

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,

Plaintiff-Respondent,
Petitioner on Review

v.

AMANDA L. NEWCOMB,

Defendant-Appellant,
Respondent on Review

Multnomah County Circuit Court
Case No. 110443303

Court of Appeals No. A149495

Supreme Court No. _____

AMICUS CURIAE IN SUPPORT OF PETITION FOR REVIEW

Animal Legal Defense Fund, Association of Prosecuting Attorneys,
National District Attorneys Association, Oregon Humane Society,
Oregon Veterinary Medical Association

Petition for Review of the Decision of the Court of Appeals

Opinion Filed: April 16, 2014

Author of Opinion: Sercombe, Judge

Before: Ortega, Presiding Judge, Sercombe, Judge, and Hadlock, Judge

Appeal from a Judgment of the Circuit Court for Multnomah County,
The Honorable Eric J. Bergstrom, Judge

Filed: July 2014

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STATEMENT OF INTEREST

Founded in 1979, the Animal Legal Defense Fund (“ALDF”) is a national nonprofit organization of attorneys specializing in the protection of animals and working to ensure the enforcement of animal protection laws throughout the United States. Toward this end, ALDF’s Criminal Justice Program, based in Portland, Oregon, provides free prosecution assistance in animal neglect and cruelty cases nationwide, both independently and in partnership with the National District Attorneys Association and the Association of Prosecuting Attorneys. ALDF staff attorneys work out of offices in five states, helped by over 1,000 volunteer attorneys nationwide who are ALDF members and who work on a pro bono basis. Total contributing membership of the ALDF is over 100,000. ALDF, with the depth of its expertise on the entire spectrum of search and seizure issues (under both State and Federal Constitutions) that arise in cases of animal abuse and neglect, is uniquely able to assist the Court in deciding whether to grant the petition to review the present case.

The Association of Prosecuting Attorneys (“APA”) was founded as a national organization to represent all prosecutors and to further the prevention of crime and the attainment of equal justice and community safety. The APA’s board of directors includes current and former prosecutors from states throughout the nation. As such, the APA acts as a forum for the exchange of

ideas, which allows prosecutors to collaborate with each other, along with other criminal justice partners. The APA also serves as an advocate for prosecutors on emerging issues related to the administration of justice, including the submission of briefs as *amicus curiae* in appropriate cases.

Founded over sixty years ago, the National District Attorneys Association (“NDAA”) boasts approximately 6,000 members and is both the largest and primary association of prosecuting attorneys in the United States. The NDAA’s mission is “[t]o be the voice of America’s prosecutors and to support their efforts to protect the rights and safety of the people.” In practice, the NDAA provides professional guidance and support to its members, serves as a resource and education center, and follows and addresses public policy issues involving criminal justice and law enforcement, including the protection of animals.

The Oregon Humane Society (“OHS”) is the Northwest’s oldest and largest humane society. Celebrating 145 years of service to animals in this community, OHS is dedicated to helping animals and people. Last year, OHS facilitated more than 11,000 animal adoptions, investigated over 1,200 reports of animal abuse and neglect, taught humane education to more than 12,000 children, and visited hundreds of nursing home residents with the help of its animal-assisted therapy volunteers and their animals. OHS pursues its mission

with the support of over 18,000 members and receives no tax dollars to fund its programs.

The Oregon Veterinary Medical Association (“OVMA”) was founded as a nonprofit organization to represent veterinarians and to help advance their medical knowledge for the care and treatment of animals. This includes the protection of animal health and welfare, the prevention and relief of animal suffering, and the promotion of public health. Dating back to 1911 with 26 charter members, OVMA now includes approximately 1,000 members—about 75% of all practicing veterinarians in Oregon. OVMA regularly provides lawmakers at the local and state level with a veterinary perspective on proposed legislation affecting animals. OVMA is uniquely able to assist this Court in its understanding of the practical and legal implications of the Court of Appeals’ decision for practicing veterinarians throughout Oregon.

INTRODUCTION

Article I, Section 9 of the Oregon Constitution protects an individual's privacy and possessory interests. *State v. Owens*, 302 Or 196, 206, 729 P2d 524, 530 (1986). Where state action invades an individual's privacy interest, a search occurs. *Id.* If a person does not have, or ceases to have, a privacy interest in something, then no search can occur and the state action does not trigger Constitutional issues.

