

SJC-13531

**Commonwealth of Massachusetts
Supreme Judicial Court**

COMMONWEALTH

v.

MARYANN RUSSO

**BRIEF OF AMICUS CURIAE COMMITTEE FOR PUBLIC COUNSEL SERVICES IN SUPPORT
OF Ms. RUSSO AND AFFIRMANCE**

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STATEMENT OF INTEREST

CPCS is a statutorily created statewide agency established by G.L. c. 211D, §§1 et seq., whose responsibility is “to plan, oversee, and coordinate the delivery” of legal services to certain indigent litigants, including defendants who are charged with violation of the animal cruelty statute, G.L. c. 272, §77. CPCS thus has a significant interest in ensuring that the animal cruelty statute is not interpreted to require euthanasia or veterinary care for pets suffering from natural causes as such interpretation renders the statute vague, provides no notice of what acts and omissions are criminal, and leads to arbitrary and erratic prosecution.

ISSUE PRESENTED

On December 19, 2023, this Court solicited amicus briefing on the following question:

Whether there is probable cause to charge the defendant with violating the animal cruelty statute, G.L. c. 272, §77, where she allegedly “knowingly and willfully authorize[d] or permit[ted]” her terminally ill dog “to be subjected to unnecessary torture, suffering or cruelty of any kind” by failing to alleviate the dog’s pain resulting from its ailments.

In addition to that question, this amicus will address the narrower question presented by the facts of this case: whether the animal cruelty statute mandates euthanasia where the pain from an animal’s terminal illness cannot be controlled.

BACKGROUND

The defendant’s brief recites the facts of this case in detail.¹ Def. Br. 7-11. In short, the Russo family took their fourteen-year-old, terminally ill dog to a veterinary hospital twice over a three-week period, including on Christmas Day. R.14. At the second visit, veterinarian Dr. Duffy told Ms. Russo that “nothing [] could be done” to control the dog’s pain, that she would not perform the previously offered surgery as the dog was likely to die, and that she recommended humane euthanasia. R.14. When the family chose to take the dog home instead and told Dr. Duffy that they planned to have him euthanized by another veterinarian, Dr. Duffy did not believe them and reported them to the Animal Rescue League of Boston (“ARL”). R.14,18. Though Dr. Duffy told ARL

¹ The Commonwealth’s brief will be cited as CW Br.X, their record appendix as R.X, and the defendant’s brief as Def. Br.X.

that the dog needed supplemental oxygen, there is no evidence that she relayed this information to Ms. Russo. R.14.

The next day, Ms. Russo called ARL and left a voice message. R.17. She reported that the dog was “now in good health” because he was “beginning to act normal again,” as evidenced by the fact that he was eating, drinking, getting off the couch, and “going to the bathroom again.” R.17. There was no evidence the dog’s condition could not ebb and flow in just the manner she described. Officer Parlon of ARL did not observe the dog until approximately three weeks later, at which point, the dog’s condition had worsened. R.16. The dog “appeared to be deceased,” and was inferentially unconscious, as the only sounds it made were associated with the unconscious act of breathing. R.16.

At that visit, Officer Parlon observed that the family possessed pain pills for the dog, R.16, and because there was no evidence that Dr. Duffy prescribed the pills, they were inferentially obtained from another veterinarian. He also observed that the dog was on the couch in a room with a large religious statue, that the dog was diapered, on a linen bed, surrounded by newspapers, and lying on the side that caused it less difficulty breathing. R.16. Officer Parlon took note of statements from other family members, including Ms. Russo’s elderly mother, Syvlia Russo, who told him that she wanted her dog to “die at home.” R.16. Ms. Russo was not present during this visit. R.16.

Though not in the record, the dog was later seized and euthanized.

Ms. Russo’s motion to dismiss was allowed in the trial court, where the judge concluded that the statute did not contemplate “an affirmative obligation to euthanize an animal loved and cared for by its owner.” R.92. That decision was upheld in the Appeals Court, which declined to extend the statute to criminalize “a person’s failure to intervene with the complicated, heartbreaking,

painful end of an animal's life[.]” *Commonwealth v. Russo*, 103 Mass. App. Ct. 319, 324 (2023).

