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Preventing the Delegitimization of Service Animals: A Proposal to Keep Service Animal Law from Going to the Dogs

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* J.D. Candidate, Expected December 2020, Chapman University Dale E. Fowler School of Law. I would like to dedicate this Note to all the animals who have ever, or will ever, spend their lives providing immeasurable service to all those who rely on them. And specifically, to the one who sparked the original inspiration for this topic, Philomena.

I. INTRODUCTION

“Service dogs are more than a vest.”¹ This is more than true for individuals like Peter Morgan and his service dog, Echuka.² Morgan suffers from a spinal disorder that prevents him from being able to bend over without pain.³ Echuka is specially trained to pick up items that Morgan cannot.⁴ Morgan’s ability to have Echuka with him wherever he goes is what disability laws are designed to protect.⁵ He is allowed to travel in public with his service dog to places where animals would normally be prohibited, such as in businesses and restaurants.⁶ Providing this protection is necessary for disabled individuals like Morgan to be independent and able to fully function in society.⁷ However, the growing number of individuals trying to pass off their pets as “service animals” poses a serious threat to handlers and service animals like Morgan and Echuka.⁸ “In the last few years, the questions and the looks I get have radically changed’ . . . ‘Now wherever I go, I see fraudulent service dogs. I have been kicked out of businesses because employees think I’m an impostor,’” Morgan expressed in response to the growing number of individuals abusing the service animal system.⁹

Laura Palacio and her service dog, Bauer, are also all too familiar with these problems.¹⁰ Palacio uses a wheelchair for her disability.¹¹ Prior to getting Bauer, she had stopped going out into public for nearly four years due to challenges with her disability.¹² Just as many individuals with service animals have expressed,¹³ Palacio credits Bauer with improving her life, stating, “He’s the one that got me back out into public.”¹⁴ However, she too has struggled and become frustrated with the

¹ *A Service Dog is More than a Vest*, CANINE COMPANIONS FOR INDEPENDENCE, <http://www.cci.org/get-involved/advocate.html> [<http://perma.cc/8L3P-HZCE>] (last visited Apr. 11, 2019).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *See Frequently Asked Questions about Service Animals and the ADA*, ADA.GOV (July 20, 2015), http://www.ada.gov/regs2010/service_animal_qa.html [<http://perma.cc/4N62-AJNJ>].

⁶ *Id.*

⁷ *See Service Dogs*, CANINE COMPANIONS FOR INDEPENDENCE, <http://www.cci.org/assistance-dogs/Our-Dogs/Service-Dogs.html> [<http://perma.cc/ZD6P-LQWM>] (last visited Apr. 11, 2019).

⁸ *A Service Dog is More than a Vest*, *supra* note 1.

⁹ *Id.*

¹⁰ Katrina Tilbury, *Fake Service Dogs, Real Problems*, AP NEWS (May 16, 2018), <http://www.apnews.com/1a28f8e528424fdca2040ea8139e3014> [<http://perma.cc/TT5Z-A43J>].

¹¹ *Id.*

¹² *Id.*

¹³ *See generally Our Stories*, CANINE COMPANIONS FOR INDEPENDENCE, <http://www.cci.org/about/stories/> [<http://perma.cc/F3UB-TFBS>] (last visited Apr. 11, 2019).

¹⁴ Tilbury, *supra* note 10.

rising level of fraudulent service animals plaguing the country.¹⁵ While eating at a frozen yogurt shop, an employee tried to kick Palacio and Bauer out,¹⁶ likely due to bad experiences with fake service animals beforehand. The employee forcefully took Bauer away from Palacio, who described how the employee “tried to pull my dog outside . . . while I was trying to turn around in my electric chair to get my dog back from him,” resulting in an upsetting and, in regard to the employee, illegal situation.¹⁷

Unfortunately, the problems do not stop there. The threats to handlers and their service animals also lead to safety issues for the animals themselves. Kim Wilson, a disabled individual who resides in New Mexico, has had three service dogs.¹⁸ After only a year and a half, Wilson’s first service dog was attacked by a fraudulent service dog and was forced to retire.¹⁹ Her second service dog, Kilworth, was attacked on two separate occasions at a mall in Colorado, both times by fraudulent service dogs who should not have been permitted on the premises.²⁰ Finally, Wilson’s third service dog was also attacked while in a craft store after a small emotional support animal jumped out of its owner’s purse and chased Wilson and her service dog throughout the store.²¹

Service dogs provide a vast range of reasonable accommodations for individuals with disabilities—from guiding the individual, to alerting of imminent medical emergencies, to reminding individuals to take their medication.²² For many, having a service animal is not merely having an ordinary pet, but a life changing situation that allows them to be productive, happy, and successful members of society. Similar to Morgan’s relationship with Echuka, many individuals who use service animals have testified to these animals changing their lives for the better.²³ However, there is an unfortunate side effect to this positive system. Along with the use of legitimate service animals, there is prevalent abuse of the system. This is evidenced by the recent media coverage about unorthodox service of emotional support animals, the impact the abuse has on society, and its effect on legitimate handlers.²⁴ Looking at the history of service

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *A Service Dog is More than a Vest*, *supra* note 1.

²⁴ See, e.g., Jeff Deminski, *Let’s Get Real on Fake Service Dogs*, N.J. 101.5 (Oct. 10, 2018), <http://nj1015.com/lets-get-real-on-fake-service-dogs/> [<http://perma.cc/4LX4-LQNN>]; Tristin Hopper, *They’re s---ing all over’: Scenes from a world taken over by fake service animals*,

animals and the law, these issues are far more complex than they seem at first glance. The laws, while designed to protect those who use service animals,²⁵ are so vague and riddled with loopholes that they are easy to circumvent,²⁶ allowing abuse of the system to become far too common.

Part II of this Note briefly discusses the background of service animals, and provides a foundation of relevant federal and state laws. In Part III, this Note describes the current problems plaguing the service animal system in America. This part covers the current confusion in laws, the unregulated system of selling service animal equipment, and the consequences that stem from these issues. Finally, Part IV proposes a detailed three-part proposal for eliminating these issues: (1) limiting the definitions of service animals, (2) implementing a certification process, and (3) strictly enforcing fraud and discrimination laws at both federal and state levels.

II. BACKGROUND

A. History of Service Animals

Service animals have been a part of society for longer than people realize, and longer than the law has recognized them.²⁷ The first recorded instances of service animals originate all the way back to World War I, when dogs aided wounded soldiers.²⁸ Over the years, there has been an increase in both the use of service animals and the services they provide.²⁹ Service animals are personally trained to perform specific tasks for disabled individuals and are generally limited to dogs being the only

NAT'L POST (Feb. 2, 2018, 1:49 PM), <http://nationalpost.com/news/canada/theyre-s-ing-all-over-scenes-from-a-world-taken-over-by-fake-service-animals> [<http://perma.cc/MPA7-KZAC>]; Megan McCluskey, *'Emotional Support Squirrel' Gets Woman Kicked Off Flight and Then Everyone Just Had to Deplane*, TIME (Oct. 10, 2018), <http://time.com/5420467/emotional-support-squirrel-flight/> [<http://perma.cc/MC3E-4MTA>]; *Woman denied emotional support peacock on United flight*, CBS NEWS (Jan. 31, 2018, 11:28 AM), <http://www.cbsnews.com/news/woman-denied-emotional-support-peacock-on-united-flight/> [<http://perma.cc/C7ZE-UG5Y>].

²⁵ *Frequently Asked Questions about Service Animals and the ADA*, *supra* note 5; *see also A Service Dog is More than a Vest*, *supra* note 1.

²⁶ *See* Mark Davis, *Is That Service Dog a Fake? Under Federal Law, You Can't Even Ask*, KAN. CITY STAR (Nov. 3, 2017, 1:44 PM), <http://www.chicagotribune.com/lifestyles/ct-service-dog-fake-20171103-story.html> [<http://perma.cc/S7RK-4PG2>].

²⁷ *See* Mark Ostermeier, *History of Guide Dog Use by Veterans*, 175 MIL. MED. 587, 587 (2010).

²⁸ *Id.*

²⁹ *See generally* *Guide Dogs and Service Dogs*, NAT'L LIBR. SERV. FOR BLIND & PRINT DISABLED, <http://www.loc.gov/nls/braille-audio-reading-materials/lists-nls-produced-books-topic-genre/listings-on-narrow-topics-minibibliographies/guide-dogs-service-dogs/> [<http://perma.cc/J35U-VSUG>] (last modified July 2017) (offering a library of information regarding the evolution of service dogs and personal accounts evidencing their increased presence over that time).

acceptable service animal.³⁰ This differentiates service animals from ordinary pets or emotional support animals.³¹ There are some tasks that animals are used for that the public generally associates with service animals, such as guiding blind individuals or picking up items for those in wheelchairs.³² These animals can also perform much larger swaths of tasks that include “alerting individuals to the presence of allergens, . . . providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.”³³ Nowadays, there are multiple institutions that specialize in specific training for service animals, including organizations such as Guide Dogs for the Blind, founded in 1942,³⁴ and Canine Companions for Independence, founded in 1975.³⁵

There has also been a rise in what are called “emotional support animals,” which further complicates the issue. While service animals are defined by federal law as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability,”³⁶ emotional support animals instead “provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities.”³⁷ Additionally, there are no strict limitations on the species of animals that can be classified as emotional support animals.³⁸ While emotional support animals may heighten the quality of life for many individuals, it is a

³⁰ 28 C.F.R. § 35.104 (2018); see also *Frequently Asked Questions about Service Animals and the ADA*, *supra* note 5; *A Service Dog is More than a Vest*, *supra* note 1.

³¹ See *A Service Dog is More than a Vest*, *supra* note 1.

³² See April Childers, *10 Service Dog Tasks for Handlers with Wheelchairs*, ANYTHING PAWSABLE (Sept. 6, 2019), <http://www.anythingpawsable.com/10-service-dog-tasks-for-handlers-with-wheelchairs/> [<http://perma.cc/58SW-KCAS>].

³³ 28 C.F.R. § 35.104.

³⁴ *About Us*, GUIDE DOGS FOR BLIND, <http://www.guidedogs.com/meet-gdb/about-us> [<http://perma.cc/6ADJ-Q4F2>] (last visited Apr. 11, 2019) (“[W]e prepare highly qualified guide dogs to serve and empower individuals who are blind or have low vision from throughout the United States and Canada.”).

³⁵ *Who We Are*, CANINE COMPANIONS FOR INDEPENDENCE, <http://www.cci.org/about/who-we-are.html> [<http://perma.cc/6FEE-A9FR>] (last visited Apr. 11, 2019) (describing that they train dogs for a variety of services including helping perform daily tasks, aiding in educational, judicial, or health care situations, and allowing independence for those with cognitive disabilities).

³⁶ JACQUIE BRENNAN, SERVICE ANIMALS AND EMOTIONAL SUPPORT ANIMALS at iii (Vinh Nguyen ed., 2014), <http://adata.org/publication/service-animals-booklet> [<http://perma.cc/S8DX-6G6S>].