In the case at hand, a veterinarian (here, a state actor¹) conducted a medical examination of a lawfully seized dog, Juno. This exam included sampling and testing blood from the dog. Respectfully, the Court of Appeals wrongly concluded that the owner of the lawfully seized dog had a privacy interest in that dog's blood after the dog was lawfully seized and needed immediate medical attention, and that the blood testing was a warrantless search in violation of the Oregon Constitution.

This issue is one of first impression for this Court, and is significant in that the Court of Appeals considered, for the first time, the existence and scope

¹ As the Court of Appeals notes, the state conceded that the veterinarian in the present case "was a state actor because she was acting at the direction of the officer" when she administered the blood draw. *State v. Newcomb*, 262 Or App 256, 265 n 6, 324 P3d 557 (2014). However, it is important to note that any other veterinarians operating in the normal course of private practice are not state actors when they administer medical tests, because they act independently from the state. The decision of the Court of Appeals is therefore limited to those veterinarians who explicitly administer exams at the state's direction—without which, the Oregon Constitution is not triggered.

of a person's Constitutional right of privacy in a legally seized animal.² We respectfully submit that the Court of Appeals reached its conclusion incorrectly, in part by treating a dog—a living, breathing being that suffers pain and requires veterinary care—like any other legal property that does not require food, water, or medical treatment to survive. In so ruling, the Court of Appeals wrongly ignored the overwhelming body of statutory and case law—including the statutory requirement that one with “custody and control” of a victim animal render care to that animal—that emphasizes the sentience of animals, a characteristic unique to animals and no other property; and failed to consider the serious and irreversible injustice that would be incurred by victim animals and the veterinarians deemed state actors who are responsible for treating them if a routine blood draw was a search, an injustice significant to the public. For the foregoing reasons, we urge this Court to grant the state's petition for review of the Court of Appeals decision.

PROPOSED RULE OF LAW

When an officer has probable cause to believe an animal is the victim of abuse or neglect, and an officer lawfully seizes that animal, sampling and

² While an issue of first impression, this Court has shown an interest in other animal cruelty issues in *State v. Fessenden/Dicke* (S061740 and S061770; argued May 6, 2014) (addressing the Constitutional issue of the application of the emergency aid exception to the warrant requirement) and *State v. Nix* (S060875; argued Sept 17, 2013) (addressing the issue of statutory construction in the context of merger under ORS 161.067).

testing the blood or other bodily systems of that animal by a state actor—as part of a routine medical examination necessary to decipher the cause of its condition, to determine the proper course of treatment for that condition, and to render care for the animal—does not constitute a search in violation of Article I, Section 9 of the Oregon Constitution because the animal’s owner does not have a privacy interest in the diagnostically relevant biological material of a lawfully seized animal.

REASONS FOR GRANTING REVIEW

- 1. This case presents a significant issue of law: whether conducting a blood test, a routine component of the medical examination of a dog believed to be neglected, is a search under the Oregon Constitution, ORAP 9.07(1).**

This case presents the significant legal issue of whether a blood test, a routine component of a medical examination for a seemingly neglected dog, is a search for purposes of the Oregon Constitution. This issue is significant because it entails an interpretation of a Constitutional provision, and because requiring a warrant (or proof of an exception to the warrant requirement) to conduct a routine blood test on a victim animal will have wide-ranging practical implications for veterinarians and animals alike, impeding veterinarians from complying with ethical rules and regulations regarding the proper treatment of animals and jeopardizing the lives and well-being of animals found to be abused or neglected, as discussed in Part 5(c), *infra*. In ruling that testing a

dog's blood is a search, the Court of Appeals ignored the overwhelming body of statutory and case law in Oregon and other jurisdictions that proclaim that animals are sentient beings whose suffering must be mitigated through cruelty prevention and medical care, as discussed in Part 5(a), *infra*.

2. This issue—the need to medically treat an animal that has been seized by humane officers—is common in animal cruelty cases investigated by the Oregon Humane Society and impacts the day-to-day functions of OHS, ORAP 9.07(2).