SUMMARY OF ARGUMENT

On the facts of this case, the only question before this Court is whether the animal cruelty statute, G.L. c. 272, §77, mandates euthanasia if the pain caused by an animal's terminal illness cannot be controlled. The answer must be no: the statute does not explicitly require euthanasia, nor can the plain language be interpreted to imply such a requirement without rendering the statute vague as applied. Individuals have no notice that euthanasia of their terminally ill or elderly pets is mandatory on pain of criminal prosecution for a felony offense punishable by seven years in state prison. If the statutory language is ambiguous enough to allow for such an interpretation, the rule of lenity requires the defendant to receive the benefit of that ambiguity, and the trial court's dismissal of the criminal charge must be affirmed. *Infra*, at 13.

The same arguments apply should this Court decide to address whether the animal cruelty statute mandates veterinary care short of euthanasia for animals suffering from natural causes, which is the question posed by the Commonwealth but not presented by the facts. *Infra*, at 9,13.

Reading the failure to euthanize or provide veterinary care into the animal cruelty statute would give rise to a host of public policy concerns: reasonable people may disagree about the morality of euthanasia; transferring the choice to euthanize an animal to a veterinarian may deter pet owners from obtaining veterinary care for their pets; and the high cost of veterinary care may make pet ownership available only to the wealthy. Whether that policy choice should be made is appropriately left to the Legislature. *Infra*, at 20.

ARGUMENT

- I. The narrow question before this Court is whether the animal cruelty statute mandates euthanasia if a pet's naturally caused pain cannot be controlled.

As an initial matter, the Commonwealth attempts to expand the question before this Court from whether the animal cruelty statute mandates euthanasia to whether it requires a pet owner to “treat pain.”² CW Br.17. The facts presented in the application for complaint do not establish probable cause that Ms. Russo had any alternative to euthanasia: the veterinarian refused to perform the only surgery Ms. Russo knew was available, told her that “nothing [] could be done to ‘control the [dog’s] pain,’” and recommended humane euthanasia. R.14. Though the veterinarian told ARL that the dog required supplemental oxygen, there was no evidence the veterinarian relayed this information to *Ms. Russo* or informed her that any other interventions would have reduced his suffering. R.14. Thus, the Commonwealth’s claim that the dog’s pain could have been alleviated with something other than euthanasia is speculative, see *Commonwealth v. Costa*, 97 Mass. App. Ct. 447, 450 (2020) (the complaint did not establish probable cause where the criminal activity relied upon “speculation rather than reasonable inferences”), and each court to review this case has properly rejected that characterization of the facts.³ This Court should do the same.

² The specific statutory language at issue is: “anyone with charge or custody of an animal” may not “knowingly and willfully authorize or permit[] it to be subjected to unnecessary...suffering[.]” G.L. c. 272, §77.

³ The trial court judge disregarded the Commonwealth’s arguments that Ms. Russo could have taken measures other than euthanasia, finding instead that the statute did not contemplate “an affirmative obligation to euthanize an animal[.]” R. 92. And the Appeals Court noted, “[t]he Commonwealth resists the notion that it charged the defendant because she failed to euthanize the dog,” arguing instead that she did not “treat[] the dog’s pain and labored breathing,” but this

A. The Commonwealth seeks to develop probable cause for its theoretical fact pattern from unreasonable inferences.

Even ignoring evidence that the dog's pain could not be controlled, as the Commonwealth does, there is no probable cause to support the allegations that Ms. Russo failed to provide veterinary care.⁴ Specifically, the Commonwealth alleges that “[t]he dog’s pain pills were being withheld, supplemental oxygen was not being provided, the defendant lied about taking the dog to another veterinarian, and then lied about the dog being in good health in her voice message to the officer.” CW Br.45. “Probable cause requires sufficient facts to warrant a person of reasonable caution in believing that an offense has been committed[.]” *Commonwealth v. Levesque*, 436 Mass. 443, 447 (2002), and any inferences drawn from the evidence must be “reasonable.” *Costa*, 97 Mass. App. Ct. at 450. Not one of these allegations can be reasonably inferred from the evidence.

The Commonwealth’s allegation that Maryann Russo “withheld” her dog’s pain pills derives from a statement by Sylvia Russo, Ms. Russo’s elderly mother, that the dog “no longer needs” the pills, which she made to Officer Parlon when Maryann was not present.⁵ R.16. While it is not entirely clear what Sylvia meant by this statement—whether it was her view that the dog no longer needed the

position “rings discordantly against the facts” where “the veterinarian ‘recommended humane euthanasia...because this [fourteen year old] dog’s pain could not be controlled[.]’” *Russo*, 103 Mass. App. Ct. at 324 n.7.

⁴ For the reasons explained *infra*, at 13, a failure to provide veterinary care is not punishable under the animal cruelty statute.