³⁷ *Id.* at 3.

³⁸ *Emotional Support Animals*, AVMA, <http://www.avma.org/KB/Policies/Pages/Emotional-Support-Animals.aspx> [<http://perma.cc/E5V5-DMC8>] (last visited Apr. 11, 2019).

broad category. The vagueness of the standard makes it difficult to control. Furthermore, service animals are trained to perform specific tasks³⁹ and to behave appropriately in stressful and unfamiliar situations.⁴⁰ Emotional support animals are not held to any training standards that would differentiate them from an average pet.⁴¹

Emotional support animals do not have any mandatory training on how to behave in public; they are not required to be calm in stressful environments,⁴² nor are they required to be attentive to their handlers' every need in distracting environments.⁴³ Emotional support animals are not even required to learn how to behave appropriately towards people and other animals.⁴⁴ Pets, even if they are emotional support animals, are not allowed in certain environments, such as restaurants and other businesses, because their behavior is unpredictable and, therefore, can be dangerous or destructive.⁴⁵

Service animals are exempt from these prohibitions, not only because they aid people with disabilities, but because they are trained to act appropriately in public.⁴⁶ Service animals are trained to relieve themselves only on command.⁴⁷ They are trained not to play with other animals, unless given permission.⁴⁸ Perhaps most impressively, the animal is trained not to eat treats that accidentally drop on the floor.⁴⁹ These examples of behavioral training are extremely important in understanding why service animals are allowed where other animals are not.⁵⁰

³⁹ Jen Karetnick, *Service Dogs 101—Everything You Need to Know*, AM. KENNEL CLUB (Sept. 24, 2019), <http://www.akc.org/expert-advice/training/service-dog-training-101/> [<http://perma.cc/T8JC-VKSV>].

⁴⁰ See *Final Goal Behaviors*, GUIDE DOGS FOR BLIND (Feb. 2019), <http://www.guidedogs.com/uploads/files/Puppy-Raising-Manual/Puppy-Raising-Final-Goal-Behaviors.pdf> [<http://perma.cc/68ZU-BEBT>].

⁴¹ See *Frequently Asked Questions about Service Animals and the ADA*, *supra* note 5; see also Cecily Sailer, *What's the Difference Between an Emotional Support Animal and a Service Dog?*, DOG PEOPLE, <http://www.rover.com/blog/difference-emotional-support-animal-and-service-dog/> [<http://perma.cc/5859-TGJM>] (last visited Nov. 11, 2019).

⁴² See *Emotional Support Dog Requirements*, SERVICE DOG CERTIFICATIONS: BLOG (Aug. 15, 2017), <http://www.servicedogcertifications.org/emotional-support-dog-requirements/> [<http://perma.cc/8Q49-RD5A>].

⁴³ See *id.* (explaining generally that emotional support dogs do not require any specialized training whatsoever, unlike service dogs).

⁴⁴ See *id.*

⁴⁵ See *Where Can I Take Emotional Support Animals?*, ESADOCTORS, <http://esadoctors.com/where-can-i-take-emotional-support-animals/> [<http://perma.cc/WM4F-JKE4>] (last visited Nov. 11, 2019).

⁴⁶ See *Final Goal Behaviors*, *supra* note 40.

⁴⁷ *Id.*

⁴⁸ See *id.*

⁴⁹ *Id.*

⁵⁰ These are only a few of the numerous behavior standards that guide dogs are trained to provide. See generally *id.*

B. Current Federal Laws

Over time, with the increasing use of service animals, standards and laws have developed. A critical part of understanding service animal law is that, while there are federal and state laws that lay out several details, there is a surprising lack of specificity in several key aspects. This leaves the area open to fraudulent exploitation.

The foundation of service animal law comes from the Americans with Disabilities Act (“ADA”).⁵¹ This Act lays the groundwork for service animal laws and remains the main pillar that holds them up today. The ADA protects individuals with disabilities⁵² regarding employment, public entities, and public accommodation.⁵³ This was not only the first major civil rights law that sought to protect individuals with disabilities,⁵⁴ but it also defined what “service animal” meant.⁵⁵ In 1992, the ADA defined service animals broadly, as a dog or other animal that would be individually trained to work or perform tasks for a disabled person.⁵⁶ However, such a broad definition allowed for individuals to either intentionally or accidentally misclassify their pets as service animals.⁵⁷ In more recent years, the ADA drastically limited the scope of service animals to include only dogs and miniature horses, indicating the Legislature’s intent for a limited definition.⁵⁸ The ADA does not include protections for emotional support animals at all.⁵⁹ While strict on the type of animals protected, the ADA is broad on many other aspects of service animal law. There are no official standards for animal training, there is no official certification process, and other interested individuals are only allowed to ask a two-part question to test the validity of a service animal.⁶⁰ Additionally, while there are organizations that train service animals,⁶¹ individual handlers are also allowed to personally train their own service

⁵¹ See Tom Coleman, *Service Dog Laws*, PAWSITIVITY SERVICE DOGS (Apr. 13, 2019), http://www.pawsitivityservicedogs.com/rules_and_regulations [<http://perma.cc/D4CD-N5CR>].

⁵² See generally 42 U.S.C. § 12101 (2012); see also *id.* § 12102(1)(A) (defining a person with a disability as someone with “a physical or mental impairment that substantially limits one or more major life activities . . .”).

⁵³ See generally *id.* §§ 12101–12213.

⁵⁴ See generally *id.*

⁵⁵ 28 C.F.R. § 36.104 (2018).

⁵⁶ *Id.*

⁵⁷ Tiffany Lee, *Criminalizing Fake Service Dogs: Helping or Hurting Legitimate Handlers?*, 23 ANIMAL L. 325, 328–29 (2017).

⁵⁸ 28 C.F.R. § 36.104; 28 C.F.R. § 35.136(h)–(i) (2018).

⁵⁹ *Frequently Asked Questions about Service Animals and the ADA*, *supra* note 5.

⁶⁰ 28 C.F.R. § 35.136(f) (“A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform.”); *Frequently Asked Questions about Service Animals and the ADA*, *supra* note 5.

⁶¹ *E.g.*, *About Us*, *supra* note 34.

animals.⁶² Although the ADA may aim to protect disabled individuals from being subjected to harassment about their service animals, these aspects are in fact where the issues stem from.

Most people think the ADA controls all disability law in the United States. However, when it comes to traveling, particularly by air, the treatment of disabled persons is governed by the Air Carrier Access Act of 1986 (“ACAA”).⁶³ The ACAA applies to anyone who wishes to travel with their animals on an airplane in the United States.⁶⁴ Even though they both deal with public spaces, the ACAA has much broader regulations than the ADA,⁶⁵ which demonstrates the beginning of the confusing web that is service animal law. Unlike the ADA, the ACAA protects the use of both service animals *and* emotional support animals.⁶⁶ Additionally, while the ADA prohibits the requirement of handlers showing documentation to prove the legitimacy of a service animal, airlines are allowed to ask for said proof in certain situations, such as for handlers who suffer from psychiatric or non-visible disabilities.⁶⁷ Another significant aspect where the ACAA differs from the ADA is that the ACAA does *not* limit the species of animals in the same way. The airline can bar animals that are impractical or dangerous for air travel, but other than that, there are few limitations on the species allowed on airplanes.⁶⁸

The third major piece of federal law with service animal implications is the Fair Housing Act (“FHA”),⁶⁹ which protects the use of service animals in private housing.⁷⁰ The FHA mandates that housing providers are not allowed to discriminate against individuals with disabilities from living on the property.⁷¹ Part of the requirement is to make sure to provide “reasonable

⁶² *Frequently Asked Questions about Service Animals and the ADA*, *supra* note 5 (“People with disabilities have the right to train the dog themselves and are not required to use a professional service dog training program.”).

⁶³ 49 U.S.C. § 41705 (2012).

⁶⁴ *See id.*

⁶⁵ *See “Service Animals” and “Assistance Animals:” What Are My Rights?*, STATESIDELEGAL (July 2015), <http://statesidelegal.org/service-animals-and-assistance-animals-what-are-my-rights> [<http://perma.cc/Y5Q5-U2J8>].

⁶⁶ 14 C.F.R. § 382.117 (2019).

⁶⁷ *Id.* § 382.117(d)–(e) (explaining how, in cases of emotional support animals and handlers with psychiatric disabilities, airlines can request proof from the handler).

⁶⁸ *Id.* § 382.117(f).

⁶⁹ *See generally* 42 U.S.C. §§ 3601–3607 (2012).

⁷⁰ *Id.* § 3604(f)(3)(B). The following proposal will be focused on analyzing the ADA and the ACAA, as the fraud of service animals being discussed deals mainly with the issue of public spaces. However, the inclusion of the FHA here is to help illustrate the issues of service animal laws and how it is easy to confuse them with one another, even at the most basic level.

⁷¹ *Id.* § 3604(f)(1).

modifications” for those with disabilities, which includes allowing service animals on the premises where they live.⁷² Similar to the ACAA, the FHA includes emotional support animals along with traditional service animals.⁷³ To further confuse the issue, the FHA refers to service animals instead as “assistance animals,” differing from the ADA and the ACAA’s terminology.⁷⁴ While in substance its definition mirrors the ADA’s, the fact that the FHA uses the word “assistance”⁷⁵ instead of “service” just adds to the pile of unnecessarily confusing details that do nothing but make the public unsure of what animals are covered by what laws.

Since this issue involves both federal and state laws, the question of preemption arises. However, as an appendix to the ADA clarifies, “The ADA does not preempt any Federal law, or any State or local law, that grants to individuals with disabilities protection greater than or equivalent to that provided by the ADA.”⁷⁶ This allows states to create their own service animal laws, as long as they do not lessen the protections provided by the ADA.⁷⁷

C. Current State Laws

States also have their own individual laws regarding the regulation of service animals. State legislatures are passing more and more laws as these issues continue to plague our society at a rapid rate.⁷⁸ However, they are far from consistent. There are several categories of state service animal laws.⁷⁹ These include topics such as the definition of service animals,⁸⁰ accommodation laws,⁸¹ harassment/interference with service dog laws,⁸² and

⁷² *Id.* § 3604(f)(3).

⁷³ OFF. OF FAIR HOUSING & EQUAL OPPORTUNITY, U.S. DEP’T OF HOUSING AND URB. DEV., FHEO NOTICE: FHEO-2013-01, SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS, 1 (2013).

⁷⁴ *Id.* at 1–2.

⁷⁵ 49 U.S.C. § 41705 (2012).

⁷⁶ 29 C.F.R. app. § 1630 (2018).

⁷⁷ *Id.* (“This means that the existence of a lesser standard of protection to individuals with disabilities under the ADA will not provide a defense to failing to meet a higher standard under another law. Thus, for example, title I of the ADA would not be a defense to failing to prepare and maintain an affirmative action program under section 503 of the Rehabilitation Act. On the other hand, the existence of a lesser standard under another law will not provide a defense to failing to meet a higher standard under the ADA.”). Based on the design of the ADA and the lack of any preemption issue, there are no commerce clause concerns here either.