The *amicus curiae* Oregon Humane Society is a 501(c)(3) nonprofit organization funded exclusively by the generous support of its donors; simultaneously, OHS employs humane officers who are statutorily classified as “peace officers” and are specially commissioned by the Governor; the State Police department also commissions humane officers at the request of OHS and other humane investigation agencies. *See* ORS 133.005(3)(e); 131.805; 181.433(1),(5); 181.435. OHS routinely conducts medical exams for animals received through its Investigations Department. In fact, from 2011 through 2013 inclusively, OHS provided medical exams for 100% of all animals seized by OHS humane officers.³ In 2013, OHS conducted 349 medical exams

³ This statistic does not include animals that are voluntarily relinquished to the OHS Investigations Department. This statistic includes animals treated both on-site and off-site at the expense of OHS: OHS veterinarians routinely perform examinations at OHS facilities for many types of animals obtained through an investigation; for certain animals that OHS facilities cannot accommodate, such as horses, OHS arranges for an off-site medical examination. E-mail from

associated with investigations cases—nearly one exam per day in that year; in 2011, 383 exams. E-mail from Emily Davidsohn, Staff Attorney, OHS, to Lora Dunn, Staff Attorney, ALDF (June 19, 2014, 11:30 PST) (on file with Lora Dunn). Thus, the issue at hand is quite common and impacts the daily practice of OHS veterinarians, as well as other veterinarians deemed state actors—many of whom are members of the OVMA—who routinely conduct necessary medical examinations of animals in their care in order to properly treat those animals.

3. The issue at hand impacts many people throughout Oregon, including pet owners and OHS supporters, ORAP 9.07(3).

The issue at hand significantly impacts pet owners throughout Oregon, and specifically those who support and/or adopt from the Oregon Humane Society. Pets, especially dogs, have a special status in our lives: 68% of all US households own a pet—more than 82 million homes—and more than 56 million households include at least one dog. *Pet Industry Market Size and Ownership Statistics*, American Pet Products Association, http://www.americanpetproducts.org/press_industrytrends.asp (last visited June 26, 2014). The majority of pet owners consider their pets to be part of the family, American Veterinary Medicine Association, *US Pet Ownership and*

Emily Davidsohn, Staff Attorney, OHS, to Lora Dunn, Staff Attorney, ALDF, June 19, 2014, 11:30 PST (on file with Lora Dunn).

Demographics Sourcebook (2012); 94% of all dog owners call their dogs family members, *Pets Aren't Just Animals; They are Members of the Family*, Harris Interactive, <http://www.harrisinteractive.com/NewsRoom/HarrisPolls/tabid/447/ctl/ReadCustom%20Default/mid/1508/ArticleId/1076/Default.aspx> (last visited June 26, 2014).

Because pets—especially dogs—are so highly valued in our society, OHS receives an outpouring of support from the Oregon community to further its mission. More than 11,000 animals were adopted from OHS in 2013, a save rate of 98.7%, with the help of more than 1,900 adult volunteers. *2013 Annual Report*, Oregon Humane Society, 3, 9, *available at* http://www.oregonhumane.org/about_us/documents/OHS_2013_AnnualReport_web.pdf. In 2013, more than 26,000 individuals, businesses, and foundations made donations to support OHS's work, generating more than \$6 million in revenue from donations and fundraising. *Id.* at 15; *Financial Statements and Other Information as of and for the Year Ended December, 31, 2013*, Oregon Humane Society, 16 (2013), *available at* http://www.oregonhumane.org/about_us/documents/OregonHumaneSociety2013FinancialStatements.pdf (last visited June 26, 2014). In 2014, nearly 7,000 people participated in OHS's annual Doggie Dash event and raised more than \$500,000. *See Doggie Dash*, Oregon Humane Society, <http://www.oregonhumane.org/doggiedash/> (last visited June 26, 2014).

4. The issue of whether testing a dog's blood is a search under Article I, Section 9, is one of first impression for this Court, ORAP 9.07(5).

The issue of whether a blood test of a dog is a search under Article I, Section 9 of the Oregon Constitution is one of first impression for this Court. More specifically, this Court has not yet considered nor determined whether an animal owner has a privacy interest in the animal once that animal has been lawfully seized.⁴

Where the existence and scope of a privacy interest has not yet been determined, such as the present case, this Court can look to statutes and other legal authority reflective of societal norms and values to help inform its determination. *State v. Cromb*, 220 Or App 315, 322, 185 P3d 1120, 1124 (2008) (“societal norms are enmeshed with the determination whether a privacy interest exists under Article I, section 9”). The Court of Appeals was correct to note that statutory rights do not “trump” a Constitutional right such as a privacy interest—however, in the current case, it has yet to be determined whether such a privacy right *even exists* in a lawfully seized dog. Therefore, we ask this Court to examine the overwhelming breadth of statutory and case law in Oregon and other jurisdictions that emphasize animal sentience in determining

⁴ *State v. Fessenden/Dicke* (S061740 and S061770; argued May 6, 2014) is currently under review by this Court, but addresses the application of an exception to the warrant requirement to victim animals, to the exclusion of addressing what constitutes a search.

animal protection, sentience being a characteristic unique to animals—unlike any other property.

