

IN THE SUPREME COURT OF OHIO

State of Ohio,

Plaintiff-Appellant,

vs.

Alonzo Kyles,

Defendant-Appellee.

Case No.: 2023-1182

On Appeal from Cuyahoga County, 8th
District Court of Appeals

**BRIEF OF AMICI CURIAE
ANIMAL LEGAL DEFENSE FUND, ASSOCIATION OF PROSECUTING ATTORNEYS,
ANIMAL WELFARE INSTITUTE, & DAVID BRAFF ANIMAL LAW CENTER
IN SUPPORT OF THE STATE OF OHIO**

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I. STATEMENT OF INTEREST

The David H. Braff Animal Law Center, hosted by the Cleveland State University College of Law—in collaboration with the Animal Legal Defense Fund, the Association of Prosecuting Attorneys, and the Animal Welfare Institute—respectfully submits this amicus curiae brief to advance the legal protections afforded to animals. The David H. Braff Animal Law Center includes Ohio’s first law school animal law clinic, which provides students with practical learning opportunities tackling legal issues applicable to the Center’s wide-ranging focus on justice for animals.

The Animal Legal Defense Fund (“ALDF”) is a national, non-profit organization of attorneys dedicated to protecting the lives and advancing the interests of animals through the legal system. Towards that end, ALDF addresses the critical gap in legal resources and expertise needed to effectively respond to crimes against animals. By providing free legal assistance, training, and resources to those on the front lines of animal cruelty cases, ALDF has become an indispensable ally in the fight against animal cruelty. ALDF’s work with esteemed national organizations, including the Association of Prosecuting Attorneys and the National Sheriffs’ Association, alongside a partnership with the National Council of Juvenile and Family Court Judges, underscores their commitment to enhancing the judicial response to animal cruelty. Given its breadth of knowledge on animal cruelty cases, ALDF is uniquely able to assist this Court in deciding the issue presented by this case.

The Association for Prosecuting Attorneys (“APA”) (www.apainc.org) is a non-profit group devoted to supporting and enhancing the effectiveness of prosecutors in their mission to create safer communities and to promote a more effective justice system. APA collaborates with

criminal justice partners across the globe and advocates on behalf of prosecutors regarding emerging issues related to the administration of justice. APA recognizes that animals are sentient beings with the undeniable capacity to suffer pain—and that animal cruelty, whether active or passive, is a crime of violence that should be responded to in the same professional manner as violent crimes against human victims. APA also recognizes animal cruelty’s all too frequent relationship with family and interpersonal violence. APA has active advisory committees that focus on both animal cruelty and domestic violence that consist of prosecutors, law enforcement, victim advocates, and other stakeholders on the frontline of these horrible crimes. These committees assist APA in providing assistance and training in the prosecution of animal cruelty and family violence, including the link between the two.

The Animal Welfare Institute (“AWI”) is a non-profit organization dedicated to alleviating animal suffering caused by people. Since 1951, we have worked to improve the welfare of animals everywhere: in agriculture, in commerce, in research, in the wild, and in our homes and communities. AWI advances its mission through strategically crafted policy and legal advocacy, educational programs, research and analysis, and engagement with policymakers, scientists, industry, educators, other NGOs, the media, and the public. Our work to protect animals includes promoting the enactment and enforcement of laws designed to safeguard companion animals. We also develop and disseminate resources to help law enforcement, social service providers, and other professionals address companion animal abuse and the interpersonal violence with which it is often associated—including through development and maintenance of a Safe Havens for Pets online directory of sheltering services for pets of domestic violence survivors. AWI envisions a world where no animal suffers at the hands of humans, and works

collaboratively with aligned groups, including the Association of Prosecuting Attorneys, to make that vision a reality.

II. SUMMARY OF ARGUMENT

This case concerns the proper statutory scope of Ohio’s law prohibiting cruelty against companion animals: § 959.131. Specifically at hand is the provision delineating who counts as a companion animal:

“Companion animal” means any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept, including a pet store as defined in section 956.01 of the Revised Code. “Companion animal” does not include livestock or any wild animal.¹

The Eighth District Appellate Court erred in deciding *State v. Kyles* where it adopted a narrow interpretation of the undefined term ‘kept,’ as used in § 959.131. The *Kyles* Court’s drastic statutory interpretation disregards the law’s plain meaning, prior precedent, legislative intent, and public policy considerations such as Ohio’s commitment to humane treatment of companion animals.