⁷⁸ Michael Ollove, *Several states crack down ‘fake’ service animals*, USA TODAY (Oct. 29, 2017, 3:31 PM), <http://www.usatoday.com/story/news/2017/10/29/several-states-crack-down-fake-service-animals/807676001/> [<http://perma.cc/UEJ7-ELD3>].

⁷⁹ See generally Rebecca F. Wisch, *Table of State Service Animal Laws*, ANIMAL LEGAL & HIST. CENTER (2019), <http://www.animallaw.info/topic/table-state-assistance-animal-laws> [<http://perma.cc/W5PW-R33E>].

⁸⁰ *E.g.*, HAW. REV. STAT. § 347-2.5 (2019).

⁸¹ *E.g.*, IDAHO CODE § 18-5812A (2019).

⁸² *E.g.*, NEB. REV. STAT. § 28-1009.01 (2019).

driving laws.⁸³ The two categories of service animal laws that are most relevant to service animal fraud are licensing laws and fraudulent representation of service animal laws. To further add to the confusion, the statutes also vary significantly state to state, and many do not even have laws regarding these aspects of service animals.⁸⁴

It is important to look at state law in addition to federal law when analyzing the lack of a mandated certification system. While some states have laws on licensing of service animals, they are not necessarily what one would assume. Some of these states have laws in place that provide a form of “certification” in the sense that they provide service animal equipment free of charge or tax exempt if the handlers can show that their animal is properly trained.⁸⁵ The existence of such laws indicates that there is some form of statutory precedent for having a certification system in some states. However, they do not go as far as creating a required certification program, but more so help provide materials for those with service animals. While these laws do provide some assistance to handlers, they do not go far enough. Federal law still disallows proprietors from actually asking for any certification that a handler may have, no matter the state laws.⁸⁶ In fact, some of these state laws align with the current federal standard and disallow or exempt any licensing or certification.⁸⁷ Finally, many of the states simply do not have any laws regarding certification or licensing.⁸⁸

The more striking aspect of state law is the number of states that regulate and punish service animal fraud. As of early 2019, thirty-one states had some form of law that criminalizes service animal fraud.⁸⁹ These laws demonstrate that more and more states are attempting to crack down on service animal fraud and provide examples of potential punishments. While, overall, the states with fraud laws follow the same general format, once again there are differences. For example, in states such as

⁸³ *E.g.*, OKLA. STAT. tit. 7, § 12 (2019).

⁸⁴ *See* Wisch, *supra* note 79.

⁸⁵ *E.g.*, CONN. GEN. STAT. § 22-345 (2019) (“Any blind, deaf or mobility impaired person who is the owner or keeper of a dog which has been trained and educated to guide and assist such person in traveling upon the public streets or highways or otherwise shall receive a license and tag for such dog from the town clerk of the town where such dog is owned or kept [at] . . . no fee.”); HAW. REV. STAT. § 143-4 (2016).

⁸⁶ *See* 28 C.F.R. § 35.136 (2018).

⁸⁷ *E.g.*, COLO. REV. STAT. § 24-34-803 (2014); LA. STAT. ANN. § 46:1958 (2014).

⁸⁸ Wisch, *supra* note 79.

⁸⁹ *See Fraudulent Service Dogs*, ANIMAL LEGAL & HIST. CENTER, <http://www.animallaw.info/content/fraudulent-service-dogs> [<http://perma.cc/HW3E-3THZ>] (last visited Apr. 11, 2019).

California⁹⁰ and Maine,⁹¹ the laws state that any person who knowingly and fraudulently represents themselves as a handler or trainer of a legitimate guide, signal, or service dog shall be guilty of fraud.⁹² Additionally, some states, such as Maine, include that “[p]roviding false documents [or k]nowingly providing to another person documents falsely stating that an animal is a service animal or an assistance animal” also constitutes fraud.⁹³ This law is a crucial step for recognizing the problems that come from businesses that sell service animal paraphernalia to anyone. However, in some states, such as Nebraska, the law is less expansive, making it a misdemeanor when “[a] person . . . unlawfully us[es] a white cane or guide dog if he is not blind as defined by law and carries, displays, or otherwise makes use of a white cane or guide dog.”⁹⁴ Nebraska has no laws regarding fraud of any other type of service animals beyond a guide dog for a blind individual.⁹⁵ While many states either already have, or are working toward, implementing stricter regulations regarding punishments for service animal fraud, the problem is far from fixed.

III. CAUSES AND ISSUES

A. The Root of the Problem

The cause of the problem with service animals stems from the laws themselves. The relaxed nature of the ADA and the inconsistency among state laws has opened the door to widespread fraud and abuse.

The ADA contains few checks on the service animal process. More importantly, the ADA contains no certification process.⁹⁶ And, in fact, such a process has received little governmental

⁹⁰ CAL. PENAL CODE § 365.7 (West 2019) (“Any person who knowingly and fraudulently represents himself or herself, through verbal or written notice, to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog, as defined in subdivisions (d), (e), and (f) of Section 365.5 and paragraph (6) of subdivision (b) of Section 54.1 of the Civil Code, shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.”).

⁹¹ ME. STAT. tit. 17, § 1314-A (2016).

⁹² Based on the available state laws on service animals, the lowest end of the penalties include fines of twenty-five dollars or community service. The higher end of the penalties includes up to one year in jail and fines of up to \$1,000. *E.g.*, N.Y. AGRIC. & MKTS. LAW § 118 (McKinney 2017); FLA. STAT. § 413.08 (2015); N.M. STAT. ANN. § 28-11-6 (2013).

⁹³ ME. STAT. tit. 17, § 1314-A.

⁹⁴ NEB. REV. STAT. § 28-1313 (2019).

⁹⁵ *Id.*

⁹⁶ See *Service Dogs and the Americans with Disabilities Act (ADA)*, AM. HUMANE, http://www.americanhumane.org/app/uploads/2018/05/Service-Dog-Laws-for-Businesses_3_7_18.compressed.pdf [http://perma.cc/56DB-SP4H] (last visited Jan. 11, 2020).

support.⁹⁷ Some organizations, such as Canine Companions for Independence, are accredited by Assistance Dogs International,⁹⁸ which is “a worldwide coalition of non-profit programs that train and place Assistance Dogs.”⁹⁹ While Assistance Dogs International has accredited over 134 service animal programs across the globe,¹⁰⁰ the ADA does not officially support this program or any other certification program. Therefore, this accreditation holds little to no weight for individuals trying to assert their legal rights.¹⁰¹ Additionally, individuals and businesses can only question the legitimacy of a service animal by asking the handler “if the animal is required because of a disability and what work or task the animal has been trained to perform.”¹⁰² These questions are both awkward to ask and easy to circumvent by lying. Finally, the differences in both terminology and scope of the ADA, in comparison to the ACAA and the FHA, creates confusion about what laws apply to what animals, to what people, and in what situations. Consequently, the confusion over these different federal laws also makes them easy to avoid. Having so many different definitions and standards for everything from species of animals allowed, to the type of documentation needed, and to the level of service provided, opens the door to misunderstandings and legal problems.

Although state legislatures have begun addressing the problem of fraud,¹⁰³ these efforts fail to solve the problem at a larger level and further add to the confusion. Like the ADA, the ACAA, and the FHA, the differences between the state laws cause additional confusion about what laws apply and where. While different states have countless differing laws, the ADA overpowers the states’ ability to adequately stem the flow of service animal fraud. As mentioned, while many states have laws

⁹⁷ See Lee, *supra* note 57, at 329.

⁹⁸ *Results for Members serving California*, ASSISTANCE DOGS INT’L, <http://assistancedogsinternational.org/index.php?src=directory&view=programs&category=California> [<http://perma.cc/X4ET-9ZH3>] (last visited Apr. 11, 2019) (listing other organizations that are accredited by Assistance Dogs International).

⁹⁹ *Who we are*, ASSISTANCE DOGS INT’L, <http://assistancedogsinternational.org> [<http://perma.cc/2PZ8-SAXZ>] (last visited Apr. 11, 2019) (“The objectives of Assistance Dogs International are to: Establish and promote standards of excellence in all areas of assistance dog acquisition, training and partnership; [f]acilitate communication and learning among member programs; [and] [e]ducate the public to the benefits of Assistance Dogs and ADI membership.”).

¹⁰⁰ *2018 Fact Sheet*, ASSISTANCE DOGS INT’L, <http://assistancedogsinternational.org/clientuploads/ADI-Fact-Sheet.pdf> [<http://perma.cc/38MS-CF5U>] (last visited Apr. 11, 2019).

¹⁰¹ See 28 C.F.R. § 35.136 (2018); see also *Frequently Asked Questions about Service Animals and the ADA*, *supra* note 5.

¹⁰² 28 C.F.R. § 35.136.

¹⁰³ See *States Lead Efforts to Curtail Rampant Abuse of Emotional Support Animal Requests*, NAA (Mar. 21, 2018), <http://www.naahq.org/news-publications/states-lead-efforts-curtail-rampant-abuse-emotional-support-animal-requests> [<http://perma.cc/VEE7-CKXV>].

punishing those who fraudulently abuse the system,¹⁰⁴ the restrictions set out by the ADA—limiting what people can do to prove legitimacy and the disallowance of a certification program—undermines the states’ abilities.¹⁰⁵ There is no recourse for states like California or Missouri to be able to punish individuals, because they are not even allowed to adequately prove fraud has occurred without running the risk of dragging legitimate handlers into court over and over again. While on paper the states have laws in place to fix these issues, practically, this problem is far from over without change at the federal level.

B. The Problem of Fraud

While there are many people defrauding service animal accommodations, it is far more complicated than it might seem at first blush. Some individuals intentionally abuse the system, and simply lie their way into having their pets with them whenever they want.¹⁰⁶ While their intent may be clear, it is still very difficult to prove, since these individuals may easily lie when asked the questions that are permitted under the ADA. This leaves no recourse for businesses or entities to prevent these illegitimate service animals from coming on their premises without facing the possibility of serious legal action.¹⁰⁷

A clear situation where the intent to defraud under service animal laws occurs when businesses intentionally sell fraudulent certificates and service animal equipment. Nowadays, all it takes is less than ten dollars and an Amazon Prime membership, and anyone can label their pet as a “service animal” in as little as two days.¹⁰⁸ Service animal organizations are making note of this problem.¹⁰⁹ The CEO of Guide Dogs for the Blind publicly stated that “[c]onfusion between legitimate service dogs and pets is fueled by how easy is it to obtain fake service or emotional support animal certification online.”¹¹⁰ The ADA clearly recognizes this as a serious issue, as it states on its official webpage, “There are individuals and organizations that sell

¹⁰⁴ See *Fraudulent Service Dogs*, *supra* note 89; e.g., CAL. PENAL CODE § 365.7 (West 2019).

¹⁰⁵ 28 C.F.R. § 35.136; see also *Frequently Asked Questions about Service Animals and the ADA*, *supra* note 5.