5. The Court of Appeals was wrong to conclude that testing a dog's blood is a search in violation of Article I, Section 9, ORAP 9.07(14).

a. The Court of Appeals was wrong to ignore statutory and case law that classifies animals as sentient beings.

The Court of Appeals was wrong to rule that the sampling and testing of a dog's blood was a search in violation of Article I, Section 9 because, in so ruling, the Court of Appeals ignored the overwhelming body of statutory and case law in Oregon and other jurisdictions that proclaim that animals are sentient beings whose suffering must be mitigated through cruelty prevention and medical care.

A dog is property in the eyes of the law. ORS 609.020. However, unlike any other legally classified "property," animals are sentient beings that experience pain and suffering. The Oregon Legislature and courts nationwide have recognized this sentience by treating animals differently than other property in a variety of contexts, by providing them with protections greater than that owed to any other property. To be sure, a property owner has no duty to care for a car, a plastic bag, or a plant in the owner's custody and control for the well-being of that property—one could bash the car with a baseball bat, rip the bag to shreds, leave the plant to shrivel and die—all with no criminal consequences.

However, doing the same to an animal in one's custody or control constitutes animal cruelty—a crime Oregon takes very seriously. Oregon has a robust history of animal cruelty laws, and consistently ranks as one of the top states for animal protection. *2013 US Animal Protection Laws Rankings*, Animal Legal Defense Fund (Dec 16, 2013), <http://aldf.org/pressroom/press-releases/annual-study-names-2013s-top-five-states-to-be-an-animal-abuser/>. Notably, just last year the Legislature recognized in particular the egregious suffering of animal neglect victims by enhancing the penalty for certain types of neglect to a Class C felony. SB 6, 77th Legis Assemb, Reg Sess (Or 2013—now codified at ORS 167.305) (finding that “[a]nimals are *sentient beings capable of experiencing pain, stress and fear ... [and] should be cared for in ways that minimize pain, stress, fear and suffering*”) (emphasis added). The breadth of Oregon's animal protection laws encompasses Class C felony penalties for aggravated abuse, first-degree abuse, and first- and second-degree neglect, ORS 167.322, 167.320, 167.325, 167.330; mandatory veterinarian reporting for aggravated cruelty, ORS 686.455; and mandatory possession bans for convicted abusers, ORS 167.332. Indeed, animals are victims of crimes in Oregon: Each animal subjected to cruelty is a separate victim of that crime for sentencing purposes. *State v. Nix*, 251 Or App 449, 461, 283 P3d 442, 449 (2012), *rev allowed*, 353 Or 410 (2013) (noting that “the legislature’s primary concern [in enacting animal cruelty statutes] was to *protect individual animals*

as sentient beings) (emphasis added), *rev. granted*, *State v. Nix* (S060875; argued Sept 17, 2013). This unique characteristic of sentience—unique to animals and *no other* property—is recognized by courts nationwide. *See, e.g., People v. Speegle*, 53 Cal App 4th 1405, 1418, 62 Cal Rptr 2d 384, 393 (1997) (where officers seized over 200 animals, including dogs, from defendant’s property, noting that animals are “*sentient beings*” deserving of proper treatment, and finding defendant showed a “lack of concern for her animals as *living sentient creatures*”) (emphasis added).

We respectfully submit that, in determining the scope of a dog owner’s privacy interest in that dog, this Court should consider Oregon’s staunch policy of preventing and alleviating animal suffering, a policy that underlies the decisions of the Oregon Legislature and court decisions nationwide.

b. The Court of Appeals wrongly treats a live animal as a closed container that fails to announce its contents.

In analogizing the dog Juno to other property, specifically containers, the Court of Appeals was gravely mistaken. Unlike “containers,” a dog cannot be filled up, opened and closed, its contents easily discarded or replaced. Most importantly, when an officer lawfully seizes property like a closed container, that seizing agent is not obligated to provide any further care for that container for the *well-being* of the container or its contents—such a responsibility would be absurd, as a container is not a living, breathing being like an animal.