⁵ In this section, Maryann and Sylvia Russo are referred to by their first names to reduce confusion.

pills as of that moment, as of that morning, or as of some other unknown time—it cannot reasonably be interpreted to mean she withheld the pills when the dog needed them or that she withheld the pills at all.⁶ And if the statement does not support probable cause that Sylvia withheld pain pills, it certainly does not support probable cause that *Maryann* withheld pain pills. There would need to be evidence that Maryann delegated the task of administering the dog’s pain pills to her mother while knowing that her mother would withhold them. There is no evidence to support these cognitive leaps. See G.L. c. 272, §77 (to be criminal per the statutory section at issue, conduct must be “knowing and willful”); *Commonwealth v. McGhee*, 472 Mass. 405, 415 (2015) (“When used in a criminal statute, the word ‘knowingly’ typically imports a perception of the facts requisite to make up the crime”), internal citations omitted; see also *Commonwealth v. Dragotta*, 476 Mass. 680, 686 (2017) (conviction for child neglect, which requires proof only of “wanton or reckless conduct,” overturned where Commonwealth did not prove mother “knew or reasonably should have known that” boyfriend “was so manifestly unfit to care for an infant that the victim was in grave danger if she were left in his sole care even briefly.”) Sylvia’s other statements to the officer—disagreement with his perception of the dog, that he should omit his observations from his report, and that Maryann would be “ruin[ed]” if he took the dog because she was “bullied at work,” CW Br.43-44—also fail to add anything meaningful to the calculus about Maryann’s state of knowledge, acts, or omissions.

⁶ Given that the dog was inferentially unconscious at the time Sylvia made this statement, it may have been a simple truism that the dog, in that moment, did not need pain pills. R.16 (the dog “appeared to be deceased” and made no sounds or movements other than those associated with the unconscious act of breathing; evidence of consciousness—like open, focused eyes, for example—was notably absent from the officer’s report).

Further, the Commonwealth unreasonably accuses Maryann of lying when she said she would take the dog to another veterinarian and when she left a voicemail indicating that the dog was in “good health” the day after she removed it from the veterinary hospital. CW Br.45. Maryann possessed pain pills for the dog which she inferentially obtained from a veterinarian other than Dr. Duffy, who had claimed that the dog’s pain could not be controlled and recommended euthanasia. R.14,16. And the rest of Maryann’s voicemail clarified that she meant the dog was better than the day before: he was “beginning to act normal again,” as evidenced by the minimal activities of “eating[,] drinking[,] getting off the couch” and “ ‘going to the bathroom again[.]’” R.17. See *Levesque*, 436 Mass. at 447 (no probable cause for indictment where Commonwealth “has provided evidence that gives a distorted picture of its probative force”). There was no evidence that the dog’s condition could not ebb and flow in just the manner Ms. Russo observed, or that a lay person could not have witnessed these changes and validly reasoned the dog’s quality of life was improving. That the dog was in a worse condition than Ms. Russo described three weeks after her voicemail to the officer does not support an inference that she “lied” in the voicemail. R.16.

Finally, without any evidence that Maryann was informed the dog needed supplemental oxygen, there is no probable cause that she knowingly withheld it. R.14. Nor does the allegation that she did not return messages or contact the officer supply the missing facts to support probable cause. Thus, even accepting that Ms. Russo could have alleviated her dog’s pain short of euthanasia, there is no probable cause that she knowingly failed to do so.⁷

⁷ Also, contrary to the Commonwealth’s suggestion, the trial judge could reasonably infer from the evidence that the dog was “loved and cared for.” CW Br.46, R.92. That the dog was loved is supported by Neil Russo’s statement that

II. If interpreted to mandate veterinary care or euthanasia, the animal cruelty statute is unconstitutionally vague and open to arbitrary enforcement, and individuals have no notice that their conduct could be criminal.

A. The plain language of the statute does not require veterinary care or euthanasia, and no case has interpreted the statute's language to require either intervention.

The animal cruelty statute explicitly prohibits certain acts and omissions: no one, regardless of their relationship to the animal, may “torture[], torment[]...cruelly beat[], mutilate[] or kill[] an animal” or “deprive[it] of necessary sustenance,” nor can anyone “procure an animal” for such purposes. G.L. c. 272, §77. And those with the “charge or custody of an animal” may not “inflict[] unnecessary cruelty upon it, or unnecessarily fail[] to provide it with proper food, drink, shelter, sanitary environment, or protection from the weather” and, among other things, may not “knowingly and willfully authorize or permit[] it to be subjected to unnecessary torture, suffering or cruelty of any kind[.]” *Id.* The words “veterinary care” and “euthanasia” do not appear in the statute. The Commonwealth has cited no case interpreting the statutory language to require either veterinary care or euthanasia.