¹⁰⁶ STACY FROMGOLDS, *Confession: My “Service Dog” Is a Total Fraud*, in A PETFUL SPECIAL REPORT: FAKE SERVICE DOGS, REAL PROBLEM 5, 6 (2012), <http://www.petful.com/service-dog-report.pdf> [<http://perma.cc/T8PJ-UJ6T>].

¹⁰⁷ See Tilbury, *supra* note 10.

¹⁰⁸ See, e.g., *Service Dog TAG*, AMAZON, http://www.amazon.com/K9King-Service-Federal-Protection-Harness/dp/B06XX8W133/ref=sr_1_5?ie=UTF8&qid=1540674607&sr=8-5&keywords=service+animal [<http://perma.cc/73M4-7PA8>] (last visited Apr. 11, 2019).

¹⁰⁹ Christine Benninger, *Greetings from the CEO*, GUIDE DOG NEWS, no. 1, 2019, at 3, 3.

¹¹⁰ *Id.*

service animal certification or registration documents online. These documents do not convey any rights under the ADA and the Department of Justice does not recognize them as proof that the dog is a service animal.”¹¹¹ However, there has been a shocking lack of action to remedy this issue. For example, one can look to the story of Stacy Fromgolds, who openly admits that she bought “credentials” online to claim her ordinary pet as a service animal simply since she “really like[s] having [her] dog with [her],” despite not suffering from any disability.¹¹² She describes how easy the process was, as she “simply paid \$50 on the United States Service Dog Registry website to get a kit that provided [her] with incredibly official-looking credentials.”¹¹³ Although Fromgolds chose to go by a pseudonym for her article, thus admitting that even she knows her actions are wrong,¹¹⁴ there is little the government has done to combat these situations. Individuals like Fromgolds continue to plague legitimate handlers and the animals they rely on to this day. These “certifications” are still widely available online¹¹⁵ and incidents involving the fraudulent labeling of animals are still ongoing. To further illustrate the widespread fraud, beyond just a few individuals like Morgan and Palacio, a 2016 survey of handlers who received service dogs from Canine Companions for Independence revealed that 77% of them have had encounters with a fraudulent service animal.¹¹⁶ Over 25% of those surveyed have had ten separate encounters with these fraudulent service animals.¹¹⁷ This is not a small problem that can be ignored.

Finally, with all the confusion in the law, there is another group of people who are also misusing the service animal system, albeit less intentionally. There may be individuals who accidentally or unknowingly use fraudulent service animal labels or break related service animal laws. The haphazard nature of these laws cannot be ignored in analyzing these situations. These individuals may think they received their animal from a legitimate trainer, or may simply not be able to figure out what their animal is classified as, or even what law applies in different situations. While the explicit intent to defraud would not be

¹¹¹ *Frequently Asked Questions about Service Animals and the ADA*, *supra* note 5.

¹¹² FROMGOLDS, *supra* note 106, at 5–6.

¹¹³ *Id.* at 6.

¹¹⁴ *Id.*

¹¹⁵ See, e.g., *Doggie Stylz Service Dog Harness Vest*, AMAZON, http://www.amazon.com/Doggie-Stylz-Reflective-Patches-Ordering/dp/B074XCBGFK/ref=sr_1_19?keywords=service+animal&qid=1552507178&s=gateway&sr=8-19 [<http://perma.cc/YG73-RJ7N>] (last visited Apr. 11, 2019).

¹¹⁶ Tilbury, *supra* note 10.

¹¹⁷ *Id.*

present in this case, it can still lead to similar issues of inadequate animal training, safety issues, property hazards, and hurting the reputation of legitimate service animals. This leads into the discussion of the problems resulting from this rampant service animal misuse.

C. The Problems *Created by* Fraud

While defrauding any aspect of the law is unacceptable, there are specific reasons as to why this is particularly harmful when it comes to service animals. First, there are issues of safety for both humans and animals. Even domesticated animals are still *animals*. Untrained animals put in public situations that they have not been trained to handle can lead to injuries—from biting people, all the way to violent attacks against legitimate service animals.¹¹⁸ This problem has been encapsulated by a recent statement from Christine Benninger, President and CEO of Guide Dogs for the Blind, who said:

Fraudulent service and emotional animals pose a threat to legitimate service dogs because they have not had the extensive training of a service dog and can become uncomfortable and even fearful in public situations. Recently, incidents of aggression involving fraudulent service and emotional support animals have jumped alarmingly. Even one dangerous encounter between a working team and an untrained animal could have catastrophic consequences and result in the permanent retirement of the guide dog.¹¹⁹

Second, there is the risk of property damage. When animals are not trained properly, it can lead to biting or even urinating in public and on other people's possessions.¹²⁰ These situations can lead to legal issues beyond discrimination¹²¹—such as personal injury and destruction of property claims—which can result in more litigation that does nothing but unnecessarily clog up the court system.

Stemming from these issues arises the third, and by far the biggest, problem with fake service animals: the harm to disabled individuals who rely on legitimate service animals. The prevalence of these incidents involving fraudulent service animals makes the issue so public, that entities and individuals are now far less likely to believe that *any* service animal is

¹¹⁸ See Hopper, *supra* note 24.

¹¹⁹ Benninger, *supra* note 109.

¹²⁰ Hopper, *supra* note 24.

¹²¹ See, e.g., *Hardesty v. CPRM Corp.*, 391 F. Supp. 2d 1067, 1069–70 (M.D. Ala. 2005); *Lentini v. Cal. Ctr. for the Arts*, 370 F.3d 837, 839–41 (9th Cir. 2004) (explaining how a quadriplegic with a small service dog was not believed when she asserted her right to have her service dog with her).

legitimate—the exact issue that Morgan discussed facing regularly when bringing Echuka with him in public.¹²² Due to what is supposed to be a protection under the ADA that does not require handlers to carry certification or documentation of any kind, handlers cannot affirmatively prove their legitimacy to the satisfaction of those inquiring. Even if they could, somehow, it should not be on the handler to force their animal to perform tasks on the spot, like a circus act, in order to prove that their animal is actually trained. The nature of the “protections” set forth in the ADA and the ACAA, that are designed to protect handlers from the extra burden of carrying identification or having to certify their animals’ training, have placed service animal law in the perfect position to be regularly defrauded. This leads people to question whether service animals are ever legitimate. A perfect real world example is the case of *Hardesty v. CPRM*, where Mr. Jolly, who had an artificial leg and had been legally blind for nearly twenty years, and his service dog, Bronson, were excluded from staying at a hotel due to a past “service dog’s” destruction of property, which forced him to turn to the courts.¹²³ The hotel in this case filed a motion for summary judgement; however, the court found the alleged discrimination serious enough for the case to proceed to trial.¹²⁴ Discrimination against Americans who rely on service animals is something the courts take very seriously.¹²⁵ Additionally, sometimes the victims of these fake service animals are the legitimate service animals who are attacked by their improperly trained counterparts, thus in turn harming both the animal itself and the disabled individual who relies on them.¹²⁶

Airlines have been one of the main areas of issue for fraudulent service animals. These situations have been gaining publicity in the media as well.¹²⁷ Nowadays, airports are filled with both a variety of species passing as “service animals” and just as many people wondering whether any of them are legitimate. For example, in October of 2018, a woman was kicked off a Frontier Airline’s flight and all of the passengers were forced to deplane, when the woman refused to disembark her emotional support animal—which turned out to be a squirrel.¹²⁸ Another situation that arose in 2018 was when a United Airlines passenger attempted to board the airplane with a fully-grown peacock, claiming that it was an emotional support animal and

¹²² *A Service Dog is More than a Vest*, *supra* note 1.

¹²³ *Hardesty*, 391 F. Supp. 2d at 1069–70.

¹²⁴ *Id.* at 1075.

¹²⁵ *See, e.g., id.*

¹²⁶ *See* Benninger, *supra* note 109.

¹²⁷ *See, e.g.,* McCluskey, *supra* note 24.

¹²⁸ *Id.*

should be allowed on board.¹²⁹ While the peacock was turned away due to health and safety concerns, the passenger had already been informed three times before arriving at the airport that the peacock would not be allowed on the plane.¹³⁰ This demonstrates the blatant disregard people have for service animal laws and rules. While these incidents illustrate the frustration and the issues of illegitimate animals when they are denied passage on an aircraft, there are many more situations that arise in the small cabin of the aircraft. In 2014, a flight had to make an unscheduled landing when a “service dog” repeatedly defecated in the aisle of the plane, resulting in imminent and serious health consequences for the other passengers on board.¹³¹ In 2017, an alleged emotional support animal, a fifty-pound dog sitting on the lap of its owner in the middle seat, severely bit a fellow passenger on the face, which resulted in the victim being escorted off the plane by paramedics.¹³² This misuse of the law damages the legitimacy and lives of handlers who depend on service animals because they fear going out in public will result in harassment by business establishment, accusations of having a fraudulent animal, or risking their animal’s safety. These incidents are only the tip of the iceberg to a larger problem that is far from over.

Beyond just the health and safety concerns, fellow patrons have noted their displeasure and rage at the problem of misbehaving animals on social media.¹³³ This is important because it not only indicates that the public wants stricter regulations, but it also publicizes these incidents, which then in turn leads to the public losing trust in the system.

The combination of the easy standards under the ADA (and other service animal laws), the systematic selling of fraudulent service animal paraphernalia, and the rising incidents in the media involving fake service animals has led to the opposite of what the ADA was set out to do. It has instead directly led to the delegitimization of authentic service animals and created harm to the handlers who rely on them.

With all the issues stemming from service animal fraud, there has been a surprising lack of action to remedy this

¹²⁹ *Woman denied emotional support peacock on United flight*, *supra* note 24.

¹³⁰ *Id.*

¹³¹ Hopper, *supra* note 24.

¹³² Nathalie Pozo, *Passenger bitten by emotional support dog on Delta flight*, FOX 5 ATL (June 6, 2017), <http://www.fox5atlanta.com/news/passenger-bitten-by-emotional-support-dog-on-delta-flight> [<http://perma.cc/P7CP-TQN2>].

¹³³ *See, e.g.*, Hopper, *supra* note 24; McCluskey, *supra* note 24; *Woman denied emotional support peacock on United flight*, *supra* note 24.

situation on any national or uniform level. The Legislature has remained silent on the reasons behind their inaction, even though both the public and service animal organizations are calling for change.¹³⁴ Even in the changes that were made to the ADA in 2010, the reasoning behind the Legislature's choices were absent.¹³⁵ This lack of action means that a solution to these current problems is long overdue.

IV. CLOSING THE LOOPHOLES: A POTENTIAL SOLUTION

The problems caused by service animal fraud and the increase in emotional support animals continue to plague both handlers and the public across the country. A nationwide solution needs to be put into place. In order to create a system that allows for the best protection for disabled individuals, and prevents the most fraud possible, a multi-faceted plan is the best approach. This Note proposes the following three-part solution: (A) creating a consistent and *limited* definition for service animals, consolidated across all federal and state laws, (B) implementing an official certification process for service animals, and (C) implementing laws for punishing those who use both fake service animals and those who sell falsified service animal paraphernalia. Federal and state certification systems have been independently proposed before.¹³⁶ But this Note argues that for this solution to work, there must be *both* federal and state changes. Furthermore, for each of these proposals to work as effectively as possible, this approach argues that it is critical they are used in tandem with one another.