Significantly—and especially so since this is an issue of first impression for this Court—at the time that an investigating agency seizes the victim animal that the agency has probable cause to believe has been cruelly treated, that animal becomes subject to the *agency’s* physical “control” and therefore *the agency now assumes the statutory obligation to provide the victim animal with minimum care—including veterinary care*—as required by Oregon’s criminal neglect statutes.⁵ While the animal owner remains liable for the *costs* of this care,⁶ the seizing agency now in physical possession and control of the animal assumes the duty to actually provide this minimum care. This duty to provide “[v]eterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect or disease,” ORS 167.310(9)(d), includes performing any tests that are needed to properly diagnose and treat the animal. Indeed, blood testing is a routine and essential component of a medical exam,

⁵ The “fail[ure] to provide minimum care for an animal in such person’s custody or control” constitutes first- or second-degree neglect. ORS 167.325, 167.330. “‘Minimum care’ means care sufficient to preserve the health and well-being of an animal,” and includes “[v]eterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect or disease.” ORS 167.310(9).

⁶ See ORS 167.347 (Animal care agency may petition for forfeiture of seized animals prior to disposition of criminal charges, and the court shall order immediate forfeiture if the court finds probable cause of mistreatment unless the defendant posts a security bond for costs of care; the court may require a defendant to post a security bond for costs of care from impoundment to the date of trial, which may be used for actual reasonable costs of care).

necessary to decipher the cause of the animal's condition, to determine the proper course of treatment for that condition, and to render care for the animal. *See, e.g., Blood Tests for Pets*, American Veterinary Medical Association, http://www.avmamedia.org/display.asp?sid=535&NAME=Blood_Tests_for_Pets (last visited June 26, 2014) (“blood work is an important part of diagnosing and treating a sick pet”); Michael D. Lorenz & Larry M. Cornelius, *Small Animal Medical Diagnosis*, 1-2 (2d ed 1993) (emphasizing that database collection for an animal patient “should contain the information necessary to allow identification of all problems in the patient,” and “a complete blood count and urine analysis . . . [as] procedures [that] broadly screen many body systems . . . can be viewed as an extension of the physical examination.”); J. Robert Duncan & Keith W. Prasse, *Preface to Veterinary Laboratory Medicine: Clinical Pathology* (1977) (“certain laboratory tests are used and relied upon with a frequency equal to that of a thermometer or stethoscope”).

We therefore submit that, once an animal has been lawfully seized from its owner, any privacy interest that the owner may have had in that animal and its blood dissipates⁷ because the duty to render physical care to the animal has

⁷ Though any existing privacy interest dissipates at the time of the animal's lawful seizure, the animal owner could reclaim this privacy interest if that owner regained lawful possession of the animal, for instance where cruelty charges were not pursued or if the animal was not forfeited prior to or after conviction as part of sentencing. *See* ORS 167.347(1),(2),(3); ORS 167.350(1),(2). This Court has already ruled that a privacy interest lost in a

transferred to the seizing agency. In short, a property owner cannot have a privacy interest in property (here, a dog) for which another person is legally obligated to render care.

- c. The Court of Appeals' wrongful conclusion that testing a dog's blood is a search in violation of Article I, Section 9 results in a serious and irreversible injustice for the victim animals that need proper medical treatment and the veterinarians bound by ethical and legal duties to treat them.

The Court of Appeals' decision jeopardizes the role of veterinarians who are deemed state actors in our society and the fate of the victim animals that may no longer receive proper treatment that a routine blood test would facilitate. Ruling that sampling and testing the blood of a lawfully seized animal

person's property through lawful seizure may be regained at the time of lawful repossession. *See State v. Munro*, 339 Or 545, 552, 124 P3d 1221, 1225 (2005) ("Until such time as defendant regained lawful possession of the videotape, he had no remaining privacy interest in its contents that he could assert. . . . [O]nce the videotape was lawfully seized under the authority of the warrant, any images stored on the videotape, no matter how hidden, private, or secret, were no longer protected by Article I, section 9"; also ruling that testing the contents of a lawfully seized videotape to confirm the presence of what law enforcement has probable cause to believe is present is not a search under the Oregon Constitution). The Court of Appeals in the instant case mistakenly relied on *State v. Munro*, 194 Or App 538, 96 P3d 1221 (2004)—later reversed by this Court—for the proposition that a defendant retained a protected privacy interest in the contents of a videotape police had lawfully seized; rather, on appeal, as quoted in this note, this Court overturned the Court of Appeals decision and ruled that the defendant actually *lost* any privacy interest he once had in the videotape when that tape was lawfully seized. *Munro*, 339 Or at 552. Without an existing privacy interest in the videotape at the time the officers viewed it, this viewing could not constitute a search—a significant premise overlooked by the Court of Appeals in the instant case.

is a search could have catastrophic effects for both victim animals and the veterinarians charged with their care.