B. If the statutory language is ambiguous such that it *could* be interpreted to require veterinary care or euthanasia, it is unconstitutionally vague.

To comport with due process, a statute may not be unconstitutionally vague. “[W]hen individuals of normal intelligence must guess at the statute’s

“[a]ll I do is love my dog,” and Officer Parlan’s response that he “did not question his dedication to the dog[.]” R.16. That the dog was cared for can be inferred from the fact that he reached the advanced age of fourteen, that the Russos twice sought veterinary care over three weeks, including on Christmas day, and from the palliative measures the family took for his comfort, including diapering him, laying him on the couch in a familiar environment and on the side that caused him less difficulty breathing, and keeping him clean and dry. R.14,16.

meaning and may differ as to its application,” they are denied “fair notice of the proscribed conduct.” *Commonwealth v. Disler*, 451 Mass. 216, 223 (2008). “A vague statute also offends due process because of ‘its lack of reasonably clear guidelines for law enforcement and its consequent encouragement of arbitrary and erratic arrests and prosecutions.’” *McGee*, 472 Mass. at 413-414, citing *Commonwealth v. Sefranka*, 382 Mass. 108, 110 (1980). If applied as the Commonwealth contends, the animal cruelty statute will violate these well-established constitutional principles.

- i. The Appeals Court correctly interpreted the phrase “subjected to” to require an actor responsible for causing the pain and to exclude pain caused by illness; interpreting it otherwise renders “unnecessary suffering” unconstitutionally vague depriving pet owners of fair notice regarding what acts or omissions are criminal.*

The statutory language at issue here is: “anyone with charge or custody of an animal” may not “knowingly and willfully authorize or permit[] it to be subjected to unnecessary...suffering.” G.L. c. 272, §77. The Appeals Court correctly concluded that “subjected to” necessarily excludes suffering from natural causes. The phrase requires an actor—“‘I was subjected to a grueling cross-examination’ makes sense, while ‘I was subjected to a herniated disc’ does not.” *Russo*, 103 Mass. App. Ct. at 323-324. Because the Court must “presume...that the Legislature intended what the words of the statute say...we accept that, by the language at issue here, the Legislature deliberately chose to criminalize only situations where someone (or something) ‘subjected’ the animal to the harm at issue.” *Id.*, internal citations omitted. Thus, the Legislature could not have intended to criminalize “a person’s failure to intervene with the complicated, heartbreaking, painful end of an animal’s life[.]” *Id.* As the Court noted, no case has interpreted the statute to require such intervention, and, when

presented with bills to make such failure criminal, the Legislature has not passed them. *Id.* at 324, n7.

If “subjected to” is instead interpreted to include pain from natural causes, the meaning of “unnecessary...suffering” becomes unconstitutionally vague. It is not at all clear whether suffering associated with old age or illness should be categorized as necessary or unnecessary, and at what point a pet owner’s acts and omissions become criminal. On the Commonwealth’s interpretation of the statute, it may be criminal to ever allow a pet to reach the end of its natural lifespan when suffering becomes an inevitable part of living; it may be criminal not to provide chemotherapy costing thousands of dollars for an elderly dog if that is the only way to treat the dog’s painful cancer; it may be criminal to treat an animal’s cancer with interventions that themselves cause suffering; it may be criminal to take a pet home for one last night with its family before euthanasia, or for a week to allow a far-off loved one to return to say goodbye; it may be criminal to seek a second veterinarian’s opinion if the animal’s pain is prolonged for any amount of time by doing so; it may be criminal to refrain from giving the animal the only effective pain medication even where that medication appears to rob the animal of its remaining zest for life.

As written, the animal cruelty statute does not criminalize any of these fraught decisions about which reasonable people might disagree. If interpreted as the Commonwealth desires, pet owners must fear criminal prosecution for the difficult choices inherent in owning an elderly or sick pet, with no clear guidance about which acts or omissions cross the criminal line.

