

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

30 Barn Owls housed at Johns
Hopkins University, by and through
their Next Friends, PEOPLE FOR
THE ETHICAL TREATMENT OF
ANIMALS, INC.
501 Front Street
Norfolk, Virginia 23510,

MARTIN WASSERMAN

[REDACTED],

LANA WEIDGENANT

[REDACTED],

EVANNA LYNCH

[REDACTED].

Plaintiffs,

v.

TOM VILSACK, Secretary
U.S. Department of Agriculture,

KEVIN SHEA, Administrator
U.S. Department of Agriculture
Animal and Plant Health Inspection Service
1400 Independence Avenue, S.W.
Washington, DC 20250,

Defendants.

Case No.

COMPLAINT

Plaintiffs, 30 barn owls confined at Johns Hopkins University (“JHU”), by and through their next friends, People for the Ethical Treatment of Animals, Inc. (“PETA”), Martin Wasserman, Lana Weidgenant, and Evanna Lynch, allege the following:

INTRODUCTION

1. This case presents the novel issue of whether the United States can enforce a bill of attainder stripping a specified group of non-human animals of legal protections otherwise accorded to them under the Animal Welfare Act and singling them out for deprivations they experience as harsh confinement, torture, and death. This is no academic question. For Plaintiff barn owls, it is literally life and death.

The Broad Scope of Constitutional Protections from Bills of Attainder

2. Under English common law and colonial government, legislative acts could punish named individuals, or groups of unnamed individuals, with death and other deprivations. The Constitution's framers chose, unanimously and without debate, to end this practice. Article I, § 9 of the Constitution states: "No Bill of Attainder . . . shall be passed [by the Congress]."

3. The Supreme Court has established that Article I's bill of attainder prohibition "stand[s] for the proposition that legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them" are prohibited by the Constitution. *United States v. Lovett*, 328 U.S. 303, 315–16 (1946). For example, in a paradigmatic case, the Supreme Court rejected a Congressional ban on members of the Communist Party holding office in trade unions. *United States v. Brown*, 381 U.S. 437 (1965). According to the Supreme Court, it posed no barrier that Congress "inflict[ed] their deprivations upon relatively large groups . . . by description rather than name." *Id.* at 461. Additionally, courts have recognized that the prohibition on bills of attainder is not limited to the infliction of punishments on humans. Today, even inanimate corporations benefit from these Constitutional protections.

***Congress's Elimination of Legal Protections for
Birds Is an Unconstitutional Bill of Attainder***

4. In 1966, Congress passed the Animal Welfare Act (“AWA”) to accord legal protections for non-human animals used in laboratories. As amended in 1970, the AWA was intended “to insure that certain animals intended for use in research facilities . . . are provided humane care and treatment . . . by persons or organizations engaged in using them for research or experimental purposes.” PL 91-579; 84 Stat. 1560 (Dec. 24, 1970). The statute applied to any “warm-blooded animal” used, or intended for use, in experimentation. *Id.*

5. More than 30 years later, Congress passed a 2002 amendment to the AWA sponsored by Sen. Jesse Helms—a virulent opponent of the civil rights movement since at least the 1950s—and codified in 7 U.S.C. § 2132(g) (“Helms Amendment”). This amendment excluded “birds . . . bred for use in research” from coverage under the AWA—stripping the Secretary of Agriculture of the right to issue or enforce standards, rules, regulations, and other requirements for the humane treatment of this specifically identified group. By eliminating their right to statutory protection, the Helms Amendment functions as a bill of attainder, singling out these birds—including 30 barn owls housed at JHU—for deprivations they experience as harsh confinement, torture, and death.

6. By virtue of the Helms Amendment, millions of laboratory-bred birds—including Plaintiffs—have been stripped of their right to statutory protection and as a consequence have suffered and will suffer under the Helms Amendment. Because of this bill of attainder, Plaintiffs are subject to torturous experiments in which their skulls will be cut open and electrodes inserted into their brains; they will be tightly confined and bombarded with jarring and harmful visual and auditory stimuli; and they will have their brain tissue mutilated by electrodes. At the end of the

experiments, the Helms Amendment functions as a death sentence: Experimenters will kill all Plaintiffs.

7. It is precisely these types of punishments, which recall “[t]he infamous history of bills of attainder,” that the Supreme Court has recognized provide the “starting”—and potentially dispositive—point in the inquiry of whether a law is a prohibited bill of attainder. *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 473 (1977). “The historical experience with bills of attainder in England and the United States ‘offers a ready checklist of deprivations and disabilities so disproportionately severe and so inappropriate to nonpunitive ends that they unquestionably have been held to fall within the proscription of Art. I, § 9.’ . . . This checklist includes sentences of death, bills of pains and penalties, and legislative bars to participation in specified employments or professions.” *Foretich v. United States*, 351 F.3d 1198, 1218 (D.C. Cir. 2003), citing *Nixon*, 433 U.S. at 473.

8. Other relevant considerations include whether the law at hand “can be said to further nonpunitive legislative purposes,” *id.* at 475-76, or whether the legislative record “evinces a congressional intent to punish.” *Id.* at 478. The Helms Amendment more than satisfies both criteria. First, Plaintiffs’ suffering under the Helms Amendment is entirely incidental to any human benefit. Nor does the Helms Amendment include any measures designed to safeguard the rights of burdened groups. Second, the Congressional record is seared with the drafter’s intent to inflict punishment. Sen. Helms introduced his amendment with “outrage,” imploring his fellow senators to “deliver a richly deserved rebuke” to the “so-called ‘animal rights’ crowd” while comparing Plaintiffs and others in their position to “food for reptiles” who merit “extermination.” 148 Cong. Rec. S612-01 (Feb. 12, 2002), at S617.