A. Limiting Definitions in Service Animal Law

The ADA, the ACAA, and nearly every state have their own independent definitions of what constitutes a service animal. There are definitions regarding “service animals,” “assistance animals,” “emotional support animals,” and other group classifications for these working animals. As formerly mentioned, and as any quick search into this area will show, this provides for mass confusion about who and what is covered by these laws. In order to provide a legal definition that helps disabled individuals, the ADA's definition of “service animal” should be implemented

¹³⁴ *The unseen dangers of fake service dogs in Central Florida*, WESH 2 (May 14, 2018, 11:34 PM), <http://www.wesh.com/article/the-unseen-dangers-of-fake-service-dogs-in-central-florida/20681912> [<http://perma.cc/MCNS-BWVZ>].

¹³⁵ *ADA Requirements: Service Animals*, ADA.GOV (July 12, 2011), http://www.ada.gov/service_animals_2010.htm [<http://perma.cc/FUL8-SYJ6>].

¹³⁶ Susan D. Semmel, Comment, *When Pigs Fly, They Go First Class: Service Animals in the Twenty-First Century*, 3 BARRY L. REV. 39, 60 (2002).

across the board for all public spaces, including air travel (thus amending the ACAA). This change would limit all service animals to specially trained dogs¹³⁷ and remove any emotional support animals from federal protection in public spaces.¹³⁸

At first glance, it may seem that limiting the scope of which species can become service animals, and disallowing emotional support animals on planes, would in fact harm the handlers that need them. In fact, others have proposed that it would be better to expand the definition of service animals to encompass more species and provide protection for emotional support animals under the ADA. For example, Rebecca J. Huss argues that the ACAA should not be limited to only service animals, and emotional support animals should still be allowed on flights.¹³⁹ She discusses how the airline companies are allowed to put their own regulations in place about which animals are permitted on planes, such as the number of animals allowed on one flight and how animals must be confined to an approved pet carrier.¹⁴⁰ She argues that “it would be inexplicable to narrow the definition of service animals” for airplanes and that “the ACAA’s current process, with its clear rules, appears to be working to a large degree and should not be altered to make it more difficult for persons with disabilities to be accompanied by their service animals.”¹⁴¹ Additionally, she argues that limiting the definition of service animals to the ADA’s definition would be potentially detrimental to disabled individuals.¹⁴²

However, the current system of the ACAA is not working. Allowing emotional support animals—even with limited restrictions on species—has impacted airlines and patrons alike, forcing the Department of Justice to revisit the issue.¹⁴³ The number of incidents involving emotional support animals (or

¹³⁷ See *I heard that miniature horses are considered to be service animals by the ADA. Is this true?*, ADA NAT’L NETWORK, <http://adata.org/faq/i-heard-miniature-horses-are-considered-be-service-animals-ada-true> [<http://perma.cc/MT4X-VK29>] (last updated Oct. 2019), for a discussion of how miniature horses are service animals under the ADA. See also Kea Grace, *Miniature Horses as Service Animals*, ANYTHING PAWSABLE (Aug. 10, 2019), <http://www.anythingpawsable.com/miniature-horses-as-service-animals/> [<http://perma.cc/Z2JJ-FGWM>].

¹³⁸ To ensure states also follow the same strict definition, the federal government could either preempt the states’ ability to define the term “service animals” for public spaces (including airplanes), or could incentivize the states to adopt the federal definition, which is further discussed in subsection B of this Part.

¹³⁹ Rebecca J. Huss, *Why Context Matters: Defining Service Animals Under Federal Law*, 37 PEPP. L. REV. 1163, 1215–16 (2010).

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 1216.

¹⁴² *Id.*

¹⁴³ *Id.* at 1180–82.

fraudulent service animals) on airlines has become alarming.¹⁴⁴ There have been serious incidents involving the public's health and safety because of the more relaxed system employed by the ACAA.¹⁴⁵ These concerns cannot continue to go unchecked. Limiting the ACAA to a stricter definition of service animals could lead to great improvement in combatting these serious issues by ensuring only appropriately trained animals are allowed on confined aircrafts. The vague differentiations of emotional support animals allow too much room for people to manipulate the system. Those who are currently using emotional support animals would be able to have their animals certified as an actual service animal, thereby ensuring that they are adequately trained to be in public. While many people use emotional support animals and find them helpful, having untrained and inexperienced animals in certain public spaces,¹⁴⁶ such as the grocery store or inside a restaurant, is not an appropriate accommodation. Emotional support animals that are unable to pass the training necessary to be certified should in fact not be permitted on airlines, considering the stressful and potentially dangerous situation that presents itself.¹⁴⁷ Thus, limiting the definition would still permit appropriately trained and relied upon dogs to be able to accompany their handlers where needed, even if at the moment they are classified as an emotional support animal.

Additionally, limiting the species permitted to be classified as service animals will help prevent fraud and protect the safety of all involved, while still leaving room for later adjustments. The service animal definition under the ADA is limited to dogs, but there is currently an exception for miniature horses.¹⁴⁸ While it is crucial to have a limited definition of service animals, there has been research indicating that miniature horses have many traits and abilities that make them successful and safe service animals, similar to dogs.¹⁴⁹ Due to this background, the ADA's current

¹⁴⁴ See, e.g., Pozo, *supra* note 132.

¹⁴⁵ See, e.g., *id.*

¹⁴⁶ This Note is not suggesting that pet dogs should be restricted from *all* public spaces. They should still be permitted to go where pets and animals have historically been allowed—public parks, sidewalks, and outdoor events. Additionally, this would not limit a business or private entity's ability to allow ordinary pets or service animals on its premises, if it so chooses.

¹⁴⁷ See, e.g., *id.* The FHA could still allow emotional support animals in housing without the animal passing official service animal certification, since that is not an issue of public safety or concern. Thus, many people with emotional support animals could continue to have support and companionship in their own home without any changes or new requirements for them to meet.

¹⁴⁸ 28 C.F.R. § 35.136(i) (2018).

¹⁴⁹ Grace, *supra* note 137.

inclusion of only this specific exception to dogs, and the undue burden that it would put on those currently using miniature horses, the ADA should continue to allow this exception (for the purpose of this proposal, the vast majority of the animals discussed are assumed to be dogs, however it all applies to miniature horses as well). The law could later be amended to allow for other species of animals at the recommendation of professionals who can testify about a need for inclusion and the proposed species' ability to be trained appropriately and safely for service animal work. Currently, the laws should still be limited to the parameters set forth in the ADA. Also, people already have (or should already have) been adhering to these limitations for the public accommodation of service animals. Thus, it will not cause an undue burden on handlers. At this point, the confusion of opening the definition up to *more* species, when the situation is already out of control, would likely cause more harm than good.¹⁵⁰

Limiting service animals to the ADA's definition will help prevent people from abusing the cracks in the system. Congress amended the ADA itself in 2010 for this very reason,¹⁵¹ and Congress should follow this precedent and make the same changes to the ACAA. Having a consistent definition of service animals that applies to public spaces, including airplanes, will allow for the public, pet owners, and handlers to better understand which animals are allowed in what public spaces. Service animals have been trained not only to perform specific tasks (e.g., opening doors), but they have also been trained to remain calm, be attentive to their handler, and interact appropriately with other animals in public spaces.¹⁵² Emotional support animals are not required to have such public situation training.¹⁵³ Therefore, by allowing only service animals to be protected, airlines and other entities will not be left to decipher each individual animal on a case by case basis with unclear and ambiguous standards.

Some may argue that individuals who rely on the current ACAA for bringing their unorthodox animals on planes would be negatively affected by this change. However, airlines currently have the ability to prevent emotional support animals from coming on planes because of their size, species, or other safety concerns. Therefore, there is no guarantee that any animal will be allowed on a plane even today. With a strict definition, those

¹⁵⁰ See Hopper, *supra* note 24.

¹⁵¹ Lee, *supra* note 57, at 328–29.

¹⁵² See *Final Goal Behaviors*, *supra* note 40.

¹⁵³ See *ADA Requirements: Service Animals*, *supra* note 135; Sailer, *supra* note 41.

who have a properly trained dog are still allowed to bring them, and in fact would be better protected from discrimination and potential dangers. The concerns for human and animal safety, as well as discrimination issues for those with disabilities, far outweigh the concerns of individuals who wish to have an untrained animal with them in a confined space. A strict definition of service animals will still allow those with legitimate disabilities to have their necessary service dogs help them in the public aspects of their lives, without having to justify their presence over and over due to the public's continual loss of faith in the system.

Having a strict definition of service animals introduces another problem—how do we know whose service animal is legitimate? This leads to the next step in reforming the shape of service animal law today—creating a system of certification for service animals.

B. Creating a Mandatory Certification System

1. A Need for Certification

Currently, neither federal nor state law regulate any form of certification for service animals, which contributes significantly to the widespread fraud seen today. In fact, Congress explicitly rejected the implementation of such a system.¹⁵⁴ Thus, current law limits the public's ability to question the validity of service animals to two questions: (1) is the animal required due to a disability, and (2) what work or task has the animal been trained to perform.¹⁵⁵ While it may seem that this process is adequate, that is far from the truth. Not only are these questions potentially awkward and could lead to many individuals feeling too uncomfortable to approach someone to ask, they are easy to circumvent. Anyone presenting a dog as a service animal can easily lie when asked questions, without having to provide official documentation to support their claims, thereby allowing them to slip by effortlessly. This is a huge factor in the rampant fraud in the system. Furthermore, it directly leads to handlers being more burdened and harassed because they are asked uncomfortable questions and, more importantly, they have to deal with the public not believing them, even when they are completely in the right. These two questions are not enough. By amending the ADA to incorporate an official certification process,

¹⁵⁴ Lee, *supra* note 57, at 329.

¹⁵⁵ 28 C.F.R. § 35.136 (2018).

the law can more adequately protect both handlers and the public from unnecessary burdens.