The cases the Commonwealth cites for a person’s duty to provide medical care to people in their care have no bearing on whether the animal cruelty statute creates such a duty to animals. CW Br.36-37. Each of the statutes at issue— G.L. c. 265, §13J, 13K, and 13L—criminalize creating a risk of bodily injury,

and serious or substantial bodily injury to children, the elderly, and disabled persons. In each statute, the duty to prevent harm by providing medical care where necessary is explicit: a “caretaker” is someone whose “failure to fulfill” their “responsibility” to an elderly or disabled person “would adversely affect the physical health of such” person, G.L. c. 265, §13K; “neglect” is defined as “the failure to provide treatment or services necessary to maintain health and safety[,]” *id.*; and the harm to be prevented is either “injury which results in a permanent disfigurement, protracted loss or impairment of bodily function, limb or organ, or substantial risk of death” or “substantial impairment of the physical condition including any burn, fracture of any bone, subdural hematoma, injury to an internal organ, any injury which occurs as the result of repeated harm to any bodily function or organ including human skin or any physical condition which substantially imperils a child’s health or welfare.” G.L. c. 265, §§13J,13K,13L. It is plain that medical treatment is required to prevent or treat these conditions, whatever their cause.⁸ In contrast, there is no definition in the animal cruelty statute for “unnecessary suffering” and thus no notice that failure to euthanize an animal or treat its naturally occurring medical condition carries risk of criminal prosecution.

ii. Enforcers of the statute will similarly lack notice regarding which acts and omissions are criminal, leading to erratic and arbitrary arrests and prosecutions.

If the animal cruelty statute is interpreted to require euthanasia or veterinary care, reporters of animal abuse and enforcers of the animal cruelty

⁸ A common law duty to provide medical attention to a child in one’s care has been recognized for over thirty years and support for such a duty dates back over seventy years. *Commonwealth v. Twitchell*, 416 Mass. 114, 118 (1993), citing *Commonwealth v. Gallison*, 383 Mass. 659, 665 (1981); see also *Commonwealth v. Hall*, 322 Mass. 523, 528 (1948).

statute would also have no notice of what conduct is criminal and may reach opposing conclusions when evaluating the same evidence.

In this case, different actors behaved differently with respect to Ms. Russo's conduct. The veterinarian appears to have believed the criminal line was crossed when Ms. Russo did not allow her to euthanize the dog.⁹ R.14. But the ARL officer seemed to believe that Ms. Russo was entitled to seek a second veterinarian's opinion and gave her that opportunity. R.18. Yet a third actor may have reasonably decided that the dog's pain was sufficiently alleviated by the steps the Russo family took for its comfort and never sought charges at all. After all, the Russos had positioned the dog on the couch in their living room, perhaps his favorite sleeping spot in a home where he felt safe and was surrounded by family, kept him clean and dry, and lay him on the side that caused him less difficulty breathing. R.16. These are just the sort of palliative interventions, among others, described by the American Society for the Prevention of Cruelty to Animals ("ASPCA"): "[t]he most important thing you can do for your elderly pet is to minimize any pain or distress she's experiencing....Surround her with her favorite things, like a warm blanket. . .it's also essential to provide a warm sleeping spot with plenty of cushioning. [And because s]ome older pets may

⁹ Veterinarians rarely take this view and "tend to reserve reporting for cases of cruelty or neglect unrelated to advanced medical conditions....[C]linicians almost never report an owner whose animal is in terminal condition who wishes for a natural death to occur at home or who simply cannot decide what to do." Cooney K., Kipperman B., *Ethical and Practical Considerations Associated with Companion Animal Euthanasia*, *Animals* (Basel). 2023 Jan. 27;13(3):430. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9913502/>.

develop incontinence, or the loss of bladder control, [] be sure to check your furry friend regularly for any wetness or soiling.”¹⁰

But the danger of erratic enforcement is not limited to situations like Ms. Russo’s, where it is likely that the complaining witnesses were well-intentioned but overzealous. Vague statutes are dangerous for more insidious reasons too. Enforcers of such statutes may harbor “unconscious or implicit bias,” which “is a discriminatory belief or association likely unknown to its holder” which causes “people who do not believe themselves to harbor implicit bias” to “act in ways that disfavor people of color.” *Commonwealth v. Buckley*, 478 Mass. 861, 878 n.4 (2018) (Budd, J., concurring). Studies have shown that people “who implicitly associated Black and Guilty were more likely to make harsher judgments of ambiguous evidence” and that “simply being primed with darker skin tone not only affected the way participants judged evidence, but also led them to perceive the defendant as more guilty.”¹¹ In Massachusetts, racial disparities in the criminal justice system are well-documented. Among other problems, “Black and Latinx people are more likely to have their cases resolved in Superior Court where the available sentences are longer,” in part “because prosecutors are more likely to exercise their discretion to bring their cases in Superior Court instead of District Court when there is concurrent jurisdiction.”¹² The animal cruelty

¹⁰ *End of Life Care*, ASPCA.org; available at <https://www.asPCA.org/pet-care/general-pet-care/end-life-care> (last visited February 7, 2024).