In contrast, this amicus brief argues for a treatment of kept that is consistent with the word’s common meaning, does not cause § 959.131 to become internally incoherent, and effectuates the legislature’s intent to comprehensively include all companion animals under the protective ambit of Ohio’s prohibition of cruelty against companion animals.

Specifically, amici argue first that on its plain terms, Ohio’s companion animal cruelty law (§ 959.131) applies to all kept cats and dogs, regardless of where, when, or by whom they are kept. Second, amici argue that the common meaning of the law’s language and its legislative history indicate that animals kept under § 959.131 include those subject to human power, control,

¹ OHIO REVISED CODE § 959.131.

or possession, as well as those who receive care from humans. Relatedly, amici argue that the *Kyles* Court’s contrary decision to limit kept animals to those who receive care not only conflicts with the plain meaning of § 959.13, but would frustrate the law’s purpose and lead to a series of absurd results and inconsistencies with prior appellate decisions.

We respectfully urge the court to consider these arguments in its deliberations and to reinstate the conviction of the Appellee, ensuring that § 959.131 continues to serve its purpose of protecting all companion animals from cruelty.

III. STATEMENT OF THE CASE AND FACTS

On October 3, 2021, Cleveland Police responded to an apartment building on Cliffview Road.² Officers arrived at the scene and entered through a door that opened into the apartment complex’s enclosed basement area.³ Immediately upon entry, officers encountered a substantial (“almost, like, flooded”) amount of bleach mixed with water coating the entire floor.⁴ After taking a few further steps into the basement area, officers heard the loud, pained cries of a small black male kitten (later determined to be approximately eight months old) “tucked underneath the bottom of [the basement area’s] stairwell”, soaked in bleach.⁵ Officers retrieved the kitten, and made contact with Appellee Alonzo Kyles, who was sitting on the staircase above the basement area.⁶ Kyles explained that the kitten was “stuck in the stairwell”, and that he had been pouring bleach and water on the kitten because he was afraid of the kitten.⁷

² Transcript of Proceedings at 12, *State v. Kyles*, No. 669748 (November 2, 2022) [hereinafter Transcript].

³ Transcript at 13.

⁴ Transcript at 13, 29.

⁵ Transcript at 23, 47.

⁶ Transcript at 24.

⁷ Transcript at 24-25.

Officers towed the kitten off, noting that his paws were red and swollen (“[with,] like, burn marks”).⁸ The kitten did not display aggression towards the officers while they were providing him with care⁹—to the contrary, while he was subsequently being transferred to West Park Animal Hospital for treatment, he behaved like a socialized, non-feral kitten.¹⁰ When treated by Doctor Jennifer Kinney at the animal hospital, the kitten did not exhibit the fearful or aggressive behavior that would be expected had he been feral.¹¹ Upon evaluation, Dr. Kinney detected a strong odor of bleach emanating from the kitten alongside ulcerations on his paws.¹² Dr. Kinney noted these ulcerations—areas where the skin on the kitten’s paw pads was “peeled away or burned or [otherwise not present]”—were consistent with exposure to bleach.¹³ The kitten was bathed in dish soap to remove bleach from his skin, which he tolerated in a manner entirely unlike that of a feral cat.¹⁴ Throughout his exam, the kitten was calm and easy for Dr. Kinney to handle and treat—which is not consistent with being a feral cat.¹⁵ Following his intake exam and treatment, the kitten remained in the animal hospital’s intensive care unit for days.¹⁶

Procedural History

Officers charged Appellee Alonzo Kyles with a single-count indictment to the fifth-degree felony charge of cruelty of animals in violation of R.C. § 959.131. The arraignment of the Appellee occurred on May 31, 2022, when he entered a plea of not guilty. Through a bench trial on November 2, 2022, Appellee twice moved under Crim. R. 29, both of which were denied. Appellee was found guilty as charged in the indictment. The court sentenced Appellee to nine

⁸ Transcript at 25.

⁹ Transcript at 39.

¹⁰ Transcript at 87.

¹¹ Transcript at 44-45.

¹² Transcript at 44, 46, 59.

¹³ Transcript at 44-45.

¹⁴ Transcript at 46, 54.

¹⁵ Transcript at 44.

