

**PEACOCKS, PIGS, AND POORLY TRAINED DOGS:
THE RELATIONSHIP BETWEEN
MISREPRESENTED SERVICE AND EMOTIONAL
SUPPORT ANIMALS AND DISABLED AMERICANS:
A CALL FOR LEGISLATIVE CLARITY**

Emily Barigye*

* J.D. Candidate 2021, Quinnipiac University School of Law; B.A., International Politics, Belmont University. Many thanks to the Quinnipiac University School of Law professors who offered valuable guidance in writing this note and to the editors and the members of Quinnipiac Health Law Journal for their excellent editorial support. Special thanks to editor Kim Caplik and Editor-in-Chief Courtney Parsons for their invaluable feedback and hard work during the editing process.

Table of Contents

Introduction 329

I. The Evolution of Attitudes Towards Pets, Service Animals, and Emotional Support Animals in the United States..... 332

II. Legal Protections and Limits Under Federal Law for Persons with Service Animals and Emotional Support Animals

..... 334

A. Americans with Disabilities Act..... 334

B. Fair Housing Amendments Act of 1989..... 338

C. Air Carrier Access Act 339

III. Legal Protections and Limits Under Non-Connecticut State Law for Persons with Service Animals and Emotional Support Animals..... 342

IV. Legal Protections and Limits Under Connecticut Law for Persons with Service Animals and Emotional Support Animals 349

V. Analysis..... 352

A. Why Updated and More Defined Protections are Needed at the State and Federal Levels..... 352

B. Solutions for Connecticut and Proposed Legislation 355

VI. Conclusion 359

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 329

Introduction

On December 22, 2019, just a few days before Christmas, a man and his service dog, Beauty, were shopping at a Delaware mall.¹ Beauty had been trained to alert the man of impending seizures.² As the pair passed a small mall kiosk, two other dogs suddenly appeared from seemingly nowhere and ran toward Beauty and her handler.³ The dogs lunged at Beauty, attacking her back leg and belly.⁴ The handler instinctively struck them with his cane to stop the attack; he knew that Beauty was trained not to react to other animals, and she would not fight back.⁵ A man then came running from the kiosk, yelling that the dogs were his service animals.⁶ Beauty's handler was less than convinced because the dogs were unleashed and the owner had no control over them.⁷ In the aftermath of the attack, the mall closed the kiosk owner's business and banned his dogs from the premises. Local Animal Services were notified, and the owner was fined and cited for not controlling his pets.⁸ Unfortunately, the fine and citation did nothing to help the disabled man's situation; he feared that he would need to spend several thousand dollars to retrain Beauty, who seemed shaken and afraid after the attack.⁹

Misrepresentation of service animals is an issue of growing importance in the United States, and current laws regarding service animals do not adequately meet the needs of disabled people. Buying and training a service dog typically costs between \$15,000 and \$30,000 and can total as much as \$50,000 in some cases.¹⁰ People who bring "fake" service animals into public spaces cause real harm to disabled persons who have, and need, genuine service animals. Not only do disabled people face the costly burden of retraining or replacing their real service animal that has been affected by a misrepresented service

¹ See Matt Petrillo, 'Upsets Me Beyond Belief', CBS PHILLY (Dec. 27, 2019, 6:55 PM), <https://philadelphia.cbslocal.com/2019/12/27/man-outraged-after-his-service-dog-is-attacked-inside-christiana-mall/>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Kellye Guinan, *How to Pay for a Service Dog*, FINDER, <https://www.finder.com/service-dog-costs-and-financing-options> (last updated Dec. 18, 2020).

animal, but discrimination against people with legitimate service animals is likely to increase as the incidence of misrepresented, illegitimate service animals increases.¹¹

Further complicating matters, due to federal protections for service animal handlers, employees of public accommodations are limited in the questions they can ask to determine if a purported service animal is, in fact, an *authentic* service animal.¹² Additionally, the distinction between service animals and animals with other designations, including emotional support animals and assistance animals, is muddled. Federal statutes provide different standards under the Americans with Disabilities Act (ADA),¹³ the Fair Housing Act (FHA),¹⁴ and the Air Carrier Access Act (ACAA),¹⁵ and state statutes also vary in their definitions and provisions.¹⁶

The public's confusion regarding service and assistance animals disadvantages disabled persons, including nearly five million veterans.¹⁷ According to a 2008 study, almost 31% of troops who had returned from Iraq and Afghanistan had a mental health condition or reported a traumatic brain injury (TBI).¹⁸ Disabled veterans often successfully use service animals to combat physical and psychiatric disabilities.¹⁹

¹¹ See, e.g., Adrienne Matei, *The Number of Fake Emotional Support Dogs is Exploding – Why?*, THE GUARDIAN (Aug. 13, 2019), <https://www.theguardian.com/lifeandstyle/2019/aug/12/fake-emotional-support-animals-service-dogs> (discussing a disabled man who was refused rideshare services while accompanied by his service dog because the rideshare driver previously had a fake service animals defecate in their car).

¹² See DISABILITY RTS. SECTION, U.S. DEP'T OF JUST., FREQUENTLY ASKED QUESTIONS ABOUT SERVICE ANIMALS AND THE ADA, at Q7 (2015) [hereinafter FREQUENTLY ASKED QUESTIONS].

¹³ Americans with Disabilities Act, 42 U.S.C. § 12101.

¹⁴ Fair Housing Act, 42 U.S.C. §§ 3601–3631.

¹⁵ Air Carrier Access Act, 49 U.S.C. § 41705.

¹⁶ At one point, distinctions were quite pronounced, but the federal government is moving toward a more uniform treatment for service and assistance animals. A DOT Regulation that went into effect in January 2021 removes mandatory protections for emotional support animals on air carriers and defines a service animal along the same lines as the ADA. See Marnie Hunter & Pete Muntean, *Rule Cracking Down on Emotional Support Animals Goes into Effect*, CNN, <https://www.cnn.com/travel/article/emotional-support-animals-airlines-wellness-trnd/index.html> (last updated Jan. 11, 2021). The ACAA previously provided greater protections than the ADA by including emotional support animals in the definition of a service animal. See *Traveling by Air with Service Animals*, 85 Fed. Reg. 79742, 79744 (Dec. 10, 2020) (to be codified at 14 C.F.R. pt. 382).

¹⁷ As of 2019, over 4.9 million veterans received compensation benefits due to service-connected disabilities. See VETERANS BENEFITS ADMIN., U.S. DEP'T OF VETERANS AFFS., ANNUAL BENEFITS REPORT: COMPENSATION 5, 9 (2019).

¹⁸ TERRI TANIELIAN ET AL., INVISIBLE WOUNDS – MENTAL HEALTH AND COGNITIVE CARE NEEDS OF AMERICA'S RETURNING VETERANS, RAND CORP. 2 (2008).

¹⁹ See, e.g., Lindsay Parenti, *Service Dogs for Veterans with PTSD: Taxonomy, Work Stress Reduction, and Matching* 13-14, 16 (2019) (graduate dissertation, West Virginia University) (The Research Repository); Abbey Nickel, *Research Shows How Service Dogs Can Help Veterans with*

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 331

Although many different groups are affected by the growing problem of misrepresented service animals, it gravely affects veterans, because many veterans suffer from non-physical disabilities and require a service dog that does not perform traditional tasks such as guiding. Our disabled veterans should be honored for their sacrifices and should be enabled to use service animals as necessary; therefore, solutions to the problem merit serious consideration by federal and state governments.

This note will address the following interrelated issues: 1) misrepresentation; 2) the distinction between service animals and other designations; 3) overlapping federal statutes; 4) relevant federal and state statutory language; and 5) the impact of these issues on disabled veterans. This note will show why the issue of misrepresented service animals is relevant and important. Next, at the federal level, the note will review applicable sections of the ADA, the FHA, and the ACAA. At the state level, the note will compare existing applicable state laws and statutory language. Further, the note will explore the impact on veterans and discuss the extent of overall limits and protections for service animals and handlers under Connecticut state law. Ultimately, the note will make a recommendation regarding necessary changes to Connecticut state law on service and emotional support animals, and it will recommend continuing changes to federal law to better clarify the status of emotional support animals.

I. The Evolution of Attitudes Towards Pets, Service Animals, and Emotional Support Animals in the United States

The ASPCA estimates that 44% of all households in the United States own a dog and 35% own a cat.²⁰ In total, American households own as pets an estimated 78 million dogs and 85.8 million cats.²¹ Americans are attached to their four-legged friends, and pets have

PTSD, MEDICAL XPRESS (Nov. 6, 2018), <https://medicalxpress.com/news/2018-11-dogs-veterans-ptsd.html>; *NEADS Service Dogs for Veterans*, WORLD CLASS SERVICE DOGS, <https://neads.org/service-dog-programs/service-dogs-for-veterans/> (last visited Dec. 29, 2020). Examples of some common psychiatric disabilities include schizophrenia, bipolar disorder, and PTSD. In the 2018 fiscal year, more than 1.7 million veterans were treated in VA mental health specialty programs throughout the United States. See *Introduction – Office of Research and Development*, U.S. DEP'T VETERANS AFFS. https://www.research.va.gov/topics/mental_health.cfm (last visited Jan. 10, 2020).

²⁰ *Pet Statistics*, ASPCA, <https://www.aspc.org/animal-homelessness/shelter-intake-and-surrender/pet-statistics> (last visited Dec. 29, 2020).