The Need for Declaratory and Injunctive Relief

9. In order to avoid their unconstitutional attainder, Plaintiffs seek declaratory and injunctive relief against defendants Tom Vilsack, the Secretary of the United States Department of Agriculture (“USDA”), and Kevin Shea, the administrator of the Animal and Plant Health Inspection Service (“APHIS,” and together, “Defendants”). Such necessary relief includes (1) a declaratory judgment that the Helms Amendment violates the United States Constitution’s Bill of Attainder Clause and is unenforceable; (2) permanent orders requiring Defendants to enforce existing AWA regulations and requirements governing the minimization of pain and distress, humane handling, care, treatment, and transportation of non-human animals by research facilities for the benefit of groups specified by the Helms Amendment; and (3) permanent orders requiring Defendants to promulgate and enforce standards under the AWA governing the minimization of pain and distress, humane handling, care, treatment, and transportation of non-human animals by research facilities for the benefit of groups specified by the Helms Amendment.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, which provide that federal district courts shall have original jurisdiction of civil actions to redress Constitutional injuries. Congress has punished Plaintiffs by passing a bill of attainder barred under Article I, § 9 of the Constitution.

11. This Court also has jurisdiction pursuant to 28 U.S.C. § 2201, which provides federal district courts with the authority to provide declaratory judgments. Plaintiffs seek a declaratory judgment that the Helms Amendment violates the United States Constitution and is unenforceable.

12. Venue is proper in the District of Columbia District Court under 28 U.S.C. § 1391(b) because the headquarters of the USDA is in this judicial district.

PARTIES

Plaintiff Barn Owls

13. Plaintiffs are **30 barn owls** confined at JHU and subject to federal grant identification number R01 EY027718. Plaintiffs were bred for use and born in laboratories at a mix of three different facilities: JHU, the University of Maryland, and Stanford University. Because of the Helms Amendment, experimenters have free license to inexpertly cut into Plaintiffs' skulls and screw metal devices into their heads. Experimenters confine Plaintiffs tightly for up to 12 hours straight and bombard them with jarring and harmful bursts of lights and sounds. The electrodes inserted into Plaintiffs' brains via an opening in their skulls are moved to different locations within their brains, causing severe and debilitating mutilation. Those Plaintiffs who are so significantly mutilated that they will no longer be of use will be killed before the experiments are complete. When the experimenters finish, they will kill all remaining Plaintiffs.

Next Friends PETA, Wasserman, Weidgenant, and Lynch

14. **PETA** is a Virginia not-for-profit corporation and an animal protection charity exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code. Founded in 1980, PETA is the largest animal rights organization in the world. PETA's mission statement reads: "**Animals are not ours to experiment on**, eat, wear, use for entertainment, or abuse in any other way." PETA's heavy focus on laboratories stems from recognition that laboratories are one of the areas in which non-human animals suffer the most intensely, and for the longest periods. PETA's first victory—in 1981, on behalf of 17 macaque monkeys used for experimentation at the Institute for Behavioral Research in Silver Spring, Maryland—resulted in the first arrest and conviction of an animal experimenter in the U.S. for cruelty, the first confiscation of abused laboratory animals, and the first U.S. Supreme Court victory for non-human animals in laboratories.

15. PETA's advocacy focuses not only on non-human animals used in laboratories generally, but also on Plaintiffs specifically. PETA has dedicated significant resources to Plaintiffs' best interests, including efforts to save Plaintiffs from their fate under the Helms Amendment. PETA's efforts and expenditures include, but are not limited to, the following:

- PETA has filed numerous public record requests intended to uncover, and help it work to end, Plaintiffs' suffering.
- On March 5, 2019, PETA wrote to JHU President Ronald Daniels and JHU Institutional Animal Care and Use Committee ("IACUC") Chair Nancy Ator asking them to meet with PETA scientists so that PETA could share its concerns regarding Plaintiffs' welfare. PETA followed up on March 13, 2019.
- On April 30, 2019, PETA wrote to National Institutes of Health officials to investigate Plaintiffs' conditions of confinement, including how long experimenters harshly restrain Plaintiffs; the extent to which Plaintiffs are afforded housing that permits them to exercise and express natural behavior; the number and nature of the surgical procedures inflicted on Plaintiffs; and the apparent lack of pain medication accompanying these surgical procedures. On November 4, 2019, PETA included these same officials on a letter addressed to the Acting Director of the National Eye Institute asking her to meet with PETA scientists.
- On May 19, 2019, PETA published a podcast episode about Plaintiffs in which a PETA senior vice president, Kathy Guillermo, urged PETA supporters to take action on Plaintiffs' behalf.

- On December 17, 2019, PETA met with Maryland State Senator Benjamin F. Kramer and representatives from JHU with the goal of convincing JHU to end its experiments on Plaintiffs. PETA has remained in regular contact with Sen. Kramer's office.
- On March 17, 2020, PETA once again called on JHU, as part of its response to the COVID-19 pandemic, to allow Plaintiffs to retire to a reputable, PETA-approved sanctuary.
- PETA wrote again to the National Eye Institute and to JHU IACUC Chair Nancy Ator on October 6, 2020 with the information that lead JHU experimenter Shreesh Mysore failed to obtain a permit required under Maryland Code, Natural Resources § 10-902(a) from January 1, 2015 to December 31, 2018. This permit was a legal prerequisite to experimenting on Plaintiffs during that time or using taxpayer funds for that purpose. PETA once again called on these parties to halt experiments on Plaintiffs. On February 23, 2021, PETA wrote to the Maryland Department of Natural Resources ("DNR") regarding the same issue in an effort to have the DNR permanently bar Mysore from obtaining a permit to possess Plaintiffs for experimentation.
- PETA has engaged in vigorous publicity efforts to help rescue Plaintiffs, including public protests. On June 26, 2019, on August 1, 2019, on December 6, 2019, on October 20, 2020, on January 25, 2021, on March 9, 2021, and on April 6, 2021, PETA held rallies at and near the JHU campus attended by both high level PETA staff and PETA supporters. On May 21, 2020 and June 25, 2020, PETA held car protests. On December 9, 2020, socially distanced PETA

supporters unfurled a gigantic banner from a busy overpass near the JHU campus demanding JHU end its experiments on Plaintiffs.