While there is no certification process in place, there has been growing support for such an idea. For example, some scholars have compared America's lack of a certification system to other countries' processes, calling for America to follow suit and make a comparable federal system.¹⁵⁶ Others have indicated a similar desire, differing only in that they suggest the state legislatures take the lead instead of the federal government.¹⁵⁷ Additionally, there has been a call, even outside of the academic and legal world, for action to be taken.¹⁵⁸ Legitimate service animal foundations have explicitly been looking for a solution.¹⁵⁹ For example, "Guide Dogs for the Blind is firmly committed to advocating for solutions to crack down on fraudulent service and emotional support animals to ensure the safety and independence of [its] clients,"¹⁶⁰ and "Canine Companions for Independence has lobbied the Department of Justice to come up with a solution which may involve creating a national registry for service dogs."¹⁶¹ With organizations like Assistance Dogs International and the work they do to accredit service animal programs around the world, the framework for a certification program is practically already in existence, it is just missing the legal weight behind it.¹⁶²

2. Federally Encouraged

To have the most successful system possible, a service animal certification process should be implemented at the federal level first. While there has been some suggestion that each state could take this process into their own hands, that would not be as effective as a federal mandate. First, since the ADA is the most significant and controlling law for service animals, the certification system should be initially incorporated as a part of the ADA. Second, leaving this to the states alone will do little to help with the current problem. While some states may establish

¹⁵⁶ Paul Harpur et al., *Regulating 'Fake' Assistance Animals—A Comparative Review of Disability Law in Australia and the United States*, 24 ANIMAL L. 77, 96 (2018) (discussing how America should emulate the Australian system and implement a federal system for service animal certification); Semmel, *supra* note 136, at 60.

¹⁵⁷ *E.g.*, Sande Buhai, *Preventing the Abuse of Service Animal Regulations*, 19 N.Y.U. J. LEGIS. & PUB. POL'Y 771, 796 (2016).

¹⁵⁸ Fremonta L. Meyer et al., *Controversies Regarding Service Animals in the Ambulatory Oncology Setting*, 14 J. ONCOLOGY PRAC. 141, 142 (2018).

¹⁵⁹ *See* Benninger, *supra* note 109, at 3.

¹⁶⁰ *Id.*

¹⁶¹ *The unseen dangers of fake service dogs in Central Florida*, *supra* note 134.

¹⁶² *Summary of Standards*, ASSISTANCE DOGS INT'L, <http://assistancedogsinternational.org/standards/adi-standards/> [<http://perma.cc/Z5HC-JLHR>] (last visited Apr. 11, 2019).

certification systems, some may not, which does little to cure the problem of the laws being confusing and inconsistent. Also, trying to make all fifty states implement similar programs along similar timelines would be next to impossible without federal intervention. Without consistent implementation, this system could do little to help the problem. For example, if California implements a certification process and Arizona does not, when an Arizona resident brings their dog to a California restaurant and the manager asks for certification, they are at a legal standoff. This exemplifies how this could get out of hand quickly and may in fact backfire, resulting in more litigation from individuals trying to assert their rights. From the perspectives of both the manager and the handler, both would technically be “correct” in their assumptions. A federal system created with no state input could lead to states being completely passed over and pushed to reject such a change. In creating this system of certification, there are two major parts: (1) the training standards, and (2) the implementation process. Federal law should prescribe the basics for both, in order to create the stability and consistency the current system lacks. While the federal government does not have the ability to force the states to adopt this program, it can offer states conditional funding in order to try and ensure nationwide compliance.¹⁶³

The first feature of the certification process is the training standards for service animals. Luckily, there are several legitimate training programs already in place that can function as blueprints for a nationwide system. For example, Guide Dogs for the Blind publishes their training standards for their service dogs.¹⁶⁴ The basic guidelines of these standards can be provided in the ADA. An example would be that the ADA could provide that the certification standards must include training for appropriate behavioral aspects (non-aggression, calmness in public places, distractibility), general commands (sit, stay, recall), and specific service training (seizure or illness detection, picking up items, leading the blind or hearing impaired). Additionally, federal law could mandate that while any breed is technically allowed under the certification system, each individual dog must be able to meet all necessary standards of training in order to be a *legal* service dog. These are just a few

¹⁶³ See, e.g., *South Dakota v. Dole*, 483 U.S. 203, 211–12 (1987) (explaining how conditional funding can be given to the states to encourage compliance with federal goals, which, in this case, was in the context of a minimum drinking age). This concept demonstrates how the federal government can encourage state participation for the proposed solution this Note suggests.

¹⁶⁴ See *Final Goal Behaviors*, *supra* note 40.

examples of the types of guidelines that the federal system can set forth for animal training. Overall, the training standards should focus on making sure the underlying policy is supported—that all service animals should be able to safely and adequately aid their handlers in all aspects of life, both private and public.

The second portion of this certification system is the implementation process. Organizations such as Guide Dogs for the Blind or Canine Companions for Independence would be required to comply with the standards set forth by the federal law. By receiving a service animal from one of these institutions, the certification requirements would be met and would require no other additional training or documentation by the handler (as the organization would provide all of the necessary materials). To be able to provide legal certification, any institution or organization, such as these, would merely have to comply with these standards and laws—which they likely would already be doing without much change in current operations.¹⁶⁵ Individuals who train their own dogs (which the ADA currently allows)¹⁶⁶ should be required to take their dog to an official organization and pass a training examination. Organizations such as Assistance Dogs International could become crucial players in this system for both training institutions and examining independently trained animals. By continuing to provide consistent and rigorous accreditation, they could ensure that everyone involved complies with all legal requirements put forth by an official certification system.¹⁶⁷

3. State Executed

To stem state push back, the best way to go about this is to make a certification system federally regulated and encouraged through the ADA, but leave the specifics of training and implementation to the states. While some may argue that this dual federal-state system of regulation is convoluted or impractical, that is not the case. For service animal certification, the states will have the ability to regulate the specifics of their individual processes. While the federal government can create consistency and stability, the states are left to make decisions that best suit the individual needs and wants of their citizens.

¹⁶⁵ *See id.*

¹⁶⁶ *See Frequently Asked Questions about Service Animals and the ADA, supra* note 5.

¹⁶⁷ *See Summary of Standards, supra* note 162 (“The ADI Standards Committee works year round on the continued development of ADI Standards. The ADI Standards are continually evaluated to ensure they are up-to-date with current industry practices and remain focused on continuous improvement of the assistance dog industry.”).

The details that are provided in training materials from institutions such as Canine Companions for Independence¹⁶⁸ or Guide Dogs for the Blind¹⁶⁹ can aid states in establishing training standards as well. The more detailed aspects of what exactly a service dog needs to do to get certified can be left to the states. For example, all dogs must be trained to do the basics listed in the above section: calmness, attentiveness, and commands. The specifics of programs, such as how many months a dog must be in training, if a probationary period is necessary, or the breeding process for the animals, can all be left to the states. States could also choose if there are breed restrictions, as long as they do not conflict with the federal requirements of trainability. States can still have independence to create standards they find appropriate, without undermining the policy of ensuring safe and reliable service animals consistently across the country.

The states would also have a crucial role in the implementation process. While it may seem daunting to put together a program for widespread certification, there are precedents to aid in the process. States would follow the basics set forth by the federal law, but would be given leeway on adding any additional requirements for organizations providing certification. For individuals who train their own animals, the handler and the dog would be required to pass an examination which demonstrates all the training elements required by both the federal and state standards. States could be left to decide the specifics of such an examination and the application process, as these details are more minor and would likely not lead to widespread inconsistencies. After all, under the ADA, all service animals would need to meet the same general requirements. As an example, the precedent to look at would be the application process for receiving a handicap placard for one's car.¹⁷⁰ This application includes information such as who is eligible to apply, appropriate uses of the placards, applicant information, and medical provider information.¹⁷¹ Additionally, this application provides relevant legal information such as the illegality of misusing, counterfeiting, loaning, or selling one's disability

¹⁶⁸ See *Training Tips*, CANINE COMPANIONS FOR INDEPENDENCE, <http://www.cci.org/about/resources/training-tips.html> [<http://perma.cc/3EV6-2Z2J>] (last visited Nov. 14, 2019).

¹⁶⁹ See *Puppy Raising Road Map*, GUIDE DOGS FOR BLIND (Sept. 2019), <http://www.guidedogs.com/uploads/files/Puppy-Raising-Manual/Puppy-Raising-Road-Map.pdf> [<http://perma.cc/8G3W-U49F>].

¹⁷⁰ See STATE OF CAL. DEP'T OF MOTOR VEHICLES, APPLICATION FOR DISABLED PERSON PLACARD OR PLATES (2018), [http://www.dmv.ca.gov/portal/wcm/connect/aebb95cd-c20a-49bd-bc13-dd74120044fc/reg195.pdf?MOD=AJPERES&CVID=\[http://perma.cc/C9KJ-RMAN\]](http://www.dmv.ca.gov/portal/wcm/connect/aebb95cd-c20a-49bd-bc13-dd74120044fc/reg195.pdf?MOD=AJPERES&CVID=[http://perma.cc/C9KJ-RMAN).

¹⁷¹ *Id.*

placard.¹⁷² All of this information could be easily transferable to an application for a service animal. Applicants for service animals would have to also include information about their requested animal, their examination passage, and any other information that the states feel necessary to include.¹⁷³ The section regarding the legal aspects of having a handicap placard would be a critical section that should be included in a service animal counterpart, as it would help alert people to the ramifications of service animal fraud and emphasize the seriousness of potential consequences. Even small factors such as these, supported by the force of an official process, will help in slowing the fraud happening today.

Because the ADA does not preempt implementing their own standards, this is a realistic possibility. The service animal certification system could mirror the handicap parking system. This idea is supported by specifically looking at the ADA's requirements for handicap spaces in parking lots.¹⁷⁴ The ADA provides numerous guidelines and standards that states should follow, but gives them discretion for making their own changes based on individual needs. Looking at the official ADA Compliance Brief for restriping handicap parking spaces illustrates this idea.¹⁷⁵ For example, the brief explicitly states that “[w]hen a business or State or local government restripes parking spaces in a parking lot or parking structure (parking facilities), it must provide accessible parking spaces as required by the 2010 ADA Standards for Accessible Design.”¹⁷⁶ This demonstrates how states are required to follow the basic standards set out by federal law. Further, the brief mentions that while the boundaries of the parking area must be clearly marked under federal law, “[s]tate or local laws may address the color and manner that parking spaces and access aisles are marked.”¹⁷⁷ This illustrates the states' discretion in implementing the specific requirements. These examples show that a federally mandated and state implemented process is not only possible, but directly applicable to disability laws governed by the ADA.

¹⁷² *Id.*

¹⁷³ All of these application requirements would also need to be met if an individual is receiving a service animal through an organization or institution. However, the organization could decide when, in the process of getting the service animal, the individual would need to provide this information, as long as it was prior to the completion of any certification.

¹⁷⁴ U.S. DEP'T OF JUST., ADA COMPLIANCE BRIEF: RESTRIPING PARKING SPACES (Dec. 2015), http://www.ada.gov/restriping_parking/restriping2015.html [<http://perma.cc/6YUG-REJ8>].

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

Some may be hesitant to support a nationwide certification system for service animals, but there are two strong precedents in place that support this concept. First, there is the legal framework that the ADA already has for other areas of disability law, such as handicap parking, where the federal government issues regulations for the states to execute. Second, there is the pre-existing service animal training guidelines that provide the substance for service animal certification. A legalized system for service animal certification can be established by taking the current legal framework and adding the existing training standards.