²¹ See *id.*

become members of an ever-evolving class in American society. Though pets are legally still regarded as property, many American pet-owners regard their animals as family members, akin to children or siblings.²² Owners share many aspects of daily life with their pets, including sleeping with pets, sharing food from the table, and even dressing in matching Halloween costumes. Just as most people would feel irresponsible or guilty leaving a child home alone, pet owners also feel guilty or anxious when they are forced to leave their pets at home for long periods of time.²³ Given the evolving relationship that Americans have with their pets, it should be expected that pet owners will find ways to keep their beloved animals by their sides, even in places that pets are not traditionally (or legally) allowed.

While Americans love their pets, many people living in the United States rely on animals for more than just companionship. A 2016 estimate by the United States government found there were 500,000 service dogs in the United States.²⁴ That number did not include miniature horses, which are also federally recognized service animals under the ADA.²⁵ That number did not include emotional support animals, either, because service animals and emotional support animals are treated differently under general federal law.²⁶

Purported service animals have caused an increasing number of injuries and inconveniences in recent years. From January of 2012 through August of 2016, six people were injured and five more killed by purported service dogs.²⁷ Prior to 2012, there were no recorded injuries

²² Even a decade ago, a large shift in the attitude towards pets had already occurred. A 2009 poll found that half of all pet owners considered their pet “as much a part of the family as any other person in the household.” See Associated Press, *Poll: Americans Consider Pets Part of the Family*, NBC NEWS (June 23, 2009, 10:50 AM), <https://www.nbcnews.com/health/health-news/poll-americans-consider-pets-part-family-flna1C9450865>.

²³ A 2016 poll found that 80% of dog owners feel guilty about leaving their dog home alone for long periods of time. See *Survey Finds 80% of Dog Owners Feel Guilty about Leaving Their Pups Home Alone Too Much*, SWNS NEWS (May 20, 2016, 11:47 AM), <https://www.nydailynews.com/news/national/80-dog-owners-feel-guilty-leaving-pups-home-article-1.2643945>.

²⁴ Mark Trainer, *Service Dogs Save Lives*, SHAREAMERICA (Sept. 30, 2016), <https://share.america.gov/service-dogs-save-lives/>.

²⁵ See Disability Rts. Section, U.S. Dep’t of Just., *ADA Requirements: Service Animals*, ADA, https://www.ada.gov/service_animals_2010.htm (last updated Feb. 24, 2020).

²⁶ See, e.g., FREQUENTLY ASKED QUESTIONS, *supra* note 12, at Q3 (discussing the different treatment of emotional support animals and service animals under the ADA).

²⁷ Kenneth M. Phillips, *Fake Service Dogs*, DOG BITE LAW, <https://dogbitelaw.com/legal-right-to-use-service-animals/fake-service-dogs> (last visited Dec. 29, 2020).

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 333

or deaths as a result of service dog attacks.²⁸ Additionally, there is a growing problem with unruly emotional support animals in public spaces, as exemplified by the various issues the airline industry has recently faced. Passengers have attempted to bring on board emotional support peacocks, farm poultry, parakeets, snakes, ducks, various rodents, and other types of animals.²⁹ Between 2015 and 2018, the number of service and support animals flying on Delta Air Lines increased by 150%.³⁰ Further, “animal incidents” such as urination, defecation, barking, growling, lunging, and even biting increased by 84% between 2016 and 2018, with Delta claiming the increased incidents resulted from “a lack of regulation.”³¹

Unclear regulation, or the absence of any regulation at all, leads some individuals to take advantage of loopholes, as exemplified by the issues that Delta Air Lines reported encountering.³² Ultimately, disabled persons with authentic service animals and persons with well-trained and well-behaved emotional support animals suffer the repercussions of misrepresented animals that wreak havoc in public spaces. In 2018, Delta for the first time decided to require health documentation and a promise of the animal’s good conduct from any person traveling with a service or emotional support animal.³³

More pet owners are seeking to bring their pets into public spaces, and at the same time, people are becoming more aware of the benefits of service animals and emotional support animals. Both federal law and Connecticut state law currently favor protections for disabled persons and their service animals over the comfort and accommodation requests of other persons who require dog-free or animal-free public spaces.³⁴ Protections and limits for emotional support animals are not as

²⁸ *Id.*

²⁹ George F. Will, Editorial, *Emotional Support Animals on Planes Signal a Cult of Victimhood*, WASH. POST (Feb. 7, 2018, 7:42 PM), https://www.washingtonpost.com/opinions/a-snake-on-a-plane-for-emotional-support/2018/02/07/3931607c-0b69-11e8-8b0d-891602206fb7_story.html.

³⁰ Tiffany Hsu, *Delta Air Lines Tightens Rules for Service and Support Animals*, N.Y. TIMES (Jan. 19, 2018), <https://www.nytimes.com/2018/01/19/business/delta-airlines-service-animals.html>.

³¹ *Id.*

³² *See id.*

³³ *Id.*

³⁴ *See Ahmad v. State Dept. Transp.*, No. HHDCV136045783S, 2015 Conn. Super. Ct. LEXIS 297, at *12-13 (Feb. 6, 2015) (in a case where a taxi driver requested and was denied an accommodation that he not be required to transport service animals due to his phobia of dogs, the court held that an employer should not discriminate against one protected class to accommodate another protected class); *cf. Tamara v. El Camino Hosp.*, 964 F. Supp. 2d 1077, 1088 (N.D. Cal. 2013) (rejecting a general rule precluding all service animals from a hospital psychiatric ward and instead requiring “that

clear; however, the federal government has made important clarifications in recent months.³⁵ Given the changing attitudes towards both pets and service and emotional support animals in the United States, it is necessary to further update applicable federal and state laws.

II. Legal Protections and Limits Under Federal Law for Persons with Service Animals and Emotional Support Animals

A. Americans with Disabilities Act

The ADA protects disabled persons and their service animals in covered entities, including state and local government agencies, businesses, and non-profit organizations providing goods and services to the public.³⁶ Public housing programs and public and private universities are also covered by the ADA.³⁷ Alternatively, places of worship and religious institutions and organizations are exempt from ADA requirements. Commercial airlines are not covered by the ADA either, but instead are covered by the ACAA.³⁸

The United States Department of Justice (DOJ), Civil Rights Division defines a service animal under the ADA as “a dog³⁹ that has been individually trained to do work or perform tasks for an individual with a disability.”⁴⁰ Further, “[t]he task(s) performed by the dog must be directly related to the person's disability.”⁴¹ “Work” or “tasks” that a dog might perform include alerting a diabetic person about blood sugar levels, reminding a person who suffers from depression to take

an individualized assessment be made in accordance with the ADA and the Code of Federal Regulations to determine whether [a] service animal can be safely allowed in the psychiatric ward”).

³⁵ See Hunter & Muntean, *supra* note 16 (discussing recent changes to the ACAA definition of a service animal, which closely align the ACAA definition with the ADA definition).

³⁶ See generally FREQUENTLY ASKED QUESTIONS, *supra* note 12.

³⁷ As an additional protection, the FHA covers all types of housing, regardless of whether it is already covered by the ADA. See FREQUENTLY ASKED QUESTIONS, *supra* note 12, at Q35; see also *Accessibility Requirements for Buildings*, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/accessibilityR (last visited Feb. 25, 2021).

³⁸ Air Carrier Access Act, 49 U.S.C. § 41705.

³⁹ For purposes of discussing the ADA in this note, the terminology “service animal” can be read to mean “service dog” and vice versa, unless otherwise indicated.

⁴⁰ FREQUENTLY ASKED QUESTIONS, *supra* note 12, at Q1.

⁴¹ *Id.*

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 335

medication, or preemptively detecting a seizure for a person diagnosed with epilepsy.⁴²

Importantly, emotional support animals are not considered service animals under the ADA. To obtain the designation of “service animal,” an animal must be trained to perform a specific job or task.⁴³ Emotional support animals, on the other hand, “provide comfort just by being with a person.”⁴⁴ Likewise, therapy, comfort, and companion animals are not trained to perform a specific job or task.⁴⁵ Thus, these four groups of animals receive none of the protections that service animals receive under the ADA.⁴⁶ The ADA does recognize a distinction between psychiatric service dogs and emotional support dogs.⁴⁷ For example, emotional support dogs often offer comfort to persons suffering from depression and anxiety; however, if a dog is trained to take action that helps a person avoid or lessen the impact of an anxiety attack, then that dog is considered a service animal under the ADA’s guidelines.⁴⁸

The ADA allows disabled persons to train their own service animal and does not require them to be professionally trained. However, service animals are only protected under the ADA once training is complete.⁴⁹ Additionally, disabled persons are not limited to having only one service dog. If different dogs are needed to perform different tasks, entities subject to ADA restrictions must accommodate multiple dogs if it is possible to safely do so.⁵⁰

⁴² *Id.* at Q2.

⁴³ *Id.* at Q3.

⁴⁴ *Id.*

⁴⁵ See “Emotional Support Animal” vs. “Therapy Animal” vs. “Service Animal,” DICTIONARY.COM, https://www.dictionary.com/e/emotional-support-animal-meaning/?itm_source=parsely-api (last visited Dec. 29, 2020).

⁴⁶ Emotional support animals do receive some protections under other federal law. See, e.g., OFF. OF FAIR HOUS. & EQUAL OPPORTUNITY, U.S. DEP’T OF HOUS. & URB. DEV., FHEO-2020-01, ASSESSING A PERSON’S REQUEST TO HAVE AN ANIMAL AS A REASONABLE ACCOMMODATION UNDER THE FAIR HOUSING ACT 3 (2020) (providing that assistance animals “are animals that do work, perform tasks, assist, and/or provide therapeutic emotional support for individuals with disabilities”). Similarly, emotional support animals are sometimes protected by state and local law. FREQUENTLY ASKED QUESTIONS, *supra* note 12, at Q3.