- PETA's publicity efforts extend to media and members of the public. PETA has written to the National Audubon Society, to organizations focused on advocating for those with attention deficit disorders, and to many world-renowned bird experts. PETA has published op-eds and taken out paid advertising in a number of physical, radio, and online outlets, including Facebook, the *Baltimore Sun*, the *Washington Times*, WBAL NewsRadio, JHU student publications, local bus shelters, and mobile billboards on the JHU campus. PETA has issued numerous press releases to targeted media outlets. PETA has sent physical letters to JHU staff members, members of the Baltimore community, and to local animal advocates. PETA representatives have leafleted the JHU campus and spoken to students and alumni of JHU, including members of the student animal rights organization Compassion, Awareness, and Responsible Eating ("CARE").
- PETA has sent email alerts to its membership, and published blog posts and articles, asking members and supporters to take action on Plaintiffs' behalf. To date, more than 252,000 PETA supporters have responded by writing to JHU on Plaintiffs' behalf.

16. PETA has the financial and operational resources, the professional expertise, and the organizational mission to advocate for the right of Plaintiffs to be free from unconstitutional bills of attainder.

17. **Martin Wasserman** served as Secretary of Health and Mental Hygiene for the State of Maryland from 1994 to 1999. He also served on a number of other Maryland state

advisory bodies, including but not limited to the Governor's Executive Council, the Cabinet Council on Criminal and Juvenile Justice, and the State Emergency Medical Services Board. Dr. Wasserman graduated from the JHU School of Medicine with a M.D. in 1968 and from the University of Maryland School of Law with a J.D., with honors, in 1977. He previously served in a number of prominent positions in public health, including as the Executive Director of Medical and Chirurgical Faculty of Maryland, as President of the Public Health Law Association, as President of the National Association of County Health Officials, as the President of the Maryland Association of County Health Officials, as the Director of the Office to End Smoking in Maryland at the Johns Hopkins School of Public Health, and as the Chief Medical Officer and Director for the National Health Services Corps. He was the winner of the Dr. Nathan Davis Award for Outstanding Government Service from the American Medical Association in 1999. In 1990, when Dr. Wasserman was Director of the Health Department for Montgomery County, an initiative he developed—Project Deliver, a public-private partnership to assure that indigent women could deliver their babies in Montgomery County hospitals—won an Innovations in American Government Award from the Ash Institute for Democratic Governance and Innovation at Harvard's John F. Kennedy School of Government.

18. Dr. Wasserman, along with his wife Barbara—also a physician—has advocated tirelessly against needless animal suffering. This includes repeated requests, spanning many years, for JHU to stop using non-human animals in laboratories, as well as prominent public action such as testifying before the United States Senate to urge the phasing out of invasive experiments on non-human animals. These efforts also include advocacy dedicated to the best interests of Plaintiffs. In 2019, Dr. Wasserman requested Sen. Kramer assist in an effort to end

the federal grant that funds the experiments Plaintiffs experience as harsh confinement, torture, and death.

19. **Lana Weidgenant** is a college senior, a public health major at JHU, and a climate justice activist. She is currently a deputy director of Zero Hour, an organization devoted to centering the voices of diverse youth in the global conversation around climate and environmental justice. She has also served as co-president of CARE at JHU. CARE is a university-recognized student organization that advocates for non-human animals, including those subject to experiments at JHU.

20. Ms. Weidgenant has a history of advocacy dedicated to the best interests of Plaintiffs. As a Junior Class Senator in JHU student government, Ms. Weidgenant introduced the Animal Testing Resolution—an effort to force JHU to publicize the number of non-human animals used annually in experiments taking place in JHU facilities, a population that includes Plaintiffs, and to decrease the number of non-human animals subject to experimentation. With CARE, Ms. Weidgenant helped host a symposium on alternatives to animal experimentation that highlighted Plaintiffs’ circumstances. Ms. Weidgenant has also advocated on behalf of Plaintiffs and other non-human animals used in JHU laboratories with other members of the student body and in conversation with the JHU student newspaper. On March 8, 2021, the JHU student newspaper published a letter to the editor authored by Ms. Weidgenant. This letter highlighted the experiments inflicted on Plaintiffs, the use of JHU and taxpayer money to fund these experiments, and that the conditions of Plaintiffs’ confinement and torture prevents these experiments from yielding results of benefit to humans. The letter culminated in a request to end Plaintiffs’ deprivations “immediately.” During the rest of her senior year and beyond, Ms. Weidgenant plans to continue advocating for Plaintiffs.

21. **Evanna Lynch** is an award-winning animal welfare activist and actor. In her former capacity, Ms. Lynch has, among other efforts, campaigned against the commercial transport of cattle across national borders, against the inhumane treatment of endangered elephants and other captive non-human animals used for entertainment, against the dog and cat meat trade, and for veganism. Lynch is the founder and host of *The ChickPeeps*, a podcast devoted to vegan lifestyle, ethics, and activism. Ms. Lynch's work extends to non-human animals used in laboratories. In 2018, Ms. Lynch appeared in a video produced by PETA in which she underwent simulated laboratory experiments of the kind routinely performed on non-human animals. Ms. Lynch operates her own beauty subscription business, Kinder Beauty Box, which sources cruelty-free products that do not rely on experimentation on non-human animals.