4. Certification is Not Unduly Burdensome

Finally, the implementation of this system will not be unduly burdensome for disabled Americans who want to receive a service animal. One large concern is that changing service animal laws will create a burden on both current and future users of service animals. However, this concern can be ameliorated. The process of applying for certification would be a comparable burden to having to apply to receive a handicap placard, which is clearly permitted under federal and state laws.¹⁷⁸ The official certification can be shown upon request in public situations. The certification could be proven through an identification that the handler holds or the animal itself wears (such as on a collar tag or in a vest pocket). In fact, in conjunction with the third prong of this proposal, as discussed in a later section, the service dog's vest itself could act as proof of certification. States could also choose to have the service animal certification be a part of the handler's driver's license to keep handlers from having to carry an additional identification card. For example, as states include indications on driver's licenses if the driver needs to wear glasses or is an organ donor, a license could be fit with another indicator for having a service animal. A comparable situation to showing an identification is how places that serve alcohol must check identification to see if patrons are at least twenty-one years old. In fact, this would even be simpler for service animals because it would not be required for a business or public entity to check the identification of an individual with a service animal, it is merely optional if the business chooses to do so.¹⁷⁹ Simply showing an identification card briefly would be far less burdensome and more accurate for

¹⁷⁸ See STATE OF CAL. DEP'T OF MOTOR VEHICLES, *supra* note 170.

¹⁷⁹ For example, if an individual enters a store with a very obvious disability, such as being in a wheelchair, and is accompanied by a service dog, business owners would likely not even have to bother checking identification since it would be fairly clear that the animal is legitimate.

all parties than asking the two questions that the ADA currently has in place.¹⁸⁰

Furthermore, the implementation of the system will not be overly burdensome on people who currently are using service animals. Handlers who have received their service animal through a reputable organization could already be considered “certified” under the new system and merely need to fill out an application as more of a formality, without changing anything about their training (as it is likely that the organizations would already be in compliance). These institutions have already trained and vetted the animals appropriately—even with how the current laws stand.¹⁸¹ For those with legitimate service animals that they have trained themselves, they would need to apply for certification as described above. However, the amendment to the ADA should provide for a period of time in order for individuals to comply and ensure that certification could be achieved for minimal or no cost to the handlers. For example, in some states there are already laws in place that, with proof of legitimacy, handlers can receive the appropriate equipment either free of charge or tax exempt.¹⁸²

Service animal equipment makes up another large part of service animal fraud. There is a prevalence of service animal equipment, from a variety of sources—ranging from the legitimate training institutions to numerous random sellers on Amazon.¹⁸³ In order for certification to work successfully, the source of the service animal certificates, identification, and equipment are a crucial piece that cannot be forgotten when analyzing other aspects of fraud.

C. Further Criminalizing Fraud

In this multifaceted approach, fraud needs to be addressed with criminal penalties, both federally and statewide. Just like the other aspects of this proposal, the amendments to the ADA in regard to fraud would be much broader than the state laws. A concern is that enforcement of these laws may be expensive or impractical. However, when enforcement is paired with the

¹⁸⁰ 28 C.F.R. § 35.136 (2018). Additionally, if a business owner continually asked a disabled individual to show his or her identification/certification in one single visit, it could be considered a form of harassment and there could be additional laws in place to prevent this, similar to how currently, under the law, individuals are not allowed to ask more personal questions besides the two that the ADA currently provides. *Id.*

¹⁸¹ See *Final Goal Behaviors*, *supra* note 40.

¹⁸² NEB. REV. STAT. § 54-603 (2015); OHIO REV. CODE ANN. § 955.011 (2011).

¹⁸³ See, e.g., *Service Dog TAG*, *supra* note 108.

limited definition and certification system proposed above, it becomes far more realistic than one might expect.

1. Federal Offenses

First, selling or producing counterfeit or unauthorized service animal equipment, paraphernalia, or certifications should be a federal offense. As this is the most prevalent, broad sweeping cause of fraud, it needs to be addressed federally.¹⁸⁴ Additionally, since a large portion of service animal equipment is sold online,¹⁸⁵ it would be best to regulate this at a federal level so the sale of equipment would be consistent across state lines. Critical to such federal regulation is the fact that this is only possible with a legitimate certification system in place. Without a system of official certificates and equipment, there is virtually no way to test if the sales of this equipment are to legitimate handlers or not. If laws changed to make equipment available only through reputable organizations (such as Assistance Dogs International, Canine Companions for Independence, etc.), there would be no need for these online shops, and any that continued to provide equipment could be easily prosecuted.

Next, for protecting legitimate handlers, the ADA needs to provide that any discrimination by a business or public entity that turns down a legitimate service dog with certification will be punished as a federal offense, either civilly or criminally.¹⁸⁶ Since the ADA is aimed at protecting individuals with disabilities, there ought to be consequences for those who actively deny these individuals their rights.¹⁸⁷ Once again, with a certification system in place, public entities would be able to consistently check legitimacy with minimal hassle. Furthermore, it would allow the government to consistently punish those who are systematically discriminating against these disabled individuals and denying them their legal right to have a service dog. While everyone must adhere to the federal laws, the government could

¹⁸⁴ See Benninger, *supra* note 109, at 1, 3.

¹⁸⁵ See, e.g., Michelle Kulas, *The Best Service Dog Vests And Harnesses (2019 Reviews)*, PET LIFE TODAY (Sept. 26, 2019), <http://petlifetoday.com/best-service-dog-vests-and-harnesses/> [<http://perma.cc/YG8L-LHHY>]; *Service & Support Dog Harnesses & Vests*, CHEWY, <http://www.chewy.com/b/service-dog-2575> [<http://perma.cc/FBU8-28MJ>] (last visited Apr. 11, 2019); *Service Dog Collection*, SITSTAY, <http://sitstay.com/collections/service-dog> [<http://perma.cc/9NQA-ART5>] (last visited Apr. 11, 2019).

¹⁸⁶ This distinction could be left for Congress to determine.

¹⁸⁷ See Semmel, *supra* note 136, at 60 (“[T]he ADA should be amended to allow for compensatory and punitive damages in a private cause of action under all of its Titles. Anti-discrimination laws strive to make persons with disabilities equal to the non-disabled. Discrimination causes emotional distress, which is a bona-fide injury, particularly for persons with disabilities and compensatory damages should be permitted by statute.”).

encourage and incentivize states to take action in creating their own independent service animal laws for a more expansive system that takes into account individual states' needs.

2. State Offenses

While the federal level covers broad legal consequences of fraud, states also have a role to play. There are several laws that are currently in place that provide a statutory framework for states to look to for guidance. There are two areas of state law that provide this: service animal laws and disability persons placard laws.

As previously mentioned, there are several states that already have some sort of law in place for criminalizing service animal fraud,¹⁸⁸ but this should be expanded. For this system to work effectively, *all* states should implement these types of laws. The statutory frameworks available indicate the general punishments states find to be appropriate for fraud of this kind. Generally, states have made service animal fraud a misdemeanor.¹⁸⁹ While each of these states have their own specifics of what constitutes fraud, there are in fact some similarities. States typically pursue individuals who fraudulently represent pets as service animals.¹⁹⁰ These laws are crucial in preventing fraud. However, there are far fewer laws currently implemented which target people selling “fake” service animal paraphernalia. This gap in the law may be due to the fact that there is little to no way to prove who is legitimately selling merchandise and who is not, since there is no certification system in place. Therefore, it is crucial for each aspect of this proposal to be implemented together. The fact that it is currently so easy to buy equipment makes little sense, since it makes defrauding the system very simple.¹⁹¹ Limiting the sale of equipment to people with certifications and criminalizing sales to uncertified individuals will allow for greater protections than currently exist. The problem will not be fixed while this merchandise is still for sale to the public.

Some may argue that stopping these sales will not stop the problem, because people could still find a way to make counterfeit equipment. Yet, fake identification cards, such as driver's licenses, are illegal, and while some might still slip through the cracks of the system, they are definitely not for sale

¹⁸⁸ *E.g.*, CAL. PENAL CODE § 365.7 (West 2019); FLA. STAT. § 413.08 (2015).

¹⁸⁹ *E.g.*, CAL. PENAL CODE § 365.7; IDAHO CODE § 18-5811A (2019); MO. REV. STAT. § 209.204 (2005); NEB. REV. STAT. § 28-1313 (2019); N.C. GEN. STAT. § 168-4.5 (2018).

¹⁹⁰ *See, e.g.*, CAL. PENAL CODE § 365.7.

¹⁹¹ *See* FROMGOLDS, *supra* note 106, at 5, 6.

on places like Amazon. Additionally, there are laws to prosecute people who sell fake driver's licenses.¹⁹² This should be the same for service animals, and some states have already begun to take those steps. Maine has laid out much more detailed laws in regard to service animal fraud¹⁹³ than other states.¹⁹⁴ For example, Maine's laws explicitly list that providing false service animal documents is a violation of the law.¹⁹⁵ Similarly, other states should follow this lead and criminalize the selling of falsified service animal certifications or equipment. For the states that have not yet implemented these types of laws, they can use the existing ones as a framework for the creation of their own service animal fraud laws.

While service animal law is still growing and expanding, states might be hesitant to take on these new laws. As this is a newer field with increasing publicity, states may be concerned with creating new legislation for fear of unknown backlash that could come with implementing more regulations. While some states, such as Maine, have more detailed service animal fraud laws,¹⁹⁶ many other states have either broader sweeping laws or none at all. However, there are other areas of disability law that provide a solid precedent of what should be included—the disabled person's disability placard and plate laws. To illustrate this idea, one can look to the laws of California. The California Vehicle Code provides several specific violations for misusing a disabled person's placard.¹⁹⁷ For example, there are laws

¹⁹² *Laws and Penalties for Underage Drinking*, ILL. LIQUOR CONTROL COMMISSION, <http://www2.illinois.gov/ilcc/Education/pages/under21laws.aspx> [<http://perma.cc/DR77-SXMZ>] (last visited Apr. 11, 2019).

¹⁹³ ME. STAT. tit. 17, § 1314-A (2016) (“A person who knowingly misrepresents as a service animal any animal that does not meet the definition of “service animal,” . . . commits a civil violation. A person who knowingly misrepresents as an assistance animal any animal that does not meet the definition of “assistance animal,” . . . commits a civil violation. Misrepresentation as a service animal or an assistance animal includes, but is not limited to: 1. False documents. Knowingly creating documents that falsely represent that an animal is a service animal or an assistance animal; 2. Providing false documents. Knowingly providing to another person documents falsely stating that an animal is a service animal or an assistance animal; 3. Harness, collar, vest or sign. Knowingly fitting an animal, when the animal is not a service animal, with a harness, collar, vest or sign of the type commonly used by a person with a disability to indicate an animal is a service animal; or 4. Falsely representing animal as service animal. Knowingly representing that an animal is a service animal, when the animal has not completed training to perform disability-related tasks or do disability-related work for a person with a disability. For a civil violation under this section a fine of not more than \$1,000 for each occurrence may be adjudged.”).

¹⁹⁴ *See, e.g.*, IDAHO CODE § 18-5811A (“Any person, not being an individual with a disability or being trained to assist individuals with disabilities, who uses an assistance device, an assistance animal, or a service dog in an attempt to gain treatment or benefits as an individual with a disability is guilty of a misdemeanor.”).