¹⁶ Transcript at 43.

months incarceration. Appellee filed an appeal. The Eighth District found that “the state failed to offer sufficient evidence that the cat was kept,” thus reversing Appellee’s conviction and sentence.¹⁷

IV. ARGUMENT

A. Under The Statute’s Plain Meaning, Kept Cats and Dogs Broadly Fall Within the Protective Remit of Ohio’s Companion Animal Cruelty Law Irrespective of Where, When, or By Whom Such Dogs or Cats Have Been Kept.

The plain language of § 959.131 protects as a companion animal “any dog or cat *regardless* of where [that dog or cat] is kept....”¹⁸ Despite the *Kyles* Court’s failure to give weight to the statutory meaning of *regardless*, its impact here is critical. The word ‘*regardless*’ gives specific impact to ‘kept’. ‘*Regardless*’ serves as an adverb that indicates a dismissal of potential limitations or conditions that might otherwise restrict the scope of the subject it modifies. Notably, the common meaning of ‘*regardless*’—“*despite everything*”¹⁹— indicates that § 959.131 includes dogs and cats within the scope of ‘companion animal’ despite every possible value for “where [the dog or cat] is kept.”²⁰ Thus, when the statute tells us that a companion animal includes “any dog or cat *regardless* of where it is kept,” it linguistically sets aside spatial, temporal, environmental, or ownership conditions that might otherwise bound the concept of keeping an animal.²¹ The threshold that § 959.131 sets for which dogs and cats qualify as companion animals is, therefore, broad: a kept dog or cat is a companion animal, irrespective of specifics as to where, when, or by whom the dog or cat has been kept. This use implies

¹⁷ State v. Kyles, 2023-Ohio-2691, ¶ 18.

¹⁸ OHIO REVISED CODE § 959.131 (italics added). Also protected as ‘companion animals’ are animals who are kept inside residential buildings while being neither livestock nor wild. *Id.*

¹⁹ *Regardless*, MIRRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/regardless> (Accessed February 18, 2024).

²⁰ OHIO REVISED CODE § 959.131.

²¹ OHIO REVISED CODE § 959.131.

intentionally broadening the definition to ensure that dogs and cats are recognized as companion animals beyond the more limited ways they were historically positioned when Ohio initially criminalized animal cruelty in the 1800s.²² The adverb ‘regardless’ thereby functions to expand the companion animals category in line with the legislative history of § 959.131.²³

B. Under Ohio’s Companion Animal Cruelty Law, Kept Animals Are Not Only Those Receiving Care from Humans, but Also Those Subject to Human Control, Possession, or Power.

The *Kyles* Court is correct to apply “the common meaning of the word ‘keep’—and initially does so in its opinion: “[the] *Merriam-Webster* dictionary defines ‘keep’ as having control; to take care of....”²⁴ The same *Merriam-Webster* dictionary entry additionally provides the definition of ‘to have in one’s possession or power’ .²⁵ However, after seeming to acknowledge that this definition’s scope is such that care cannot be the sole determinant as to whether an animal is kept,²⁶ the *Kyles* Court abruptly changes course in the next sentence: holding that for “cats and dogs, the state must establish that the cat or dog received care” in order for the animal to qualify as kept.²⁷ The *Kyles* Court neither explains why this is so only for cats and dogs, nor why the common meaning of a kept dog or cat—one who is receiving care from a human, or who is subject to a human’s control, or who is in a human’s possession, or who is

²² Ohio first passed anti-cruelty and animal protection laws in the 1800s. *State v. Kyles*, 2023-Ohio-2691, ¶ 9. Positioning dogs, cats, and other animals as companions rather than workers became increasingly normative in American culture as the 1800s gave way to the 1900s. Lacey Levitt, *The Evolving Role of Animals in Contemporary Society*, in ANIMALS AS CRIME VICTIMS 67, 69 (Levitt, Rosengard, & Rubin eds., 2024).

²³ *Infra* Part C.

²⁴ *State v. Kyles*, 2023-Ohio-2691, ¶ 15. Italics added.

²⁵ *Keep; Kept; Keeping*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/keep> (Accessed February 18, 2024).

²⁶ See *State v. Kyles*, 2023-Ohio-2691, ¶ 17 (Citing *Buettner v. Beasley* for the proposition that “[a]n animal is ‘kept’ when there is evidence that it is cared for or under physical control.” Note, this is an overly-narrow characterization of *Beasley*. See *supra* note 30 and accompanying text (discussing *Beasley*’s fact-specific model for determining an animal’s kept status)).