22. Ms. Lynch's history of advocacy includes efforts dedicated to the best interests of Plaintiffs. Among her starring roles was the character Luna Lovegood in the *Harry Potter* film franchise; Ms. Lynch credits *Harry Potter* for spurring her awareness of owls, including their intelligence and emotional capacity. Ms. Lynch applied this knowledge in writing a personalized letter to JHU President Ronald Daniels on October 19, 2020 asking him to end experiments on Plaintiffs. Ms. Lynch explained that there can be no ethical justification for the "vicious treatment" and "grotesque cruelty" inflicted on Plaintiffs, who in their natural environments would have territories that span several miles. She called particular attention to not only the gruesome details of the experiments and vivisection, but also that these experiments cannot yield human-relevant results, that Plaintiffs "live under fluorescent lights in an enclosure the size of a walk-in closet," and that Plaintiffs will all eventually be killed. Ms. Lynch has also advocated for Plaintiffs with her millions of social media followers and fans, calling on them to help end Plaintiffs' torture.

23. PETA, Martin Wasserman, Lana Weidgenant, and Evanna Lynch bring this action on behalf of, and as next friends to, Plaintiffs pursuant to Rule 17(c) of the Federal Rules of Civil Procedure because Plaintiffs cannot vindicate their rights effectively except through appropriate representatives. Upon information and belief, Plaintiffs' circumstances—confinement in a laboratory—entirely preclude the appearance as next friend of anyone with a more direct relationship to Plaintiffs or of the practical representation of Plaintiffs' interests by others similarly situated.

Defendants Vilsack and Shea

24. Defendant **Tom Vilsack** is the USDA Secretary. In that capacity, Mr. Vilsack has responsibility for promulgating and enforcing AWA standards that govern the minimization of pain, humane handling, care, treatment, and transportation of non-human animals by research facilities. This includes requirements that research facilities consider alternatives to any procedures likely to produce pain to or distress in non-human animals, including Plaintiffs.

25. Defendant **Kevin Shea** is the administrator of APHIS. Under the USDA's AWA regulations, Mr. Shea has responsibility for overseeing the enforcement of the AWA at regulated facilities. This responsibility includes maintaining records, conducting inspections of regulated facilities, and reviewing the premises, records, husbandry practices, veterinary care, and animal handling procedures at regulated facilities to ensure non-human animals are receiving humane care. APHIS inspects research facilities that use regulated non-human animals—including JHU—at least once a year.

GENERAL ALLEGATIONS

I. Barn Owls, Including Plaintiffs, Are Sensitive, Intelligent Individuals for Whom the Deprivations of the Helms Amendment Constitute Punishment

26. Barn owls are highly sensitive and intelligent creatures, with complex communication systems and cooperative social structures.

27. Barn owls form communities all over the United States, including in grasslands, forests, and even cities. These communities are built from a variety of social bonds. Pairs of male and female barn owls are typically monogamous, and often mate for life. They often use the same nest site every year and have elaborate courtship rituals—such as courtship flights, calls, and offerings of food—to reestablish their pair bond every spring. Adult barn owls live in home ranges that overlap with not only their mate but also other individuals and pairs of barn owls. In the wild, these ranges can extend for miles.

28. Altruism—behavior in which an individual provides another with a benefit, at cost to themselves—and cooperation—behavior in which individuals work in concert for mutual benefit—shape owl social relationships. During the early days of nesting, when barn owl hatchlings are unable to maintain their own body temperatures, the father provides all of the food for the family. Female barn owls sometimes co-parent with other barn owl mothers. Young owls groom each other, and share food with their smaller siblings. Young, nesting barn owls huddle together when it is cold, sharing warmth. In one field study, scientists recorded the different calls made by hungry and satiated young, nesting barn owls. When the nestlings heard hungry squawks, they delayed eating by an average of half an hour in order to give their hungriest nest-mates a chance to eat first. When they heard satiated squawks, they ate more quickly.

29. Owls, like humans, can be more or less fearful, shy, or outgoing. Barn owl mothers and fathers can differ in their responsiveness to their offspring begging for food, with

one parent or the other showing a stronger tendency to feed the begging offspring. Many barn owls are highly social, starting from a young age. Barn owls express their needs and desires to each other through their own language, consisting of a variety of complex, context-specific sounds. And, as described above, even nestlings can vocally communicate to one another about their relative hunger.

30. Owls have also demonstrated high intelligence. They are among the rapidly increasing number of bird species that researchers have observed using tools. For example, researchers have observed owls collecting dung and using it as bait to attract beetles, a favorite source of food.

31. Barn owls bred and reared in laboratories have individual worth and needs just like other barn owls.

32. Plaintiffs are, or directly descend from, barn owls bred at laboratories at JHU, the University of Maryland, or Stanford University. Many were boxed and shipped overnight from Palo Alto to Baltimore. Like all of their wild-born barn owl peers, they are each individuals with distinct personalities. Yet, as “birds . . . bred for use in research,” 7 U.S.C. § 2132(g), they are sentenced to harsh confinement, torture, and death by the Helms Amendment.

II. The Helms Amendment Singles Out and Inflicts Unconstitutional Punishment on Plaintiffs Via Experiments They Experience as Harsh Confinement, Torture, and Death

33. Because of the Helms Amendment, Plaintiffs experience punishment via torture, harsh confinement, and death.

34. Plaintiffs are confined in a JHU laboratory—the conditions of which, upon information and belief, do not provide species-appropriate housing, including sufficient space for natural social and physical behavior, exercise, and movement.

35. There, based on information and belief, they are or will be restrained for up to 12 hours at a time, subjected to multiple torturous surgical procedures, bombarded with harmful visual and auditory stimuli while being held in a head-fixation device, and ultimately killed.