⁴⁷ See U.S. Dep’t of Just., 28 C.F.R. § 36.104 app. A (“psychiatric service animals that are trained to do work or perform a task for individuals whose disability is covered by the ADA are protected by the Department’s present regulatory approach” but “the [DOJ] has retained its position on the exclusion of emotional support animals from the definition of ‘service animal’”).

⁴⁸ FREQUENTLY ASKED QUESTIONS, *supra* note 12, at Q2.

⁴⁹ *Id.* at Q6.

⁵⁰ *Id.* at Q13.

In recent years, there has been an explosion of online websites providing registration and certification documents for a fee.⁵¹ However, certification of a service animal is not required under the ADA, and, in fact, possessing documentation stating that a dog is a service animal is not enough to convey rights under the ADA.⁵² Service animals are also not required to wear any identifying garment, tag, or harness.⁵³ If it is not apparent that a dog is a service animal, then employees of businesses or public spaces covered by the ADA may ask two questions to determine whether a dog is in fact a service animal: (1) employees may inquire whether “the dog [is] a service animal required because of a disability,”⁵⁴ and (2) employees may inquire as to “what work or task [the dog has] been trained to perform.”⁵⁵ The ADA prohibits employees from requesting documentation, from requesting that the dog perform its task to prove that it is, in fact, a service dog, and from questioning the disabled person about their disability.⁵⁶

State and local governments cannot enact breed-specific bans on service animals, but service animals can still be excluded on a case-by-case basis if an individual animal poses a health or safety threat.⁵⁷ A service animal can also be lawfully excluded if the animal is not housebroken or if the handler cannot or will not control the animal.⁵⁸ With some exceptions, when service dogs enter a store or other covered entity, they must either stay on the floor or be carried by the disabled person. Although some persons bringing purported service dogs into grocery stores and other shops might place the dogs in shopping carts, stores generally are not required to allow service animals to sit in carts.⁵⁹ Likewise, although service dogs can enter restaurants, restaurants are not required to allow service dogs to sit at the table or in a chair.⁶⁰

In 2010, the DOJ amended its regulation implementing Title II of the ADA.⁶¹ Subsequently, the ADA’s definition of a service animal is

⁵¹ See SERVICE DOG REGISTRATION, <https://www.servicedogregistration.org> (last visited Dec. 29, 2020); see also USA SERVICE DOG REGISTRATION, <https://usaservicedogregistration.com> (last visited Dec. 29, 2020).

⁵² FREQUENTLY ASKED QUESTIONS, *supra* note 12, at Q17.

⁵³ *Id.* at Q8.

⁵⁴ *Id.* at Q7.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at Q23.

⁵⁸ *Id.* at Q25.

⁵⁹ *Id.* at Q31.

⁶⁰ *Id.* at Q32.

⁶¹ See generally U.S. Dep’t of Just., 28 C.F.R. pt. 35.

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 337

understood to include both dogs and miniature horses. However, the DOJ chose not to list miniature horses as protected service animals in the final rule in the event that the use of a service horse would not be appropriate.⁶² No other animal qualifies as a service animal under the ADA.⁶³ The DOJ updated the rule to also make it clear that the ADA extends the same service animal protections to both persons with mental disabilities and persons with physical disabilities.⁶⁴

B. Fair Housing Amendments Act of 1989

Under the FHA, disabled persons and their assistance animals are offered protection against rental discrimination.⁶⁵ The FHA does not distinguish between service animals, emotional support animals, and assistance animals. The Act provides that an assistance animal is a “trained service animal” or a “companion or therapy animal recommended for a mental or emotional disability.”⁶⁶ Similarly, the administrative agency responsible for enforcing the FHA, the United States Department of Housing and Urban Development (HUD), defines an assistance animal as “an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides emotional support that alleviates one or more identified effects of a person’s disability.”⁶⁷ The Act does not limit assistance animals by breed, size, weight or species. However, unlike limitations set forth in the ADA, under the FHA, landlords have the right to request written verification from a medical provider of an animal’s necessity due to an individual’s disability.⁶⁸ Finally, similarly to the ADA, the Act also

⁶² See Disability Rts. Section, U.S. Dep’t of Just., *supra* note 25.

⁶³ See *id.*; see also U.S. Dep’t of Just., 28 C.F.R. § 35.104 (defining a service animal as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability”).

⁶⁴ U.S. Dep’t of Just., *Fact Sheet: Highlights of the Final Rule to Amend the Department of Justice’s Regulation Implementing Title II of the ADA*, ADA, https://www.ada.gov/regs2010/factsheets/title2_factsheet.html (last updated May 26, 2011).

⁶⁵ MARLEY J. EICHSTAEDT, NORTHWEST FAIR HOUSING ALLIANCE, ASSISTANCE ANIMALS IN HOUSING – NEW HUD GUIDANCE REGARDING ASSISTANCE ANIMALS (2009).

⁶⁶ *Id.*

⁶⁷ *Assistance Animals*, HUD.GOV, https://www.hud.gov/program_offices/fair_housing_equal_opp/assistance_animals (last visited Dec. 29, 2020).

⁶⁸ U.S. DEP’T OF HOUS. & URB. DEV., FHEO-2013-01, SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS (2013).

allows landlords to exclude assistance animals that pose a health or safety risk to people living on the property.⁶⁹

C. Air Carrier Access Act

The ACAA was enacted in 1986 with the purpose of “[banning] discrimination in air travel on the basis of disability.”⁷⁰ The Department of Transportation (DOT) issued its rule implementing the ACAA in 1990, “[setting] out specific requirements to ensure equal access to air transportation” for all passengers in the United States.⁷¹ One of those “specific requirements” includes a rule on service animals.⁷² Importantly, the DOT recently made changes to its ACAA service animal rule, changing its definitions for service animals under the Act. A Notice of Proposed Rulemaking (NPRM) was issued on February 5, 2020, and proposed removing the current language defining a service animal as any animal that assists a person with disabilities by providing emotional support.⁷³ The comment period for the NPRM closed on April 6, 2020.⁷⁴ More than 24,000 public comments were made,⁷⁵ and the DOT ultimately enacted the rule on December 10, 2020.⁷⁶

The DOT chose to codify new rules for service animals because of: (1) disabled persons’ service animal-related complaints against airlines, (2) inconsistent federal definitions, (3) unusual species being brought on aircrafts, (4) misrepresentation, (5) misbehavior, and (6) congressional mandate placed on the DOT by the FAA Reauthorization

⁶⁹ The ADA allows employees, businesses, and other covered entities to exclude service animals that pose a health or safety threat. See FREQUENTLY ASKED QUESTIONS, *supra* note 12, at Q23. For a Connecticut case discussing FHA permissions, see *King’s Daughters & Sons Hous., Inc. v. Farrell*, No. NWHCV186003784S, 2018 Conn. Super. LEXIS 9905, at *13 (Dec. 6, 2018) (ordering the blind defendant to obtain a new service dog after the dog he had been using to assist him bit and nipped multiple other tenants and staff members).

⁷⁰ *DOT Hosts Celebration of Air Carrier Access Act’s 25th Anniversary*, U.S. DEP’T OF TRANSP. (Aug. 1, 2019), <https://www.transportation.gov/briefing-room/dot-hosts-celebration-air-carrier-access-act%E2%80%99s-25th-anniversary>.

⁷¹ *Id.*

⁷² See *Service Animals*, U.S. DEP’T OF TRANSP., <https://www.transportation.gov/individuals/aviation-consumer-protection/service-animals> (last updated Jan. 19, 2021).

⁷³ See generally *Traveling by Air with Service Animals*, 85 Fed. Reg. 6448 (proposed Feb. 5, 2020) (to be codified at 14 C.F.R. pt. 382).

⁷⁴ *Id.* at 6448; *Traveling by Air with Service Animals*, 85 Fed. Reg. 20889, 20889 (pub. Apr. 15, 2020) (to be codified at 14 C.F.R. pt. 382).

⁷⁵ See *Traveling by Air with Service Animals*, 85 Fed. Reg. at 20889.

⁷⁶ See *Traveling by Air with Service Animals*, 85 Fed. Reg. 79742 (Dec. 10, 2020) (to be codified at 14 C.F.R. pt. 382).

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 339

Act of 2018.⁷⁷ Between 2013 and 2015, the number of complaints against airlines from passengers traveling with service animals more than doubled.⁷⁸ Further, the DOT found it problematic that the DOJ's ADA definitions do not recognize protections for emotional support animals and limit service animals to dogs.⁷⁹ The inconsistency of multiple rules applying to public spaces, airport restaurants, and airplanes proved difficult for airports and airlines to implement, and also confused travelers.⁸⁰

Over 750,000 emotional support animals traveled by airplane cabin in 2017, making up 73% of all service animals transported.⁸¹ Prior to the NPRM's publication in February 2020, disability advocates raised concerns with the DOT about persons who travel with peacocks, ducks, and other strange animals as emotional support animals. The advocates expressed that these occurrences lead to "additional scrutiny for service animal users" and "[erode] the public's trust and confidence in service animals."⁸² Finally, the FAA Reauthorization Act of 2018 required the DOT to "conduct a rulemaking proceeding on the definition of the term service animal and to develop minimum standards for what is required for service and emotional support animals."⁸³

The change to the service animal definition draws a sharper distinction between service animals and all other animals. The new defining language is meant to "[explain] that emotional support animals, comfort animals, companionship animals, and service animals in training are not service animals for purposes of [the] rule."⁸⁴ However, the change also "[treats] psychiatric service animals (animals that assist individuals with mental health related disabilities) like other service animals."⁸⁵ The DOT believes the change will help combat the trend of passengers claiming pets as emotional support animals in order to be able to transport the pets at no cost.⁸⁶ However, the DOT also

⁷⁷ See *Traveling by Air with Service Animals*, 85 Fed. Reg. at 6449-51.