²⁷ *State v. Kyles*, 2023-Ohio-2691, ¶ 17.

under a human’s power—ought be narrowed so drastically.²⁸ While the *Kyles* Court reiterates their newly created rule that receipt of care is a necessary condition for an animal to qualify as kept at the close of their opinion, they again do not explain how they came to so dramatically narrow the common meaning of kept.²⁹

The *Kyles* Court’s reliance upon *Buettner v. Beasley* does not support the rule announced in *Kyles*. Indeed, *Beasley* adopts a treatment of kept which is fundamentally incompatible with the *Kyles* Court’s holding. *Beasley* rejects the creation of a bright-line test for kept animals, instead describing an animal’s kept status as a fact-specific matter impacted by factors including (but not limited to) control over the animal, custody of the animal, or provision of the animal with care.³⁰ In doing so, *Beasley* stands in opposition to the *Kyles* Court’s inexplicably narrowed treatment of kept, and suggests a way forward that comports with the word’s common meaning: whether an animal is kept should be a question of fact, involving factors such as whether the animal has been under a human’s control, custody, care, or power.

The *Kyles* Court, in other words, has inverted the proper approach deployed in *Beasley*. For the *Kyles* Court, a dog or cat receiving care from a human is a necessary condition to qualify as a ‘companion animal.’ This approach requires ignoring most of the common dictionary-provided meaning of ‘kept.’ In order for receipt of care to be the binary threshold for companion animal status as announced by the *Kyles* Court, other factors such as the degree to which a human has power over the animal, control of the animal, or possession of the animal must be

²⁸ State v. Kyles, 2023-Ohio-2691, ¶ 17.

²⁹ See State v. Kyles, 2023-Ohio-2691, ¶ 19 (“...this court concludes that the state failed to present sufficient evidence that the cat was provided care. Therefore, the cat was not kept, and the state did not prove the necessary element that the cat was a ‘companion animal.’”).

³⁰ Buettner v. Beasley, 2004-Ohio-1909, ¶ 14.

read out of the meaning of ‘kept.’ In contrast, *Beasley* recognizes the common meaning³¹ of ‘kept’ as relevant to determining whether any given dog or cat is kept: receiving care from a human, being within human control, being in human possession, or being under the power of a human are all sufficient conditions for being kept and thus for qualifying as a companion animal.

In terms of how dogs and cats are positioned within § 959.131, this broad understanding of kept aligns with the expansive meaning of ‘regardless’ discussed above. The plain language of the statute calls for including dogs and cats within the scope of kept based on consideration of multiple sufficient but not necessary factors (i.e. “despite”³² not all factors being present), rather than making a single factor—receipt of care—entirely responsible for whether a dog or cat qualifies as kept. This properly broad interpretation of kept encompasses various positive ways in which companion animals are kept (e.g. care or guardianship) but is also able to address less inherently beneficial ways in which a companion animal may be kept by a human (e.g. simply being in the human’s custody, within the human’s control, or under the human’s power).

C. The Kyles Court’s Narrow Definition of ‘Kept’ Defies Legislative Intent Underlying Ohio’s Companion Animal Cruelty Law, Leading To Absurd Results.

a. The Kyles Court’s Understanding of § 959.131 Cannot Be Reconciled with The Statute’s Legislative History.

In analyzing the legislative history underlying § 959.131, the *Kyles* Court begins and ends its inquiry with the 123rd General Assembly’s House Bill 108, under the assumption that HB 108 is responsible for the statute at hand.³³ This approach cannot adequately describe the legislative history of Ohio’s companion animal anti-cruelty law for two reasons. First, HB 108 never passed

³¹ I.e. both the meaning provided by general-use dictionaries, but also the common sense meaning of the word.

³² MIRRIAM-WEBSTER DICTIONARY, *supra* note 19.