36. At an early stage of Plaintiffs' confinement, their skulls are cut open by inexperienced students and other non-surgeon laboratory personnel. These ad-hoc vivisectors cut into the skin and muscle of Plaintiffs' heads and drill into Plaintiffs' skulls, creating a hole that they then cover with a plastic cap glued to the skull to give experimenters easy access to Plaintiffs' brains. They then install head bolts in Plaintiffs' skulls. During subsequent "surgeries," they will insert recording equipment and electrodes into Plaintiffs' brains.

37. Inserting electrodes into Plaintiffs' brains is a complex procedure. To insert an electrode, it must first pass through three protective membranes, including a tough outermost membrane enveloping the brain (the dura mater). Avoiding arteries and veins requires skill and care. As an electrode is inserted, ruptured, severed, and pulled vessels lead to bleeding, serum protein leakage, and infiltration of blood cells. An electrode can also tear and rupture cell bodies and processes, and cause tissue displacement.

38. Experimenters intend students' trial-and-error during these procedures to be part of, per experimenters' grant application, the students' "learning process."

39. Plaintiffs have bolts attached to their skulls to hold their heads in a fixed position within a specially designed apparatus—known to experimenters as an electrophysiology rig, but experienced by Plaintiffs as just one of many torture devices.

40. Experimenters then place Plaintiffs in restraints such as plastic tubes and jackets. Experimenters designed these confinements to prevent Plaintiffs from engaging in any movement.

41. Plaintiffs' eyelids are then clamped open. Experimenters insert earphones into Plaintiffs' ear canals five millimeters from their eardrums.

42. Experimenters then bombard Plaintiffs with simultaneous bursts of competing, and unnatural, visual and auditory stimulation. The visual stimuli are blasted at Plaintiffs using a giant 65-inch screen. All of this is done so that experimenters can measure activity in Plaintiffs' brains in attempts to determine how their brains sort between competing stimuli. Throughout, experimenters poke and prod Plaintiffs' brains with electrodes. Measurements are taken both before and after Plaintiffs' brains are injected with various experimental drugs.

43. The process of taking these measurements from Plaintiffs is extremely time consuming. Because Plaintiffs struggle and kick against their restraints, experimenters have to administer tranquilizers to calm them down when they become too frantic. Experimenters reposition the electrodes for various phases of the experiments, which mutilates Plaintiffs' neural tissue.

44. Experimenters acknowledge in their grant application that these procedures cause pain to Plaintiffs. There is no evidence that Plaintiffs receive appropriate pain medication.

45. At the end of the experiments, all Plaintiffs will be summarily killed. Experimenters may kill Plaintiffs earlier than that if Plaintiffs become unusable—that is, if experimenters damage Plaintiffs so severely that Plaintiffs' anticipated distress, infection, illness, or difficulty engaging in physical and mental activity becomes too persistent. Ultimately, however, the Helms Amendment encourages experimenters to consider all birds bred for use in laboratories as cheap, disposable instruments. JHU experimenters will treat all Plaintiffs as such.

III. Plaintiffs' Suffering Imposed Under the Helms Amendment Serves No Nonpunitive Purpose

46. Experimenters' stated reason for the harms they inflict on Plaintiffs is to determine how humans, including those with attention deficit disorders, process competing information. However, because these experiments are flawed in both design and execution, they fail to further any nonpunitive purpose and serve only to punish.

47. A major reason why experimenters consider barn owls like Plaintiffs suitable for such experiments has nothing to do with any direct inferences that can be made to humans. As the JHU experimenters admit, birds are easy to study because "their midbrain is organized in a way that makes it relatively easy to track the activity of specific neurons." And they use owls, specifically, because it is convenient. In their grant application, the experimenters explained that "because most of the recent neurophysiological findings on stimulus competition in birds have come from work done in owls," barn owls provide a large data set for studies such as theirs to build on.

48. Yet the chief attributes the experimenters probe—Plaintiffs' vision and hearing—are ones not shared between humans and barn owls. Barn owls are nocturnal animals whose vision, hearing, and behavior differ significantly from those of humans. Their eyes are adapted to low-light conditions. Barn owl hearing is orders of magnitude more acute than human hearing. While human ears are symmetrically located on either side of the head, the asymmetrical outer ears of barn owls work in tandem with a ruff of sound-reflective feathers (lacking in humans) that help direct sound to barn owls' ear openings. Additionally, humans rely on cortical areas for auditory and visual attentional control, while experimenters are only probing Plaintiffs' sub-cortical neural areas. In sum, Plaintiffs' auditory and visual sensory and attentional processes differ significantly from how humans see and hear.

49. Laboratory environments and routine experimental procedures render experimentation on Plaintiffs unproductive and misleading. At JHU, Plaintiffs suffer acute and chronic stress. Studies of birds in captivity have documented marked changes in stress hormone production, as well as immune-system dysfunction in response to laboratory environments. Alterations in stress hormone levels are known to harm birds' cognitive abilities, including spatial learning and memory. Similarly, hyperinflammation, documented in captive birds, impairs brain function and cognition in human and non-human animals. Restrictions in space, alterations in lighting, and limited, experimentally controlled sights and sounds will further alter Plaintiffs' vision and hearing. Birds reared in captivity routinely exhibit reduced overall brain volume, reduced brain volume in regions critical for processing spatial information, and atypical hippocampal morphology and spatial processing abilities. This all means that study of Plaintiffs will not capture species-typical auditory and visual processes.

50. Lead JHU experimenter Shreesh Mysore acknowledged a similar limitation in a virtual event at the Albert Einstein College of Medicine in September 2020, when he stated that "there are lots of reasons that are emerging now . . . indicating" that there could be significant differences in examining "freely-behaving animals" and "head-fixed animals," a category that includes Plaintiffs. Mysore stated that these differences could cause experimenters to "misinterpret what's happening, or misunderstand."

51. Finally, attention deficit disorders in humans predominantly involve dysfunction in high order brain functions, including top-down executive functions such as goal-directed filtering and inhibition processes—not the lower-order processes experimenters study.