¹¹ Justin D. Levinson, Danielle Young, *Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence*, 112 W. Va. L. Rev. 307, 322-323, 337 (2010).

¹² Bishop, et al, *Racial Disparities in the Massachusetts Criminal System*, Criminal Justice Policy Program, Harvard Law School, pg. 2; available at <https://hls.harvard.edu/wp-content/uploads/2022/08/Massachusetts-Racial-Disparity-Report-FINAL.pdf>.

statute allows for just such discretionary charging and carries a harsh maximum penalty of seven years in state prison if the defendant's case is resolved in Superior Court. G.L. c. 272, §77.

Some researchers, citing implicit bias, have noted that “modern animal control policies are perpetuating many of the same issues under examination in the human justice movement.”¹³ They caution against “pursuing animal welfare by advocating for punitive outcomes, such as incarceration” as these measures “perpetuate[] a system that disproportionately targets low-income communities and people of color.”¹⁴ These policies have the perverse effect of “creat[ing] and perpetuat[ing] worse health outcomes for [] pets” by “negatively impact[ing] animal control agencies’ capacity to serve animals in crisis and contribut[ing] to higher euthanasia rates, lower return to owner rates, and extend[ing] lengths of stay in animal shelters.”¹⁵

It is against the backdrop of the harshness of this statute and Massachusetts’ known racial disparity problem that this Court should decide that the statute does not require euthanasia or veterinary care and, if read to require them, provides insufficient notice of the proscribed conduct.

¹³ Hawes SM, Hupe T, Morris KN, *Punishment to Support: The Need to Align Animal Control Enforcement with the Human Social Justice Movement*. Animals (Basel). 2020 Oct 16;10(10). Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7602950/>.

¹⁴ *Id.*

¹⁵ *Id.*

iii. The rule of lenity requires that any ambiguity in the statute must be resolved in the defendant's favor.

The animal cruelty statute is not ambiguous and does not criminalize the conduct here. But if the Court regards it as ambiguous, “the rule of lenity requires that the defendant receive the benefit of the ambiguity.”

Commonwealth v. Dayton, 477 Mass. 224, 226 (2017). And even if the Commonwealth is correct that the history and purpose of the statute support such an interpretation, the “dictate of criminal law [that] requires resolution of any ambiguity in favor of the defendant” prevails. *Youngworth v. Commonwealth*, 436 Mass. 608, 612 (2002). Proponents of an interpretation that includes these interventions may appeal to the Legislature to add those requirements.

III. It is for the Legislature to decide if public policy supports mandatory euthanasia and veterinary care on pain of criminal prosecution.

A. When and whether to euthanize a pet are difficult moral decisions about which reasonable people may disagree.

Pets cannot express a desire to die; thus, knowing when and whether to euthanize a pet is fraught. The ASPCA cautions that cats and dogs “may not show outward signs that we normally associate with pain[,] like whimpering or crying” and even that some suffering animals “continue to eat and drink in spite of pain or disorientation.”¹⁶ For those and other reasons, various sources recommend using “quality of life” scales to determine when euthanasia is the best course. These scales “seek to objectively measure when euthanasia is warranted to avoid negative states of suffering, such as pain, physiologic and

¹⁶ *End of Life Care*, ASPCA.org, *supra* note 10.

emotional distress, and anxiety.”¹⁷ The Humane Society lists some of these metrics, including how the pet interacts with family, and how it sleeps, among others.¹⁸

Even as the pet’s score drops using these and other indicators, the Humane Society describes euthanasia as a “hard decision,” noting “it’s difficult to know when the kindest choice is euthanasia.”¹⁹ Indeed, quality of life metrics are “subjective to the point that one household may score their pet’s [quality of life] very differently than another household in a similar situation.”²⁰ Yet, a pet owner’s “determination if their pet is suffering is as relevant (if not more so) as that of the veterinarian....If agreement cannot be reached, an animal may suffer or die prematurely through euthanasia.”²¹

In addition, what our society legally permits for a person, who can express their wishes, has some bearing on how reasonable people may view the end-of-life options for their pets, who cannot. Only two years ago, this Court rejected the argument that physician-assisted suicide should not be prosecuted as manslaughter, recognizing “an important distinction between the refusal of medical treatment and physician-assisted suicide, which lies in fundamental legal principles of cause and effect; whereas withdrawing or withholding medical care is not the primary cause of a patient’s death, physician-assisted

¹⁷ Cooney, *supra* note 9.