³³ State v. Kyles, 2023-Ohio-2691, ¶ 10.

into law, and therefore cannot be responsible for the text of § 959.131. Secondly, an accurate review of Ohio companion animal protection law legislative history must account for all three of the major pieces of legislation that are responsible for the companion animal anti-cruelty statute as invoked in the instant case: the 124th General Assembly’s Senate Bill 221, Nitro’s Law, and Goddard’s Law.³⁴

Taken as a whole, these three laws evidence a consistent legislative intent to broadly include dogs, cats, and certain other animals within the scope of ‘companion animal’ when kept. The first of these laws, GA 124’s SB 221, gave § 959.131 both a crime specific to companion animals and a definition of ‘companion animal’: “any animal that is kept inside a residential dwelling [excluding livestock and wild animals] and any dog or cat regardless of where it is kept.”³⁵ SB 221 did not, however, enact the first-offense felony-level companion animal cruelty crime at issue in the instance case.

The next major Ohio companion animal cruelty bill—Nitro’s Law—was expressly responsive to a cruelty case in a manner that would be well-nigh incomprehensible under the *Kyles* Court’s narrow reading of kept.³⁶ In the case giving rise to Nitro’s Law, Nitro and eight other dogs died at a Youngstown kennel due to being deprived of minimum care.³⁷ The legislative response was to enact Ohio’s first initial-offense felony-level companion animal cruelty crime, specifically applicable to kennel staff who unlawfully maltreat animals in their

³⁴ See OHIO LEGISLATIVE SERVICE COMMISSION, *Protecting Ohioans’ Best Friends: An Overview of Ohio’s Companion Animal Abuse Law*, 134 MEMBERS BRIEF (November 22, 2022), <https://www.lsc.ohio.gov/assets/organizations/legislative-service-commission/files/protecting-ohioans-best-friends-an-overview-of-ohios-companion-animal-abuse-law.pdf> (accessed February 18, 2024).

³⁵ S.B. 221, 124th General Assembly, Reg. Sess., (OH. 2002).

³⁶ OHIO HOUSE OF REPRESENTATIVES, *Nitro’s Law Advanced by the Ohio House of Representatives*, <https://ohiohouse.gov/news/republican/nitros-law-advanced-by-the-ohio-house-of-representatives-17582> (May 15, 2013).

³⁷ *Supra* note 36.

custody. In passing Nitro’s Law, legislators were explicit about their desire to address animal cruelty and related harms to humans.³⁸ Critically, were the lawmakers who enacted Nitro’s Law to have been using the *Kyles* Court’s definition of kept (‘receiving care’), the charging theory created by Nitro’s Law would have been fundamentally unable to straightforwardly address cruelty of the sort that Nitro suffered. The relevant charging theory laid out by the Nitro’s Law amendments to § 959.131 is that when staff at a kennel fail to provide a dog under the kennel’s custodial control with minimum care such that the dog suffers unlawful maltreatment, the staff have committed felony-level companion animal cruelty—i.e. exactly what befell Nitro at the hands of the kennel staff who had power over him. However, under the *Kyles* Court’s reasoning where receipt of care is what makes a dog or cat a ‘companion animal’, this straight-forward application of § 959.131 could not be sufficient to protect Nitro precisely because Nitro died as a result of *not* receiving care at the hands of kennel staff.

This suggests two options: either the 130th General Assembly understood ‘kept’ to have the plain dictionary definition (i.e. including ‘to have control over’, ‘to have in possession’, ‘to provide care for’, or ‘to have within one’s power’) and passed Nitro’s Law to provide protection for companion animals who—while uncared for—were kept just as Nitro was, or the General Assembly understood ‘kept’ in the sense the *Kyles* Court does (i.e. excluding dictionary definitions other than to ‘to provide care for’) and passed Nitro’s Law at worst to no purpose or at best in anticipation of convoluted and impractical charging theories that would require law enforcement to inquire into the conduct not of the kennel staff who killed Nitro but rather those humans who interacted with Nitro prior to his placement in the kennel. The former option

³⁸ NBC4 COLUMBUS, *Nitro’s Law Testimony*, <https://youtu.be/0zbVr65Tqlo?si=9eVC4PEJdV9LP6UY> (April 9, 2013).

comports with the position of the law’s sponsors,³⁹ as well as the Governor’s understanding upon signing the law.⁴⁰ The latter option flies in the face of both canons of statutory construction and respect for a coequal branch of government.