52. Given these facts, invasive and artificial experiments on Plaintiffs will not yield conclusions that experimenters can apply in a useful way to humans. The only thing

experimenters accomplish is that Plaintiffs experience harsh confinement, torture, and death—punishment.

IV. The Helms Amendment Is the Cause of the Treatment Plaintiffs Experience as Harsh Confinement, Torture, and Death

53. As amended in 1970, the AWA was intended “to insure that certain animals intended for use in research facilities . . . are provided humane care and treatment, it is essential to regulate the transportation, purchase, sale, housing, care, handling, and treatment of such animals by persons or organizations engaged in using them for research or experimental purposes.” PL 91-579, 84 Stat. 1560 (Dec. 24, 1970). These protections applied to any “warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes.” *Id.*

54. Congress intended the AWA to benefit all birds, mice, and rats. As explained in a letter authored by Sen. Bob Dole, “[w]hen Congress stated that the AWA applied to ‘all warm-blooded animals,’ we certainly did not intend to exclude 95 percent of the animals used[.]” 147 Cong. Rec. H3744-04 (June 28, 2001), at H3768. Sen. Dole added: “I am aware of efforts by opponents of animal welfare to prevent coverage of birds, mice, and rats as detrimental to research. This notion is preposterous.” *Id.* Vindicating the purpose of the AWA, the USDA committed in 2000 to initiating and completing a new rulemaking for the benefit of birds, mice, and rats in accordance with the Administrative Procedures Act. *Id.*

55. In 2002, Sen. Jesse Helms introduced the Helms Amendment in the United States Senate. Sen. Helms did so with a cruel, sarcastic floor speech during which the virulent, decades-long opponent of the civil rights movement, drawing on his “sense of outrage,” criticized the “so-called ‘animal rights’ crowd” and concluded by calling on his colleagues to “deliver a richly deserved rebuke.” 148 Cong. Rec. S612-01 (Feb. 12, 2002), at S617. While he paid lip service to

“life-saving research in laboratories all over America,” Sen. Helms quickly pivoted to demeaning Plaintiffs and similarly-situated laboratory-born birds, mice, and rats as “food for reptiles” who, in other contexts, may be “a tiny bulge digested inside an enormous snake” or subject to “extermination” if found in his basement. *Id.* (“I suspect Mrs. Helms would have a word or two for me if I forgot to phone the exterminator upon finding evidence that a mouse has taken up residence in our basement.”). The Congressional Record evinces no further floor debate or discussion.

56. Sen. Helms’ proposal provided that “[s]ection 2(g) of the Animal Welfare Act (7 U.S.C. 2132(g)) is amended by striking ‘excludes horses not used for research purposes and’ and inserting the following: ‘excludes birds, rats of the genus *Rattus*, and mice of the genus *Mus* bred for use in research, horses not used for research purposes, and’.” 148 Cong. Rec. S426-02 (Feb. 6, 2002), at S431.

57. The Helms Amendment as codified, unchanged, bars Defendant Tom Vilsack from defining the term “animal” to include “birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research.” 7 U.S.C. § 2132(g).

58. Because of the Helms Amendment, the definition of “[a]nimal” found in AWA regulations states “[t]his term excludes birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research.” 9 C.F.R. § 1.1.

59. If not for the Helms Amendment, experimenters could not inflict precisely those punishments that Plaintiffs experience from birth to death.

60. For example, under AWA regulations, IACUCs must consider, and carefully document, alternatives to all procedures on regulated non-human animals that may cause discomfort, distress, or pain, or more than momentary or slight pain and distress. 9 C.F.R. §§

2.31(d)(1)(i), (ii). There is no shortage of viable and humane alternatives for studying attentional deficits in humans. Alternatives include neuroimaging techniques and computational and mathematical models that successfully measure, map, and model how human sensory systems respond to stimuli, the attentional networks in the human brain, complex interactions between cortical and subcortical neural regions during auditory and visual stimulus selection in humans, and aberrant information processing by humans in attention deficit disorders. Upon information and belief, no JHU IACUC seriously and sufficiently considered such alternatives in a manner that would satisfy the AWA.

61. AWA regulations include specific rules governing the transportation, housing, exercise, diet, and general husbandry of numerous taxonomic units of non-human animals such as dogs and cats, *see* 9 C.F.R. §§ 3.1-3.19, guinea pigs and hamsters, *see* 9 C.F.R. §§ 3.25-3.41, rabbits, *see* 9 C.F.R. §§ 3.50-3.66, non-human primates, *see* 9 C.F.R. §§ 3.75-3.92, marine mammals, *see* 9 C.F.R. §§ 3.100-3.118, and “warm-blooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, non-human primates, and marine mammals,” *see* 9 C.F.R. §§ 3.125-3.142. USDA APHIS animal care inspectors under the direction of Defendant Kevin Shea, including veterinary medical officers, routinely visit JHU to enforce, and issue citations for violations of, these regulations.

62. If not for the Helms Amendment, Plaintiffs would either be the beneficiaries of those rules codified at 9 C.F.R. §§ 3.125-3.142, or the beneficiaries of new taxonomic unit-specific rules. Instead, to cite just one of many examples, experimenters can confine Plaintiffs in enclosures or devices that do not meet the AWA’s requirements for sufficient space for normal social and postural adjustments with adequate freedom of movement.