¹⁹⁵ ME. STAT. tit. 17, § 1314-A.

¹⁹⁶ *Id.*

¹⁹⁷ CAL. VEH. CODE § 4461 (West 2010).

protecting people from falsely using paraphernalia that is not provided for them, as “a person shall not display a disabled person placard that was not issued to him or her or that has been canceled or revoked.”¹⁹⁸ Further, it provides that a violation of this section of the California Vehicle Code “is subject to the issuance of a notice of parking violation imposing a civil penalty of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000).”¹⁹⁹ These laws also have sections applying to the selling of falsified placards and/or license plates.²⁰⁰ Specific laws like these can easily be translated to service animal fraud laws with minimal change. These laws easily mirror those currently in place (or that should be in place) for service animal fraud and indicate that these punishments are both appropriate and have precedent to help enact them at the level of specificity needed. By leaning on the established precedent from a familiar area of disability law, states can feel more confident in the implementation of new service animal laws, while taking the necessary steps to help stop this fraud.

D. The Funding Process

One of the most prevalent arguments against this proposed system revolves around the question of who is going to pay for its implementation. First, many of the programs that are needed to make this process work are already in place. Organizations that have provided service animals for decades all across the country are generally run as non-profits.²⁰¹ Institutions such as these rely heavily on generous donations of both money and time from volunteers to help these programs function as they currently do.²⁰² Service animal organizations are very upfront with their funding situations. Right on the front page of the Guide Dogs for the Blind website, there is a statement from the President and CEO Christine Benninger stating, “All of our services are free, and we don’t receive any government funding. Support our life-changing

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ For example, California law states that any person who “[a]lters, forges, counterfeits, or falsifies a certificate of ownership, registration card, certificate, license, license plate [or] [u]tters, publishes, passes, or attempts to pass, as true and genuine, a false, altered, forged, or counterfeited [license] knowing it to be false, altered, forged, or counterfeited” shall be “guilty of a felony and upon conviction thereof shall be punished by . . . imprisonment in a county jail for not more than one year.” *Id.* § 4463.

²⁰¹ *E.g.*, *Who We Are*, *supra* note 35; *Make a Donation Today*, GUIDE DOGS FOR BLIND, <http://www.guidedogs.com/support-gdb/donate> [<http://perma.cc/4YET-5YUN>] (last visited Apr. 11, 2019).

²⁰² Tax deductions provide additional incentives for people to make donations. *Make a Donation Today*, *supra* note 201 (“Guide Dogs for the Blind is a non-profit, charitable organization under the provisions of section 501(c)(3) of the Internal Revenue Code (tax ID #94-1196195). Donations are tax-deductible as allowed by law.”).

mission today.”²⁰³ Little to nothing about these institutions that provide a large amount of service dogs would need to be changed with these new provisions. Second, any fees (even nominally) that are charged as a part of a state’s certification process should go back into the system of service animals, whether going towards paying for equipment, certification examiners, or training organizations. Any additional funding needed to make this system work would not be extreme given that so much of the system is already in place.

Additionally, the publicity of this new certification system and amended laws could lead to an increase in the public recognition of service animal organizations. Just as the public is aware of some large non-profit organizations, such as the Wounded Warrior Project for supporting veterans²⁰⁴ or Feeding America for fighting hunger,²⁰⁵ the publicity with this legislation could help lead the public to being more engaged with the service animal process. While this idealistic proposal may seem potentially far-fetched, in actuality there is some precedent for it. Training organizations have been consistently working to try to publicize their work and help shed a positive light on service animals in general.²⁰⁶ Although it is not currently widely publicized, the month of September is the month to celebrate service dogs and spread awareness.²⁰⁷ There has also been some statutory movement—in Texas, the legislature has enacted a statute where “[t]o ensure maximum public awareness of the policies set forth in this chapter, the governor shall issue a proclamation each year taking suitable public notice of October 15 as White Cane Safety and Service Animal Recognition Day.”²⁰⁸ This shows the small steps that some states have taken to try to help this cause. By implementing these proposed amendments to disability law, and creating a certification system, public attention will be directed to this issue. This will allow for an ideal

²⁰³ GUIDE DOGS FOR BLIND, <http://www.guidedogs.com> [<http://perma.cc/8FY3-GZZE>] (last visited Apr. 11, 2019).

²⁰⁴ WOUNDED WARRIOR PROJECT, <http://www.woundedwarriorproject.org> [<http://perma.cc/LB99-U2W9>] (last visited Apr. 11, 2019).

²⁰⁵ *Our Work*, FEEDING AM., <http://www.feedingamerica.org/our-work> [<http://perma.cc/67SZ-LQTP>] (last visited Apr. 11, 2019).

²⁰⁶ See *Social Media: Follow Us*, CANINE COMPANIONS FOR INDEPENDENCE, <http://www.cci.org/news-media/follow-us.html> [<http://perma.cc/R6L5-HMZJ>] (last visited Apr. 11, 2019).

²⁰⁷ Vicki Clinebell, *Celebrate National Service Dog Month September 2017*, DOGTIME, <http://dogtime.com/lifestyle/27981-celebrate-national-service-dog-month-september> [<http://perma.cc/6UZ2-89BK>] (“September is National Service Dog Month, a time designated to raising awareness and showing appreciation for the extraordinary work service animals do every day for the people in their care. National Service Dog Month honors these working dogs for making millions of lives better and safer.”).

²⁰⁸ TEX. HUM. RES. CODE ANN. § 121.008 (West 2014).

opportunity to embrace that attention and further direct it to positive outcomes, instead of the negative publicity currently surrounding service animals. There is a lack of education in the area of service animals—so, these laws could help educate as to the legal scope of service animals and aid in building the strength of the system across the nation.

Some may argue that these sources of funding are either too minimal or too unpredictable; however, that is not enough to stop this progress in its tracks. While it may require the government to spend some amount of funding to implement this process, that is a critical part of fixing this issue. The government laid out these laws as they currently are, and while they were an attempt to protect disabled Americans, unfortunately, this has not been the case. It is the responsibility of the government to provide a *successful* system for its disabled citizens, and simply leaving things as they are is not enough. Additionally, since this is a self-regulating industry²⁰⁹ that is privately funded through donations,²¹⁰ the government's main role would simply be enforcing this new legal framework. While there is a real concern for the financial aspects of any new regulation, the protection of the disabled individuals that rely on these laws should outweigh these concerns. Particularly, since the amount would likely be minimal due to the significant pathways that are already in place.

V. CONCLUSION

Service animals provide an immeasurable service to disabled individuals across the country.²¹¹ Unfortunately, what began as a legitimate effort to aid these disabled Americans has become a system that allows for rampant fraud and abuse. The ADA's limitations on public entities of allowing only two verbal questions as the form of proving legitimacy is not enough.²¹² The prevalence of service animal equipment and fake certifications available online has rendered this protection nearly moot.²¹³ The ACAA, while trying to be inclusive, with a broad definition of animals allowed on aircrafts, has unfortunately led to many incidents and puts the health and safety of the public at risk.²¹⁴ Public entities and businesses currently have to balance the risk of discriminating against disabled individuals with legitimate

²⁰⁹ See *Summary of Standards*, *supra* note 162; *Final Goal Behaviors*, *supra* note 40.

²¹⁰ See *Make a Donation Today*, *supra* note 201.

²¹¹ See generally, *Our Stories*, *supra* note 13.

²¹² 28 C.F.R. § 35.136 (2018).

²¹³ See, e.g., *Doggie Stylz Service Dog Harness Vest*, *supra* note 115; FROMGOLDS, *supra* note 106, at 6 (“I simply paid \$50 on the United States Service Dog Registry website to get a kit that provided me with incredibly official-looking credentials.”).

²¹⁴ See Hopper, *supra* note 24.

service animals and the risk of untrained and potentially dangerous or destructive animals wreaking havoc in their place of business. However, the biggest victims of this abuse are the disabled handlers and their service animals. The current fraud in the system has caused the public to distrust the legitimacy of any service animal, thus leading to the very real discrimination of disabled Americans.²¹⁵ Additionally, the prevalence of untrained pets masquerading as service animals in areas that disallow animals has led to legitimate service animals being harassed, attacked, and injured.²¹⁶

This is an important issue that requires a thoughtful solution. However, by looking at programs and laws that are already in place, there is a strong framework for implementing a realistic solution. First, federal and state laws should amend their definitions of service animals to match the ADA's limited definition in order to help regulate the number of inadequately trained animals in certain public places. Second, the federal government should require certification of service animals and prescribe the basics by amending the federal law to allow for such a program. States should implement their own detailed requirements for such certification systems while also complying with the basic federal regulations. By relying on programs such as Assistance Dogs International, Canine Companions for Independence, and Guide Dogs for the Blind, the process of implementing a certification system is largely already established.²¹⁷ Finally, by using a combination of current state laws regarding service animals²¹⁸ and the laws in place that regulate disabled persons parking placards, federal and state legislatures have a nearly complete framework for implementing further laws to regulate service animal fraud.²¹⁹ Specifically, implementing laws that criminalize the selling of fake service animal credentials online is a critical step to stemming the current fraud of the system. Because of the practically self-regulating nature of this industry,²²⁰ the fact that it is privately funded without government aid,²²¹ and the existence of laws and programs that can be easily adapted to fit service animal issues,²²² the main role the government would play in this process is one of enforcement. This multi-faceted proposal would

²¹⁵ *A Service Dog is More Than a Vest*, *supra* note 1.

²¹⁶ *E.g.*, Tilbury, *supra* note 10.

²¹⁷ *See Summary of Standards*, *supra* note 162; *Final Goal Behaviors*, *supra* note 40.

²¹⁸ *E.g.*, ME. STAT. tit. 17, § 1314-A (2016).

²¹⁹ CAL. VEH. CODE § 4461 (West 2010).

²²⁰ *See Summary of Standards*, *supra* note 162; *Final Goal Behaviors*, *supra* note 40.

²²¹ *See Make a Donation Today*, *supra* note 201.

²²² *See e.g.*, STATE OF CAL. DEP'T OF MOTOR VEHICLES, *supra* note 170.

make great strides in protecting disabled individuals all across the country, with minimal practical changes to how the system is currently working. It may be impossible for fraud to ever be stopped entirely, but with changes to the service animal system, fraud can be significantly reduced, and thus provide greater protections to those who use service animals.

While animals are an amazing part of life, and the companionship they bring to an individual can be undeniably and significantly life changing, that does not mean individuals are allowed to delegitimize and destroy the accommodations of millions of disabled Americans just because they love their pet. Just because an individual may want to park closer to the store, does not mean he can just park in the handicap spot. Just because someone loves his dog, does not mean he gets to take it with him anywhere he wants with no regard for the law. Federal and state governments should work to ensure that disabled Americans and the service animals they rely on, such as Morgan and Echuka, are adequately protected and able to live their lives to the fullest, without the fear and hassle that the current system creates.