¹⁸ *Making End-of-Life Decisions for your Pet*, The Humane Society of the United States; available at <https://www.humanesociety.org/resources/making-end-life-decisions-your-pet> (last visited February 9, 2024).

¹⁹ *Id.*

²⁰ Cooney, *supra* note 9.

²¹ *Id.*

suicide is.” *Kligler v. Attorney Gen.*, 491 Mass. 38, 67-68 (2022). A reasonable person may hold these same beliefs with respect to pet euthanasia, seeing a distinct difference between allowing a pet to die naturally and causing it to die, and be morally opposed to the latter.²²

The difficulty of determining when and whether a pet should be euthanized may explain why the Legislature has never required it. Until the Legislature decides in what circumstances euthanasia is mandatory on pain of criminal prosecution, this Court should not read such a requirement into the statute.

B. Rendering a veterinarians’ opinion conclusive on euthanasia may deter pet owners from seeking veterinary care.

Neither party has cited a case where failure to euthanize a terminally ill pet resulted in criminal prosecution. The lack of caselaw on this issue likely reflects a general societal consensus that the choice to euthanize a sick or elderly pet belongs to the pet owner, not the veterinarian.²³ For that reason, there may be little or no research on the effect of transferring that decision from pet owners to veterinarians, which would be the practical effect of criminalizing Ms. Russo’s decision not to euthanize her dog. But there is reason to fear unintended consequences from such a shift.

²² The most apt human comparison to Ms. Russo’s conduct here is opposition to physician-assisted suicide, not murder, stalking, pedophilia, or child or elder abuse, as the Commonwealth implies at various points in their brief. CW Br.3-37,49.

²³ Per the common law, dogs and other animals are considered property. *Irwin v. Degtiarov*, 85 Mass. App. Ct. 234, 237 (2014). Thus, their disposition, while subject to some constraints from statutes which govern the humane treatment of animals, is generally up to the owner.

The potential harm from empowering a veterinarian to decide when a pet should be euthanized is patent. A pet owner who is aware their dog is suffering may delay seeking veterinary care, fearful the veterinarian will decide to euthanize the dog before the pet's time or before the owner is ready. They may decide not to seek veterinary care at all, and thus never get counsel from a veterinarian about how the animal's quality of life has reached an intolerable low, or the support many pet owners need and seek from veterinarians before they take the drastic step of intentionally ending their pet's life.²⁴ The connection between the person who has loved and cared for the pet and the pet's healthcare provider may be damaged or severed. Many more pets may suffer as a result.

C. Veterinary care is expensive and not equally available to all pet owners.

An average veterinary visit in Massachusetts is estimated to be \$85, before adding the cost of routine testing (like bloodwork, estimated at \$80-200 and heartworm tests, estimated at \$45-50).²⁵ If the pet requires emergency services, the exam alone may cost \$100-200, with wound treatment estimated at \$800-2,500, emergency surgery estimated at \$1500-5,000, and hospitalization estimated at \$600-3,500.²⁶ Almost half of all dogs over the age of ten will develop cancer

²⁴ "When an animal is considered a member of the family, making the decision to end its life can be a very distressing and protracted process, often described by owners as the hardest thing they have ever had to do. Owners reasonably expect emotional support during this time, including validation of their decision (if this can be offered sincerely) which mitigates feelings of guilt." Cooney, *supra* note 9.

²⁵ *How Much Does a Vet Visit Cost?*, CareCredit.com, available at <https://www.carecredit.com/vetmed/costs/#average-state-costs> (last visited February 9, 2024).

²⁶ *Id.*

and cancer treatment costs approximately \$4,100.^{27 28} In one case about the money owed a small-breed dog owner after its dog was injured by the other party's dog, there was no challenge to the cost of the emergency veterinary care, which exceeded \$8,000. *Degtiarov*, 85 Mass. App. Ct. at 234. And pet insurance does not render veterinary care affordable for those with limited means: the average cost is \$35 per month for a dog and \$29 per month for a cat.²⁹ Even with pet insurance, a cat owner may pay \$1,600 to treat a single instance of ingestion of a foreign object.³⁰

Nonetheless, pet ownership is ubiquitous. In 2016, more than half of all U.S. households owned a pet.³¹ It is perhaps unsurprising, given the high cost of veterinary care, that 27 percent of pet-owning households did not take their pet

²⁷ Ashley Kilroy, "How Much Does a Vet Visit Cost?," *Forbes Advisor*, available at <https://www.forbes.com/advisor/pet-insurance/pet-care/how-much-does-vet-visit-cost/> (last visited February 9, 2024).