63. If not for the Helms Amendment, the AWA would bar experimenters from inflicting a number of other punishments on Plaintiffs. For example:

- The AWA would require that all procedures performed on Plaintiffs include appropriate sedatives, analgesics, or anesthetics, unless experimenters can justify the withholding of such agents as scientifically necessary. 9 C.F.R. § 2.31(d)(1)(iv)(A). Instead, available documents show no provision for appropriate pain medication by experimenters on Plaintiffs' behalf.
- The AWA would require any experimenters performing surgical procedures on Plaintiffs to be "appropriately qualified and trained in those procedures." 9 C.F.R. § 2.31(d)(1)(viii). Instead, unqualified, inexperienced student experimenters' trial-and-error is part of the torture Plaintiffs experience.
- The AWA would require Plaintiffs not "be used in more than one major operative procedure from which [they are] allowed to recover" unless justified by scientific necessity, in writing. 9 C.F.R. § 2.31(d)(1)(x)(A). Instead, Plaintiffs are subject to repeated, torturous procedures until their deaths.
- The AWA would require Plaintiffs' deaths to be "humane." 9 C.F.R. § 2.31(d)(1)(xi). Instead, experimenters can, and will, summarily kill all Plaintiffs for no reason other than experimenters' own convenience.

V. Plaintiffs' Suffering Under the Helms Amendment Is Not Unique

64. Plaintiffs are just a small number of those who are singled out under the Helms Amendment. Like Plaintiffs, these laboratory-born non-human animals experience punishment—via torture, harsh confinement, and death—because of the Helms Amendment.

65. Laboratories across the country routinely inflict many of the specific punishments described above on non-human animals. Because Congress sentenced them under the Helms Amendment, it is common for these thinking and feeling individuals to, without any protection under federal law, be deprived of everything that is natural and important to them; electrocuted; paralyzed; suspended by their extremities; overcrowded with traumatized cage-mates; purposefully starved and dehydrated; have body parts amputated without medical necessity; have their eyes gouged; have painful conditions such as oozing scabs, open sores, ulcerated or burst tumors, or distended or enlarged organs neglected; and be painfully and needlessly killed.

CAUSE OF ACTION

(Bill of Attainder)

66. Plaintiffs incorporate by reference all prior allegations of this Complaint.

67. The Bill of Attainder Clause of the United States Constitution states: “No Bill of Attainder . . . shall be passed.” U.S. Const. art. I, § 9, cl. 3. As such, it is a strict prohibition on Congressional action.

68. By plain text, this Constitutional prohibition applies without limitation to any particular group which may be targeted by bills of attainder—be they individual humans, groups of humans, inanimate corporations, or non-human animals. For example, the Second Circuit has held the Bill of Attainder Clause extends to non-human corporate persons. *Consol. Edison Co. of New York v. Pataki*, 292 F.3d 338, 346-47 (2d Cir. 2002). The Supreme Court and other U.S. courts of appeal, including the D.C. Circuit, have also taken for granted in dicta that the Bill of

Attainder Clause applies to corporations. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 239 n.9 (1995); *Kaspersky Lab, Inc. v. U.S. Dep't of Homeland Sec.*, 909 F.3d 446, 453 (D.C. Cir. 2018); *SeaRiver Mar. Fin. Holdings, Inc. v. Mineta*, 309 F.3d 662, 668 n.3 (9th Cir. 2002); *Club Misty, Inc. v. Laski*, 208 F.3d 615, 617 (7th Cir. 2000); *BellSouth Corp. v. FCC*, 144 F.3d 58, 63 (D.C. Cir. 1998); *SBC Commc'ns., Inc. v. FCC*, 154 F.3d 226, 234 n.11 (5th Cir. 1998).

69. Application of the Bill of Attainder Clause to non-human animals vindicates the framers' and the Supreme Court's understanding that "the Bill of Attainder Clause was intended not as a narrow, technical . . . prohibition," *Brown*, 381 U.S. at 442, but as a means to vindicate the rights of "those who are peculiarly vulnerable." *South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966). In the sense that species or taxonomic units of non-human animals present "easily ascertainable" classes, *Lovett*, 328 U.S. at 315–16, consisting of individuals whose status is "irreversible" regardless of their choice of conduct, *Selective Serv. Sys. v. Minnesota Pub. Interest Research Grp.*, 468 U.S. 841, 848 (1984), they present a paradigmatic class of "those who are peculiarly vulnerable."

70. There is no established Constitutional barrier to the vindication of generally-applicable rights on behalf of non-human animals. *See, e.g., Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1175 (9th Cir. 2004) (holding that "Article III does not compel the conclusion that a statutorily authorized suit in the name of an animal is not a 'case or controversy'"); *Tilikum ex rel. People for the Ethical Treatment of Animals, Inc. v. Sea World Parks & Entm't, Inc.*, 842 F. Supp. 2d 1259, 1262-64 (S.D. Cal. 2012) (recognizing that, although contemporary sources and the *Slaughter-House Cases* compel a conclusion that the concepts of "slavery" and "involuntary servitude" in the Thirteenth Amendment refer only to humans, "that is not to say that animals have no legal rights" and leaving open the question of whether other "constitutional

amendments” and “fundamental constitutional concepts” may extend to non-human animals). *Cf. People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 150, 998 N.Y.S.2d 248, 250 (2014) (“The lack of precedent for treating animals as persons for habeas corpus purposes does not, however, end the inquiry[.]”).

71. The Helms Amendment to the AWA singles out specified groups of laboratory-born non-human animals, including Plaintiffs, in several ways. For example, the Helms Amendment forbids Defendants from enforcing existing AWA regulations, requirements or standards—or promulgating and enforcing new regulations, requirements, or standards—governing the minimization of pain and distress, humane handling, care, treatment, and transportation of non-human animals by research facilities for the benefit of Plaintiffs only because they are “birds . . . bred for use in research.” 7 U.S.C. § 2132(g).

72. The Helms Amendment applies to Plaintiffs with requisite specificity. The Bill of Attainder Clause “stand[s] for the proposition that legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them” are prohibited by the Constitution. *Lovett*, 328 U.S. at 315–16. This doctrine has always encompassed laws “directed against a whole class,” *Cummings v. Missouri*, 71 U.S. 277, 323 (1866), including “relatively large groups” identified “by description rather than name.” *Brown*, 381 U.S. at 461.