⁷⁸ The DOT's Aviation Consumer Protection Division received 48 complaints in 2014, 100 in 2015, 110 in 2016, 70 in 2017, and 115 in 2018. See *id.* at 6449. Airlines reported only 719 direct complaints in 2013 but 3,065 in 2018, with the number increasing each intervening year. *Id.*

⁷⁹ *Id.* at 6450.

⁸⁰ *Id.* at 6449.

⁸¹ *Id.* at 6450 n.14.

⁸² *Id.* at 6450.

⁸³ *Traveling by Air with Service Animals*, 85 Fed. Reg. at 6451.

⁸⁴ *Id.* at 6452.

⁸⁵ *Id.*

⁸⁶ See *id.*

acknowledges that the new rule will create a “burden on passengers traveling with service animals who may be required to submit up to three DOT forms to carriers.”⁸⁷ Additionally, the rule limits the covered species of service animals to dogs, with the option for airlines to establish their own policies allowing the transport of other species of service animals.⁸⁸ Thus, if airlines choose not to establish additional policies, they will only be required to recognize dogs as service animals.⁸⁹

The new ACAA definition of protected service animals is similar to the ADA’s definition. The ACAA now defines a service animal as “a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.”⁹⁰ This is an important departure from the previous ACAA definition of a service animal as “(1) Any animal that is individually trained or able to provide assistance to a qualified person with a disability; and (2) emotional support animals, defined as ‘any animal shown by documentation to be necessary for the emotional well-being of a passenger.’”⁹¹ Crucially, the December 2020 rule changing the definition “allows airlines to recognize emotional support animals as pets, rather than service animals.”⁹² The rule further permits airlines to “require passengers with a disability traveling with a service animal to complete and submit to the airline a form, developed by DOT, attesting to the animal’s training and good behavior, and certifying the animal’s good health.”⁹³ Although ACAA rules originally allowed employees to request advance notice and documentation from a passenger traveling with an emotional support or psychiatric service animal, those provisions were removed, and the current rules only address service animals.⁹⁴

In determining whether an animal qualifies as a service animal under the ACAA, an airline can: “(1) [ask] whether the animal is

⁸⁷ *Id.*

⁸⁸ *Id.* at 6454.

⁸⁹ *Traveling by Air with Service Animals*, 85 Fed. Reg. at 6454.

⁹⁰ *Traveling by Air with Service Animals*, 85 Fed. Reg. at 79742.

⁹¹ *Id.* at 79744.

⁹² *Id.*

⁹³ *Id.* at 79742.

⁹⁴ *Id.* at 79742 n.2 (noting the removal of 14 C.F.R. 382.117 and the addition of new Subpart EE on service animals); *see also id.* at 79767 (detailing a new provision permitting airlines to require forty-eight hours advance notice for transport of service animals).

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 341

required to accompany the passenger because of a disability and what work or task the animal has been trained to perform; (2) [observe] the behavior of the animal; and (3) [look] at physical indicators such as harnesses and vests.”⁹⁵ Importantly, although carriers are free to view vests and tags as indication that an animal is a service animal, the DOT has acknowledged that those items can be easily purchased by virtually anyone online, and thus, airlines “are also free to give the presence or lack of presence of such paraphernalia little weight.”⁹⁶

III. Legal Protections and Limits Under Non-Connecticut State Law for Persons with Service Animals and Emotional Support Animals

Currently, thirty-one states have laws addressing service animal fraud in some capacity.⁹⁷ Some of these laws, however, appear to need substantial updates in order to have true efficacy. For example, the service animal fraud law in Nebraska applies only to guide dogs, likely because this law was last updated in 1977.⁹⁸ Additionally, the Washington statute prohibiting unauthorized use of a service animal was established several decades ago.⁹⁹ Comparing Washington’s aged statute with more recent provisions in other states displays a disparity in the way that legislatures have viewed the misrepresentation issue.¹⁰⁰ Washington’s law protects against the unauthorized use of a “dog guide” or “service animal” by a person who is “not totally or partially blind . . . not hearing impaired . . . or . . . not otherwise physically disabled.”¹⁰¹ The law does not imagine that a person might misrepresent a pet as a service animal; rather, the law anticipates that a person without a disability might wrongfully use an actual service animal in order to gain benefits. Further, the law does not reflect the modern understanding that disabilities can be non-physical as well as physical. Instead, the Washington law is completely silent on any prohibition against a person using a “dog guide” or “service animal” in order to secure rights and

⁹⁵ *Id.* at 79767-68.

⁹⁶ *Id.* at 79768.

⁹⁷ Rebecca F. Wisch, *Table of State Service Animal Laws*, ANIMAL LEGAL & HIST. CTR. (2019), <https://www.animallaw.info/topic/table-state-assistance-animal-laws>.

⁹⁸ *Id.*; see also NEB. REV. STAT. § 28-1313 (2020).

⁹⁹ See generally WASH. REV. CODE § 70.84.060 (2019).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

privileges accorded to persons who have disabilities that are non-physical.¹⁰²

Texas provides an example of a state that has consistently made changes to its statute on misrepresentation, in order to keep up with federal law and changing attitudes about the issue. The Texas statute pertaining to misrepresentation has been in place for over two decades.¹⁰³ Texas updated the statute in 1997 to allow for penalties for improper use of “assistance animals” as opposed to previously only “support dogs.”¹⁰⁴ Prior to 1997, the statute penalized a person who wrongfully “[fitted] a dog with a harness or leash of the type commonly used by blind, deaf, or otherwise handicapped persons who use trained dogs for purposes of travel or auditory awareness, in order to represent that his or her dog [was] a specially trained support dog,” if, in fact, appropriate training had not been provided.¹⁰⁵ Texas replaced this language with language penalizing a person “who uses an assistance animal with a harness or leash of the type commonly used by persons with disabilities who use trained animals, in order to represent that his or her animal is a specially trained assistance animal” even though appropriate training has not been provided.¹⁰⁶ In 2013, Texas modified the language referring to “an assistance animal” to read “a service animal.”¹⁰⁷ The state also increased the applicable fine penalizing misrepresentation to a maximum of \$300 – from a prior maximum of \$200 – and added a new requirement that offenders complete thirty hours of community service.¹⁰⁸

Some states – recognizing the dual problem of outdated language and outdated understandings of what it means to be disabled or to need a service animal – have simultaneously updated antiquated language in their statutes, expanded protections for both non-dog service animals and for persons with non-physical disabilities, and enacted stricter provisions for punishment when an individual misrepresents a service animal. In 2017, Wyoming House Bill 114 changed language

¹⁰² As an example, if the law in Washington state otherwise protects persons with psychiatric disabilities from being discriminated against because they have a service animal, § 70.84.060 as currently written does nothing to prevent a non-disabled person from using a service animal to gain rights or privileges accorded to persons with psychiatric disabilities.

¹⁰³ See TEX. HUM. RES. CODE ANN. § 121.006 (West 2019).

¹⁰⁴ See H.B. 2525, 75th Leg., Reg. Sess. (Tex. 1997).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ See H.B. 489, 83rd Leg., Reg. Sess. (Tex. 2013).

¹⁰⁸ *Id.*

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 343

pertinent to FHA protections against discrimination in renting residential properties.¹⁰⁹ The bill changed language which previously read that a person “[s]hall not be discriminated against in the leasing or rental of residential property because the person has a service dog . . .” to read that “[a] person shall not be discriminated against in the leasing or rental of residential property because the person has an assistance animal”¹¹⁰ The 2017 Wyoming House Bill also updated statutory language to allow a disabled person to be accompanied by a “service animal” instead of only a “service dog.”¹¹¹ In 2015, Michigan removed statutory language exempting only physically disabled persons from the state’s prohibition against the use of certain harnesses, collars, and leashes that typically indicate a dog is a service dog.¹¹² The state expanded the exemption to cover disabled persons as defined by the ADA, and the new statutory language specifically covered veterans with PTSD or TBI.¹¹³ The 2015 Michigan bill also increased the maximum fine for falsely representing possession of a service animal or service animal in training and added other punitive options, including imprisonment for up to ninety days and community service for up to thirty days.¹¹⁴

Some states have focused not only on changing the laws but also on recording the reasoning behind those changes. For example, the enacting language in the preamble of Montana’s 2019 law on misrepresentation of service animals displays the consensus widely shared among legislatures and the public in many different states. The Montana preamble references the ADA definition of a service animal as a dog “trained to do work or perform a task for the benefit of a person with a disability and whose work or task is directly related to the individual’s disability. . . .”¹¹⁵ The legislature further states that “there is an increasing number of occurrences of people bringing pets, therapy animals, and emotional support animals into a place where the animal

¹⁰⁹ See H.B. 114, 64th Leg., Gen. Sess. (Wyo. 2017).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² See H.B. 4527, 98th Leg., 1st Reg. Sess. (Mich. 2015).

¹¹³ See *id.*; cf. S.B. 10, 2019 Leg., Reg. Sess. (Ala. 2019) (removing language referring to “[t]he blind, the visually handicapped, and the otherwise physically disabled” and replacing it with language referring to “individuals with a disability”).

