driving animal rights forward and to provide a foundation to help propel future courts into advancing animal rights.⁶⁷ While this decision is beneficial for animal rights, the SJC's

applications. See *Duncan*, 7 N.E.3d at 474 (electing to categorize animal emergencies as involving preservation of life rather than property); cf. *Bauer*, 379 N.W.2d at 897 (explaining warrantless entry to rescue animals was proper where defendant had no "justifiable expectation of privacy"). Another more reticent approach available was the approach used in *Bauer*, where the court held that the lack of the defendant's expectation of privacy rendered the warrantless entry permissible to rescue the aid the horse. See *Bauer*, 379 N.W.2d at 898; see also *Florida v. Riley*, 488 U.S. 445, 450-51 (1989) (finding no reasonable expectation of privacy existed regarding aerial view of defendant's greenhouse). But see *Duncan*, 7 N.E.3d at 469 (noting officers were able to view dogs by stepping onto snow bank on public street).

⁶⁵ See cases cited *supra* note 6 and accompanying text (explaining SJC's progressive application of emergency aid doctrine to animals); see also Chiefs of Police, *supra* note 49, at *2-3 (discussing progressive history of animal rights law in Massachusetts); 2012 U.S. Animal Protection Laws Rankings, *supra* note 36 (showing that Massachusetts among states with strongest animal protection laws); The HSUS Releases Annual Ranking of State Animal Protection Laws, *supra* note 36 (establishing Massachusetts tied for second strongest animal protection laws). Aligning the instant case with the rationale of *Rogers* by declaring that animals fit within the doctrine's purpose of preserving property was possible, but instead the SJC completely departed from this rationale by reasoning that protecting nonhuman life "fits coherently within the existing emergency aid exception" because its purpose is to preserve life. See *Duncan*, 7 N.E.3d at 474 (emphasizing and italicizing "life" rather than "property"); see also *Rogers*, 708 N.Y.S.2d at 796-97 (encompassing animals into definition of "property"). If the SJC placed animals within the property component of the doctrine, the protection of animal life would have still been advanced, however it would be a more gradual progression. See *Duncan*, 7 N.E.3d at 474 (choosing to highlight "life" rather than "property").

⁶⁶ See *Commonwealth v. Higgins*, 178 N.E. 536, 538 (Mass. 1931) (reasoning that cruel and barbarous acts of animal cruelty tend to corrupt public morals); *Commonwealth v. Turner*, 14 N.E. 130, 132 (Mass. 1887) (concluding defendant's actions deemed, "against public morals"). Historically, animal cruelty prevention laws were focused on preservation of public morals of society, but the reasoning in *Duncan* evidences the evolution of animal rights and the way in which focus has shifted to purely concerning animals. See *Higgins*, 178 N.E. at 538; *Turner*, 14 N.E. at 132; see also *Duncan*, 7 N.E.3d at 474-75 (explicating animal cruelty prevention is important policy concern). This decision is consistent with Massachusetts's ranking as one of the states with the most progressive state animal protection laws. See 2012 U.S. Animal Protection Laws Rankings, *supra* note 36; The HSUS Release Annual Ranking of State Animal Protection Laws, *supra* note 36.

⁶⁷ See *Payne*, *supra* note 42, at 619 (discussing animal rights movement lacks "legislative foundation" to build movement upon). Although animals are afforded more protections today, their traditional disposition as property has severely inhibited the movement for animal rights. See *id.*; see also *Mass. Soc'y for Prevention of Cruelty to Animals v. Comm'r of Pub. Health*, 158 N.E.2d 487, 493 (Mass. 1959) (construing lost dogs and cats as abandoned property). Regardless of their importance to society, it is challenging to expand animal rights due to lack of guiding decisions results in low odds of prevailing in court. See *Payne*, *supra* note 42, at 619, 629. The

amorphous standard for this expansive application could lead to inconsistent application by trial courts.⁶⁸ As this court did, other state courts with little guidance can rely on this decision's reasoning if faced with the same issue of determining whether to apply the emergency aid exception to preserve animal life.⁶⁹

Freedom against arbitrary government intrusions, specifically unwarranted searches and seizures, can be compromised if the interest in preserving life or property outweighs the privacy rights of individuals. However, this right is not absolute, giving way to reasonable and carefully delineated exceptions, such as the emergency aid doctrine. The intent to protect human life was palpable for this doctrine's existence, but gradually, the protection of animal life has emerged as another purpose behind this exception, as shown by the SJC's decision in *Duncan*. The decision in the affirmative gives impetus to the force of the animal rights movement, however it leaves much to unfold in future cases, since the SJC set forth a cursory test to address emergencies surrounding animal life. Each additional exception to the right against unwarranted entry into one's private domain is an evisceration of this right and thus, there must be carefully crafted standards for each exception, which has yet to develop for

SJC in *Duncan* and the other state courts that have applied the emergency aid doctrine to animals have significantly bolstered animal rights movements by providing the necessary basis to reinforce their arguments. See *Duncan*, 7 N.E.3d at 469. With the SJC's bold decision in *Duncan*, there is now firm support for the animal rights movement in Massachusetts. See *id.*; see also Payne, *supra* note 42, at 619, 629.

⁶⁸ See *Duncan*, 7 N.E.3d at 475-76 (articulating amorphous totality of circumstances standard); *Rogers*, 708 N.Y.S.2d at 796-97 (including animals in definition of "property" to protect them under doctrine). Sweeping animal life under the definition of property for purposes of applying the doctrine, which allows for preservation of property, would have yielded the same result. See *Rogers*, 708 N.Y.S.2d at 796-97. Despite this availability of a more gradual approach, the SJC chose to classify emergencies involving animals into the portion of the doctrine that permits warrantless entry for preservation of life. See *Duncan*, 7 N.E.3d at 474. This reading is problematic due to the tremendous variance within the term "life" as it applies to animals and at point at which the exception ceases to be reasonable is uncertain. See *supra* note 55 and accompanying text (discussing carrying definitions of "animals" and reasonableness of applying emergency aid exception).

⁶⁹ See *Duncan*, 7 N.E.3d at 474 (stating decision accords with highest courts of other states and agreeing with their rationales). The SJC arrived at their decision by borrowing support and rationales from out-of-state authorities. See *Duncan*, 7 N.E.3d at 474 (citing other jurisdictions that applied exception to animals in distress). Additionally, the SJC's approach of extracting policy rationales from state statutes mimics that of the *Fessenden* court, a decision which was heavily relied upon. See *id.*; see also *State v. Fessenden*, 310 P.3d 1163, 1168 (Or. 2013) (inferring "strong societal interest" from statutes). As more states address this question, application of the doctrine to protect animal life will decrease in novelty. See *Duncan*, 7 N.E.3d at 474 (noting strong societal interest in preventing animal cruelty). *Duncan* may assist in guiding future states determining this issue, however they cannot look to this decision's test, as it opens the door for an amalgam of different issues. See *id.* at 475-76 (listing illustrative factors to consider when assessing emergencies involving animal life).

inquiries of applying the exception to animals. Positive ramifications will certainly flow from this decision, however it leaves the issue standing at the precipice of a “slippery slope.” Failing to preserve life, human or animal, is an anathema to the spirit of the Constitution, but failing to adequately preserve a fundamental right so deeply grounded in the Nation’s history is no different. Although the SJC assures that the right is well-protected, such an assurance holds little weight absent a more carefully delineated standard.

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