73. The Helms Amendment constitutes punishment as to Plaintiffs by inflicting exactly that category of immediately suspect deprivations reflected in the infamous history of bills of attainder: harsh confinement (imprisonment), torture, and death. For example, the Helms Amendment:

- Subjects Plaintiffs to torturous surgeries in which experimenters, including inexperienced students and other non-surgeons, cut into their skulls and screw metal devices onto their heads.
- Subjects Plaintiffs to torturous confinement in which Plaintiffs are physically restrained for up to 12 hours straight and bombarded with jarring and harmful bursts of sights and sounds.
- Subjects Plaintiffs to torturous experimental procedures in which the electrodes inserted into their brains are moved to different locations in their brains, causing severe and debilitating mutilation.
- Subjects to an early death sentence those Plaintiffs who are so significantly mutilated that they will no longer be of use.
- Ultimately subjects all Plaintiffs to early death sentences for no other reason than that the experiments they experience as torture no longer benefit experimenters.

74. These horrors are punishment under the Bill of Attainder Clause. The Supreme Court has held that deprivations like these, such as harsh confinement, torture, and death, which recall “[t]he infamous history of bills of attainder,” provide the “starting”—and potentially dispositive—point in the inquiry of whether a law inflicts punishment under the Bill of Attainder Clause. *Nixon*, 433 U.S. at 473. While the question of applying the Bill of Attainder Clause to non-human animals may be novel, Plaintiffs are seeking protection from the “very particular thing”—a death sentence—a bill of attainder meant “[t]o subjects of the British crown.” *Kaspersky Lab, Inc.*, 909 F.3d at 454-61. *See also Foretich*, 351 F.3d at 1218, applying *Nixon*, 433 U.S. at 473 (explaining that the “ready checklist of deprivations and disabilities so disproportionately severe and so inappropriate to nonpunitive ends that they unquestionably have been held to fall within

the proscription of Art. I, § 9” provided by English and United States history “includes sentences of death”).

75. For this reason, the Helms Amendment’s imposition of “these forbidden deprivations,” *Nixon*, 433 U.S., at 475, is sufficient to trigger the protections of the Bill of Attainder Clause. Yet while consideration of legislative function and intent are required only in the analysis of “new burdens and deprivations,” *id.*, these alternative tests also compel a decision in Plaintiffs’ favor.

76. The punishments experienced by Plaintiffs fail to further any nonpunitive purpose. This functional test requires that the Helms Amendment must “reasonably . . . further nonpunitive legislative purposes” when “viewed in terms of the type and severity of burdens imposed.” *Nixon*, 433 U.S. at 475-76. “[W]here there exists a significant imbalance between the magnitude of the burden imposed and a purported nonpunitive purpose, the statute cannot reasonably be said to further nonpunitive purposes.” *Foretich*, 351 F.3d at 1221. These nonpunitive aims and the “means employed to achieve those ends” must be “‘sufficiently clear and convincing’ before a court will uphold a disputed statute against a bill of attainder challenge.” *Id.* It is not enough to serve a purported purpose if the deprivations imposed are not “rational and fair.” *Id.* at 1222. The deprivations suffered by Plaintiffs under the Helms Amendment are the most severe imaginable, and are irrational and unfair—at best, “merely incidental to legitimate purposes,” *id.* at 1223—because they cannot yield conclusions that experimenters can apply in a useful way to humans. It is also highly relevant to this analysis that the Helms Amendment includes no “protective measures designed to safeguard the rights of the burdened individual[s] or class.” *Id.* at 1222.

77. The legislative record of the Helms Amendment evinces a Congressional intent to punish. It is appropriate under this motivational test to consider legislative history, including “expressed contempt” spoken into the Congressional record by bill sponsors. *Id.* at 1225. The Helms Amendment presents little ambiguity—its sponsor and namesake, Sen. Helms, introduced it with “outrage,” compared Plaintiffs and others in their position to “food for reptiles” who merit “extermination,” and asked his colleagues to join him in “deliver[ing] a richly deserved rebuke” to Plaintiffs’ advocates. 148 Cong. Rec. S612-01 (Feb. 12, 2002), at S617.¹ This evident Congressional intent to punish, together with the immediately suspect punishments at issue and the absence of sufficient nonpunitive legislative purpose, confirms that the Helms Amendment inflicts punishment within the meaning of the Bill of Attainder Clause.

78. As legislation that selectively targets groups of individuals, including Plaintiffs, and imposes punishment on them, the Helms Amendment is an unconstitutional bill of attainder.

PRAYER FOR RELIEF

Plaintiffs pray for relief as follows:

1. A declaratory judgment that the Helms Amendment violates the United States Constitution’s Bill of Attainder Clause and is unenforceable;
2. Issue a permanent injunction restraining Defendants, and all their officers, employees, or agents, from violating the U.S. Constitution by not enforcing existing AWA regulations and requirements governing the minimization of pain and distress, humane handling,

¹ It is not necessary that Congress have intended to inflict literal retribution against Plaintiffs or other birds, mice, or rats. *Brown*, 381 U.S., at 458-59. (“It would be archaic to limit the definition of ‘punishment’ to ‘retribution.’ Punishment serves several purposes . . . Historical considerations by no means compel restriction of the bill of attainder ban to instances of retribution.”).

care, treatment, and transportation of non-human animals by research facilities for the benefit of groups specified by the Helms Amendment;

3. Order Defendants to promulgate and enforce standards under the AWA governing the minimization of pain and distress, humane handling, care, treatment, and transportation of non-human animals by research facilities for the benefit of groups specified by the Helms Amendment;

4. Award reasonable costs and attorneys' fees; and

5. Order any other such relief as this Court deems just.

Respectfully submitted,

Plaintiffs and Next Friends
By Counsel

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