The final piece of legislation contributing to Ohio’s current companion animal cruelty law is 2016’s Goddard’s Law, which—by amending § 959.131 to allow general first-offense companion animal cruelty to be charged as a felony—codified the crime that lies at the core of the instant case.⁴¹ Goddard’s Law, formally House Bill 60, was enacted in Ohio to significantly strengthen the penalties for abusing companion animals.⁴² This legislation, named for Dick Goddard, a renowned meteorologist from Northeast Ohio, who was a fervent advocate for animal welfare.⁴³ The bill was passed with bipartisan support⁴⁴ and was designed to address and deter the serious issue of animal cruelty by making the knowing infliction of severe physical harm to a companion animal a fifth-degree felony.⁴⁵ This includes withholding minimum care such as food, water, or shelter from such animals as well as inflicting long-term pain on them.⁴⁶

³⁹ *Supra* note 38.

⁴⁰ FOX 8, *Nitro Able to ‘Rest in Peace’ with Signing of New Law*, <https://fox8.com/news/nitro-able-to-rest-in-peace-with-signing-of-new-law/> (July 1, 2013).

⁴¹ I.e. under Nitro’s Law only kennel staff could be charged with felony companion animal cruelty on a first-offense; Goddard’s Law broadened that charging option to any companion animal cruelty offender.

⁴² H.B. 60, 131st General Assembly, Reg. Sess., (OH. 2016).

⁴³ Dick Goddard, the champion and face of the companion animal statute at issue, was a cultural icon of Northeast Ohio. He used his platform as a beloved meteorologist to bring awareness to the plights of companion animals while also working alongside humane organizations. Every Friday, he featured animals that were up for adoption from Cleveland’s Animal Protective League on a special segment on Fox 8 News in Cleveland, and he also founded the Dick Goddard APL Telethon, which raises more than \$130,000 annually for the Cleveland Animal Protective League. FOX 8, *Dick Goddard’s Legacy Lives on Through Goddard’s Law, Animal Advocacy*, <https://fox8.com/news/dick-goddards-legacy-lives-on-through-goddards-law-animal-advocacy/> (August 4, 2020).

⁴⁴ *House Bill 60 Votes*, THE OHIO LEGISLATURE, <https://www.legislature.ohio.gov/legislation/131/hb60/votes> (accessed February 3, 2024).

⁴⁵ *H.B. 60 Fiscal Note & Local Impact Statement*, OHIO LEGISLATIVE SERVICE COMMISSION, <https://www.legislature.ohio.gov/download?key=5522&format=pdf> (accessed February 3, 2024).

⁴⁶ H.B. 60, 131st General Assembly, Reg. Sess., (OH. 2016).

The contention by the Appellee that Ohio’s companion animal cruelty law should not extend to dogs and cats who are not receiving care fundamentally misunderstands the spirit and purpose of the Goddard’s Law. Such a narrow interpretation is at odds with the very essence of Goddard’s advocacy and the legislative intent behind the law. Drawing a distinction between animals who are receiving care and those not receiving care in applying protections against cruelty undermines the scope of the law’s moral foundation. It ignores the reality that companion animals—including outdoor cats, uncared for dogs, and others—can be targets of cruelty.

b. Adopting The Kyles Court’s Over-Narrow Definition of ‘Kept’ Under § 959.131 Produces Absurd Results and Upends Appellate Precedent.

The paradoxical result of reading kept in the context of § 959.131 as being limited to meaning ‘receiving care’ is most pointedly ironic in the face of scenarios where animals who are under the control, possession, or power of humans are maltreated by those same humans depriving the animals of care. Again, Nitro’s case is illustrative: under the *Kyles* Court’s reading, one of the sentinel cases responsible for the current scope of § 959.131 would itself be at worst fundamentally unreachable by the very law in question and at best obtusely impractical—leading to an absurd result.

Nor is Nitro’s case the only scenario where the *Kyles* Court’s overly narrow treatment of who qualifies as a companion animal under § 959.131 produces absurd results. The facts underlying *State v. Hartman*—itself relied upon by the *Kyles* Court—are instructive.⁴⁷ In *Hartman*, the defendant was charged with companion animal cruelty committed against victims including 25 birds, six mice, two ferrets, and an iguana. The charging theory for each did not involve Hartman caring for animals whom she subjected to cruel acts of *commission*. Rather, the

⁴⁷ State v. Kyles, 2023-Ohio-2691, ¶ 16.

charges in *Hartman* were predicated upon the defendant subjecting each of her animal victims to an act of *omission*: failing to provide them with minimum care. It is on this basis—that the animal victims were neither livestock nor wild animals and were held under Hartman’s control, power, or possession within her residence—that the Ninth District Court of Appeals affirmed her conviction.⁴⁸ Under the *Kyles* Court’s treatment of § 959.131, however, it would not be possible for any of the *Hartman* animal victims to constitute companion animals specifically because the cruelty they were subject to consisted of Hartman not caring for them (despite each animal being within her power, possession, and control).