¹¹⁴ See H.B. 4527, 98th Leg., 1st Reg. Sess. (Mich. 2015); cf. S.B. 10, 2019 Leg., Reg. Sess. (Ala. 2019) (adding a mandatory 100 hours of community service to the penalty for anyone who knowingly and willfully misrepresents himself or herself as using a service animal and being qualified to use a service animal).

¹¹⁵ H.B. 439, 66th Leg., Reg. Sess. (Mont. 2019).

would otherwise not be allowed to enter by passing the animal off as a service animal or service animal in training. . . .” The preamble also acknowledges that such wrongful activity is often possible due to (1) “oral misrepresentation,” (2) “a misleading vest or other article on the animal,” or (3) a “falsified certificate.”¹¹⁶ Finally, the legislature recognizes that “the use of a misrepresented service animal erodes the public’s trust of service animals that are well trained, adequately equipped, and fully serving the person with a disability they are entrusted to guide, aid, or protect.”¹¹⁷

The South Carolina statute enacted into law in 2019 has similar preamble language. The text states that there exists “an increasing number of occurrences in which people exploit the confusion related to service animals and attempt to bring an animal into a place that it would otherwise not be allowed to enter by passing off the pet, therapy animal, or emotional support animal as a service animal”¹¹⁸ The legislature also recognizes the problem with falsified vests and documents and acknowledges that as a result, “places of public accommodation become increasingly distrustful that the animals being represented to them as service animals are, in fact, service animals.”¹¹⁹

Enforcement mechanisms are another important consideration; the most well-written law, if unenforced, is meaningless. Although some states with prohibitions on misrepresentation of service animals are silent on enforcement mechanisms, in 2015, Michigan codified a simple enforcement mechanism into law.¹²⁰ Persons who suspect an individual is falsely representing possession of a service animal may make a complaint by using the Department of Civil Rights hotline.¹²¹ The alleged violation may then be referred to law enforcement agents for investigation.¹²² Likewise, in Montana, a representative of a covered place or accommodation may file a complaint in writing with local law enforcement if that representative suspects an animal is being

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ S.B. 281, 123rd Assemb., 1st Reg. Sess. (S.C. 2019).

¹¹⁹ *Id.*

¹²⁰ *See* MICH. COMP. LAWS SERV. § 752.64 (LexisNexis 2019).

¹²¹ *See id.*

¹²² *Id.*

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 345

misrepresented as a service animal in order to gain entry to the place or accommodation.¹²³

Some states have taken other measures to more strictly define what a service animal is and to limit service animal protections to a narrower group of animals. In 2019, Montana updated its state code to replace broader language defining a service animal as “*a dog or other animal* individually trained to provide assistance to an individual with a disability” with narrower language limiting a service animal to “*a dog or miniature horse* individually trained to provide assistance to an individual with a disability.”¹²⁴ The updated definition more closely follows the ADA’s definition of a service animal.¹²⁵ As well, Montana and other states have sought to explicitly exclude emotional support animals from their definition of a service animal. The Montana statute clarifies that the term “service animal . . . does not include an emotional support animal.”¹²⁶ Adopting language from the ADA definition of a service animal, the current Florida statute provides that “[t]he crime-deterrent effect of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.”¹²⁷ Though the Florida legislature introduced a bill to provide increased protections for disabled Floridians with emotional support animals in February 2019, the bill was ultimately withdrawn in May of that year.¹²⁸

Even states without misrepresentation laws are not devoid of protections against interference with a service animal’s duties by some other unruly animal, generally a dog. In some states, these protections predated statutory clauses that made misrepresentation of a service animal a crime or civil infraction. The State of Nevada introduced and passed a law concerning misrepresentation in 2005.¹²⁹ However, prior to 2005, Nevada law already provided explicit protections against a person allowing a dog that he or she owned, harbored, or controlled to interfere

¹²³ See MONT. CODE ANN. § 49-4-221 (2019). The complaint may only be filed if the place or accommodation has previously posted a “conspicuous public notice” declaring both that they do not allow animals other than service animals and that they reserve the right to file a complaint alleging misrepresentation. *See id.*

¹²⁴ See H.B. 439, 66th Leg., Reg. Sess. (Mont. 2019) (emphasis added).

¹²⁵ See Disability Rts. Section, U.S. Dep’t of Justice, *supra* note 25.

¹²⁶ MONT. CODE ANN. § 49-4-203(2) (2019).

¹²⁷ FLA. STAT. § 413.08(d) (2019).

¹²⁸ The bill provided disabled individuals with emotional support animals explicit entitlement to full and equal access in housing accommodations. See H.B. 721, 2019 Leg., Reg. Sess. (Fla. 2019).

¹²⁹ See S.B. 36, 73rd Leg., Reg. Sess. (Nev. 2005).

with the use of a service animal or to jeopardize the safety of the service animal.¹³⁰

Even when a state already has legal protections prohibiting individuals from allowing their dogs or animals to interfere with service animals, the addition of a state misrepresentation law remains useful. Such a law adds an extra layer of protection for disabled individuals who use service dogs. Instead of allowing a response only after harm is inflicted on the disabled person and his or her service animal, misrepresentation laws allow law enforcement authorities to intervene *before* a disabled person and his or her service animal is harmed.

Finally, it is relevant to note that the issue of misrepresentation is understood by some state legislatures to be an issue of veterans' rights and protections. Misrepresentation bills in some states have been sponsored or supported by Senate and House veterans' committees. In Michigan, a Democratic member of the House Military and Veterans Affairs Committee sponsored the 2015 Public Act that increased the fine for the misdemeanor of misrepresenting a service or assistance animal and expanded protections for both veterans and individuals with non-physical disabilities.¹³¹ A 2019 misrepresentation bill enacted in Iowa was sponsored by the Senate Veteran's Committee.¹³² Likewise, in Colorado, a 2016 bill on misrepresentation was sponsored by a member of the House State, Veterans, and Military Affairs Committee, and that committee gave the bill a favorable report.¹³³

It is unsurprising that some members of state legislatures see service animal misrepresentation as a veteran's issue. Almost five million veterans have one or more service-connected disabilities, and

¹³⁰ The law codifying such behavior as a criminal misdemeanor is still in effect. *See* NEV. REV. STAT. § 426.790 (2019). Subsequent amendments have made technical changes, such as the 2005 amendment which broadened the prohibition against interference to include other animals and not just dogs. *See* S.B. 36 § 9, 73rd Leg., Reg. Sess. (Nev. 2005). Clear civil liability provisions requiring violators to pay restitution to the disabled person or owner of the service animal were also added through the 2005 Amendment. *See id.* §§ 9-10.

¹³¹ *See* REP. DAVID E. RUTLEDGE (D), MI LEGISLATOR PROFILES, LexisNexis (database updated 2021); H.B. 4527, 98th Leg., 1st Reg. Sess. (Mich. 2015).

¹³² 2019 LEGISLATIVE OUTLOOK IA S.B. 341, IOWA LEGIS. OUTLOOK, LexisNexis (database updated 2021).

¹³³ *See* 2016 BILL TRACKING CO H.B. 1426, COLORADO BILL TRACKING, LexisNexis (database updated 2016); 2016 LEGISLATIVE OUTLOOK CO H.B. 1426, COLO. LEGIS. OUTLOOK, LexisNexis (database updated 2021); REP. DIANNE PRIMAVERA (D), CO LEGISLATOR PROFILES, LexisNexis (database updated 2021).

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 347

those disabilities are often quite severe.¹³⁴ Between 2001 and 2018, the number of veterans with a service-connected disability rating of 50% or higher increased from less than 500,000 to approximately two million.¹³⁵ Thus, the number of veterans who suffer from disabilities – and therefore might benefit from the use of a service animal – has effectively quadrupled in the last two decades.

In Mississippi, a veteran with a PTSD service dog experienced the effects of an outdated law that did not provide protections for individuals with non-physical disabilities.¹³⁶ She encountered many questions when she tried to enter Mississippi businesses with her service dog, and employees often demanded that she leave because she was not hearing or vision impaired.¹³⁷ Although she was protected by federal laws, there remained confusion among employees and business owners, and Mississippi state laws provided no protection.¹³⁸ The veteran successfully advocated for a 2018 Mississippi bill enacted to include post-traumatic stress disorder in the qualifying list of disabilities and impairments for which an individual may use a support animal.¹³⁹ Though the enacted legislation did not address misrepresentation, it did extend greater protections to veterans with psychiatric disabilities.¹⁴⁰

IV. Legal Protections and Limits Under Connecticut Law for Persons with Service Animals and Emotional Support Animals

Connecticut offers no greater protections for service animals than does federal law, with Connecticut law referring only to guide or assistance dogs for blind, deaf, or mobility impaired persons.¹⁴¹ Further,

¹³⁴ See VETERANS BENEFITS ADMIN., U.S. DEP'T OF VETERANS AFFS., ANNUAL BENEFITS REPORT: COMPENSATION 5, 9 (2019).

¹³⁵ NAT'L CTR. FOR VETERANS ANALYSIS & STAT., U.S. DEP'T OF VETERANS AFFS., STATISTICAL TRENDS: VETERANS WITH A SERVICE-CONNECTED DISABILITY, 1990 TO 2018, at 6 (2019). "Service-connected" refers to a disability that is "a result of disease or injury incurred or aggravated during active military service." A "disability rating" is a score of the veteran's degree of disability, "on a scale of 0 to 100 percent, in increments of 10 percent." *Id.* at 3.