²⁸ Coco Lederhouse, "Research on Aging a Natural Fit for One Health Approach; Similarities between Senior Dogs and Human with Alzheimer's Proving Valuable for Translational Research," Jan. 3, 2024, *American Veterinary Medical Association ("AVMA") News*, available at <https://www.avma.org/news/research-aging-natural-fit-one-health-approach> (last visited February 9, 2024).

²⁹ Kilroy, *supra* note 27.

³⁰ *Id.*

³¹ Katie Burns, "Pet Ownership Stable, Veterinary Care Variable; AVMA Sourcebook Details Pet Ownership Numbers and How Veterinary Care Varies by Pet Species and Other Factors," (Dec. 31, 2018) *AVMA News*, available at <https://www.avma.org/javma-news/2019-01-15/pet-ownership-stable-veterinary-care-variable> (last visited February 9, 2024).

to a veterinarian that year.³² Unlike medical professionals who treat humans, there is no obligation for a veterinarian to treat animals if the owner cannot afford to pay for services.³³

Despite the prohibitive cost of veterinary care, many believe that pet ownership should not be restricted to the wealthy. The “human-animal bond is a mutually beneficial and dynamic relationship...that is influenced by behaviors considered essential to the health and wellbeing of both. This bond is beneficial to the mental, physical, and social health of people and animals.”³⁴ The president and CEO of the ASPCA has written: “[a]nybody, regardless of income, should be able to enjoy and benefit from the love and companionship that comes from pets[.]”³⁵ The Centers for Disease Control and Prevention (“CDC”) have recognized measurable physical and mental health benefits from pet ownership. Pets “can increase opportunities to exercise, get outside, and socialize. Regular walking or playing with pets can decrease blood pressure, cholesterol levels, and triglyceride levels. Pets can help manage loneliness and depression by giving us

³² *Id.*

³³ See 256 CMR 7.01(3) (“A licensee may...(b) Refuse to provide veterinary services....when the licensee is unable to reach agreement with an owner or other authorized person regarding services[.]”)

³⁴ “Human-Animal Bond,” American Veterinary Medical Association (“AVMA”), available at <https://www.avma.org/one-health/human-animal-bond> (last visited February 9, 2024).

³⁵ Matt Bershadker, ASPCA CEO & President, “Acting on the Critical Link Between Pets, People, and Poverty,” (Feb. 26, 2019), ASPCA Blog, available at <https://www.asPCA.org/blog/acting-critical-link-between-pets-people-and-poverty#:~:text=Anybody%2C%20regardless%20of%20income%2C%20should,there%2C%20but%20keep%20them%20there.>

companionship.”³⁶ Studies have demonstrated these benefits and more—including “better cognitive function in older adults” as well as decreased “anxiety, and symptoms of PTSD.”³⁷

In short, whether the animal cruelty statute should require veterinary care and to what extent is a question best left to the Legislature. If such a requirement becomes statutorily mandated, prospective pet owners will at least be on notice about the financial burden they must bear to avoid criminal prosecution and make choices with that obligation in mind.

CONCLUSION

For the foregoing reasons, CPCS urges this Court to hold that the animal cruelty statute, G.L. c. 272, §77, does not require euthanasia for animals whose naturally caused pain cannot be controlled. It further requests that this Court not address questions not presented by the facts of the case. But should it do so, CPCS urges this Court to further hold that the animal cruelty statute also does not require veterinary care for animals who are suffering from natural causes.

Respectfully submitted,

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³⁶ “How to Stay Healthy Around Pets and Other Animals,” CDC.gov, available at <https://www.cdc.gov/healthypets/keeping-pets-and-people-healthy/how.html#:~:text=They%20can%20increase%20opportunities%20to,have%20at%20least%20one%20pet> (last visited February 9, 2024).

³⁷ *Id.*

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with Rules 17 and 20 of the Massachusetts Rules of Appellate Procedure. This brief is set in 14-point Athelas font and contains 6,030 non-excluded words, as counted by the word-processing system used to prepare it.

/s/ Ann Grant
Ann Grant

CERTIFICATE OF SERVICE

I hereby certify that I have today made service of this amicus brief by directing copies through the electronic filing service provider to Assistant District Attorney Tracey Cusick of the Norfolk District Attorney's Office and to Attorney Jason Bolio, counsel for Ms. Russo.

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