Similarly, the *Kyles* Court’s over-narrow treatment of ‘kept’ is incompatible with the Twelfth District Appellate Court’s 2014 decision in *State v. Sullivan*. In *Sullivan*, a dog was found chained in the yard of a vacant home, suffering from fever, infection, emaciation, and dehydration. After being rescued by authorities and provided with care, the dog made a full recovery. Sullivan was convicted on a single count of cruelty to a companion animal on the theory that she—the dog’s former owner—had failed to provide the dog with appropriate care.⁴⁹ Under the restrictive definition of ‘kept’ advanced by the *Kyles* Court, however, both the *Sullivan* conviction and underlying language of the law become incomprehensible. Using the overly narrow *Kyles* construal of kept would prevent the relevant portion of § 959.131 from criminalizing failures to provide dogs and cats with minimum care because that very deprivation of care would bar the dog or cat’s status as a companion animal. The absurd result here is dual: first rendering the statutory text of § 959.131 inherently inoperable, and second preventing

⁴⁸ See *State v. Hartman*, 2012-Ohio-4694, ¶ 21-24 (discussing the animal victims being ‘kept’ in reference to the location they were confined in, rather than care they did not receive).

⁴⁹ *State v. Sullivan*, 2014-Ohio-1687, ¶ 7.

Ohio’s companion animal cruelty law from protecting dog and cats from being tied up and left to die by their owners.

The Second District Appellate Court’s 2014 *State v. Davis* is an even more apt analogy to the instant case—and even more vulnerable to the *Kyles* Court’s restrictive read of ‘kept’. In *Davis* the defendant was convicted on companion animal cruelty charges for throwing kittens from a moving vehicle. The feline victims in *Davis*, like the victim in the instant case, were outdoor kittens without apparent owners.⁵⁰ Certainly *Davis* was not providing the kittens with care as he was tossing them from his car—much as *Kyles* was not providing the kitten in the instant case with care by dousing his victim with bleach while the kitten was trapped indoors. In both cases, the feline victims appear to be cats living a liminal existence in which they are exposed to humans but are not necessarily owned by humans or live in human homes.⁵¹ By the same token however, both when *Davis* threw kittens to their death and *Kyles* doused the instant case’s victim kitten with bleach each perpetrator had their feline victims quite under their power: placing those kittens within the common meaning of kept inexplicably ignored by the *Kyles* Court.⁵²

It requires no imaginative leap to discern how the *Kyles* Court’s narrow treatment of who counts as a companion animal would result in similar scenarios where the function of Ohio’s long-standing animal companion anti-cruelty law would be rendered unworkable. By way of

⁵⁰ See *State v. Davis*, 2014-Ohio-624, ¶ 7 (describing the kitten victims as “quick [to] run off when approached by humans.”).

⁵¹ *State v. Kyles*, 2023-Ohio-2691, ¶¶ 3-4; *supra* note 50.

⁵² *Supra* Section B. In *State v. Amos*, the Fifth District Appellate Court’s treatment of how a person comes to qualify as the ‘keeper’ of a stray or feral kitten under the analogous § 959.01 is likewise in agreement with *Davis* and incompatible with the position advanced by the *Kyles* Court. The *Amos* defendant never provided that case’s kitten victim with care—the kitten had simply shown up one day outside her home. *Amos*, however, did eventually exercise control over the kitten by transporting and releasing the feline victim elsewhere—which the court held sufficed to make her the cat’s ‘keeper,’ even if her “conduct [was not that] of an individual that we would normally associate with being the ‘owner’ or ‘keeper’ of the animal.” *State v. Amos*, 2014-Ohio-3097, ¶¶ 18, 20.