¹³⁶ Jimmie E. Gates, *Meet the Veteran Behind Mississippi's New Law Allowing Service Animals for Those with PTSD*, MS CLARION LEDGER (Mar. 15, 2018), <https://www.clarionledger.com/story/news/politics/2018/03/15/veteran-behind-mississippis-new-law-allowing-service-animals-those-ptsd/423591002/>.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ See *id.*; H.B. 944, 2018 Leg., Reg. Sess. (Miss. 2018).

¹⁴⁰ See H.B. 944, 2018 Leg., Reg. Sess. (Miss. 2018).

¹⁴¹ See CONN. GEN. STAT. § 46a-44 (2019).

Connecticut currently has no law directly penalizing persons who misrepresent animals as service animals or emotional support animals.¹⁴² Legislators in Connecticut have thrice attempted to address the issue of misrepresentation of service animals,¹⁴³ but there has not yet been any substantive change to Connecticut law on the issue.

On March 19, 2018, the Joint Judiciary committee introduced the first bill, which would make the misrepresentation of a dog as a service animal an infraction.¹⁴⁴ When first introduced, the proposed bill was entitled “An Act Concerning Service Animals.”¹⁴⁵ However, when the committee reissued the bill approximately one month later, the bill was entitled “An Act Concerning Emotional Support Animals and Housing Accommodations.”¹⁴⁶ The bill initially provided that a person could not “knowingly represent, whether expressly or impliedly, that a dog is a service animal or [is being] trained as a service animal, for the purpose of obtaining any rights or privileges afforded to an individual with a disability, unless such dog is a service animal or [service-animal-in-training].”¹⁴⁷ However, the April 17, 2018, reissue consisted of entirely different substance, providing that the Department of Consumer Protection should develop a pamphlet “concerning reasonable accommodations that certain housing providers must allow for a person with mental and emotional disabilities, who lives with an emotional support animal, as provided in the federal Fair Housing Act”¹⁴⁸

Prior to the reissue, the Joint Judiciary Committee produced a favorable report on the substitute.¹⁴⁹ Though the modified bill ultimately passed through the first committee, it was never voted on in the House.¹⁵⁰ The dramatic change from the initial language to the language in the reissue calls into question the actual purpose of the bill. It remains

¹⁴² See Wisch, *supra* note 97.

¹⁴³ See H.R. 5566, 2018 Gen. Assemb., Feb. Sess. (Conn., as introduced in House Mar. 19, 2018); H.R. 5566, 2018 Gen. Assemb., Feb. Sess. (Conn., as reissued in House Apr. 17, 2018); H.R. 6430, 2019 Gen. Assemb., Jan. Sess. (Conn. 2019); H.R. 7091, 2019 Gen. Assemb., Jan. Sess. (Conn. 2019).

¹⁴⁴ See H.R. 5566, 2018 Gen. Assemb., Feb. Sess. (Conn., as introduced in House Mar. 19, 2018).

¹⁴⁵ *Id.*

¹⁴⁶ See H.R. 5566, 2018 Gen. Assemb., Feb. Sess. (Conn., as reissued in House Apr. 17, 2018).

¹⁴⁷ H.R. 5566, 2018 Gen. Assemb., Feb. Sess. (Conn., as introduced in House Mar. 19, 2018).

¹⁴⁸ H.R. 5566, 2018 Gen. Assemb., Feb. Sess. (Conn., as reissued in House Apr. 17, 2018).

¹⁴⁹ See JUD. COMM., JOINT FAVORABLE REP., H. 2018-537, Feb. Sess. (Conn. 2018).

¹⁵⁰ See 2018 LEGISLATIVE OUTLOOK CT H.B. 5566, CONN. LEGIS. OUTLOOK, LexisNexis (database updated 2021).

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 349

unclear whether the bill was meant to protect the public against misrepresented service animals, protect landlords from tenant abuse of emotional support animal accommodations, or protect tenants with emotional support animals by clarifying their rights under the FHA. Different parties who objected to the bill opposed it on the basis of each of these purposes.¹⁵¹ One opponent called for reduced protections for support animals and claimed that the bill as reissued would be unreasonably burdensome for landlords.¹⁵² However, another opponent felt that the bill's reissue did not model the Fair Housing Amendments Act closely enough, arguing that more should be done in the bill to recognize emotional support dog information.¹⁵³ A Connecticut Legal Services representative felt that enacting the bill as originally drafted would penalize persons who innocently mischaracterized an emotional support animal as a service animal.¹⁵⁴

In 2019, Republican Representative Laura Devlin proposed a second bill.¹⁵⁵ The proposed bill required that “the general statutes be amended to establish and enhance fines for the misrepresentation of an animal as a service animal.”¹⁵⁶ Just as in 2018, the new bill failed to reach a vote in the House.¹⁵⁷

The 2018 and 2019 bills did not seriously address the problem with misrepresented service animals. The Joint Judiciary Committee made a half-hearted attempt to enact some guidance in 2018, but the 2018 bill was quickly transformed to instead address issues with emotional support animals.¹⁵⁸ The 2019 bill appeared to be a simple attempt to test the waters again, seeing as the entire substance of the bill was just two sentences.¹⁵⁹

¹⁵¹ It may be important to note that some objections came from persons outside the state of Connecticut, bringing into question how much consideration and weight their objections should be given. *See* JUD. COMM., JOINT FAVORABLE REP., H. 2018-537, Feb. Sess., at 3 (Conn. 2018).

¹⁵² *See id.* at 3 (statement of Deborah Lutz).

¹⁵³ *See id.* (statement of Edward Balfour).

¹⁵⁴ *See id.* (statement of Raphael Podolsky, Conn. Legal Servs.).

¹⁵⁵ *See generally* H.R. 6430, 2019 Gen. Assemb., Jan. Sess. (Conn. 2019).

¹⁵⁶ *See id.*

¹⁵⁷ 2019 LEGISLATIVE OUTLOOK CT H.B. 6430, CONN. LEGIS. OUTLOOK, LexisNexis (database updated 2021).

¹⁵⁸ *See generally* H.R. 5566, 2018 Gen. Assemb., Feb. Sess. (Conn. 2018).

¹⁵⁹ The text of the bill read: “*Be it enacted by the Senate and House of Representatives in General Assembly convened:* That the general statutes be amended to establish and enhance fines for the misrepresentation of an animal as a service animal. *Statement of Purpose:* To enhance penalties for misrepresenting an animal as a service animal.” H.R. 6430, 2019 Gen. Assemb., Jan. Sess. (Conn. 2019).

On February 7, 2019, the Joint Committee on Human Services introduced a third bill, which established more detailed provisions for making it a crime to misrepresent a service animal,¹⁶⁰ perhaps as a hopeful continuation of Representative Devlin's bill. However, this new bill failed to make it out of committee.¹⁶¹ Though fairly detailed, the bill completely avoided addressing the misrepresentation of emotional support animals.¹⁶² In light of Connecticut's continued statutory silence on the top of ESAs, service animals in Connecticut are governed by ever-changing federal law.

V. Analysis

A. Why Updated and More Defined Protections are Needed at the State and Federal Levels

Even people who have legitimate service animals face illegal discrimination from time to time.¹⁶³ Unfortunately, this discrimination will likely continue to increase as the incidence of misrepresented service animals continues to rise. The assertion that fake service animals are problematic is often grounded in anecdotal evidence. In an online forum devoted to service dogs, one disabled woman wrote that a hostess at a restaurant tried to seat her in an outdoor patio space, even though it was raining, simply because a service dog accompanied the woman.¹⁶⁴ When the disabled woman complained to a manager, he commented that the hostess had treated the woman badly because, a few days prior, an improperly trained, or possibly fake, service dog had come into the

¹⁶⁰ See H.R. 7091, 2019 Gen. Assemb., Jan. Sess. (Conn. 2019).

¹⁶¹ The bill failed to successfully pass through its first committee, the Joint Committee on Human Services, on March 28, 2019. See 2019 BILL TRACKING CT H.B. 7091, CONN. BILL TRACKING, LexisNexis (database updated 2019).

¹⁶² Perhaps attempting to define a legitimate versus illegitimate emotional support animal is untenable, which leads some legislators to avoid addressing emotional support animals in proposed and enacted legislation. See Phillips, *supra* note 27 (proposing that all pets provide their owners with some level of emotional support and that the acceptance of emotional support animals should be done away with and replaced with a more narrow and defined protection for persons with a diagnosed mental condition who use the dog as part of their treatment).

¹⁶³ See Bob D'Angelo, *Blind Woman in Minnesota Says Ride-Sharing Companies Do Not Allow Her Service Dog in Vehicles*, WHIO (Sept. 24, 2019, 3:00 PM), <https://www.whio.com/news/national/blind-woman-minnesota-says-ride-sharing-companies-not-allow-her-service-dog-vehicles/79vqIOFjOr1Ihf40g1GnAM/>.

¹⁶⁴ *On the Consequences of Fake and Undertrained Service Dogs*, SERV. DOG CENT., <http://servicedogcentral.org/content/On-the-Consequences-of-Fake-and-Undertrained-Service-Dogs> (last visited Sept. 28, 2019).

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 351

restaurant and “[sat] on a chair and [caused] general mayhem,” leading to many customer complaints.¹⁶⁵ In another case, a woman living in a small town with her service dog reported being repeatedly mistaken for *another* woman whose service dog’s bad manners had caused her and the dog to be banned from four area stores.¹⁶⁶ Sadly, people who have well-behaved, trained service dogs still suffer due to the bad reputation stemming from people who utilize undertrained service dogs or have misrepresented their pets as service dogs.