The Court of Appeals' decision could result in veterinarians, wary of rendering a routine blood test to victim animals for fear that the test will result in the suppression of evidence gained through the blood draw, failing to administer this necessary test. Veterinarians systematically rely on blood tests to rule out possible causes of an animal's condition; only armed with this information can they properly treat a victim animal. *See* Part 5(b), *supra* (necessity of blood tests). If a veterinarian does not administer a blood test for the foregoing reasons, the animal may be misdiagnosed and improperly treated, which could result in harm or death to the animal. Moreover, a veterinarian who has not ruled out possible illnesses could, in attempts to treat the animal, administer incorrect medication that in fact exacerbates the true cause of the animal's perilous condition.

In addition to these dire consequences for victim animals, categorizing a blood draw as a search could have a chilling effect on veterinary practice, would conflict with veterinarians' ethical and legal duties to properly care for animals in their care, and could open the judiciary to a flood of malpractice

suits⁸ when veterinarians fail to render routine, necessary blood tests that result in improper treatment. Under Oregon's Veterinary Practice Act, veterinarians may not engage in "unprofessional or dishonorable conduct," which includes, but is not limited to, "[g]ross negligence in the practice of veterinary medicine" ("intentional acts and wilful disregard for outcome" rather than mistakes) and the "[f]ailure to use generally accepted diagnostic procedures and treatments, without good cause." OAR 875-011-0010(7). Administering a blood test to determine the proper course of treatment is such a "generally accepted practice," and failure to use this routine method would constitute both gross negligence and a failure to use generally accepted practices as the Act prohibits. *See also Veterinarian's Oath*, American Veterinary Medical Association, <https://www.avma.org/KB/Policies/Pages/veterinarians-oath.aspx> (last visited June 26, 2014) (veterinarians "solemnly swear to use [their] scientific knowledge and skills for the benefit of society through the protection of animal health and welfare, the prevention and relief of animal suffering . . . [and to] practice [the] profession conscientiously, with dignity, and in keeping with the principles of veterinary medical ethics"). Furthermore, veterinarians are required to report aggravated animal cruelty and are permitted to report any

⁸ In addition to malpractice vulnerability, those veterinarians deemed state actors may also be exposed to civil rights claims under 42 USC 1983 for performing medical services the court has classified as a search.

other type of cruelty—a duty and a right that would be significantly impeded by the Court of Appeals’ requirement that a warrant be procured before the administration of any blood test—a routine part of a veterinarian’s diagnostic medical exam. *See* ORS 686.445; 686.455; 686.442 (noting that the Legislature “finds that . . . it is necessary and in the public interest to require mandatory reporting of aggravated animal abuse by veterinarians”).

CONCLUSION

For the foregoing reasons, we respectfully submit that this Court should accept review and resolve the well-briefed and fully presented question of whether sampling and testing the blood of a lawfully seized animal by a state actor—as part of a routine medical examination necessary to decipher the cause of its condition, to determine the proper course of treatment for that condition, and to render care for the animal—constitutes a search in violation of Article I, Section 9 of the Oregon Constitution.

Respectfully submitted the 3rd day of July, 2014 by,

/s/ Lora Dunn

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Petition on Review

Animal Legal Defense Fund

Association of Prosecuting Attorneys

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Oregon Veterinary Medical Association

CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 8.15(3) and 9.05(3)(a)) is 4,559 words. I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on July 3, 2014, I directed the Brief of *Amicus Curiae* to be electronically filed with the Appellate Court Administrator, Appellate Records Section. I further certify that, upon receipt of the confirmation email stating that the document has been accepted by the electronic filing system, this Brief will be eServed pursuant to ORAP 16.45 (regarding electronic service on registered eFilers) on Jamie Contreras, #022780, Assistant Attorney-in-Charge, attorney for Plaintiff-Respondent; and Andrew Robinson, #064861, attorney for Defendant-Appellant.

/s/ Lora Dunn

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