example, consider the fate of Ohio housecats under the *Kyles* Court’s rule. Many Ohio housecats roam their neighborhoods⁵³ with both claws and sex organs intact,⁵⁴ much like the kitten victim in the instant case. The housecats in question—beloved cats living in family homes and allowed to venture outside—unquestionably appear to be among the companion animals the people of Ohio have decided to specifically protect by consistently expanding the remit of § 959.131. If during a feline excursion, such a housecat was deliberately beaten to death, set on fire, or sodomized with a subsequently detonated firecracker (all incidents perpetrated against Ohio outdoor cats in recent years),⁵⁵ the *Kyles* Court’s narrow interpretation of ‘kept’ would place that housecat (and other similarly situated cats and dogs) presumptively outside the protective scope of Ohio’s companion animal protection law. This is because the *Kyles* Court’s rule provides but a single narrow avenue for the state to show that such a cat or dog is a companion animal: somehow establishing that they are in receipt of care.

In contrast, the approach urged here by amici relies upon the common meaning of ‘kept’ and the framework set forth in *Beasley* not to shift the state’s burden of proof, but rather simply to accept that the state may show that a cat or dog is kept not only by referencing receipt of care,

⁵³ See Lori K. Lord, *Attitudes Toward and Perceptions of Free-Roaming Cats Among Individuals Living in Ohio*, 232 JOURNAL OF THE AMERICAN VETERINARY MEDICAL ASSOCIATION 1159, 1162 (2008) (Ohio State University study revealing that 40% of Ohio cat owners allow their cats outdoors).

⁵⁴ See Karyen Chu, Wendy M. Anderson, & Micha Y. Rieser, *Population Characteristics and Neuter Status of Cats Living in Households in the United States*, 234 JOURNAL OF THE AMERICAN VETERINARY MEDICAL ASSOCIATION (April 15, 2009) (finding that approximately 20% of housecats in the USA are sexually intact); *Literature Review on The Welfare Implications of Declawing of Domestic Cats*, AMERICAN VETERINARY MEDICAL ASSOCIATION (July 23, 2019) (https://www.avma.org/sites/default/files/resources/declawing_bgnd.pdf) (suggesting that over 75% of housecats in the USA have full claws).

⁵⁵ See Matthew Dietz, *Sheriff: Suspect Accused in Butler County Cat Abuse Case Arrested*, WLWT5, <https://www.wlwt.com/article/zhean-bai-butler-county-cat-abuse-suspect/46664755> (February 7, 2024) (“A man accused of putting a cat into a trash bag and slamming it to the ground in Butler County has been arrested.”); 13NEWS, *Sheriff: Ohio Man Wanted for Burning Cat Alive*, <https://www.wowktv.com/archives/sheriff-ohio-man-wanted-for-burning-cat-alive/> (October 25, 2017) (outdoor cat fatally set aflame); Mark Caudill, *Mansfield Cat Tortured With Fireworks Released From Veterinary Hospital*, WKYC3, <https://www.wkyc.com/article/news/local/northeast-ohio/mansfield-cat-tortured-with-fireworks-released-from-veterinary-hospital/95-575995874> (July 20, 2018) (describing recovery of kitten “brought in after someone put a firecracker in her rectum and detonated it.”).

but also through relevant evidence regarding the degree to which the animal victim was subject to human power, control, or possession

V. CONCLUSION

This Court should reverse the appellate court, maintain the interpretation of who constitutes a companion animal as used in *Beasley* and similar cases, and reinstate the conviction of the Appellee, Alonzo Kyles. Such a reversal will make clear to all that the statutory protection of § 959.131 applies to all companion animals, irrespective of how they meet the threshold of being kept.

The protection many other potential animal victims receive will be impacted by this decision. Similarly, this decision stands to impact the degree to which interpretation of Ohio's companion animal cruelty law is consistent with public policy considerations and able to protect the interests of both human and nonhuman animals alike. While the implications of the decision facing this Court are broad, they are well illustrated by the cruelty suffered by the victim in the instant case: a vulnerable, friendly eight-month old black kitten who found himself trapped at the foot of the defendant's enclosed stairwell and—subject there to the defendant's power—was violently assaulted with a caustic chemical. This kitten—trapped and helpless under the power of a human who abused him—is precisely the sort of companion animal the people of Ohio have chosen to protect by including him within the meaning of 'kept' under § 959.131, and this Court should find accordingly.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2024 a copy of the Brief of Amicus Curiae Animal Legal Defense Fund in Support of Ohio was served by *electronic or regular mail* upon the following:

All named counsel and parties.

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