Another issue arises when employees attempt to identify an authentic service animal versus a misrepresented service animal. Although the ADA does not require service animals to wear an identifying item, in practice, many people assume a service animal *will* wear an identifying item.¹⁶⁷ As an example, the DOJ previously issued the “ADA Best Practices Tool Kit for State and Local Governments,” a document which was designed to help state and local officials comply with Title II of the ADA.¹⁶⁸ In one section, the document states that “[many service dogs] are easily identified because they wear special harnesses, capes, vests, scarves, or patches.”¹⁶⁹

However, identifying an authentic, versus misrepresented, service animal is not as simple as making sure the animal is wearing an identifying item. Some authentic service dogs will not wear an identifying object, and further, it is extremely easy for a person desiring to misrepresent a pet as a service dog to obtain a vest, tag, badge, or harness online.¹⁷⁰ Thus, the dual problem created is that some authentic service dogs will be labeled fakes, while other illegitimate service dogs will regularly pass through public spaces, undetected until they cause an incident.¹⁷¹ Misrepresented service dogs that do cause incidents often

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See U.S. DEP’T OF JUST., *The ADA and Emergency Shelters: Access for All in Emergencies and Disasters*, in ADA BEST PRACTICES TOOL KIT FOR STATE AND LOCAL GOVERNMENTS, ch. 7 add. 2, at 7 (2007).

¹⁶⁸ See generally *id.*

¹⁶⁹ See *id.* at 7.

¹⁷⁰ See *SitStay*, SERV. DOG COLLECTION, <https://sitstay.com/collections/service-dog> (last visited Jan. 30, 2020).

¹⁷¹ See Jennifer Chasser, *How Aggressive Fake Service Dogs Harm Real Service Dog Teams*, THE MIGHTY (Sept. 9, 2019), <https://themighty.com/2019/09/fake-service-dogs-harm-real-service-dogs/> (discussing how the handler of a service dog encountered a fake service dog at a VA hospital, and the fake service dog’s owner attempted to invoke the ADA as protection).

cause real service dogs to face illegal and unwarranted discrimination.¹⁷² In 2017, a dog behavior consultant in North Carolina stated that due to the widespread phenomena of misrepresented service dogs, some of her clients were refused service in restaurants or asked to provide documentation for their service dog.¹⁷³ Another example of the problem is the previously discussed Delta Airlines issue.¹⁷⁴

In order to establish more defined state and federal law addressing emotional support animals and misrepresented emotional support animals, legislators must first clearly define the term “emotional support animal.” Attorney Kenneth Phillips, who specializes in dog bite law across the United States, argues that the designation of “emotional support animal” is untenable, as all pets give their masters some type of emotional support.¹⁷⁵ He has called for the ADA to be clarified, specifically in regard to emotional support animals, and for state protections of emotional support animals to be scaled back.¹⁷⁶ Phillips argues that the law should be amended to allow a person who has a diagnosed mental condition to be in the presence of a specific animal as part of that person’s treatment.¹⁷⁷ Further, Phillips would limit the acceptable animal to either a dog or a cat and would not allow the animal to remain in a public space if a nearby person protested the animal being in the space.¹⁷⁸

Members of the public largely want federal and state governments to make changes to service animal definitions and protections.¹⁷⁹ The recent changes to the ACAA were a reaction to public discontent with airline policies regarding emotional support animals.¹⁸⁰ The changes also showcased the government’s desire to better regulate

¹⁷² Mackensy Lunsford, *Fake Service Dogs Are Unruly Beasts*, CITIZEN TIMES (May 5, 2017, 4:59 PM), <https://www.citizen-times.com/story/news/local/2017/05/05/fake-service-dogs-unruly-beasts/99451434/>.

¹⁷³ *See id.*

¹⁷⁴ Hsu, *supra* note 30.

¹⁷⁵ Phillips, *supra* note 27.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *See, e.g.*, Traveling by Air with Service Animals, 85 Fed. Reg. 79742, 79743 (Dec. 10, 2020) (to be codified at 14 C.F.R. pt. 382).

¹⁸⁰ *See* Traveling by Air with Service Animals, 85 Fed. Reg. 79742, 79743 (Dec. 10, 2020) (to be codified at 14 C.F.R. pt. 382) (removing protections for emotional support animals on air carriers but leaving in place protections for service animals, including psychiatric service animals).

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 353

the confined spaces travelers must share on aircrafts.¹⁸¹ The consensus from persons and organizations who commented, as well as the DOT's position, largely expressed a desire to do what Attorney Phillips has called for and scale back protections and acceptance of emotional support animals.¹⁸² Additionally, many airlines have responded to the new rule by immediately rolling back protections for emotional support animals, with some rollbacks taking effect as early as March 2021.¹⁸³

At the state level, the evolution of law often comes in stages. Comparing the changes that states made to their service animal legislation in the 1990s, the 2000s, and the past decade brings to light the need for each state to continue updating the ever-evolving body of law associated with protections for disabled persons. States that have enacted misrepresentation laws often have simultaneously replaced outdated language and modified statutes to more closely follow changes to federal law.¹⁸⁴ States that have yet to enact any legislation regarding misrepresentation of service animals could likely benefit from technical corrections, such as updated definitions and modified word usage. Thus, even if such states choose not to enact misrepresentation legislation, those states should still consider updating their statutory language. Ultimately, it is important to recognize that misrepresentation laws should primarily protect the rights of the disabled. Of course, it is also important to protect public spaces and members of the public from the inconvenience and dangers associated with misrepresented service animals, but attempting to protect other members of the public should not come at the expense of the truly disabled.

B. Solutions for Connecticut and Proposed Legislation

How can Connecticut better protect legitimate users of service and support animals from dangerous interference and discrimination in

¹⁸¹ For further discussion of the unique air travel challenges that the government sought to address through the new rule, see *id.* at 79747 n.38, 79748, 79751, 79755, 79758, 79760, 79768.

¹⁸² See Phillips, *supra* note 27.

¹⁸³ See Hunter & Muntean, *supra* note 16 (detailing changes at four airlines which began phasing out services for emotional support animals immediately after the new DOT regulation went into effect).

¹⁸⁴ See, e.g., H.B. 114, 64th Leg., Gen. Sess. (Wyo. 2017) (modifying dated statutory language referring to "service dogs" and replacing that language with a broader reference to service animals and assistance animals); H.B. 4527, 98th Leg., 1st Reg. Sess. (Mich. 2015) (modifying statutory language previously covering only physically disabled persons to now cover disabled persons as defined by the ADA; increasing the maximum fine for falsely representing possession of a service animal).

a society where misrepresentation of service animals is a growing problem? There have been several unsuccessful attempts to address this question at the state level.¹⁸⁵ Current Connecticut law on service animals should be updated. Connecticut can learn from states like Texas, who chose to consistently implement updates to its law on service animals over the span of the last two decades.¹⁸⁶ Connecticut law presently offers protections against intentional interference with guide or assistance dogs of blind, deaf, and mobility impaired persons.¹⁸⁷ The law makes it a class C misdemeanor for a person to intentionally interfere with a blind, deaf, or mobility impaired person's use of a guide dog through "any action intended to harass or annoy the blind, deaf or mobility impaired person, the person training a dog as a guide dog or assistance dog or the guide dog or assistance dog"¹⁸⁸ Connecticut could begin by making changes to establish a narrower definition of what constitutes a disabled person utilizing a service animal. Changes enacted in Alabama in 2019 were simple but extremely effective at expanding protections beyond only physical disabilities. The legislature removed language referring to "[t]he blind, the visually handicapped, and the otherwise physically disabled" and replaced it with language referring to "[a]n individual with a disability."¹⁸⁹

Connecticut's next step could be to revisit the existing definitions of what it means to be a service animal. The current definitions in Montana and Florida offer examples of clear language that differentiates between service animals and other emotional support animals.¹⁹⁰ Modeling the Connecticut statute after the statutes in Montana and Florida would simultaneously increase protections for disabled persons with non-physical disabilities, as well as create a clear rule establishing that owners of emotional support animals are not entitled to the same accommodations as owners of service animals.

¹⁸⁵ See *supra* Section IV. (discussing 2018 and 2019 Connecticut General Assembly bills raised to address misrepresentation of service animals).

¹⁸⁶ See, e.g., H.R. 2525, 75th Leg., Reg. Sess., sec. 7 (Tex. 1997); H.R. 489, 83rd Leg., Reg. Sess. (Tex. 2013).

¹⁸⁷ See CONN. GEN. STAT. § 46a-44 (2019).

¹⁸⁸ CONN. GEN. STAT. § 46a-44 (c) (2019).

¹⁸⁹ See S.B. 10, 2019 Leg., Reg. Sess. (Ala. 2019).

¹⁹⁰ See MONT. CODE ANN. § 49-4-203(2) (2019) (clearly defining a service animal as "a dog or miniature horse individually trained to provide assistance to an individual with a disability"); FLA. STAT. § 413.08(d) (2019) (excluding provision of emotional support from the work or tasks that defines a protected service animal).

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 355

Current Connecticut law also stops short of specifically addressing interference by an offending person's dog or other animal.¹⁹¹ Enacting a civil or criminal statute penalizing a person who allows his or her dog or other animal to interfere with a guide dog or assistance animal would serve as a first step in ensuring better protections for disabled individuals living in Connecticut. As a comparative example, Nevada law has clear civil liability provisions requiring violators to pay restitution to the disabled person or owner of the service animal.¹⁹² Violators are responsible for both actual and punitive damages under the law.¹⁹³ While such a step would neither prevent nor penalize misrepresentation, it would provide a clear remedy for a disabled person whose guide dog or assistance animal is injured by a misrepresented service animal.

