



Animal Defenders International

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May 26, 2016

Pittsburgh Mayor Peduto
Pittsburgh City Council President Kraus
Council Members Harris, Kail-Smith, Rudiak, O'Connor, Lavelle, Gross, Gilman, and Burgess

Via email to william.peduto@pittsburghpa.gov, Bruce.Kraus@pittsburghpa.gov, Darlene.Harris@pittsburghpa.gov, Theresa.Kail-Smith@pittsburghpa.gov, natalia.rudiak@pittsburghpa.gov, coreyoconnor@pittsburghpa.gov, daniel.lavelle@pittsburghpa.gov, deborah.gross@pittsburghpa.gov, ricky.burgess@pittsburghpa.gov, daniel.gilman@pittsburghpa.gov, asbley.robinson@pittsburghpa.gov, and lara.sullivan@pittsburghpa.gov

RE: ADI's response to claims and challenges raised at the 5/24/16 City of Pittsburgh's public hearing on proposed ordinance 2016-0370 to ban traveling wild animal performances

Dear Mayor Peduto; Pittsburgh City Council President Kraus, and Councilpersons Harris, Kail-Smith, Rudiak, O'Connor, Lavelle, Gross, Gilman, and Burgess:

[Animal Defenders International](#) thanks you for the opportunity to respond to the claims and challenges raised at the May 24, 2016 City of Pittsburgh public hearing on proposed ordinance 2016-0370 to ban traveling wild animal performances. We are certainly available and happy to provide additional information, to meet with you in person or otherwise to answer your questions, to work with you on effective language, or to discuss this matter further. Again, our thanks to you for considering these long-suffering animals and the safety of your citizens. Please let me know if you have any trouble opening the associated hyperlinks. (While the cases cited herein are hyperlinked, I am happy to provide you copies of my highlighted pdf versions as well, upon request. Other referenced items have been provided at [this link](#).)

We look forward to working with you on this important issue.

ADI's response to claims and challenges raised during the May 24, 2016 public hearing:

- Re: the claim that the proposed ordinance is “overreach” “beyond the City’s authority,” “legally flawed,” “unconstitutional,” or otherwise illegal as contrary to First Amendment free speech rights and/or the Commerce Clause, because it emphasizes regulating some, but not others or otherwise because “Council doesn’t have the right to decide.”

This claim is absolutely incorrect, contrary to longstanding constitutional jurisprudence. There is extensive caselaw supporting the City’s authority and duty to legislate under its police powers in the interest of its citizens’ public health, safety, welfare, and morals. Such regulations may apply differently to different entities or persons, and will withstand constitutional challenge so long as they bear some reasonable relation to the government purpose and are not wholly arbitrary. The government is afforded wide latitude here, and regulation will not be invalidated unless there is *invidious discrimination*. See Addendum A for a small selection of the well-settled law on this point. Further supporting the legal basis for such laws, note that the *American Bar Association* looked at this issue and passed its *Resolution 105* urging local, state, and federal prohibitions against possession and import of wild animals.¹ In so doing, it flatly rejected a proposed circus animal exemption. The *NYC Bar Committee on Animal Law* also recommends a ban on the use of wild and exotic animals in traveling performances, describing such acts are inhumane and dangerous to the animals, workers, and the general public.² Their recommendation cites several reports supporting that animals subjected to the traveling

performance business model suffer “*extreme physical coercion and abuse*”; are “*detrimental to animal physical and psychological health and welfare*”; and that “*law enforcement cannot properly monitor violations of animal-related laws due in part to the transitory nature of traveling circuses.*”³

- Re: the claim that the proposed ordinance is “*not scientifically based*”

ADI has previously provided the Council (and does so again here) cited peer-reviewed studies, including [one study which reviewed all peer-reviewed studies to date on the matter in North America and Europe](#), and which concluded that wild animals enduring the traveling performance business model are “*inevitably impoverished.*”⁴ A [similar study repeated this effort in 2009](#) with the same results.⁵ Pro-zoo advocate, former AZA Director and *William Conway Chair of Conservation & Science*, Dr. Michael Hutchins stated:

There is no way that even the best of traveling circuses can provide the kinds of conditions that will allow captive elephants to thrive.⁶

Stanley Johnson, Conservation Ambassador for the *United Nations Environment Programme*, stated:

I have worked to conserve and protect wildlife for many years, and it is of grave concern that efforts to safeguard these same species in the wild are being undermined by those who continue to use them for cheap tricks, despite the opposition.⁷

According to Harvey Locke, President of the *British Veterinary Association*:

The welfare needs of non-domesticated, wild animals cannot be met within the environment of a travelling circus; especially in terms of accommodation and the ability to express normal behaviour. A licensing scheme will not address these issues.⁸

In 2015, the *Federation of Veterinarians of Europe* issued a formal recommendation that:

[A]ll European and national competent authorities ... prohibit ... wild mammals in travelling circuses across Europe ... there is by no means the possibility that their physiological, mental and social requirements can adequately be met.

There is little or no educational, conservational, research or economic benefit derived from the use of wild mammals in travelling circuses that might justify their use. In addition to the welfare considerations, the use of wild mammals in circuses can represent serious animal health and public health and safety risks. These wild mammals can cause physical injury to the public and their keepers and zoonotic disease transmission.

Public polls show that an overwhelming majority of the public backs a ban on wild animals performing in circuses.⁹

- Re: the claims that wild animal performances provide conservation education, which impacts and inspires children or adults to engage in conservation, “*proven to positively influence ideas about conservation*” or “*inspire conservation*”

Beyond the various anecdotal accounts presented at the hearing, there is no scientific support for this assertion. There was one [2007 study by Falk](#), presumably the study referenced during the hearing, that has been widely cited to support such claims, though such references have decreased since a [2010 study identified at least six methodological flaws in Falk’s 2007 work](#) and calls for new study on this question. There is no study that has conclusively established a connection between animal performances and conservation education or inspiration; however, there are two studies (completed in 2010 and 2014)¹⁰ which looked at the question and found zero to minimal impact. Further, these studies concluded that to achieve even minimal impact to inspire conservation education or action, the animal exhibit must: (a) closely approximate an animal’s natural environs and behaviors and (b) be an engaging, interactive exhibit (it was found that most patrons don’t actually participate in interactive exhibits unless they are particularly engaging). Certain progressive zoos have used these studies to improve the conservation impact of their exhibits; however, it’s clear that traveling circuses don’t and cannot satisfy either of these requirements.

Zoo Miami’s Wildlife Ambassador Ron MaGill, in defending the role of zoos in conservation, admitted:

I am not a proponent of animals like tigers jumping through hoops in circuses
 ...
 Are zoos perfect? Absolutely not ... And for zoos to come out and say...
 'We're saving these animals, we're saving these animals for
 reintroduction into the wild.' Bull**** ... The thought of us introducing
 tigers back into the wild is almost ludicrous.¹¹

According to former AZA Director Dr. Michael Hutchins:

Accredited zoos should not tarnish their reputation by exchanging
 animals with circuses or similar entities.
 ...
 The use of threatened or endangered species purely for entertainment
 should be an anathema to serious conservationists.¹²

- At the hearing, a Ringling representative referenced federal law to claim there is *no distinction between a sanctuary, zoo, or circus*, that the law treats zoos, sanctuaries, and circuses the same, and that it’s *unconstitutional to regulate some, but not others*

That assertion is incorrect. (See discussion above and Addendum A for extensive caselaw supporting the constitutionality of local government regulation, even where one may impact certain entities, but not others.) Moreover, there are different regulatory standards and requirements for zoos, sanctuaries, and traveling animal performances, the most obvious being the minimum acceptable space requirements; the level of commercial trade and breeding; and the amount of direct contact between wild animals, workers, and the public. Traveling animal acts are permitted to maintain wild animals for extended periods in significantly less space than that required of permanent facilities. Facilities for traveling acts are temporary and collapsible, and are not required to meet (and logistically cannot meet both the traveling business model and) the structural requirements demanded of permanent facilities. Oversight of permanent facilities is simpler because the regulated entity does not move across jurisdictional boundaries, which is one primary reason USDA oversight is lacking and, in the case of OSHA, precludes any real oversight under the current structure. (See section below on regulatory and oversight issues). Permanent facilities are also beholden to their hometown – visitors that come time and again to facilities can and have demanded such facilities to progress with evolving public perception of what is

or may be appropriate for the animals and for the patrons. This is seen most obviously in the evolution of zoos and sanctuaries over the last century, while traveling animal circuses fiercely cling to their claims of “tradition,” defiantly claiming they’ve done business the same way for 150+ years. Frankly, it’s not a compelling argument to maintain the status quo that long when we’ve learned so much about animals (and a lot of things) in the last 150+ years. Standards are also quite different under the various industry accreditations – [AZA](#), (or [WAZA \(World Association of Zoos and Aquariums\)](#) or [BIAZA \(the British and Irish Association of Zoos and Aquariums\)](#)), [GFAS \(Global Federation of Animal Sanctuaries\)](#), versus the traditional circus organizations such as CFA (*Circus Fans of America*) or EMA (*Elephant Managers Association*). Associations like WAZA, AZA, or GFAS pressure unaccredited entities to improve their standards regardless of whether they actually join as members. Such standards may also become a basis for regulatory provisions, as with the *US Fish and Wildlife Services’* use of what are essentially GFAS standards in its definition of what sanctuaries must meet if they want to qualify for the sanctuary exemption under the *Captive Wildlife Safety Act*.¹³ In one particular case examining an employer's general duties (to provide a safe workplace), following the elephant trampling death of a trainer, OSHA settled with the *Knoxville Zoo*, requiring it to replace its free contact elephant management system with protective containment.¹⁴ The AZA subsequently proposed the same requirement for its members; afterwards, a number of circuses left the AZA for other organizations who continue to allow and promote direct public and worker contact with large mammals and predators. (The 2012 *AZA Lion Care Manual* also strongly recommends against free contact with adult lions “*under any circumstances.*”)

- Re: the claim that the ordinance is “unnecessary” because *there is no cruelty*; “*there is no abuse*”; “*I’ve never seen abuse*”; that wild animals are “*not forced to perform*” but instead “*love performing*” with trainers who “*form unique bonds with the animals*”; that “*animals won’t perform for you if you beat them*”; “*you can’t get an animal to perform if you abuse it*” that only “*positive reinforcement*” is used and “*we treat ‘em like family*”

Firstly, among other standards and data supporting that species’ relationships with their own kind are best, the 2011 *AZA Elephant Standards* make clear that

Interaction between elephant care staff and elephants is not a sufficient substitute for species-appropriate elephant-to-elephant interactions.

Secondly, while it’s not clear what immediate progress can be made between the two sides in this constant back and forth on the question of whether or not abuse is prevalent in this industry, the overwhelming evidence via undercover investigations, agency citations, lawsuits, and first-hand accounts, is that brutality is par for the course. To choose to believe otherwise is to deliberately ignore information that yes, thanks to the internet among other sources, has become widely available, allowing more people to understand that such incidents are not singular. Regardless of how one may feel about the internet, like any information source, it can be verified or undercut. Whatever your position on this point, it’s clear that a growing percentage of the public have accepted there is more than enough evidence, and are choosing to turn away from the violence. If we’ve learned nothing else from the plummeting stock prices of business choosing to ignore this point, it should be that information is today more widely attainable, discernible, and circulating. ADI stands by its undercover investigations, which have revealed horrific industry-wide brutality across North and South America, and Europe, and which have supported legislative and judicial action against cruelty.

Getting an elephant to do what it’s told really requires the elephant to be dominated. ... it’s a near certainty that it’s been trained using punishment, using pain, using very traditional methods that have been with us for a long time, but are not at all elephant friendly. They’re basically cruel.

Peter Stroud, former curator of elephants, *Melbourne Zoo*

Existing welfare laws and association standards (including those of the AVMA and AZA) have not stemmed the violence, and oversight is lacking (see below). For example, one expert witness testifying in the Mary Chipperfield trial (in the UK) insisted that the only way to train camels, who are notoriously difficult, is to beat them. (Camels have killed three Americans in the last two years.)¹⁵

At the public hearing, Mr. Lacey stated that he treats his wild cats *like family* and only trains via positive reinforcement. Mr. Lacey's father, Martin Lacey, owns the *Great British Circus* in the UK, which earned a reputation for cruelty, violence, and deception following a number of incidents exposed by ADI.¹⁶ [ADI undercover footage released in 2013](#), showed tigers being lashed with whips and hit with sticks by Martin Lacey and his daughter, Natasha Lacey, during training.¹⁷ In 2009, [ADI footage captured elephants with the Great British Circus viciously abused, punched and hit with brooms and sticks](#).¹⁸ In 1993, ADI investigated *Gerry Cottle's Circus*, which was eventually taken over by Martin Lacey, and obtained video of a [llama being beaten and a severely disturbed chained elephant](#).¹⁹ Years later, Mr. Cottle "*decided to move on*" and tour with human performances only, stating:

I now support the ban... Times have changed and this issue has to be decided one way or the other. I believe a ban will, in the end, improve the image of circuses in Britain.²⁰

In 1997, ADI investigated *Circus Harlequinn*, run by Martin Lacey with Alex Lacey presenting the lion and tiger act. Alex Lacey's beastman was filmed losing his temper and lashing out at and hitting tigers in a beast wagon. In another sequence, the same beastman loses his temper with a lioness named Narla and hits her in the mouth with a metal bar. Alex Lacey is also filmed jabbing a big cat hard with a stick. During this investigation, ADI also found that *Great British Circus*, including [Alex Lacey, concealed a seriously injured lioness from inspectors](#).²¹ Footage of this investigation is included in [ADP's Ugliest Show on Earth video at this link](#) – warning, the footage is very disturbing – and is included in [ADI's 2011 Report to the UK Parliament](#).²² In 2006, ADI presented information to the UK Parliament on husbandry and the length of time animals were kept in transporters in the *Great British Circus*, including [lions and tigers confined in transporters 27 hours for a journey time of 3 hours 27minutes](#).²³ ADI also found that tigers remained in their beast wagon throughout the winter, even while at the permanent/winter quarters. The *Great British Circus* [represented to the UK Parliament that they did not chain their elephants, yet ADI's round-the-clock video evidence showed that they are chained every day, for up to 11 hours](#).²⁴ Government circus inspection reports released in response to ADI's (Freedom of Information) request revealed big cats at the *Great British Circus* lived the whole year in cages on the back of transporters; tigers gave birth while on tour; and enclosures used to house the big cats were smaller than those deemed acceptable in zoos. These reports also revealed one elephant was "*chronically and obviously lame*," with the inspector noting that she "*should not be expected to do anything other than gentle daily exercise*" until her condition was diagnosed. The report also identified that she had a chronic abscess that "*should be seen by a veterinary surgeon to reassess the condition as soon as possible*." However, the circus disregarded the inspector's advice and the elephant continued to perform, resulting in the inspector later commenting that "*we cannot rely on any verbal agreements in future. We may need to serve you with a notice to ensure that the welfare of this animal is protected*."²⁵ Mr. Lacey performed earlier this year with Ringling in Philadelphia and demonstrated that, despite years of training and a whip in each hand, workers are at risk by powerful predators who nevertheless perform in close proximity to the public. This video shows [Mr. Lacey taking a lion swipe](#) to his hand during the performance.

Contrary to the assertion during the hearing that the "*vast majority*" of organizations comply with regulations and do not employ brutal coercion for compliance, there are numerous records revealing longstanding and widespread incidents of abuse, including even the largest, most recognizable organizations.²⁶ Ringling (FEI), for example, entered a \$270,000 settlement agreement related to USDA violations between 2007 and 2011.²⁷

The extended and severe confinement of these mammals, who would otherwise naturally enjoy vast home ranges, is itself abuse, and drives these animals mad. It is harmful and inconsistent with the species-specific care and containment generally prescribed by the *Animal Welfare Act* ("AWA") and its

implementing regulations. There is substantial and growing evidence that even with the best intentions traveling shows simply cannot provide what these animals need. The *World Association of Zoos and Aquariums* (“WAZA”) opposes the “*keeping and transporting of animals under inadequate conditions, e.g... roadside zoos or circuses/entertainment.*”²⁸

The limited space available in a traveling circus is unsuitable to big cats ... patrolling their large territories in the wild is an essential behavioral drive, thwarted by the limited confines of circus accommodation.

Simon Adams, BSc BVMS MRCVS
Zoo & Wildlife Veterinarian

During transport, animals suffer increased heart rate, raised hormone levels, lowered immunity to disease, weight loss, aggression, and stereotypic behaviors.

TG. Iossa, CD Soulsbury, & S. Harris
*Are wild animals suited to a traveling circus life?*²⁹

- Re: the claim that this is “*unnecessary*” because the industry is “*strictly regulated*” by USDA and there are no public or worker health or safety issues

Federal oversight of traveling animal acts is costly, problematic, and unmanageable. Nominal licensing fees and minimal, inconsistent monetary penalties don’t cover oversight costs; they are largely borne by the American taxpayer.³⁰ Oversight is difficult with the limited number of inspectors and the events’ transitory nature. In 2009, APHIS/USDA had just 97 inspectors who performed over 4300 inspections of more than 2700 exhibitors.³¹

You do not have to inspect every circus or traveling exhibitor that exhibits in your territory

USDA APHIS Animal Care Resource Guide
Exhibitor Inspection Guide, 2004, 17.10.1.

APHIS’ Office of Inspector General (“OIG”) reports note numerous inspector deficiencies including limited to no follow-up to noncompliance citations and failure to consult animal experts to determine if enclosures or barriers are sufficient to protect the public. OSHA inspections generally rely upon self-reporting alone and often by the time a complaint or inspection request is made, the circus has moved on to another jurisdiction. It is not uncommon for the agencies to report their hands are tied once the circus leaves town. The 2010 OIG report identified that for 15% of reviewed traveling exhibitors, “*Animal Care inspectors could not perform timely reinspections to ensure that serious noncompliant items that were identified in previous inspections had been resolved.*”³² OIG also identified that:

APHIS needs to strengthen the inspection process
Safety conditions questioned at 48% of licensed exhibitors observed
Periodic supervision lacking
Failure to identify safety-related deficiencies during inspections
Failure to document conditions & require corrective action
Lack of consistency in safety determinations
Without clear & consistent standards, can’t adequately ensure the safety of the animals or the public

Inspectors did not regularly consult with agency animal expert to determine if an enclosure or barrier was sufficient
Inspectors not always aware of incidents - exhibitor reporting not required
Lacked a process to ensure inspectors were aware of details of incidents at exhibitors' facilities nationwide
Inspectors could not locate traveling exhibitors to conduct critical re-inspections
APHIS Office of Inspector General (2010)

Regional, state, and local agencies don't typically have the benefit of cross-jurisdictional communications or authority; not knowing the history of a particular circus or its animals leaves little context to frame a one-time likely expected look-see. All too often local authorities lacking familiarity or facilities to deal with exotic species defer upstream to federal agencies that nevertheless maintain public safety is not their mandate. Local animal control officers typically don't have the knowledge, facilities, or the funding to evaluate, confiscate, or otherwise deal with exotic animals. If things do go awry, it's the local police who are surprised to discover that they are the ones left to deal with the outfall.

When laid end to end, the records revealed a pattern of injury, illness and fatal accidents - and the repeated failure of federal regulators to intervene, even when their own investigators urged action.

These four-ton, highly intelligent creatures spent much of their lives locked in chains, confined in trains and under constant fear of the bullhook. They were poked, hit, whipped and electrically shocked.

USDA records revealed that agency officials had opened and closed a dozen investigations in as many years. They declined to take action even as complaints about mistreatment mounted, four young elephants succumbed to accidents or illness, and a deadly strain of tuberculosis spread.

A recently retired USDA lawyer conceded during an interview in his home 'It's a tough life.'

Deborah Nelson, *Tracking Animal Mistreatment*
[Investigative Reporters and Editors Journal](#)
University of Maryland (Spring 2013)

At the hearing, several Shriners adamantly noted they'd never been cited for AWA violations. This is certainly admirable; however, under the AWA they wouldn't be, as typically Shrine circuses lease their animals, but do not own them and are not "*exhibitors*" as that term is defined under the AWA. Only an *exhibitor* is responsible for the animals under the AWA, and only the *exhibitor* would be cited for violations. Some circuses also lease animal acts, including, for example, *Kelly Miller Circus*, *Jordan Circus*, and *UniverSoul Circus*. This further complicates oversight where violations do occur, as happened last year when a trainer from a *UniverSoul* show was arrested for cruelty, because the circus can claim, as *UniverSoul* did in that instance, that it is not the exhibitor and therefore is not responsible with regard to the animals.³³

It is foolish to expect that animals living under severe stress, confinement, and abuse will never lash out or try to escape. Unfortunately, there are numerous videos of rampages that did not end well, including, among too many others, elephant rampages in [Hawaii](#),³⁴ [Florida](#),³⁵ [India](#),³⁶ and [Denmark](#),³⁷ and a [lion attack in Peru](#).³⁸ These rampages endangered the general public, and in some cases, members of the public were in direct contact with the animal rampaging.

I have never seen a situation as frightening - or one I was less capable of controlling – than that day the elephant ran wild. The greatest shock to me as a police officer was when I discovered that the owner and trainer ... had absolutely no control over her He had no plan for such an emergency and his only strategy was to keep yelling at me to shoot her. I have discovered that, once an elephant goes out of control, nothing can be done. It is not a predictable or preventable accident. The only thing that can be done – and even this is a danger to the public – is to get a battery of police officers in with heavy weapons and gun the elephant down.

Police officer Blayne Doyle, testifying before Congress
that local law enforcement is incapable of handling an elephant rampage³⁹

One elephant named Tyke injured a groom and killed a trainer named Allan Campbell in Hawaii.⁴⁰ According to Tyke's previous trainer, who spoke on camera in the documentary *Tyke: Elephant Outlaw*, he warned Tyke's owners, Mr. Campbell, and other trainers that Tyke was dangerous, after she first escaped in Altoona, Pennsylvania. A few months later, Tyke reportedly broke her groom's arm in North Dakota. The trainer reports in the documentary that he told Tyke's owners he'd no longer work with her, and that she should not perform for the public, but should be retired to a sanctuary "*where she can just be an elephant.*" He also claimed to have warned the owners and Mr. Campbell not to take Tyke to Hawaii (or anywhere else to perform anymore). Ignoring that advice, Mr. Campbell presented Tyke before a public audience, risking their safety and resulting in the tragic event causing his own death; his groom's injury; stampeding, panicked circus-patrons; and a chase through city streets by local authorities who, after 87 gunshots, finally took Tyke down before horrified local citizens (though she reportedly suffered for hours before dying). Afterwards, the circus publicly claimed there were no indications of prior issues. Neither the Pennsylvania escape, nor the groomer attack (in North Dakota) was reported. As is typically the case, local Hawaii officials noted they relied upon the USDA license to clear Tyke for her performance that evening (though OSHA would be responsible for worker injuries, and neither USDA or OSHA have public safety in their purview). They did not have the benefit, and under our current regulatory structure, neither would Pittsburgh, of knowing Tyke's history or particular stressors.

To read this lengthy list is to realize how common these attacks are, and how using (and in most instances, abusing) animals in circus and zoo performances is arcane and unethical.⁴¹

These are and will remain wild animals. Domestication cannot be trained into an individual animal; it takes certain genotypes and many generations of breeding an entire population of animals, and even then some species cannot be domesticated.⁴² There is no conclusive evidence that wild animals habituate to travel and there's no evidence that familiarity equates to security.⁴³ According to self-proclaimed "*circus historian*" LaVohn Hoh:

No one can actually tame a wild beast no matter how gifted they are, or how much time they spend with their animal.⁴⁴

In 2014, an apparently well-regarded and experienced trainer was killed by an elephant while working in close physical contact.⁴⁵ The trainer reportedly had a 30-year relationship with "*his girls*" - Opal and Rosie – two elephants in their forties who lived in the circus from the time they were taken from the wild in 1969 and 1970. His many years of experience training circus elephants, his later knowledge as a veterinarian working with elephants at the *Bronx Zoo* and as head elephant trainer at an Oregon safari park, and his reportedly close-knit bond and long-term relationship with Opal and Rosie were not enough to prevent his being crushed to death. Unfortunately, there are numerous news reports of worker deaths despite years working and familiarity with the animals (e.g. [tiger kills trainer](#); [tiger kills trainer/circus owner](#); [elephant kills trainer](#); [camel attacked and killed its caretaker, reportedly described as a severely stressed](#)

[circus camel](#)). These attacks occurred in close proximity to other workers and the public, who watched the horror unfold, including 200 Pennsylvania schoolchildren who “*watched in terror*” as a 400-pound tiger killed its trainer.⁴⁶

Traveling shows’ collapsible and temporary facilities also raise serious public and worker safety and health concerns, which are not currently addressed under federal law, although state and local authorities typically reference federal oversight to appease local safety inquiries. Workers and the public are often in close proximity to these wild animals with limited, if any, protections. In 2014, the US Court of Appeals DC Circuit upheld a decision that an animal exhibitor employer violated the (general duty clause under the) *Occupational Safety & Health Act* by exposing animal trainers to recognized hazards despite the employer’s arguments its trainers were qualified, trained in safety procedures, and familiar with the mammal.⁴⁷ In a similar case examining an employer’s general duties, OSHA settled with the *Knoxville Zoo* after the elephant trampling death of a trainer, requiring the zoo to replace its free contact management system with protective containment.⁴⁸

Certain domestic, exotic, or wild animals should be prohibited from exhibition settings where a reasonable possibility of animal contact exists, especially nonhuman primates and certain carnivores
Compendium of Measures to Prevent Disease Associated with Animals in Public Settings,
National Association of Public Health Veterinarians (2013)

No US federal laws address pathogen transmission risk at venues where the public has contact with animals

...

Direct contact with dangerous animals (nonhuman primates, certain carnivores) should be completely prohibited.

Compendium of Measures to Prevent Disease Associated with Animals in Public Settings,
National Association of Public Health Veterinarians (2013)

Circus workers typically have limited if any species-specific training (save perhaps that related to circus tricks), and local venue operators/workers may have no knowledge of the animals’ needs or history. Parents purchasing tickets for their children to take photos with tigers or to ride on an elephant’s back have no way of knowing the animal’s history, training, escape risk, stressors, anxiety level, triggers, injury, illness, or aggression. ADI released video of one elephant’s aggression to another and to her trainers during rehearsal.⁴⁹ This elephant was giving rides to children later the same week; she also escaped in 2014, along with two other elephants, while still wearing their ride saddles.

Handler deaths average one per year ... the most dangerous profession in the country. ... When an elephant attacks, the difference between a close call or minor injury and death is pure luck ...

the elephant in the circus is ...wild.

It is not a domestic animal.

Dr. Joel Parrott, Executive Director Oakland Zoo, testifying before the US House, Judiciary Subcommittee meeting⁵⁰

- Re: the claim that the proposed ordinance risks job loss, and negative impacts to the arena; or to employees who might otherwise work the event:

This claim presumes there can be no other replacement for traveling wild animal performances, despite the descriptions heard at the hearing by the *Consol Center’s* general manager of “*diverse*” entertainment, with a “*lot of different types of events*” already appearing there, including a scheduled human performance circus. Where bans such as this ordinance have gone into effect, and where there is not yet a ban, but the public has largely rejected such acts (as in the UK), these events have been supplanted by other profit-generating, labor-requiring shows. The doom and gloom predictions have not come to pass – alternate events came, jobs continued, and without the safety and health risks to citizens and workers.

Banning the use of wild animals does not have to mean the end of the circus. There are more than 20 human-performance circuses in the US, including some who were once animal exhibitors. Articles in *Forbes Magazine* and *The Wall Street Journal* quote major players in US circuses describing diversification away from "traditional" acts and identifying the primary economic driver in today's circus as being the celebrity clown or "power clown" - not the animals.⁵¹ Recently, Bill Cunningham, owner of *Carden Circus* (the largest animal act supplier for Shriner circuses) retired all its animal acts, citing "immense psychological stress to the animals."⁵²

Circuses must keep up with the modern audience. ... As we look into the future, we see all circuses moving to non-animal productions. Over the last 20 years ... changing public sentiment, performing animal acts have begun to be a thing of the past. So it's up to creative minds to conceive new and entertaining all-human performances...⁵³

Perhaps the most familiar human-performance circus may be *Cirque du Soleil*, which had its first show in 1990 and has now grown to a >\$800 million enterprise Unlike the noted decline in animal circus attendance, these human-performance shows are proliferating worldwide. Human-performance circuses are popular; they require labor, create jobs, and are great fundraisers; and they can bring dollars to local jurisdictions without exposing people (or other animals) to chronically stressed and abused animals.

- Re: the claim this issue is a "radical" notion by "a small minority" of "special interest groups" "pushing an agenda" who will "come for your dog next"

Arguments relying upon insults or stereotyping do not answer or inspire meritorious debate; more often, one's reliance upon such tactics merely reflects a defeatist abandonment of substantive argument. In response, I would simply note that public opinion is changing, as reflected in the viewpoint of now [more than 2/3 of Americans](#), that the use of wild animals in traveling performances is concerning. Thirty-two nations have banned the use of wild animals in traveling shows, and more than 50 local US jurisdictions also have some form of ban or restriction on traveling wild animal acts.

Austria	Ecuador	Netherlands
Belgium	El Salvador	Panama
Bolivia	Estonia	Paraguay
Bosnia-Herzegovina	Finland	Peru
Bulgaria	Greece	Poland
Columbia	Hungary	Portugal
Costa Rica	India	Singapore
Croatia	Iran	Slovenia
Cyprus	Israel	Sweden
Czech Republic	Malta	Taiwan
Denmark	Mexico	

- Re: the claim the ordinance will otherwise threaten the fine work at Shriners’ Hospitals

This assertion presumes no other fundraiser will succeed for Shriners, and ignores the fine efforts of other charities, such as *Lions Clubs International* or other Shrine chapters, who have elected to move past reliance upon cruel animal acts, to promote their good works. The argument also presumes *Shriners Hospitals* solely depend upon the circus fundraisers, where reports indicate such events provide only a small percentage of the Shriners’ great work.⁵⁴

Our moral compass doesn’t point us in that direction anymore ...
These animals weren’t meant to be in that world
and were put into that service.
We just don’t agree with it.
So we are distancing ourselves from that
and going forward with a new model.
[Stuart Larson, WA WA Shrine Circus Event Chairman](#)

- Re: concerns noted by *Pittsburgh Zoo*, the *National Aviary*, or other entities currently exempted under the proposed ordinance language.

As currently drafted, the proposed ordinance expressly exempts *Pittsburgh Zoo* (though it’s apparently no longer AZA accredited), the *PPG Aquarium*, and those “*activities or enterprises endorsed or accredited by*” AZA, GFAS, or the *American Alliance of Museums*. The current language also exempts veterinary practice, rehabilitation, and others as determined on a case-by-case by the *City Bureau of Animal Care and Control*. It appears then, that although certain representatives from the *Pittsburgh Zoo* and the *National Aviary* (whose representative attested it was AZA-accredited) spoke in opposition, these entities will not be impacted by the currently proposed language. Entities affiliated with *Circus Fans of American* (CFA), *Zoological Association of America* (ZAA), and the *Elephant Managers Association* (EMA), which promote direct and free contact between wild animals, workers, and the general public, directly conflict with the very purpose of the proposed ordinance and therefore should not be exempted. Given concerns raised by certain entities at the hearing, we offer suggested additional exemption language that we’ve used in drafts elsewhere in the US for sanctuaries (defined as those meeting GFAS requirements (whether or not they are actually GFAS accredited – similar to that exemption’s requirements according to USFWS under CWSA)) and for those enterprises conducting bona fide educational outreach - see Addendum B.

* * *

ADI websites www.stopcircussuffering.com and www.federalcircusbill.org include further briefings on the numerous animal welfare, worker safety, public health & safety, regulatory oversight, and economic issues associated with keeping wild animals in traveling performances. You will also find information there on the increasing numbers and success of human-performance circuses.

Thank you for your time and consideration of this matter.

Sincerely,



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General Counsel

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Humane Action Pittsburgh

JusticeForAnimals

ADDENDUM A

*Caselow supporting proposed ordinance 370 as constitutional,
within the City's authority and duty under their police powers
to legislate in the interest of its citizens' health, safety, welfare, and morals.*

The claim that regulations such as Pittsburgh's proposed ordinance 2016-0370 violate the constitution or are otherwise outside the City's authority is absolutely incorrect, as is demonstrated by a very long line of constitutional jurisprudence.

The right to free speech is carried down to state and local governments via due process under equal protection (14th Amendment), i.e. the *Incorporation Doctrine*. (See [Gitlow v. People of New York](#); see also [West Coast Hotel v. Parrish](#) & others below.) Thus, the analysis here is a *substantive due process* analysis, and because this does not involve a suspect (e.g. race) or quasi-suspect (e.g. gender) class, it is determined under a *rational basis* standard. Historically, under a rational basis standard, the regulation will stand; the only time the government loses on this is if there's *rank prejudice* or the regulation is found to be wholly arbitrary. Further, local government is afforded wide latitude in their regulatory determinations, including those which may regulate some, but not others. (As you know, because police powers are passed down to local governments through the states, references in these federal cases to a "State" also applies to local governments barring some state preemption. Neither the state of Pennsylvania, nor the federal government, preempt local regulation in this area.)

- **Free Speech (1st Amendment) goes to the states via Due Process under the 14th Amendment.** [Gitlow v. People of New York](#) (1925) (*freedom of speech and of the press — which are protected by the First Amendment from abridgment by Congress — are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States. ... It is a fundamental principle, long established, that the freedom of speech⁵⁵ and of the press which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language ... freedom is an inestimable privilege in a free government; without such limitation, it might become the scourge of the republic. That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question. ... Freedom of speech ... does not protect disturbances to the public peace ... Every presumption is to be indulged in favor of the validity of the statute. ... the State is primarily the judge of regulations required in the interest of public safety and welfare," and that its police "statutes may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise authority vested in the State in the public interest.*)
- **Regulation must bear some fair & substantial relation to the government purpose; however, government is afforded wide discretion.** [Royster Guano v. Virginia](#) (1920) (*It is unnecessary to say that the "equal protection of the laws" required by the Fourteenth Amendment does not prevent the States from resorting to classification for the purposes of legislation. Numerous and familiar decisions of this court establish that they have a wide range of discretion in that regard. But the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.*)
- **Constitutionality is presumed; regulation will be held constitutional if rationally related to a legitimate government purpose.** [New Orleans v. Duke](#) (1976) (*Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude ... In short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines ... in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment.*)
- **Government doesn't even have to state its reason, so long as it "might be thought" to be rationally related.** [Williamson v. Lee Optical](#) (1955) (*the law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it. The day is gone when this Court uses the Due Process Clause of the Fourteenth*

Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought. ... "For protection against abuses by legislatures the people must resort to the polls, not to the courts); see also [Railroad Retirement Board v. Fritz](#) (1980) (this Court has never insisted that a legislative body articulate its reasons for enacting a statute).

- **Lee Optical** also upholds the ordinance regulating some, but not others (in that case, opticians vs. sellers of ready-to-wear glasses). (*E evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. ... Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. ... The legislature may select one phase of one field and apply a remedy there, neglecting the others. ... The prohibition of the Equal Protection Clause goes no further than the invidious discrimination.*) See also [Minnesota v. Clover Leaf Creamery](#) (below, regarding plastic & paper milk jug containers); [Nebbia v. New York](#) (setting minimum milk price for one type of merchant but not others); and [West Coast Hotel v. Parrish](#) (1937) (*legislature 'is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be dearest.' If 'the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied.'* There is no 'doctrine requirement' that the legislation should be couched in all embracing terms.)
- **Essentially, the regulation will stand if the government has a good reason, a not-so-great reason, no reason, or even the wrong reason, so long as it's "at least debatable."** [Minnesota v. Clover Leaf Creamery](#) (1981) (*states are not required to convince the courts of the correctness of their legislative judgments. Rather, "those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." ... Although parties challenging legislation under the Equal Protection Clause may introduce evidence supporting their claim that it is irrational ... they cannot prevail so long as "it is evident from all the considerations presented to [the legislature], and those of which we may take judicial notice, that the question is at least debatable." Where there was evidence before the legislature reasonably supporting the classification, litigants may not procure invalidation of the legislation merely by tendering evidence in court that the legislature was mistaken. ... This Court has made clear that a legislature need not "strike at all evils at the same time or in the same way," ... and that a legislature "may implement [its] program step by step, ... adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations. ... The Equal Protection Clause does not deny the State of Minnesota the authority to ban one type of milk container conceded to cause environmental problems, merely because another type, already established in the market, is permitted to continue in use. Whether in fact the Act will promote more environmentally desirable milk packaging is not the question: the Equal Protection Clause is satisfied by our conclusion that the Minnesota Legislature could rationally have decided that its ban on plastic nonreturnable milk jugs might foster greater use of environmentally desirable alternatives. ... The Minnesota Supreme Court may be correct that the Act is not a sensible means of conserving energy. But we reiterate that "it is up to legislatures, not courts, to decide on the wisdom and utility of legislation." ... Since in view of the evidence before the legislature, the question clearly is "at least debatable," ... the Minnesota Supreme Court erred in substituting its judgment for that of the legislature. ... it is not the function of the courts to substitute their evaluation of legislative facts for that of the legislature.*)
- **General rules that apply evenhandedly to all persons within the jurisdiction "unquestionably comply" with the Equal Protection Clause of the 14th Amendment.** [NYC Transit Authority v. Beazer](#) (1979) (*General rules that apply evenhandedly to all persons within the jurisdiction unquestionably comply with this principle. Only when a governmental unit adopts a rule that has a special impact on less than all the persons subject to its jurisdiction does the question whether this principle is violated arise. ... the exclusionary line challenged by respondents "is not one which is directed 'against' any individual or category of persons, but rather it represents a policy choice ... made by that branch of Government vested with the power to make such choices." ... Because it does not circumscribe a class of persons characterized by some unpopular trait or affiliation, it does not create or reflect any special likelihood of bias on the part of the ruling majority. Under these circumstances, it is of no constitutional significance that the degree of rationality is not as great with respect to certain ill-defined subparts of the classification as it is with respect to the classification as a whole. ... No matter how unwise it may be for TA to refuse employment to individual car cleaners, track repairmen, or busdrivers simply because they are receiving methadone treatment, the Constitution does not authorize a federal court to interfere in that policy decision; see also FN39 "[L]egislative classifications are valid unless they bear no rational relationship to the State's objectives. ... State legislation 'does not violate the Equal Protection Clause merely because the classifications [it makes] are imperfect.' ... Even if the classification involved here is to some extent both under-inclusive and overinclusive, and hence the line drawn by Congress imperfect, it is nevertheless the rule that in a case like this 'perfection is by no means required'; FN40 Since *Barbier v. Connolly*, ... the*

Court's equal protection cases have recognized a distinction between "invidious discrimination," ... classifications drawn "with an evil eye and an unequal hand" or motivated by "a feeling of antipathy" against, a specific group of residents ... and those special rules that "are often necessary for general benefits [such as] supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects." ... Quite plainly, TA's Rule 11(b) was motivated by TA's interest in operating a safe and efficient transportation system rather than by any special animus against a specific group of persons; and FN41 the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.)

- **A regulation may even be unwise, mathematically imprecise, or inartfully drawn, but that will not provide grounds to strike it down under Equal Protection.** *Railroad Retirement Board v. Fritz* (1980) *(for a classification to be valid under the Equal Protection Clause of the Fourteenth ... it "must rest upon some ground of difference having a fair and substantial relation to the object of the legislation. ... In more recent years, however, the Court, in cases involving social and economic benefits, has consistently refused to invalidate on equal protection grounds legislation which it simply deemed unwise or unartfully drawn. ... "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because, in practice, it results in some inequality.'" ... "The problems of government are practical ones, and may justify, if they do not require, rough accommodations -- illogical, it may be, and unscientific." ... [The rational basis standard] is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy." ... "[I]t is not within our authority to determine whether the Congressional judgment expressed in that Section is sound or equitable, or whether it comports well or ill with ... purposes of the Act. ... The answer to such inquiries must come from Congress, not the courts. Our concern here, as often, is with power, not with wisdom." ... The only remaining question is whether Congress achieved its purpose in a patently arbitrary or irrational way. ... Where, as here, there are plausible reasons for Congress' action, our inquiry is at an end. It is, of course, "constitutionally irrelevant whether this reasoning in fact underlay the legislative decision ... this Court has never insisted that a legislative body articulate its reasons for enacting a statute. This is particularly true where the legislature must necessarily engage in a process of line-drawing)*
- **Regulations must be lawful in both their writing and application; however, courts take the “utmost caution” with regards to invalidation, and the police power is a “continuing” right, such that a “business lawful today may ... become a menace.”** *Dobbin v. Los Angeles* (1904) *(every intendment is to be made in favor of the lawfulness of the exercise of municipal power, making regulations to promote the public health and safety, and that it is not the province of courts, except in clear cases, to interfere with the exercise of the power reposed by law in municipal corporations for the protection of local rights and the health and welfare of the people in the community. ... "The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class. ... The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health and the public safety, but if, by their necessary operation, its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void. ... the power of the courts to declare such regulation invalid will be exercised with the utmost caution, and only where it is clear that the ordinance or law declared void passes the limits of the police powers, and infringes upon rights guaranteed by the constitution. ... the right to exercise the police power is a continuing one, and a business lawful today may in the future, because of the changed situation, the growth of population or other causes, become a menace to the public health and welfare, and be required to yield to the public good. ... where the exercise of legislative or municipal power is clearly within constitutional limits, the courts will not inquire into the motives which may have actuated the legislative body in passing the law or ordinance in question. ... although an ordinance might be lawful upon its face and apparently fair in its terms, yet if it was enforced in such a manner as to work a discrimination against a part of the community for no lawful reason, such exercise of power would be invalidated by the courts.); see also*

 - *All rights in contracts and property are held subject to such regulations as may be made from time to time by the State for the protection of public health, comfort and safety.* Cooley Const. Lim. 6th ed. 707; *Mugler v. Kansas*, 123 U.S. 669; *Corporation of Knoxville v. Bird*, 12 B.J. Lea, 121; *City of Salem v. Maynes*, 123 Mass. 372; *Barbier v. Connolly*, 113 U.S. 27; *City of New Orleans v. Stafford*, 21 Am. Rep. 563; 2 Story Const. Lim. § 1954; *Jamieson v. Ind. Natural G. Oil Co.*, 28 N.E. 76;
 - *A municipality cannot in any manner barter away, part with or abridge its right to exercise the police powers delegated to it by the State.* Cooley Const. Lim. 6th ed. 341; *Russell on Police Powers*, 88; *Davenport v. Richmond*, 81 Va. 636; *Newson v. Galveston*, 13 S.W. 368; *Fertilizing Co. v. Hyde Park*, 97 U.S. 659;

- *The ordinance complained of is not violative of the commerce clause of the Constitution of the United States.* Sherlock v. Alling, Admr., 93 U.S. 99; United States v. E.C. Knight, 156 U.S. 1; Railroad Co. v. Husen, 95 U.S. 465;
 - *The motives of a legislative body in enacting a law cannot be inquired into by the courts.* Fletcher v. Peck, 6 Cranch, 87; Dodge v. Wolsey, 18 How. 371; United States v. Des Moines R.R. Co., 142 U.S. 545; Hing v. Crowley, 113 U.S. 703.
- **Regulations made under the police power for a public purpose stand where they operate likewise upon all similarly situated persons and property.** *Barbier v. Connolly* (1885) (*The provision is purely a police regulation within the competency of any municipality possessed of the ordinary powers belonging to such bodies. And it would be an extraordinary usurpation of the authority of a municipality, if a federal tribunal should undertake to supervise such regulations. ... of the necessity of such regulations the municipal bodies are the exclusive judges ... There is no invidious discrimination against any one within the prescribed limits by such regulations. ... All persons engaged in the same business within it are treated alike; are subject to the same restrictions and are entitled to the same privileges under similar conditions. ... equal protection and security should be given to all under like circumstances ... Special burdens are often necessary for general benefits — for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. ... legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated ... this is a matter for the determination of the municipality in the execution of its police powers, and not a violation of any substantial right of the individual.*)
 - **So long as the ordinance is not arbitrary, it will stand, including regulations that favor one economic faction over another.** *West Coast Hotel v. Parrish* (1937) (*The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process. This essential limitation of liberty in general governs freedom of contract in particular. ... that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. ... The guaranty of liberty does not ... deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. ... if such laws "have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied"; that "with the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal"; that "times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power. ... The legislature "is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be dearest.*)
 - **Regulation may be constitutional even where it distinguishes between two classes of merchants.** Since *Nebbia v. New York* (1934), the Court has not struck down an economic statute in terms of due process & many legal scholars say it likely never will. (*Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest ... it is not only the right, but the bounden and solemn duty of a state, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation, which it may deem to be conducive to these ends ... But what are the police powers of a State? They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a State passes a quarantine law, or a law to punish offences, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same powers; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion. It is by virtue of this power that it*

legislates; and its authority to make regulations of commerce is as absolute as its power to pass health laws, except in so far as it has been restricted by the constitution of the United States. ... Thus has this court from the early days affirmed that the power to promote the general welfare is inherent in government. ... No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need. ... the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demand only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts. ... The court has repeatedly sustained curtailment of enjoyment of private property, in the public interest. The owner's rights may be subordinated to the needs of other private owners whose pursuits are vital to the paramount interests of the community. The state may control the use of property in various ways ... The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases. Certain kinds of business may be prohibited; and the right to conduct a business, or to pursue a calling, may be conditioned. ... statutes prescribing the terms upon which those conducting certain businesses may contract, or imposing terms if they do enter into agreements, are within the state's competency ... it is said that when one devotes his property to a use, "in which the public has an interest," he in effect "grants to the public an interest in that use" and must submit to be controlled for the common good. ... merely another way of saying that if one embarks in a business which public interest demands shall be regulated, he must know regulation will ensue. ... It is clear that there is no closed class or category of businesses affected with a public interest, and the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory. ... So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the legislature, to override it. If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court functus officio. ... With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal. ... Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power ... The Constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people.)

ADDENDUM B

*Suggested exemption language drafted elsewhere in the US,
including Pennsylvania, as consistent with state and federal law*

Considering the prohibition:

§ 636.03 PERFORMANCE OF WILD OR EXOTIC ANIMALS PROHIBITED

It shall be unlawful for any Person to Cause a Performance of any Wild or Exotic Animal on any public or private property within the City of Pittsburgh.

Or alternatively:

No person may cause a performance of an exotic or wild animal or allow for the participation of an exotic or wild animal in a performance with the City of Pittsburgh, if such animal has been living or traveling in a mobile or traveling housing facility.

With the exemptions:

§ 636.04 EXEMPTIONS

- (a) The following are exempt from the provisions of Section 636.03:
- (1) The Pittsburgh Zoo & PPG Aquarium, located at One Wild Place, Pittsburgh, PA 15206.
 - (2) Exhibitions at a non-mobile, permanent institution, facility, wildlife sanctuary, zoo, or aquarium accredited by the *Association of Zoos & Aquariums*, *Global Federation of Animal Sanctuaries*, the *American Alliance of Museums*, or a wildlife sanctuary meeting the requirements of that term as defined in this subsection.
 - (3) Environmental Education Programs by a facility accredited by the *Association of Zoos & Aquariums* or the *Global Federation of Animal Sanctuaries*, if the animal used for such purposes is not kept in a mobile or traveling housing facility for more than 12 hours a day.
 - (4) Licensed veterinary hospitals or state-licensed veterinarians for the purpose of providing treatment of to a wild or exotic animal.
 - (5) The rehabilitation of wild animals by a person holding a wildlife rehabilitator's license(s) and/or permit(s) as required by federal, state and local laws and regulations.
- (b) In its discretion, the City of Pittsburgh Bureau of Animal Care and Control may on a case-by-case basis grant an exemption from the provisions of Section 636.03 following a written application for an exemption, where the proposed activity or enterprise is substantially similar in nature or purpose to an exemption provided in this Section 636.04.

Adding to the Definitions section:

§ 636.02 DEFINITIONS

CAUSE A PERFORMANCE.—The term ‘cause a performance’ means to be responsible for a performance, to financially benefit as an owner or operator from a performance, or to sponsor a performance.

ENVIRONMENTAL EDUCATION PROGRAM.—The term ‘environmental education program’ means animal use or exhibition that is devoted to imparting knowledge or information, for educational or conservation purposes, about that animal's behavior, habitat, life cycle, migratory patterns, feeding habits, or similar pedagogical information, and is conducted by an individual accredited or similarly

qualified to impart such information, but does not include any exhibition or performance that includes behavior or an act that is not intrinsically natural to the animal.

MOBILE OR TRAVELING HOUSING FACILITY.—The term ‘mobile or traveling housing facility’ means a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for performances or public education purposes.

WILDLIFE SANCTUARY.—The term ‘wildlife sanctuary’ means an organization described in sections 170(b)(1)(A)(vi) and 501(c)(3) of the Internal Revenue Code 1986 that does not—

- (a) engage in commercial trade in any exotic or wild animal, including the sale of any animal, animal part or derivative, offspring, photographic opportunities or public events for financial profit or any other entertainment purpose;
- (b) breed any exotic or wild animal;
- (c) permit unescorted public visitation;
- (d) permit direct contact between the public and any exotic or wild animal;
or
- (e) remove any exotic or wild animal from a sanctuary or enclosure for exhibition or performance.

¹ See http://www.americanbar.org/content/dam/aba/images/abanews/2015mm_hodres/105.pdf (last accessed 5/6/16).

² See NYC Bar, Committee on Animal Law report at <http://www2.nycbar.org/pdf/report/uploads/20072237-HRBillTravelingExoticAnimalProtectionAct.pdf> (federal); <http://www2.nycbar.org/pdf/report/uploads/20072638-RestrictionsofWildAnimalsinCircuses.pdf> (state), and http://www.nycbar.org/pdf/report/LIPTA_NYC_Animals_Entertainment.pdf (local) (last accessed 5/6/16).

³ NYC Bar, Committee on Animal Law report, p.2 at <http://www2.nycbar.org/pdf/report/uploads/20072237-HRBillTravelingExoticAnimalProtectionAct.pdf> (last accessed 5/3/16).

⁴ See *A review of the welfare of wild animals in circuses*, Stephen Harris, Graziella Iossa & Carl D. Soulsbury, University of Bristol (2006) at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwi6w-Pcx77MAhWJJiYKHT6WCtwQFggdMAA&url=http%3A%2F%2Fwww.rspca.org.uk%2FImageLocator%2FLocateAsset%253Fasset%3Ddocument%26assetId%3D1232714755621%26mode%3Dprd&usg=AFQjCNG5_GvyAuL5I2l0efW4eyQ_K1gB6w&sig2=o0QB0DiH93ZkFU7R9IwiDA (last accessed 5/3/16); Coghlan, Andy, *Circus Captivity is beastly for wild animals*, *New Scientist* (2009) at <https://www.newscientist.com/article/dn17169-circus-captivity-is-beastly-for-wild-animals/#.VKwc71rIZII> (last accessed 5/3/16).

⁵ TG. Iossa, CD Soulsbury, & S. Harris, *Are wild animals suited to a traveling circus life?* University of Bristol, UK (2009) (*subsequent 2009 study affirming earlier results*).

⁶ Schaul, *Elephants in Captivity: A Perspective from Former AZA Director/William Conway Chair of Conservation and Science*, *National Geographic* (2013), citing Alward, L. 2008. *Why circuses are unsuited to elephants*. Pp. 205-224 in Wemmer, C. and K. Christen (eds.) *Never Forgetting: Elephants, Ecology and Ethics*. Baltimore, MD: Johns Hopkins University Press), also available at [this link](#) (last accessed 5/25/16).

⁷ See <http://www.stopcircussuffering.com/news/europe/wildlife-experts-speak-circus-suffering-britain/> for quote provided to ADI during the UK campaign.

⁸ As quoted by Louise Gray, *Government Accused of a u-turn on ban in wild animals in circuses*, *UK Telegraph* (2011) at <http://www.telegraph.co.uk/news/earth/earthnews/8512631/Government-accused-of-u-turn-on-ban-on-wild-animals-in-circuses.html> (last accessed 5/25/16).

⁹ Federation of Veterinarians of Europe (June 2015) at http://www.fve.org/uploads/publications/docs/fve_position_on_the_travelling_circuses_adopted.pdf (last accessed 5/3/16).

¹⁰ *Review of Zoos' Conservation and Education Contribution* (2010 study conducted by the Agricultural Development Advisory Service (ADAS) working in close collaboration with the British and Irish Association of Zoos and Aquariums (BIAZA)) <http://archive.defra.gov.uk/wildlife-pets/zoos/documents/review-zoos-conservation.pdf>; Jensen, Eric, *Evaluating Children's Conservation Biology Learning at the Zoo*, *Conservation Biology*, Aug 01, 2014; Vol. 28, No. 4, p. 1004-1011 <http://onlinelibrary.wiley.com/doi/10.1111/cobi.12263/abstract>.

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¹⁴ See Hosier, *Zoo pays fine, admits no fault in handler death*, OSHA Safety News Alert (2012) at <http://www.safetynewsalert.com/zoo-pays-fine-admits-no-fault-in-elephant-handlers-death/> (last accessed 5/6/16).

¹⁵ See <https://www.dropbox.com/sh/v8cl3yu9ox2g917/AADgbR0RmJLU5luoVTBPtRlca?dl=0>.

¹⁶ See also https://youtu.be/C-9WSTBY_TU?list=PLBB7CC8DDE817329C, <http://www.stopcircussuffering.com/news/europe/great-british-circus/>, http://www.ad-international.org/media_centre/go.php?id=3309&ssi=12, http://www.ad-international.org/animals_in_entertainment/go.php?id=2780, http://www.ad-international.org/animals_in_entertainment/go.php?id=2779&ssi=10, and http://www.ad-international.org/animals_in_entertainment/go.php?id=3310.

¹⁷ https://www.youtube.com/watch?v=C-9WSTBY_TU&feature=youtu.be&list=PLBB7CC8DDE817329C (last accessed 5/26/16).

¹⁸ See http://www.ad-international.org/media_centre/go.php?id=1623&ssi=12; https://www.ad-international.org/media/GBC_Elephant_Report_F_2010.pdf; https://www.ad-international.org/admin/downloads/adi_parlbrief_circus_regulation_oct_2011f.pdf; and https://www.youtube.com/watch?v=C-9WSTBY_TU&feature=youtu.be&list=PLBB7CC8DDE817329C (last accessed 5/26/16).

¹⁹ Included in ADI’s Circus Madness video at <https://www.youtube.com/watch?v=Fgk4B9KJnpY> (starting around 12:50) (last accessed 5/26/16).

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²¹ See excerpt from ADI’s 2011 Report to the UK Parliament, at <https://www.dropbox.com/s/gry6d0la9luz88i/Great%20British%20Circus%202006%20.pdf?dl=0> (last accessed 5/26/16).

²² See ADI’s video footage *Ugliest Show on Earth* at https://www.youtube.com/watch?v=hYgDa3nSp9I&oref=https%3A%2F%2Fwww.youtube.com%2Fwatch%3Fv%3DhYgDa3nSp9I&has_verified=1 and ADI’s 2011 Report to the UK Parliament, at <https://www.dropbox.com/s/gry6d0la9luz88i/Great%20British%20Circus%202006%20.pdf?dl=0> (last accessed 5/26/16).

²³ See https://www.ad-international.org/admin/downloads/circuses_science_awb_lords_low_res.pdf (last accessed 5/26/16).

²⁴ See excerpt from ADI’s 2011 Report to the UK Parliament, at <https://www.dropbox.com/s/xtroo6tbr61rf7s/ADI%202011%20Report%20to%20UK%20Parliament%20-%20Great%20British%20Circus.pdf?dl=0> (last accessed 5/26/16).

²⁵ See http://www.ad-international.org/animals_in_entertainment/go.php?id=2859&ssi=10 with links to the referenced inspection reports; see also http://www.ad-international.org/animals_in_entertainment/go.php?id=3007&ssi=10, http://www.ad-international.org/animals_in_entertainment/go.php?id=2674, and https://www.ad-international.org/admin/downloads/adi_parlbrief_circus_regulation_oct_2011f.pdf.

²⁶ See <https://www.dropbox.com/sh/v8cl3yu9ox2g917/AADgbR0RmJLU5luoVTBPtRlca?dl=0>.

²⁷ See https://www.dropbox.com/s/dp4awmt4lfw8nm7/FEI_settlement%20agreement%20with%20USDA%20re%20violations%202007-2011.pdf?dl=0.

²⁸ WAZA Code of Ethics, 2003 at http://www.waza.org/files/webcontent/1_public_site/5_conservation/code_of_ethics_and_animal_welfare/Code%20of%20Ethics_EN.pdf (last accessed 5/3/16).

²⁹ TG. Iossa, CD Soulsbury, & S. Harris, *Are wild animals suited to a traveling circus life?* School of Biological Sciences, University of Bristol, UK (2009), citing Langley & Hunter (2001).

³⁰ See ADI’s economic briefing at <http://www.federalcircusbill.org/briefings/restricting-the-use-of-wild-animals-in-circuses-the-economics-2/> (last accessed 5/4/16).

³¹ See USDA APHIS Audit Report, Office of Inspector General, 2010.

³² NYC Bar, Committee on Animal Law report, p. 5 at <http://www2.nycbar.org/pdf/report/uploads/20072237-HRBillTravelingExoticAnimalProtectionAct.pdf>, citing Audit Report by the USDA Office of the Inspector General, *Controls Over APHIS Licensing of Animal Exhibitors*, p. 2 (June 2010), at <https://www.usda.gov/oig/webdocs/33601-10-CH.pdf> (last accessed 5/3/16).

³³ See https://www.dropbox.com/sh/d645bzb72t9wg0y/AACxDGYH_grckEF41HHIbdt9a?dl=0.

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- ³⁴ See Tyke's rampage in Honolulu, Hawaii at <https://archive.org/details/ElephantRampageHawaii1994> (*this was Tyke's third rampage, including an escape in Altoona, Pennsylvania, after suffering years of abuse; it ended with one dead, 13 injured, and Tyke being shot at least 87 times. The police officer who killed Tyke later became an advocate for ending the use of wild animals in circuses. This incident remains a strong memory for locals even 20 years later, and is the subject of the documentary Tyke: Elephant Outlaw*)(last accessed 5/6/16).
- ³⁵ See Janet's rampage in Palm Bay, Florida at <http://www.discovery.com/tv-shows/discovery-presents/videos/circus-elephant-rampage.htm> (*17 spectators were injured; a mother and 5 children were still riding the elephant when this rampage began; the police officer reportedly broke down and cried afterwards for having to shoot such a beautiful animal - he can be seen in various PSAs and he testified before Congress to end the use of wild animals in circuses, noting that local law enforcement is not prepared to deal with a rampaging elephant*) (last accessed 5/6/16).
- ³⁶ See <http://www.youtube.com/watch?v=qVaVp12WI0A> (Reportedly, 2 died and 24 were injured; the elephant even turned on the man who raised him; that man missed or ignored certain precursors, and was killed.)
- ³⁷ See <http://www.mirror.co.uk/news/world-news/circus-elephant-goes-berserk-attacks-6088429> (last accessed 5/6/16)(*note the proximity of the elderly gentleman on a scooter, and two baby carriages to 3 nervous, agitated, elephants; also note the reporter indicates these elephants nevertheless performed that night*).
- ³⁸ See <http://www.americatv.com.pe/noticias/actualidad/ong-intento-rescatar-leon-que-ataco-profesora-duenos-no-lo-entregaron-n149411> (Lion attacked audience member/teacher in front of her students.)
- ³⁹ See also <http://www.discovery.com/tv-shows/discovery-presents/videos/circus-elephant-rampage.htm> for video of Janet's rampage, which began while a mother and kids were still riding her.
- ⁴⁰ See Tyke's rampage in Honolulu, Hawaii at <https://archive.org/details/ElephantRampageHawaii1994> (*this was Tyke's third rampage, including an escape in Altoona, Pennsylvania, after suffering years of abuse; it ended with one dead, 13 injured, and Tyke being shot at least 87 times. The police officer who killed Tyke later became an advocate for ending the use of wild animals in circuses. This incident remains a strong memory for locals even 20 years later, and is the subject of the documentary Tyke: Elephant Outlaw*)(last accessed 5/6/16).
- ⁴¹ Emil Holbrook, *When Circus Animals Kill*, Risk Management Monitor (2009) at <http://www.riskmanagementmonitor.com/when-circus-animals-kill/>.
- ⁴² See E. Ratiff, *Taming the Wild*, National Geographic (March 2011) and N. Wolchover, *Why Can't All Animals Be Domesticated?* *livescience* (2012) at and respectively (last accessed 5/3/16).
- ⁴³ See TG. Iossa, CD Soulsbury, & S. Harris, *Are wild animals suited to a traveling circus life?* University of Bristol, UK (2009), citing Langley & Hunter (2001).
- ⁴⁴ Rebhorn, Matthew, *Preview: Circus historian LaVahn Ho discusses the thrill and darkness under the big top* (2012) at http://www.c-ville.com/preview_circus_historian_lavahn_hoh_discusses_the_thrill_and_darkness_of_life_under_the_big_top/#.VyzaJGNafSU (last accessed 5/6/16).
- ⁴⁵ Curtis, Abigail, *Hope elephants cofounder found dead after falling, being stepped on by elephants* (2014) at <https://bangordailynews.com/2014/09/09/news/midcoast/hope-elephants-co-founder-found-dead-in-elephant-barn-tuesday-morning/?ref=topStories0> (last accessed 5/6/16).
- ⁴⁶ See http://articles.orlandosentinel.com/1997-05-09/news/9705090201_1_franzen-lucca-circus (last accessed 5/26/16).
- ⁴⁷ *SeaWorld of Florida, LLC v. Perez, Secretary, US Dep't of Labor*, USCA Case number 12-1375 (2014).
- ⁴⁸ See Hosier, *Zoo pays fine, admits no fault in handler death*, OSHA Safety News Alert (2012) at <http://www.safetynewsalert.com/zoo-pays-fine-admits-no-fault-in-elephant-handlers-death/> (last accessed 5/6/16).
- ⁴⁹ See ADI's undercover investigation video *Out of Control – Abused Elephants Fighting in US Circus* at <https://vimeo.com/98627950> (last accessed.5/6/16).
- ⁵⁰ See transcript at http://commdocs.house.gov/committees/judiciary/hju65825.000/hju65825_of.htm; see also <https://www.youtube.com/watch?v=ee5fOs9UX7s> (elephant attacks trainer)
- ⁵¹ See *The Richest People in America 2014*, Forbes Magazine and *Power Clown*, The Wall Street Journal (2005).
- ⁵² NewsFix, CW33, reported by Sharda Neal (2015) <http://cw33.com/2015/09/01/shriners-peta-heated-battle-over-animals-in-shrine-circus/> (last accessed 5/4/16).
- ⁵³ *The Topeka Capital Journal*, reported by Bill Blankenship, quoting James Hamid of *Hamid Circus* (the oldest single-family operated US circus) (2015) at <http://cjonline.com/life/arts-entertainment/2015-02-19/topekas-arab-shrine-circus-returns-75th-straight-year#> (last accessed 5/4/16).
- ⁵⁴ See <http://www.charitynavigator.org/index.cfm?bay=search.summary&orgid=6493#.V0TLQ2NaGFI> and http://www.nytimes.com/2007/03/19/us/19shrine.html?_r=0 (last accessed 5/25/16).
- ