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NO PETS ALLOWED: THE NEED TO ADDRESS INCREASING ABUSES OF ASSISTANCE ANIMAL REGULATIONS UNDER FEDERAL LAW

Ansley Fantaski*

INTRODUCTION

Peacocks in public, kangaroos in restaurants, and pigs on planes all have one thing in common: individuals trying to assert rights to which they are not entitled.¹ Assistance animals are becoming increasingly more recognizable through their popularity in the media, with news

* J.D. Candidate, 2020, Georgia State University College of Law. As a volunteer puppy raiser for the Guide Dog Foundation, I have personally experienced a lot of issues relating to misbehaved and misrepresented dogs, undereducated members of the public, and overall distrust of service animals. Understanding the importance of the work these animals perform, I am passionate about the issues presented in this paper and am honored to have been selected for publication. Thank you to everyone who helped me and supported me throughout this process, especially my fellow members of the *Georgia State University Law Review* for all of your time and effort leading up to publication of this Note. Additionally, I would like to thank Provost Wendy Hensel, Professor Megan Boyd, and Joseph Lynett for their review and feedback during this process.

1. Robin Abcarian, *After a Brush with Fame, Dexter, the Pet Peacock Who Was Refused a Seat on United, Has Moved on*, L.A. TIMES (Mar. 9, 2018, 3:00 AM), <http://www.latimes.com/local/abcarian/lame-abcarian-peacock-20180309-story.html> [<https://perma.cc/4F3B-PLAZ>] (describing how a woman obtained her pet peacock from Craigslist, not for emotional support, but for a prop to be used in an art show); Lindsey Bever & Eli Rosenberg, *United Changed Its Policy for Emotional-Support Animals. That Peacock Still Can't Board*, WASH. POST (Feb. 1, 2018, 3:35 PM), https://www.washingtonpost.com/news/animalia/wp/2018/01/30/a-woman-tried-to-board-a-plane-with-her-emotional-support-peacock-united-wouldnt-let-it-fly/?utm_term=.861a516693b1 [<https://perma.cc/SYZ8-AGN7>] (discussing United's refusal to permit boarding a woman's "emotional support peacock" due to its failure to meet the guidelines for a number of reasons, including size and weight). After this incident, and in response to a dramatic increase in the amount of comfort animals accompanying passengers, United Airlines updated their policies. Bever & Rosenberg, *supra*. United reports nearly twice the number of emotional support animals on their planes since 2016. *Id.* The updated policy requires confirmation that the animal is properly trained for public settings. *Id.* Similarly, a woman was asked to leave McDonald's after she entered with a baby kangaroo that she claimed was a therapy animal accompanied by a doctor's note of approval. *'Therapy Kangaroo' Booted from Wisconsin McDonald's*, FOX NEWS (Feb. 4, 2015), <http://www.foxnews.com/health/2015/02/04/therapy-kangaroo-booted-from-wisconsin-mcdonald.html> [<https://perma.cc/9BP2-S7EL>]; see also Kristen Hugo, *'Emotional Support' Pig Kicked off Plane: Why Are These Animals Allowed on Board?*, NEWSWEEK (Nov. 16, 2017, 12:11 PM), <https://www.newsweek.com/emotional-support-pig-kicked-plane-why-are-these-animals-allowed-board-713547> [<https://perma.cc/3Z54-8Q5X>] (recounting incidents of individuals attempting to bring companion pigs onto flights and discussing their permissions as emotional support animals).

channels, talk shows, and even sports teams sponsoring service animals in training.² However, the number of individuals trying to take their companion pets wherever they go has also increased, resulting in consequences surrounding the laws granting rights to individuals requiring either service or emotional support animals for legitimate needs.³

The Americans with Disabilities Act (ADA) grants the most significant rights to individuals requiring service animals.⁴ Under this Act, individuals with disabilities have the right to bring qualified service animals into places of public accommodation such as hotels, restaurants, and stores.⁵ However, this right is not absolute.⁶ These access rights are only granted for qualifying service animals who perform work to aid their handler with their disability.⁷ Service animals must receive individualized training relating to their handler's

2. *Operation Max*, FOX 5 ATLANTA, <http://www.fox5atlanta.com/operation-max> [<https://perma.cc/CN2Q-V76B>] (last visited Feb. 11, 2020). Fox 5 Atlanta partnered with Canine Assistants, a nonprofit dedicated to raising service dogs, to raise Max, a golden retriever puppy recently paired to work with a woman who suffers from epilepsy. *Id.*; see also Christine Morea, *Meet Sunny, TODAY's 3rd Puppy with a Purpose*, USA TODAY (Feb. 27, 2018, 8:26 AM), <https://www.today.com/pets/meet-today-s-3rd-puppy-purpose-t123790> [<https://perma.cc/EB7W-K96Y>]. Sunny is the third puppy raised by the *TODAY* show in partnership with both the Guide Dog Foundation and America's VetDogs, two nonprofit organizations raising service dogs. *Id.*; see also *Islanders Puppy with a Purpose*, NHL.COM, <https://www.nhl.com/islanders/fans/islanders-puppy> [<https://perma.cc/F9EK-7MM8>] (last visited Feb. 10, 2020) (reporting that National Hockey League team New York Islanders partnered with the Guide Dog Foundation to raise a professional guide dog for a child who is visually impaired).

3. See RUTH COLKER & PAUL D. GROSSMAN, *THE LAW OF DISABILITY DISCRIMINATION HANDBOOK: STATUTES AND REGULATORY GUIDANCE* 392 (8th ed. 2013); Stanley Coren, *Is There an Epidemic of Fake Service Dogs?*, PSYCHOL. TODAY (Apr. 24, 2015), <https://www.psychologytoday.com/us/blog/canine-corner/201504/is-there-epidemic-fake-service-dogs> [<https://perma.cc/GD4E-PRQJ>]; Adam Edelman, *Collared: New Laws Crack Down on Fake Service Dogs*, NBC NEWS (May 5, 2018, 11:00 PM), <https://www.nbcnews.com/politics/politics-news/collared-new-laws-crack-down-fake-service-dogs-n871541> [<https://perma.cc/DKA7-6JV4>].

4. See generally Americans with Disabilities Act, 42 U.S.C. § 12182 (2018) (requiring that places of public accommodation make reasonable modifications for those with disabilities).

5. COLKER & GROSSMAN, *supra* note 3.

6. See, e.g., 28 C.F.R. § 35.136(b) (2019) (permitting the exclusion of a service animal if the handler does not take effective action to control the animal or if the animal is not housebroken); DISABILITY RIGHTS SECTION, U.S. DEP'T JUSTICE, REVISED ADA REQUIREMENTS: SERVICE ANIMALS 2 (2011), https://www.ada.gov/service_animals_2010.pdf [<https://perma.cc/YW7A-YYWD>] [hereinafter REVISED ADA REQUIREMENTS] (“[I]t may be appropriate to exclude a service animal from operating rooms or burn units where the animal’s presence may compromise a sterile environment.”).

7. REVISED ADA REQUIREMENTS, *supra* note 6, at 1.

particular disability.⁸ However, under the ADA, places of public accommodation are permitted only a limited inquiry if a person enters with a service animal.⁹ When it is not obvious what service an animal provides, personnel may only ask two specific questions: (1) is the animal required because of a disability, and (2) what work or task has it been trained to perform?¹⁰ These limited questions, however, can enable individuals to claim—either fraudulently or accidentally—that their companion or emotional support animals are “service animals” to gain access to places of public accommodation where companion or emotional support animals are not normally allowed.¹¹

With increasing frequency, some individuals have begun to abuse the Airline Carrier Access Act (ACAA), which requires airlines to allow assistance animals to ride in the cabin of an airplane.¹² The standard for assistance animals for airlines is far more lenient than the standard under the ADA because it provides travel rights. These traveling rights permit animals inside plane cabins at no additional cost. This is true for service animals *and* emotional support animals, which simply provide comfort and support through their presence with their owners and are not individually trained to provide any specific services to their owners.¹³ Although airlines have options in place to transport household pets, such as paying a fee to bring the animal as a carry-on or putting the animal in the cargo hold, flight attendants and passengers have reported an increase in emotional support animals as

8. *Id.*

9. 28 C.F.R. § 36.302(c)(6) (2019); REVISED ADA REQUIREMENTS, *supra* note 6.

10. REVISED ADA REQUIREMENTS, *supra* note 6.

11. COLKER & GROSSMAN, *supra* note 3, at 407.

12. 14 C.F.R. § 382.117 (2019); *see also* Bever & Rosenberg, *supra* note 1; Karin Brulliard, *Fur and Fury at 40,000 Feet as More People Bring Animals on Planes*, WASH. POST (Jan. 22, 2018), https://www.washingtonpost.com/news/animalia/wp/2018/01/22/fur-and-fury-at-40000-feet-as-more-people-bring-animals-on-planes/?utm_term=.0b44b76b588d [https://perma.cc/NR5T-8PMZ]; Christopher Mele, *Is That Dog (or Pig) on Your Flight Really a Service Animal?*, N.Y. TIMES (May 1, 2018, 11:00 AM), <https://www.nytimes.com/2018/05/01/travel/service-animals-planes.html> [https://perma.cc/442R-T78G].

13. *Compare* 14 C.F.R. § 382.117 (defining assistance animals covered under the ACAA to include emotional support animals and animals of various species), *with* 28 C.F.R. § 36.104 (2019) (defining service animals within the scope of the ADA to be limited to dogs trained to perform tasks associated to the individual’s disability).

individuals attempt to avoid paying the costs associated with pet travel.¹⁴

Abuses can also occur under the Fair Housing Act (FHA) for similar reasons. Because the FHA also covers both service animals and emotional support animals, landlords face an increasing number of accommodation requests to either permit a companion pet or emotional support animal in “no pet housing” or to waive fees associated with having a pet in the home.¹⁵ However, because these abuses typically occur within the home, the effects are far more limited in scope than those involving public access.

The following Note discusses the nuances associated with assistance animal regulations. Part I provides an in-depth overview of the current laws in place permitting certain rights to handlers of assistance animals under a variety of circumstances. Part II analyzes the abuses of assistance animal regulations and discusses the distinctions between service animals and emotional support animals. Part III discusses proposed solutions to streamline the regulations, including establishing a national registration system and increasing educational efforts to help minimize abuses under federal law.

14. Hugo Martin, *Emotional Support Animals Snap, Bark and Cause Disruptions, Most Flight Attendants Say*, L.A. TIMES (Sept. 15, 2018, 10:00 AM), <http://www.latimes.com/business/la-fi-travel-briefcase1-emotional-support-animals-20180915-story.html> [<https://perma.cc/6BLG-BKVE>] (detailing results from a survey of nearly 5,000 flight attendants about incidents of disruptions due to animals on flights); Dan Reed, *Delta Yanks Hard on the Leash of Those Who've Abused Service Animal Travel Policies*, FORBES (Jan. 22, 2018, 6:05 AM), <https://www.forbes.com/sites/danielreed/2018/01/22/delta-yanks-hard-on-the-leash-of-those-who-ve-abused-its-service-support-animal-travel-policies/#1f3ce6073eed> [<https://perma.cc/DX9Y-Z4XM>] (discussing changes in Delta's policies—becoming more stringent about qualifications of assistant animals—in response to the number and behavior of on-board animals getting out of control).

15. Samantha Bomkamp, *Emotional Support Animals—From Dogs to Peacocks, Real or Fake—Present Challenges for Businesses*, CHI. TRIB. (Feb. 9, 2018, 1:50 PM), <http://www.chicagotribune.com/business/ct-biz-emotional-support-animals-20180211-story.html> [<https://perma.cc/FS9V-ME2Z>]. Businesses “must strike a balance between accommodating patrons with disabilities and maintaining an environment that is clean and safe for everyone.” *Id.* Additionally, these businesses must also consider the likelihood of assistance animal fraud. *Id.*

I. Background

Traditionally, assistance animals worked as guides for individuals who were blind or visually impaired, but now, animals are assisting individuals with a variety of disabilities such as blindness, deafness, or diabetes.¹⁶ There are three sources of authority governing rights of assistance animals under federal law: the ADA, the FHA, and the ACAA.¹⁷ Each authority has different definitions, scopes of protection, and requirements for various levels of assistance animals.¹⁸

A. *The Americans with Disabilities Act*

Title III of the ADA establishes that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.”¹⁹ Further, the ADA defines “discrimination” to include failure to make reasonable modifications to facilitate full and equal enjoyment to disabled individuals.²⁰ The Department of Justice (DOJ), which is charged with enforcing public accommodations under Title III, has interpreted the ADA to include permitting the use of service animals

16. COLKER & GROSSMAN, *supra* note 3, at 401.

17. *See* Fair Housing Act, 42 U.S.C. § 3604 (2018); 42 U.S.C. § 12182 (2018); Airline Carrier Access Act, 49 U.S.C. § 41705 (2018).

18. *See* 28 C.F.R. § 36.104 (defining service animal under ADA as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability”); Nondiscrimination on the Basis of Disability in Air Travel, 73 Fed. Reg. 27,614 (May 13, 2008) (to be codified at 14 C.F.R. pt. 382) (defining service animal under ACAA as “[a]ny animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well-being of a passenger”); U.S. DEP’T OF HOUS. & URBAN DEV., FHEO-2013-01, SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS 2 (2013), https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF [<https://perma.cc/49FE-QVJT>] (defining assistance animal under FHA as “an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability”).

19. 42 U.S.C. § 12182(a).

20. *Id.* § 12182(b)(2)(A)(ii). Discrimination includes “a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities.” *Id.*

as a reasonable modification required in places of public accommodation.²¹

The definition of service animal is limited to dogs and miniature horses that are individually trained to do work or perform tasks for people with disabilities, whether physical or mental.²² The work required must be directly related to the individual's disability.²³ Psychiatric service dogs that are trained to perform a variety of tasks related to detecting the onset of psychiatric episodes and ameliorating its effects are included under the ADA; however, animals that provide emotional support, well-being, comfort, or companionship are specifically excluded.²⁴ Psychiatric service animals do more; for example, they may remind an individual to take their medicine, provide safety checks or room searches, interrupt self-mutilation, or remove disoriented individuals from dangerous situations.²⁵

DOJ also provides a nonexhaustive list of work or tasks that would qualify an assistance animal as a service animal, but the key to qualification is individualized training.²⁶ There is an increasing

21. 28 C.F.R. § 36.302(c)(1) (2019) (“Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.”).

22. 28 C.F.R. § 36.104; REVISED ADA REQUIREMENTS, *supra* note 6, at 3. The definition has also been expanded to cover miniature horses as service animals, if they meet the requisite training requirement. *Id.* at 2.

23. 28 C.F.R. § 36.104 (“Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, 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.”).

24. *Id.* (“[T]he provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks,” which is required for classification as a service animal); COLKER & GROSSMAN, *supra* note 3, at 400–01.

25. COLKER & GROSSMAN, *supra* note 3, at 401. To qualify for ADA protections and therefore be accompanied by a psychiatric service animal in places of public accommodation, the handler must be disabled under the ADA. 42 U.S.C. § 12102 (2018) (“The term ‘disability’ means, . . . (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.”). The Act further defines major life activities by providing examples such as eating, sleeping, walking, lifting, standing, speaking, breathing, learning, communicating, and working. *Id.* Additionally, major life activities may include major bodily functions such as functions of the immune system, cell growth, digestive functions, and reproductive functions. *Id.*

26. 28 C.F.R. § 36.104; COLKER & GROSSMAN, *supra* note 3, at 392–93. Examples include assisting

number of individuals who claim to be covered under the ADA who do not meet the legitimate regulatory criteria.²⁷ However, places of public accommodation may only ask two specific questions to verify the legitimacy of an animal's presence: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform?²⁸ In fact, places of public accommodation are not allowed to ask for any verification beyond the two permitted questions nor is any paperwork required to prove a service dog qualifies under the ADA, which gives rise to a large source of abuse.²⁹ For example, numerous online resources exist for individuals to purchase "official" service dog registration and identification.³⁰ DOJ has stated explicitly that these certifications do not convey rights under the ADA to the individuals or pets they claim to certify.³¹

B. Fair Housing Act

The FHA prohibits property owners from discriminating based on disability, race, color, national origin, religion, sex, and familial status.³² Under this Act, pet restrictions cannot be the basis for denying

blind individuals with navigation and other tasks, alerting deaf individuals to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. 28 C.F.R. § 36.104.

27. Edelman, *supra* note 3.

28. REVISED ADA REQUIREMENTS, *supra* note 6, at 2; Edelman, *supra* note 3; Michael Ollove, *These 19 States Are Cracking Down on Fake Service Dogs*, PBS (Oct. 16, 2017, 10:29 AM), <https://www.pbs.org/newshour/health/19-states-cracking-fake-service-dogs> [https://perma.cc/5NXW-933S].

29. Edelman, *supra* note 3; Ollove, *supra* note 28.

30. NAT'L SERV. ANIMAL REGISTRY, <https://www.nsarco.com> [https://perma.cc/AL9K-J7FB] (last visited Feb. 10, 2020); USA SERV. DOG REGISTRATION, <https://usaservicedogregistration.com> [https://perma.cc/6FUQ-DD8S] (last visited Feb. 10, 2020); U.S. DOG REGISTRY, <http://usdogregistry.org/> [https://perma.cc/WF72-ME5E] (last visited Feb. 10, 2020).

31. U.S. DEP'T JUST., *Frequently Asked Questions About Service Animals and the ADA* (July 20, 2015), https://www.ada.gov/regs2010/service_animal_qa.html [https://perma.cc/M2E4-QUZ9] ("There are individuals and organizations that sell 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.")

32. 42 U.S.C. § 3604 (2018).

or limiting housing to individuals with disabilities who require an assistance animal, whether a service animal or an emotional support animal.³³ In those instances, housing providers must grant reasonable accommodations, such as modifying their pet policies.³⁴

The FHA defines assistance animals similarly to the ADA, though it expressly includes emotional support animals and is not limited specifically to dogs.³⁵ Specifically, the FHA defines “assistance animal” within the scope of its protections as “an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.”³⁶ Similar to the ADA, the FHA does not require an individual to provide registration or certification to comply.³⁷ Although some individuals still struggle with obtaining accommodations under the FHA, the effects of abuses under the FHA are more limited than those under the ADA.³⁸

C. *Airline Carrier Access Act*

The ACAA prohibits discrimination in air travel based on disability.³⁹ Similar to both the ADA and the FHA, the ACAA includes

33. Press Release, U.S. Dep’t of Hous. & Urban Dev., HUD Issues Notice on Assistance Animals and Reasonable Accommodations for Persons with Disabilities (Apr. 30, 2013), <https://archives.hud.gov/news/2013/pr13-060.cfm> [<https://perma.cc/3JWG-83G3>]. “The vital importance of assistance animals in reducing barriers, promoting independence, and improving the quality of life for people with disabilities should not be underestimated, particularly in the home.” *Id.*

34. *Id.*

35. U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 18, at 3.

36. *Id.*

37. *Id.* For purposes of reasonable accommodation requests in the housing context, assistance animals are not required to be individually trained or certified. *Id.*

38. See generally Amber Dukes, *Emotional Support Pig Faces Eviction, Orange City Woman Fights Back*, WESH 2 (July 11, 2018, 5:33 PM), <https://www.wesh.com/article/emotional-support-pig-faces-eviction-orange-city-woman-fights-back/22119832> [<https://perma.cc/NK9S-BUHC>]. A woman was in danger of eviction for keeping an emotional support pig in her home because she was in violation of a city ordinance prohibiting keeping swine in the home. *Id.* Because the FHA does not grant any rights to the animal outside of the home, the effects of the abuses do not extend to the general public. *Id.*

39. 49 U.S.C. § 41705(a) (2018); *Passengers with Disabilities: About the Air Carrier Access Act*, U.S. DEP’T TRANSP. (Jan. 27, 2015), <https://www.transportation.gov/airconsumer/passengers-disabilities> [<https://perma.cc/TE63-JLJF>].

provisions for assistance animals.⁴⁰ The Department of Transportation, charged with enforcing the ACAA, defines “assistance animals” as “any animal that is individually trained or able to provide assistance to a person with a disability; or any animal that assists persons with disabilities by providing emotional support,” but also provides limitations for size, weight, threat to health and safety, cabin disruption, and even species.⁴¹

The main difference between the ACAA and the ADA, other than the ACAA’s inclusion of emotional support animals, is that airlines are permitted to request specific documentation forty-eight hours in advance of a passenger’s flight for animals that are emotional support animals and psychiatric service animals.⁴² For example, Delta Air Lines permits boarding of trained service animals *and* emotional support animals, but requires submission of specific documentation for those seeking to fly with emotional support animals no later than forty-eight hours before a flight.⁴³ Similarly, Southwest Airlines

40. 14 C.F.R. § 382.117 (2019); *Service Animals (Including Emotional Support Animals)*, U.S. DEP’T TRANSP. (Mar. 20, 2018), <https://www.transportation.gov/individuals/aviation-consumer-protection/service-animals-including-emotional-support-animals> [https://perma.cc/PUW4-8MUH] [hereinafter U.S. DEP’T TRANSP., *Service Animals*].

41. 14 C.F.R. § 382.117(f); U.S. DEP’T TRANSP., *Service Animals*, *supra* note 40 (“Airlines may exclude animals that: Are too large or heavy to be accommodated in the cabin; Pose a direct threat to the health or safety of others; Cause a significant disruption of cabin service; or Are prohibited from entering a foreign country. Airlines are never required to accept snakes, reptiles, ferrets, rodents, sugar gliders, and spiders.”).

42. 14 C.F.R. § 382.117(e); U.S. DEP’T TRANSP., *Service Animals*, *supra* note 40. Airlines may require documentation—not older than one year from the date of a passenger’s scheduled initial flight—from a licensed professional that specifically states four pieces of information: (1) the passenger has a recognized mental or emotional disability; (2) an emotional support or psychiatric support animal is a necessary accommodation for air travel; (3) an assessment provided by a licensed mental health professional under whom the passenger receives professional care; and (4) the licensed information of the health care professional. *Id.*

43. *Accessible Travel Services*, DELTA, <https://www.delta.com/us/en/accessible-travel-services/service-animals> [https://perma.cc/QM4N-HNTB] (last visited Feb. 11, 2020) (requiring passengers to upload documentation to fly with assistance animals including a veterinary health form, a certification from a health professional, and a confirmation of training). Delta recently changed its policy regarding emotional support animals. Alexa Lardieri, *Delta to Prohibit Emotional Support Animals on Long Flights*, U.S. NEWS & WORLD REP. (Dec. 11, 2018, 10:10 AM), <https://www.usnews.com/news/national-news/articles/2018-12-11/delta-to-prohibit-emotional-support-animals-on-long-flights> [https://perma.cc/EM28-3WCG]. In response to an 84% increase in animal-related incidents since 2016, the new policy will ban emotional support animals on Delta’s longer flights and establish “enhanced requirements” for passengers traveling with assistance animals. *Id.* Delta

encourages advance notice from passengers traveling with trained service animals, but specifies that those traveling with emotional support animals must provide current documentation to waive the required pet fee under its ordinary pet policy.⁴⁴ These requirements are in place to help reduce abuse of the provisions provided for emotional support animals so that passengers can avoid paying the costs of flying with their pets.⁴⁵

II. Analysis

Abuses surrounding assistance animals, and the inconsistent attempts to regulate them, have become an issue for many individuals. Specifically, these issues are felt by those hoping to mitigate their impairments through the use of assistance animals,⁴⁶ the general public forced to engage with untrained animals,⁴⁷ and the organizations responsible for controlling the abuse.⁴⁸ With three different federal statutes establishing three different levels of protection for individuals

will also require additional documentation of current vaccines for both service and emotional support animals, and certification that emotional support animals are able to behave “in a manner that [is] not aggressive.” *Id.*

44. *Traveling with Animals*, SOUTHWEST, <https://www.southwest.com/html/customer-service/traveling-with-animals/index-pol.html> [https://perma.cc/UPU6-PKFM] (last visited Sept. 20, 2018) (discussing the differences in procedure for passengers traveling with trained service animals and emotional support animals).

45. See Reed, *supra* note 14.

46. COLKER & GROSSMAN, *supra* note 3 (“Individuals with disabilities who use trained guide or service animals are concerned that if untrained or unusual animals are termed ‘service animals,’ their own right to use guide or service dogs may become unnecessarily restricted or questioned.”); Bonnie Bolden, *Man Says Local Restaurant Barred Entry for His Service Dog*, NEWS STAR (Aug. 24, 2018, 2:54 PM), <https://www.thenewsstar.com/story/news/local/2018/08/24/man-says-local-restaurant-barred-entry-his-service-dog/1086495002/> [https://perma.cc/YDD2-YR6X].

47. Dawn Gilbertson, *Emotional Support Dog Bites Child on Southwest Flight*, USA TODAY (Feb. 22, 2018, 11:05 AM), <https://www.usatoday.com/story/travel/flights/todayinthesky/2018/02/22/emotional-support-dog-bites-child-southwest-flight-debate-animals-airlines/362759002/> [https://perma.cc/K2TD-UNZJ]; Mateusz Maszcynski, *The Majority of Flight Attendants Think Emotional Support Animals Have a “Negative” Impact on Air Travel*, PADDLE YOUR OWN KANOO (Sept. 14, 2018), <https://www.paddleyourownkanoo.com/2018/09/14/the-majority-of-flight-attendants-think-emotional-support-animals-have-a-negative-impact-on-air-travel/> [https://perma.cc/EAC4-29HJ].

48. Edelman, *supra* note 3; Josh Hafner, *Publix on Pups: No Animals Allowed in Shopping Carts, Including Service Dogs, Chain Says*, USA TODAY (July 30, 2018, 2:53 PM), <https://www.usatoday.com/story/money/nation-now/2018/07/30/publix-issues-warning-no-dogs-shopping-carts-service-animals-too/865154002/> [https://perma.cc/PH7T-HR3S].

who rely on assistance animals, whether service animals or emotional support animals, there are many opportunities for individuals whose companion animals do not qualify under any of the regulations to abuse the pitfalls in the system.⁴⁹

A. *Abuses Surrounding Assistance Animal Classification*

1. *Definitional Distinctions*

First, there is an important distinction between service animals and emotional support animals. Under the ADA, service animals must perform work or tasks in furtherance of mitigating a disability, while emotional support animals simply provide comfort through their presence.⁵⁰ For example, organizations such as the Guide Dog Foundation, America's VetDogs, and Southeastern Guide Dogs begin training their dogs as young as eight weeks of age, typically through a volunteer puppy raiser, and continue their basic training until the dogs are ready to be professionally trained for a specific job.⁵¹

Furthermore, the ADA protects the rights of individuals who rely on service animals but specifically excludes any animal whose role is the provision of emotional support or comfort. This means that emotional

49. Patricia Marx, *Pets Allowed*, NEW YORKER (Oct. 20, 2014), <https://www.newyorker.com/magazine/2014/10/20/pets-allowed> [https://perma.cc/8UUU-6LLK] (detailing author's ease in bringing different animals into public and how easy it was to obtain documentation stating that the animals provided her with emotional comfort).

50. See 28 C.F.R. § 36.104 (2019) (defining service animal under the ADA as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability"); 73 Fed. Reg. 27,614 (May 13, 2008) (to be codified at 14 C.F.R. pt. 382); U.S. DEP'T TRANSP., *Service Animals*, *supra* note 40 (defining service animal under the ACAA as "any animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal that assists persons with disabilities by providing emotional support"); U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 18 (defining assistance animal under the FHA as "an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability").

51. *Become a Puppy Raiser*, GUIDE DOG FOUND., https://www.guidedog.org/GD/Help/Puppy_Raising/GD/DogPrograms/puppyraiser.aspx?hkey=160488e7-ee05-4ec1-8c0a-4241cd79e2b2 (last visited Feb. 11, 2020); *Raise a Puppy*, SE. GUIDE DOGS, <https://www.guidedogs.org/volunteer/raise-a-puppy/> [https://perma.cc/DFH5-R68Z] (last visited Feb. 11, 2020); *Volunteer with America's Vet Dogs*, AMERICA'S VET DOGS, <https://www.vetdogs.org/AV/HowtoHelp/Volunteer/AV/HowToHelp/volunteer.aspx?hkey=c402058e-de88-4372-8f67-3e596e912760> [https://perma.cc/M9JZ-X6WY] (last visited Feb. 11, 2020).

support animals do not enjoy access rights to places of public accommodation under the ADA.⁵² Emotional support animals provide significant value; however, their lack of individualized training distinguishes them from service animals when it comes to qualifying for certain legal protections.⁵³ Therefore, individuals in need of emotional support animals do not qualify for public accommodation under the ADA, but they have other rights such as accommodations relating to housing and airline travel.⁵⁴

Once an animal has been classified as either a service animal or an emotional support animal, then individuals can better determine which regulations apply to them. If the assistance animal is a service animal under the ADA, the owner essentially enjoys the rights prescribed to assistance animals across the ADA, the FHA, and the ACAA.⁵⁵ Therefore, individuals with service animals have the most significant protections and rights to accommodation. When the assistance animal only qualifies as an emotional support animal, however, then the individual may only invoke the protections from the FHA and the ACAA, neither of which grants public access beyond commercial flights.⁵⁶ For example, there has been an increase in requests from

52. 28 C.F.R. § 36.104.

53. COLKER & GROSSMAN, *supra* note 3, at 401. It is important to distinguish psychiatric service animals who are covered under the ADA even though they may be used for the same disabilities, such as depression and anxiety, as emotional support animals because they are valuable for more than just their presence—they are trained to perform specific tasks for their handlers. *Id.*

54. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 18; Deborah Thrope, *HUD Clarifies Definition of Assistance Animals Under FHA and Section 504*, 43 HOUSING L. BULL. 134, 134 (2014). In the Fair Housing Act, the term “assistance animal” was intended to include service animals, emotional support animals, and any other animal that “works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.” U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 18.

55. 73 Fed. Reg. at 27,614 (defining service animal under the ACAA as “[a]ny animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well-being of a passenger”); Thrope, *supra* note 54.

56. *Compare* 14 C.F.R. § 382.117 (2019) (permitting emotional support animals to accompany handlers on commercial flights), *with* Goodloe, *supra* note 33 (establishing presence of an emotional support animal as a reasonable housing accommodation). The FHA allows persons with disabilities to request accommodations for emotional support animals. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 18. However, it only protects the individual when securing housing. *Id.* The FHA does not extend to places of public accommodation. Thrope, *supra* note 54. Alternatively, the ACAA permits individuals to bring emotional support animals onto flights without having to pay the airline’s pet fee. 28 C.F.R. § 36.104.

university and college students to have emotional support animals accompany them while living in dorms.⁵⁷ However, granting these requests does not permit the animals any access beyond that student's dorm.⁵⁸

Because of the definitional differences, some individuals—whether intentionally or accidentally—have asserted higher level access rights for emotional support animals.⁵⁹ Commonly, this occurs on airlines when a passenger asserts that a pet is allowed on the plane as an emotional support animal.⁶⁰ “The rampant abuse of claiming a need for emotional support animals in air travel is negatively impacting all passengers. It’s a safety, health, and security issue.”⁶¹

2. Documentation Requirements

Handlers are not required to show any certification, identification, or documentation for their service animal under the ADA.⁶² This is due to the short-term nature of public accommodation as well as the desire

57. David Levine, *What’s Behind the Rise in Support Animals on College Campuses?*, U.S. NEWS & WORLD REP. (Oct. 5, 2018, 1:43 PM), <https://health.usnews.com/health-care/patient-advice/articles/2018-10-05/whats-behind-the-rise-in-support-animals-on-college-campuses> [<https://perma.cc/UF3Z-NS45>].

58. *Id.*

59. COLKER & GROSSMAN, *supra* note 3; Marx, *supra* note 49 (detailing multiple situations in which the author brought various emotional support animals into areas beyond her legal rights).

60. Sara Moniuszko, *Woman Kicked off Flight over Emotional Support Squirrel Speaks Out: ‘You Will Not Take My Baby from Me’*, USA TODAY (Oct. 11, 2018, 3:04 PM), <https://www.usatoday.com/story/travel/flights/2018/10/11/frontier-airlines-passenger-who-brought-emotional-support-squirrel-flight-speaks-out/1603615002/> [<https://perma.cc/6QMK-QQCZ>]. A woman recently attempted to board a Frontier flight with a baby squirrel that she claimed was for emotional support. *Id.*

61. Janine Puhak, *61 Percent of Flight Attendants Say Emotional Support Animals Have Caused Trouble Midflight: Survey*, FOX NEWS (Sept. 14, 2018), <https://www.foxnews.com/travel/61-percent-of-flight-attendants-say-emotional-support-animals-have-caused-trouble-midflight-survey> [<https://perma.cc/TW54-2QXQ>]. Sixty-one percent of responding flight attendants reported disturbances from emotional support animals in the cabin of recent flights; fifty-three percent of such disruptions included “aggressive or threatening behavior” by the animal. *Id.* Eighty-two percent of flight attendants surveyed agree that “the DOT needs to release a more clarified policy on the requirements for emotional support animals in the high skies, while continuing necessary support for travelers with disabilities and veterans.” Ass’n of Flight Attendants-CWA, *Emotional Support Animals Negatively Affecting Air Travel*, CISION PR NEWSWIRE (Sept. 13, 2018, 4:36 PM), <https://www.prnewswire.com/news-releases/emotional-support-animals-negatively-affecting-air-travel-300712535.html> [<https://perma.cc/33TJ-5LX8>].

62. 28 C.F.R. § 35.136(f) (2019) (“A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.”).

to protect disabled individuals from further scrutiny.⁶³ Alternatively, current law may require handlers of emotional support animals and psychiatric service animals to provide very specific documentation.⁶⁴ For example, Delta's recently changed service and support animal policy requires documentation from passengers with emotional support animals to confirm that the animal has appropriate behavior.⁶⁵ These requirements may vary airline to airline, increasing confusion for handlers.⁶⁶

Furthering abuse of these assistance animal regulations are several online resources from which individuals can purchase fraudulent certification documents for their pets. Some sites, such as Amazon, sell vests and harnesses that identify the animal as an assistance animal, but others more directly contravene the regulations by claiming to register pets and selling "Identification Kits," which include certificates, identification cards, harnesses, collars, leashes, and anything else individuals may falsely believe that they need to "prove" legitimacy.⁶⁷ DOJ has explicitly stated that these certifications do not convey rights under the ADA to the individuals or pets they claim to certify.⁶⁸

63. COLKER & GROSSMAN, *supra* note 3.

64. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 18. Under the FHA, housing providers may ask individuals to provide documentation of a disability and their disability related need for an assistance animal, unless the individual's disability is readily apparent or known to the provider. *Id.* at 3. However, the ACAA requires very specific documentation for passengers to board with emotional support animals. U.S. DEP'T TRANSP., *Service Animals*, *supra* note 40.

65. Lardieri, *supra* note 43 (establishing "enhanced requirements" for passengers traveling with assistance animals including certification that an emotional support animal is able to behave "in a manner that was not aggressive").

66. *Delta Restricts Emotional Support Animals on Flights over Eight Hours*, DELTA, <https://news.delta.com/delta-restricts-emotional-support-animals-flights-over-eight-hours> [<https://perma.cc/DU3A-6KFU>] (last visited Jan. 23, 2020) (announcing Delta's revisions to their animal policy to prohibit assistance animals under four months of age, ban emotional support animals on flights longer than eight hours, and require proof of vaccines and appropriate behavior); *Service and Support Animals*, DELTA, <https://www.delta.com/us/en/accessible-travel-services/service-animals> [<https://perma.cc/Y6YX-M9YP>] (last visited Feb. 11, 2020).

67. *See, e.g.*, NAT'L SERV. ANIMAL REGISTRY, *supra* note 30; USA SERV. DOG REGISTRATION, *supra* note 30; U.S. DOG REGISTRY, *supra* note 30.

68. U.S. DEP'T OF JUST., *supra* note 31.

B. *Effects of Assistance Animal Abuses*

1. *Effects on Handlers*

The excess of illegitimate assistance animals has created a bias against those who are in need of assistance for their individual disabilities.⁶⁹ Animals that exhibit a lack of training, poor manners, or unacceptable behavior while handlers are presenting them as “service animals” essentially leave a bad impression that is implicated on future handlers.⁷⁰ As a result, it has become challenging for those with qualified service animals to live their day-to-day lives.⁷¹ Due to businesses encountering poor experiences with those animals not trained to behave properly in such an environment, individuals are more likely to be denied access to places of public accommodation with their service animal or are at least faced with scrutiny over their animal’s qualifications.⁷²

More importantly, the presence of illegitimate assistance animals can be dangerous for handlers who depend on the training of their service animal.⁷³ Disabled handlers rely on their animals’ assistance for nearly every aspect of their lives, so if the animals are distracted by the presence of an untrained animal while they are working, their

69. Ass’n of Flight Attendants-CWA, *supra* note 61. A study of flight attendants reported that twenty percent of responding flight attendants saw travelers express bias against those traveling with service animals because they automatically assume that all claimed service or emotional support animals are fake. *Id.*; see also Bolden, *supra* note 46.

70. *The Hidden Complications of Fake Service Dogs*, ANYTHING PAWSABLE (Feb. 28, 2019), <https://www.anythingpawsable.com/fake-service-dog-complications/> [https://perma.cc/FQQ4-59S7] [hereinafter *Hidden Complications*].

71. Lauren Pastrana, *PTSD Sufferer Says Increasingly Businesses Are Saying No to Service Animals*, CBS MIAMI (Oct. 5, 2018, 11:11 PM), <https://miami.cbslocal.com/2018/10/05/ptsd-sufferer-says-increasingly-businesses-are-saying-no-to-service-animals/> [https://perma.cc/VT4M-9LJT]; see also Stacey Barchenger, *Service Dog Evicted from Ocean Medical Center ER, Jackson Woman Says*, ASBURY PARK PRESS (last updated Oct. 12, 2018, 12:41 PM), <https://www.app.com/story/news/local/how-we-live/2018/10/10/service-dog-evicted-hospital-emergency-room-ocean-medical-center/1569986002/> [https://perma.cc/K3HK-G2DT].

72. *Even the Disabled Can’t Agree on Colorado’s Fake Service Dog Bill*, CBS DENVER (Apr. 19, 2016, 9:34 PM), <https://denver.cbslocal.com/2016/04/19/colorado-fake-service-animal-dog-bill/> [https://perma.cc/2DF6-DEAH]; *Hidden Complications*, *supra* note 70; Pastrana, *supra* note 71.

73. *Hidden Complications*, *supra* note 70.

handlers could be in danger.⁷⁴ Thus, the safety of handlers turns on the professionalism of both their service animal, as well as other animals and persons they may encounter along the way.⁷⁵

2. *Effects on Other People*

The effects of these abuses are not just limited to those who have a legitimate need for assistance animals, but they also extend to the general public.⁷⁶ Generally, having improperly trained animals in public causes disruptions to those around them.⁷⁷ For example, on a recent Frontier Airlines flight, a woman tried to board her plane with an emotional support squirrel.⁷⁸ Unfortunately, when asked to get off the plane, her refusal caused the entire plane to deplane and resulted in a two-hour delay for the flight.⁷⁹

Certain individuals experience specific consequences from interacting with these animals. For example, under the FHA, these regulations impose an unfair burden on landlords and building owners due to the monetary losses they face.⁸⁰ Also, professional dog trainers have had to adjust.⁸¹ When people ask how to take their dogs anywhere, how to train their pet to be a service animal, and how to certify that an animal is a service animal, the trainers are faced with

74. *Id.*

75. Paul Harpur et al., *How Fake Assistance Animals and Their Users Are Gaming the System and Increasing Prejudices*, CONVERSATION (Apr. 17, 2018, 11:46 PM), <http://theconversation.com/how-fake-assistance-animals-and-their-users-are-gaming-the-system-and-increasing-prejudices-94293> [https://perma.cc/X88T-UGDF] (noting incident in which a poorly trained Saint Bernard wearing a service vest attacked a quadriplegic woman's service dog).

76. Gilbertson, *supra* note 47; Moniuszko, *supra* note 60.

77. Bomkamp, *supra* note 15 (detailing instances of residents, who believed they were moving into a "no pets" building, complaining when apartment complexes allowed emotional support animals due to increasing FHA accommodation requests); Edelman, *supra* note 3 (recounting incidents of dogs barking through entertainment shows and humping the legs of strangers).

78. Moniuszko, *supra* note 60.

79. *Id.* Although the passenger informed Frontier of her emotional support animal when making her reservation, Frontier states that she did not mention the animal was a squirrel. *Id.* Frontier also states that rodents, including squirrels, are not permitted on Frontier flights. *Id.*

80. Bomkamp, *supra* note 15. Landlords typically have to forego pet fees, deposits, and any pet rent they would typically charge when faced with an accommodation request. *Id.*

81. *Id.*; see also *Hidden Complications*, *supra* note 70.

the unfair burden of assessing the situation and often explaining the different laws to individuals.⁸²

C. *Attempts at Regulating Abuse*

1. *Federal Steps Taken*

People are calling on the federal government to address the inconsistencies throughout the service dog regulations, particularly those dealing with the ACAA.⁸³ For example, the FAA Reauthorization Act of 2018, passed on October 5, 2018, calls for a harmonization of service animal standards.⁸⁴ No later than eighteen months after the enactment of this Act, the Secretary of Transportation is required to define “service animal” for purposes of air transportation and develop minimum standards for requirements for these animals to fly in aircraft cabins.⁸⁵ In addition to potentially standardizing the requirements for assistance animals, the Act instructs the Secretary to consider potential fraud and misrepresentation in its rulemaking.⁸⁶ Potential considerations include whether to require the following: photo identification for the animal, including the service that the animal provides to the passenger; training documentation; and documentation from a licensed physician, indicating the mitigating task the animal provides.⁸⁷ Additionally, on April 24, 2018, a bill was

82. Bomkamp, *supra* note 15. A trainer discussed how she received numerous, inappropriate requests for training or fake paperwork to the extent that she was forced to change her website to reduce the number of requests. *Id.*

83. *See generally* S. 2738, 115th Cong. § 1 (2018); 164 CONG. REC. H8950 (daily ed. Sept. 26, 2018).

84. 164 CONG. REC. H8950. The bill passed in the House with 393 yeas and 13 nays and was placed on Senate Legislative Calendar as of May 8, 2018. U.S. House of Representatives Voting Record, HR 4, #165, Apr. 27, 2018. As of October 5, 2018, the FAA Reauthorization Act of 2018 passed through both houses, was signed by the President, and officially became a law. FAA Reauthorization Act of 2018, Pub. L. No. 115-254, 132 Stat. 3186; United States Congress, HR 302, Bill Tracking, <https://www.congress.gov/bill/115th-congress/house-bill/302/all-actions> [<https://perma.cc/5Z4X-2R2U>].

85. FAA Reauthorization Act § 437. Furthermore, the Act establishes that the Secretary of Transportation must consider whether the definition of “service animal” should mirror that of the ADA, the possible implications for disabled passengers, and ways to mitigate potential implications on those passengers. *Id.*

86. *Id.* The Act also requires consideration of possible reasonable measures to ensure the safety of the passengers and that pets are not misrepresented. *Id.*

87. *Id.*

introduced to the U.S. Senate to amend the U.S. Code to require air carrier passengers with assistance animals to adhere to the service animal training requirement set forth in the ADA.⁸⁸ This amendment also proposes a section punishing under federal criminal law a passenger who knowingly or willfully makes a false misrepresentation regarding their animal's qualifications.⁸⁹ Further, in early 2020, the U.S. Department of Transportation (DOT) proposed a new rule that would make serious changes to the ACAA.⁹⁰ In response to increasing numbers of complaints regarding service animals, DOT proposes changing the definition of "service animal" to only include dogs that are individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.⁹¹ The proposed rule would also change the requirements for flying with a service animal and would allow airlines to "recognize emotional support animals as pets rather than service animals."⁹²

Lastly, there has been increasing conversation around the FHA and HUD potentially releasing new guidelines for assistance animals.⁹³ Although HUD is refusing to release a statement at this time, these types of conversations are critical for initiating reform.⁹⁴ Attorneys,

88. S. 2738 (proposing amending the ACAA to set behavior standards for service animals to conform to ADA requirements set forth in 28 U.S.C. §§ 36.104, 36.302). This legislation would require airline passengers with assistance animals to adhere to the stricter definition under the ADA, as well as provide a behavior standard by which the airlines are permitted to deny service animals. *Id.*

89. *Id.* (providing that "[a]n individual who knowingly and willfully makes a false statement for the purpose of seeking accommodation involving an animal from an air carrier . . . may be punished in accordance with section 1001 of title 18, United States Code"). This provision would criminalize the conduct under the federal provision for Fraud and False Statements, which is punishable by fine or imprisonment. 18 U.S.C. § 1001 (2018).

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

91. *Id.* This definition is similar to the definition of a service animal in DOJ regulations regarding the ADA but still differs in its proposed requirements. *Id.*

92. *Id.* Additional requirements for traveling with a service animal under the proposed rule include "submit[ing] to the airline forms developed by DOT attesting to the animal's training and good behavior, certifying the animal's good health, and attesting that the animal has the ability either not to relieve itself on a long flight or to relieve itself in a sanitary manner." *Id.*

93. Rachel M. Cohen, *Donald Trump's Civil Rights Office for Housing Has Found the Real Problem: Pets*, INTERCEPT (Mar. 23, 2018, 9:51 AM), <https://theintercept.com/2018/03/23/emotional-support-animals-housing-law/> [<https://perma.cc/L72L-NBJG>].

94. *Id.*

lobbyists, and advocates have all been pressuring the government to provide, at the very least, more guidance regarding the nuances of these regulations.⁹⁵

2. *State Laws*

In the absence of federal changes, states have taken matters into their own hands. States have several ways of protecting disabled individuals from discrimination, especially as it relates to their service animals, including public accommodation laws, criminal interference laws, animal licensing laws, disabled pedestrian laws, and service animal misrepresentation laws.⁹⁶ Equal access laws protect the rights of disabled individuals to use service animals in public places without being denied entry or having to pay an extra fee by imposing potential fines or criminal charges on a violating public entity.⁹⁷ For example, Georgia's equal access law provides that denying admittance to places of public accommodation or interference with qualifying service animals is a "misdemeanor of a high and aggravated nature and, upon conviction . . . , shall be punish[able] by a fine not to exceed \$2,000.00, imprisonment for not more than [thirty] days, or both."⁹⁸

Additionally, almost all states have laws that protect assistance animals from things like criminal interference, theft, and assault.⁹⁹ For example, in Connecticut, it is a misdemeanor to interfere intentionally with an individual's use of a service dog including, but not limited to, "any action intended to harass or annoy" the individual or the dog.¹⁰⁰

95. *Id.*

96. *See, e.g.*, Rebeca F. Wisch, *Table of State Service Animal Laws*, ANIMAL LEGAL & HIST. CTR. (2019), <https://www.animallaw.info/topic/table-state-assistance-animal-laws> [<https://perma.cc/NTK4-8JYB>] (compiling all fifty states' service animal laws for several categories including public accommodation laws, criminal interference laws, animal licensing laws, disabled pedestrian laws, and service animal misrepresentation laws).

97. *Id.*

98. O.C.G.A. § 30-4-4 (2018); Wisch, *supra* note 96.

99. Wisch, *supra* note 96.

100. CONN. GEN. STAT. § 46a-44(c) (2019) ("Any person who intentionally interferes with a blind, deaf or mobility impaired person's use of a guide dog or an assistance dog, including, but not limited to, any action intended to harass or annoy the blind, deaf or mobility impaired person, the person training a dog as a guide dog or assistance dog or the guide dog or assistance dog, shall be guilty of a Class C misdemeanor, provided the person complies with the applicable provisions of [this section].").

However, these laws require a range of associated “mens rea” from “recklessly” interfering to “intentionally” causing injury to a service dog.¹⁰¹ Moreover, more than half of the states have enacted laws that criminalize fraudulent representation of a person claiming the right to be accompanied by an assistance animal.¹⁰² For example, Florida has made it a misdemeanor to knowingly or willfully misrepresent oneself regarding any of the following: using, being qualified to use, or training a service animal.¹⁰³ Additionally, Arkansas passed a bill in the 2019 legislative session to codify civil penalties on individuals who “misrepresent an animal to be a service animal or service animal-in-training to a person or entity that operates a public accommodation.”¹⁰⁴ However, states are struggling to enforce these violations due to the limited inquiry imposed under the ADA.¹⁰⁵ As a result, handlers essentially have to admit their misrepresentation for the criminal sanctions to be applicable.¹⁰⁶

3. *Non-Legislative Mitigation*

Individuals with disabilities and their advocates tend to shy away from additional proposed legislation to the established assistance animal regulations.¹⁰⁷ Typically, it is quite simple to tell the difference between a trained service animal and a pet being brought beyond their limitations—it is all in their behavior.¹⁰⁸ Trained service animals exhibit good behavior, lack disruptive conduct, and ignore distractions.¹⁰⁹ Under current law, when a service animal misbehaves,

101. Wisch, *supra* note 96.

102. *Id.*

103. FLA. STAT. § 413.08(9) (2018) (criminalizing misrepresentation of a service animal as “a misdemeanor of the second degree” and requiring community service “for an organization that serves individuals with disabilities.”).

104. S.B. 654, 92d Gen. Assemb., Reg. Sess. (Ark. 2019) (to be codified at ARK. CODE ANN. § 20-14-310).

105. REVISED ADA REQUIREMENTS, *supra* note 6.

106. *See id.*

107. Cohen, *supra* note 93. New statutes could have an adverse effect of deterring or preventing people from receiving accommodations they are entitled to. *Id.*

108. *Hidden Complications*, *supra* note 70.

109. *Id.*

a business owner is permitted to request the individual to leave.¹¹⁰ Some disabled individuals believe that this is enough and, in furtherance of this belief, many advocate for better educational efforts.¹¹¹ For example, the Disability Network of Southwest Michigan hosts workshops that educate attendees about the differences in the types of assistance animals and, more importantly, the differences in the rights associated with each one.¹¹²

The inconsistencies across the federal regulations in both definitions and requirements make it easy for individuals to misrepresent their pets as assistant animals, whether intentionally or accidentally. These misrepresentations have negative consequences for disabled handlers as well as the general public.¹¹³ In an attempt to alleviate these burdens, Congress, as well as some individual states, has enacted legislation hoping to restructure the regulations and even criminalize abuses.¹¹⁴ However, these attempts have not been sufficient to curb increasing instances of abuse and a more comprehensive solution is necessary.¹¹⁵

III. Proposal

Misrepresenting pets as service animals has become an epidemic in today's society;¹¹⁶ the negative consequences of which are felt by disabled handlers, businesses, and the general public.¹¹⁷ These consequences need to be addressed within the statutes themselves, as

110. 28 C.F.R. § 35.136(b) (2019) (permitting the exclusion of a service animal if the handler does not take effective action to control the animal or if the animal is not housebroken).

111. *Hidden Complications*, *supra* note 70.

112. *Assistance Animals Workshop Next Month*, WSJM (Oct. 16, 2018), <https://www.wsjm.com/2018/10/16/assistance-animals-workshop-next-month/> [<https://perma.cc/P344-2TN2>]; *see also* Bret Hauff, *Pet or Service Animal? The Distinction Matters*, JOURNAL (Oct. 11, 2018, 3:52 PM) <https://the-journal.com/articles/113264> [<https://perma.cc/8RJB-YTEM>].

113. *Hidden Complications*, *supra* note 70.

114. *See, e.g.*, S. 2738, 115th Cong. (2018); Wisch, *supra* note 96 (laying out the state specific nuances of assistance animal regulations).

115. Edelman, *supra* note 3 (examining how state statutes criminalizing the misrepresentation of assistance animals are ineffective in practice).

116. *See* Coren, *supra* note 3. In the instance of a woman struggling to find an apartment that accepts Rottweilers, she was told, in clear violation of the FHA, “Just go online and get one of those assistance dog vests and then tell the owner that your dog is a service dog. Once you do that they are not allowed to forbid you from renting an apartment in their building.” *Id.*

117. *See* discussion *supra* Section II.B.

well as in their application and enforcement. There are several ways to do so, including curing inconsistencies throughout the regulations, establishing a national registration system, and increasing educational efforts to help minimize abuses under federal law.

A. Streamlined Legislation

It is clear that one major catalyst of assistance for animal abuses is the definitional distinction between service animals and emotional support animals. Therefore, the most direct approach for addressing these abuses is to focus legislative efforts on the regulations themselves, specifically by establishing consistent definitions and requirements for authentication.¹¹⁸ Two classes of thought have emerged around this issue: maintain the distinction but with more clarity, or include emotional support animals under the ADA protections.¹¹⁹ Although the latter would be an easy solution to some of the difficulty handlers face, this is neither a sufficient nor a fair solution.

As discussed above, there has been recent initiative to consolidate definitions across the different regulations.¹²⁰ Consolidation would require establishing a single definition for each classification that is consistent across the different regulations, including the ADA, FHA, and ACAA. With this, the definition of service animal should mirror that provided in the ADA.¹²¹ The higher training standards should be required across the board, and service animal protections should be limited to qualified dogs and miniature horses.¹²² Additionally,

118. See, e.g., FAA Reauthorization Act of 2018, Pub. L. No. 115-254, 132 Stat. 3186, 3344–45 (suggesting redefining “service animal” as to mirror that of the ADA and suggests consideration of documentation requirements).

119. See generally 164 CONG. REC. H8950 (daily ed. Sept. 26, 2018); Kristin M. Bourland, *Advocating Change Within the ADA: The Struggle to Recognize Emotional-Support Animals as Service Animals*, 48 U. LOUISVILLE L. REV. 197, 215–20 (2009).

120. See discussion *supra* Section II.C.

121. 28 C.F.R. § 36.104 (2019) (defining service animal under the ADA as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability”).

122. *Id.*; 28 C.F.R. § 35.136 (2019) (limiting qualified service animals within the scope of the ADA to dogs and miniature horses).

because the ACAA permits limited public access for emotional support animals, revisions should be made requiring all emotional support animals meet minimum training requirements to limit strains caused by untrained animals, particularly on flights.¹²³ Emotional support animals under this more limited definition need not meet the same individualized training requirement as service animals, but they should have sufficient training to behave appropriately in public.¹²⁴ However, emotional support animals should not be included in the broad protections given to service animals under the ADA.

Emotional support animals do not have the same level of training and experience, nor do they serve the same purpose as service animals. Mental health is incredibly important in society today, and emotional support animals undoubtedly provide significant value to those in need; however, these animals are distinguished from service animals based on their lack of specialized training.¹²⁵ Further, service animals must be able to actively assist their handler relating specifically to their handler's disability.¹²⁶ Emotional support animals mitigate certain impairments, but not to the extent that service animals mitigate disabilities.¹²⁷ Moreover, unlike service animals, many emotional support animals are not trained to act appropriately when out in public.

123. Martin, *supra* note 14 (detailing results from a survey of nearly 5,000 flight attendants about incidents of pet disruptions due to untrained animals on commercial flights).

124. *Hidden Complications*, *supra* note 70. Part of the reason why emotional support animals are receiving so much media attention calling for a solution to the regulatory inconsistencies is their lack of training and inappropriate behavior while they are in public. *Emotional Support Animals Negatively Affecting Air Travel*, *supra* note 61.

125. *Mental Health by the Numbers*, NAT'L ALLIANCE MENTAL HEALTH, <https://www.nami.org/Learn-More/Mental-Health-By-the-Numbers> [<https://perma.cc/M69Y-ZBR7>] (last visited Feb. 11, 2020). Approximately one-in-five adults experience mental illness in any given year, of which, almost ten million adults experience serious mental illness that substantially limits their life activities. *Id.* The presence of an emotional support animal has been shown to aid those with mental illnesses by decreasing their sense of loneliness, reducing their stress and anxiety, increasing their physical activity, and giving them a sense of purpose. *Positive Effects of Emotional Support Animals*, ESA DOCTORS., <https://esadoctors.com/positive-effects-of-emotional-support-animals/> [<https://perma.cc/ET9S-HYQM>] (last visited Feb. 11, 2020); *see also* 28 C.F.R. § 36.104 (specifically excluding animals providing only comfort or support from coverage under the ADA).

126. 28 C.F.R. § 36.104; REVISED ADA REQUIREMENTS, *supra* note 6.

127. *Compare Positive Effects of Emotional Support Animals*, *supra* note 125 (describing positive benefits of emotional support animals on a person's general wellbeing), *with* 28 C.F.R. § 36.104 (detailing examples of the specified tasks performed by service animals).

If emotional support animals were held to the same training standards as service animals, then they could enjoy increased access rights without causing a burden on service animals and their handlers.

Airlines in particular need to restructure their rules and policies regarding the types of assistance animals they permit on flights, so that passengers wishing to travel with an assistance animal can have more consistent expectations. Consistency amongst the airlines could reduce the number of individuals attempting to push the limits by bringing untrained and even nondomestic animals onto commercial flights. For example, many of the leading airline companies have recently updated their assistance animal policies, requiring passengers to comply with a newly established expectation of appropriate behavior.¹²⁸ American Airlines requires that assistance animals are “trained to behave properly in public” and allows the exclusion of assistance animals from a flight if “they display any form of disruptive behavior” including, but not limited to, growling, biting or attempting to bite, and jumping or lunging at people.¹²⁹ Additionally, airlines should require passengers who bring any type of assistance animal onto the plane to certify that they understand the rules laid out in the regulations, as well as the airline’s specific rules.¹³⁰ They could certify that they are complying with those rules, and that they understand that the airline maintains the right to exclude an animal if it does not meet the established qualifications and requirements. DOT’s recent proposed rule acknowledges the inconsistent federal definition for service

128. *Delta Restricts Emotional Support Animals on Flights over Eight Hours*, *supra* note 66 (announcing Delta’s revisions to their animal policy to prohibit assistance animals under four months of age, ban emotional support animals on flights longer than eight hours, and require proof of vaccines and appropriate behavior); *Service and Emotional Support Animals*, AM. AIRLINES, <https://www.aa.com/i18n/travel-info/special-assistance/service-animals.jsp> [https://perma.cc/BK9W-S3T7] (last visited Feb. 11, 2020) (announcing American Airlines’ establishment of “enhanced requirements” for emotional support animals).

129. *Service and Emotional Support Animals*, *supra* note 128.

130. *Confirmation of Animal Training*, DELTA, <https://www.delta.com/content/dam/delta-www/pdfs/policy/emotional-support-animal-required-forms-dec3.pdf> (last visited Feb. 11, 2020). In filling out this newly required form, Delta passengers certify that the animal has been trained to be in public and will respond to the handler’s command, and that the passenger “assume[s] full responsibility for the behavior of this animal, including its interaction with crew, other passengers or their property while onboard the aircraft.” *Id.*

animals, the likelihood of false misrepresentations, and ultimately the need for change to the ACAA.¹³¹ The proposed rule's definitional change and increased requirements imposed on individuals traveling with a service animal are designed to curtail potential abuses while ensuring safe travel and accessibility to those with disabilities.¹³²

Furthermore, the legislature should establish consistency in the documentation requirements. Specifically, the FHA and ACAA should establish the same documentation requirements for qualifying emotional support animals.¹³³ The ADA could also require similar documentation. However, requiring such documentation under the ADA poses specific issues such that the handler would be required to have that documentation ready and available effectively at all times.¹³⁴ Requiring documentation of disabled individuals at all times is unreasonable, considering the short-term and repetitive nature of disabled individuals entering places of public accommodation throughout their day.¹³⁵ The purpose of allowing a service animal as a reasonable accommodation is to ease the handler's life, not make day-to-day activities more cumbersome. Therefore, a reasonable type of documentation alternative would be ideal. This particular issue would be best addressed through the implementation of national registration.

B. National Registration

The federal government should establish a uniform authentication process or national registration system for qualified service animals. There are similar systems already in place for other disability-related

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

132. *Id.*

133. Compare U.S. DEP'T TRANSP., *Service Animals*, *supra* note 40 (detailing specific documentation requirements that must be met before bringing an emotional support animal on commercial flights), with U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 18 (allowing housing providers to request documentation of a disability and related need for an assistance animal before granting an individual's accommodation request).

134. COLKER & GROSSMAN, *supra* note 3; *Hidden Complications*, *supra* note 70.

135. COLKER & GROSSMAN, *supra* note 3.

services, such as handicapped parking permits and disability benefits through the Social Security Administration (SSA).¹³⁶ To receive either of these services, individuals must prove their disability.¹³⁷ There is no such requirement under ADA standards, which provides for individualized considerations regarding each person's disability claims.¹³⁸ Individualized inquiries make sense for conflicts, such as adverse employment decisions or noncompliance with disability-friendly building requirements. However, the lack of active registration of service animals is something handlers must overcome on a daily basis, not just once a conflict has arisen.¹³⁹ For example, imagine being disabled and in need of a handicapped parking space but not having a handicapped parking permit. In these situations, individuals would face potential confrontation and questioning of their disability each and every time they park. This is essentially what handlers of service animals face each day.¹⁴⁰ Because there is no readily available, uniform way of easily establishing that handlers are within their rights when bringing a service animal into a place of public accommodation, handlers are often questioned or even turned away.

The application process to obtain a handicapped parking permit varies state by state, but generally, the application must be signed by a medical professional certifying that the individual has a qualifying disability.¹⁴¹ For example, in Georgia, individuals qualify for a disabled parking permit if they cannot walk, cannot walk without assistance, are blind, are sufficiently hearing impaired, or have certain

136. *Benefits for People with Disabilities*, SOC. SECURITY ADMIN., <https://www.ssa.gov/disability/> [<https://perma.cc/5QJJ-TL3Y>] (last visited Feb. 11, 2020); *Handicapped Parking Permits: How to Get One*, WEBMD (Jan. 21, 2020), <https://www.webmd.com/pain-management/handicap-parking> [<https://perma.cc/3PV2-YTUK>] [hereinafter *Handicapped Parking Permits*].

137. *Disability Evaluation Under Social Security*, SOC. SECURITY ADMIN., <https://www.ssa.gov/disability/professionals/bluebook/evidentiary.htm> [<https://perma.cc/J89G-79CG>] (last visited Feb. 11, 2020); *Handicapped Parking Permits*, *supra* note 136.

138. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 483 (1999) (stating that determining whether a person is disabled under the ADA is an individualized inquiry).

139. See discussion *supra* Section II.B.1.

140. See generally *Hidden Complications*, *supra* note 70 (detailing the day-to-day struggles handlers face when confronted about the legitimacy of their service animals).

141. *Handicapped Parking Permits*, *supra* note 136.

chronic health conditions.¹⁴² Similarly, disabled persons may file disability claims through SSA. To get approved to collect disability payments, individuals are responsible for providing medical evidence of their disability, including both their impairment and the severity of that impairment.¹⁴³ SSA's definition of disability is strict and qualification is limited to how the disability relates to a person's ability to work.¹⁴⁴ The law requires applicants to prove this heightened disability standard through objective medical evidence from an acceptable medical source.¹⁴⁵

Although disability benefits are permitted only when individuals are unable to work due to their disability, and handicapped parking permits are available for either permanent or temporary disabilities on a state-by-state basis, similar systems could be implemented regarding service animals. The disability benefits show that requiring medical information from disabled persons is not an unreasonable request to make to provide them with the accommodations to which they are entitled.¹⁴⁶ They also show that having government entities monitor and approve such requests is not an unmanageable task, especially when associated with enforcing and implementing their own federal programs and regulations.¹⁴⁷ Furthermore, the significance of the handicapped parking permit is not just the right to park in handicapped parking spaces, but also the identification that individuals are asserting rights to which they are entitled. In adopting a similar strategy for

142. See O.C.G.A. § 40-6-221 (2018).

143. *Disability Evaluation Under Social Security*, *supra* note 137.

144. 20 C.F.R. § 416.905 (2019) (defining disability for purposes of social security benefits as “the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”). To meet this definition, individuals must have a “severe impairment(s) that makes [them] unable to do [their] past relevant work or any other substantial gainful work that exists in the national economy.” *Id.*

145. *Disability Evaluation Under Social Security*, *supra* note 137 (detailing evidentiary requirements for obtaining disability benefits). State agencies, known as Disability Determination Services (DDS), typically gather evidence from the claimant's medical providers first; then if insufficient, they may arrange a consultative examination to obtain additional information. *Id.*

146. See *id.*; see also *Selected Data from Social Security's Disability Program*, SOC. SECURITY ADMIN., <https://www.ssa.gov/oact/STATS/dibStat.html> [<https://perma.cc/3A8R-JVVJ>] (last visited Feb. 11, 2020) (indicating that over two million people applied for disability payments in 2017).

147. See generally *Disability Evaluation Under Social Security*, *supra* note 137 (providing that government officials for the SSA review and approve or deny each application).

service animals, individuals could apply seeking to have their service animal's qualifications approved. In doing so, they could receive some sort of identification whether it be an identification card, indication on their driver's license, a designated harness or leash, or even just an identification tag for the animal to wear on its collar. Then, handlers could either be readily identifiable as compliant with ADA requirements or be able to show easily such compliance.

A national registration system for service animals could combine these concepts without placing an undue burden on the handlers of the service animals or an entity charged with maintaining the registry. Ideally, applications for such a system would require both proof of disability and proof that the animal is qualified to be in public. First, as previously mentioned, requiring that a disabled person offer proof of disability is not unreasonable. It is standard practice among both federal and state rights and privileges to require some instance of proof that individuals are qualified for the accommodation they seek.¹⁴⁸ Even in the instance of obtaining a driver's license, individuals must pass a written test and a skills test to be permitted to drive legally within the state.¹⁴⁹

Additionally, requiring a showing of adequate training is not unreasonable to legitimize a service animal. Whether the animal was trained by its handler or a professional trainer, the individual could obtain confirmation from a qualified trainer evidencing sufficient training or behavior.¹⁵⁰ The first issue would be that those training their own service animals would still need to get a signature from a trainer establishing that the animal qualifies under the ADA. However, this

148. See generally *Affordable Housing*, GEORGIA.GOV, <https://georgia.gov/popular-topic/affordable-housing> [<https://perma.cc/P6QX-REQA>] (last visited Feb. 11, 2020) (detailing the qualifications and application process of applying for affordable housing in Georgia); *Apply for a New GA License*, GA. DEP'T DRIVER SERVICES, <https://dds.georgia.gov/apply-new-ga-license> [<https://perma.cc/TU5E-USX3>] (last visited Feb. 11, 2020) (listing requirements for applying for a driver's license in the state of Georgia); *Disability Evaluation Under Social Security*, *supra* note 137; *Food Stamps*, GA. DIVISION FAM. & CHILD. SERVICES, <https://dfcs.georgia.gov/food-stamps> [<https://perma.cc/TEZ6-HZBH>] (last visited Feb. 11, 2020) (explaining the application and qualification requirements for obtaining food stamps in Georgia).

149. *Apply for a New GA License*, *supra* note 148.

150. *Service Dog Training*, COMPREHENSIVE PET THERAPY, INC., <https://cpt-training.com/dog-training-brochure/service-dog-training/> [<https://perma.cc/LEE8-ERZW>] (last visited Feb. 11, 2020). Comprehensive Pet Therapy, Inc. is an Atlanta-based training organization, which provides individualized training for clients, including training service dogs. *Id.*

could be satisfied by a handler demonstrating the animal's abilities to a trainer. The second issue would be that the trainers would need to be qualified. Qualifications may include number of service animals trained or number of years training professionally. Trainers would simply need to vouch for both the dog's behavior, as well as their own qualifications to train them.

Lastly, management of such a registry is not an undue burden for a government agency to undertake. Management efforts could coincide with some of the currently existing entities. For example, SSA could approve requests alongside the current requests for disability benefits. Conversely, a new team could be established within the Disability Rights Section of DOJ. The Disability Rights Section strives to achieve equal opportunity through its enforcement of the ADA.¹⁵¹ Establishing this team would allow DOJ to best monitor, manage, and enforce the requirements for registration while ensuring disabled individuals are entitled to equal opportunity efficiently. Although requiring registration upfront may pose a small hurdle for handlers, the efficiency of readily available identification would benefit handlers overall.

C. Increase Educational Efforts

Absent these more radical proposals, the easiest way to address the issues posed by the inconsistencies in assistance animal legislation is to increase educational efforts. Personnel training regimens in places of public accommodation should include coverage of assistance animal regulations. Increasing the awareness of authorized behavior, such as excluding unruly assistance animals from the premises, could help decrease the instances of abuse. Teaching all staff and executives the nuances of the ADA would position them to assess better a situation involving fraudulent animals in their place of business. For

151. *Disability Rights Section*, U.S. DEP'T JUST., <https://www.justice.gov/crt/disability-rights-section> [<https://perma.cc/PC8E-8WVS>] (last visited Feb. 11, 2020). The section provides a "cost-effective and dynamic approach for carrying out the ADA's mandates" through enforcement, certification, coordination, and innovative mediation. *Id.*

example, still adhering to the two-part inquiry permitted under the ADA, personnel would be able to know their rights regarding when to turn away an emotional support animal, or even a service animal that is misbehaving.¹⁵² Just as businesses can certify that they have complied with other training, such as sexual harassment seminars, they could certify that they have informed their staff regarding the different rights associated with the different classifications of assistance animals.¹⁵³

CONCLUSION

Inconsistencies surrounding the various regulations concerning assistance animals cause substantial confusion. With the ADA, the FHA, and the ACAA all granting varying degrees of rights to various qualifying assistance animals, it is no surprise that the confusion has resulted in abuses—whether intentional or accidental—of these regulations.¹⁵⁴ Strange animals on planes and pets that are being presented as emotional support animals misbehaving in public cause hardship on the public, but more importantly, on disabled individuals who choose to mitigate their disability through use of a legitimate service animal.¹⁵⁵

Although there has been recent attention to these abuses and proposed solutions to at least alleviate their effects, there is still significant need in addressing both the underlying confusions and the requirements to ensure proper qualification.¹⁵⁶ Not only should the

152. REVISED ADA REQUIREMENTS, *supra* note 6 (limiting inquiry to two specific questions: (1) is the animal required because of a disability, and (2) what work or task has it been trained to perform).

153. *Legal and Regulatory: Training: What Training Must Employers Provide to Employees?*, SHRM (Mar. 26, 2013), <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/whattrainingmustemployersprovidetoemployees.aspx> (explaining that various authorities may require specific training of workplace employees such as some states requiring general sexual harassment training).

154. *See* discussion *supra* Sections I–II.A.

155. *See generally* Gilbertson, *supra* note 47 (detailing specific instance of a child being bit by an untrained emotional support animal on a Southwest flight); Pastrana, *supra* note 71 (describing accounts of veterans being denied entrance to places of public accommodation when accompanied by their service animals); Puhak, *supra* note 61 (recounting data from flights observing disturbances by emotional support animals on planes).

156. *See* discussion *supra* Section II.C.

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legislature consider refining the regulations to be more consistent across the board, but it should also consider implementing a registration process for those service animals qualifying for significant access rights under the ADA. Allowing disabled individuals to choose to mitigate their disability through the use of service animals is one that should be protected, not hindered by handlers masquerading untrained peacocks, kangaroos, or pigs as possessing access rights not granted to them.