Another way of approaching the misrepresentation issue in Connecticut is to consider the rights of disabled veterans. In this state, past conversations about misrepresentation laws have not included concerns for disabled veterans; however, such concerns have been at the forefront of other states' considerations.¹⁹⁴ Connecticut would benefit from considering the needs of disabled veterans as they relate to the misrepresentation issue. As of 2018, approximately 165,000 veterans lived in Connecticut, making up around 6.4% of the state's population.¹⁹⁵ Of these men and women, approximately 28,400 have known service-related disabilities.¹⁹⁶

Veterans with physical or psychiatric disabilities can greatly benefit from properly trained service dogs. Service dogs are able to pick

¹⁹¹ See S.B. 10, 2019 Leg., Reg. Sess. (Ala. 2019).

¹⁹² See NEV. REV. STAT. ANN. § 426.820 (LexisNexis 2019); *supra* note 130 and accompanying text.

¹⁹³ NEV. REV. STAT. ANN. § 426.820 (LexisNexis 2019).

¹⁹⁴ Compare JUD. COMM., JOINT FAVORABLE REP., H. 2018-537, Feb. Sess. (Conn. 2018) (discussing support and opposition of an act concerning emotional support animals and housing accommodations, with no input or discussion of the impact on veterans with disabilities; the act was introduced by the Joint Judiciary Committee), and 2019 BILL TRACKING CT H.B. 7091, CONN. BILL TRACKING, LexisNexis (database updated 2019) (disclosing that Connecticut's 2019 bill on service animal misrepresentation was introduced by the Joint Committee on Human Services), with H.B. 4527, 98th Leg., 1st Reg. Sess. (Mich. 2015) (expanding protections for both veterans and individuals with non-physical disabilities and sponsored by a member of the House Military and Veterans Affairs Committee), and H.B. 944, 2018 Leg., Reg. Sess. (Miss. 2018) (extending greater protections to veterans with psychiatric disabilities and advocated for by a veteran with PTSD).

¹⁹⁵ See *Connecticut Veterans Demographics and Statistics*, LIVESTORIES, <https://www.livestories.com/statistics/connecticut/veteran-demographics> (last visited Jan. 10, 2020).

¹⁹⁶ *Id.*

up on acute signals that someone suffering from PTSD gives.¹⁹⁷ The dogs can be trained to intervene by barking, jumping, or physically intervening when a veteran handler has a flashback or severe anxiety attack.¹⁹⁸ A study recently conducted by Purdue University researchers found that when veterans suffering from PTSD were paired with psychiatric service dogs, those veterans reported a 22% higher rate of life satisfaction, similarly increased rates of mental and social health, lower rates of depression, and fewer PTSD symptoms.¹⁹⁹ Given the common occurrence of both physical and psychiatric disabilities among veterans, it makes sense to enforce protections for veterans' rights to legitimate service animals, and to protect veterans with service animals from the dangers of misrepresented service animals.

Connecticut should also look to the 2015 Public Act in Michigan, which explicitly expanded protections for both veterans and individuals with non-physical disabilities.²⁰⁰ It is important to note that although the Department of Veterans Affairs (VA) does not currently provide benefits to veterans with service dogs for assistance with non-physical disabilities,²⁰¹ many veterans living in Connecticut and throughout the country currently utilize service dogs to assist with non-physical disabilities.²⁰² Additionally, a 2020 resolution requiring the VA to offer grants to veterans for the purpose of PTSD service dogs passed in the United States House.²⁰³ Though it was not ultimately voted upon in the Senate,²⁰⁴ if such legislation is successful in the future, it could mean thousands of Connecticut veterans suffering from PTSD would have access to low-cost service dogs for the first time. This might lead to a large increase in the number of veterans utilizing service dogs,

¹⁹⁷ *Post Traumatic Stress Disorder, PTSD Service Dogs*, OPERATION OVERWATCH, <https://www.operationoverwatch.org/ptsd-service-dogs/> (last visited Mar. 23, 2020).

¹⁹⁸ *Id.*

¹⁹⁹ *Do Service Dogs Really Help with PTSD? A New Study Has Answers*, MILITARY TIMES (Mar. 16, 2018), <https://rebootcamp.militarytimes.com/news/transition/2018/03/16/do-service-dogs-really-help-with-ptsd-a-new-study-has-answers/>.

²⁰⁰ See H.R. 4527, 98th Leg., 1st Reg. Sess. (Mich. 2015).

²⁰¹ See Richard Weinmeyer, *Service Dogs for Veterans with Posttraumatic Stress Disorder*, 17 AM. MED. ASSOC. J. ETHICS 547, 547 (2015) (noting that VA rules currently limit provision of service dogs to veterans with "visual, hearing or substantial mobility impairment").

²⁰² See generally Parenti, *supra* note 19.

²⁰³ See H.R. Res. 4305, 116th Cong. (2019-2020); H.R. 4305 – PAWS for Veterans Therapy Act, CONGRESS.GOV, <https://www.congress.gov/bill/116th-congress/house-bill/4305> (last visited Dec. 29, 2020).

²⁰⁴ See H.R. 4305 – PAWS for Veterans Therapy Act, *supra* note 203.

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 357

making the issues discussed in this note even more relevant to Connecticut veterans.

Given the direction that the federal government seems to be taking, creating legislation now would allow Connecticut residents to participate in crafting state-specific rules instead of simply deferring to federal decisions and any gaps that will remain in federal law. If Connecticut legislators choose to approach the enactment of law on misrepresentation as a veterans' rights and protection issue, the General Assembly's Veterans' Affairs Committee could take up the matter, and legislators might find it easier to draft and pass law that has both a positive impact and bipartisan support.

VI. Conclusion

Misrepresented service and emotional support animals and a lack of federal and state regulation leads to an abundance of confusion and ill will towards persons with authentic service and emotional support animals. Definitions for both service animals and emotional support animals should be clarified and streamlined at both the state and federal levels.

The lack of legislation in Connecticut addressing the prevalence of both misrepresented service animals and misrepresented emotional support animals is confusing to the public at large, disabled individuals with service animals, and persons with emotional support animals. Where there is a lack of clear policy at the federal or state level, it is left up to local municipalities to craft their own policies. Individuals with emotional support animals are especially affected by confusing, decentralized policies. Federal protections for emotional support animals currently exist in housing but were recently eliminated in aircrafts and are nonexistent in many public spaces. In Connecticut, a state with 169 towns,²⁰⁵ it would be nearly impossible for a person to learn 169 different rules simply to go about a normal day. As well, a lack of clear policy negatively affects public and private employees and business owners. Businesses operating offices, restaurants, or stores in multiple towns must be aware of each town's policy, if any, pertaining to emotional support animals. Connecticut citizens and businesses alike

²⁰⁵ *Connecticut Cities by Population*, CONN. DEMOGRAPHICS, https://www.connecticut-demographics.com/cities_by_population (last visited Dec. 29, 2020).

will benefit from finally updating the state's antiquated service animal laws.

Policy updates should be made with a central goal in mind: the protection and greater benefit of disabled persons. Therefore, there should be clearly distinct policies for service animals versus emotional support animals.

Thus far, at the federal level, it appears that there is both broader protection for and broader regulation of service animals as opposed to emotional support animals. Though the ADA is the most comprehensive protection for disabled persons in public spaces, it does not offer any protection for persons with emotional support animals.²⁰⁶ Further, the FHA does currently offer federal protections for persons with emotional support animals but does not cover most public spaces.²⁰⁷ Additionally, airports and air carriers are now exempt from providing protections for emotional support animals, per the new DOT regulations.²⁰⁸ Finally, of the thirty-one states that have laws concerning service animal fraud, none of these states have laws specifically addressing emotional support animal fraud²⁰⁹ – if such fraud is even ascertainable given the current protections for and definitions of emotional support animals.

The winds are shifting, and the federal government may soon choose to further address the growing confusion around emotional support animals in federal protections for service animals. The recent ACAA rule change is an indication that the federal government will seek to limit protection for emotional support animals across all spaces – now including aircrafts. The FHA policies may be next in line to receive an overhaul. As the federal government continues to consider changes to service animal and emotional support animal law, they, too, should remember to consider the unique needs of American veterans. Not only could Connecticut do much to improve protections for veterans with service animals, but all American veterans could benefit from updated VA rules on service animal benefits for disabled veterans with psychiatric disabilities. Ultimately, our broad federal policies under the ACA, FHA, and ACAA should maintain a wide goal: protecting and benefiting *all* disabled persons, including those with physical *and*

²⁰⁶ FREQUENTLY ASKED QUESTIONS, *supra* note 12, at Q3.

²⁰⁷ See EICHSTAEDT, *supra* note 65.

²⁰⁸ See *Traveling by Air with Service Animals*, 85 Fed. Reg. 79742, 79744-45 (Dec. 10, 2020) (to be codified at 14 C.F.R. pt. 382).

²⁰⁹ See generally Wisch, *supra* note 97.

2021] PEACOCKS, PIGS, AND POORLY TRAINED DOGS 359

psychiatric disabilities. Streamlining federal policy on emotional support animals will achieve this goal. In doing so, it will create less confusion in public spaces and housing, and, ultimately, make it less likely that disabled persons with service animals will be forced to face discrimination in public spaces.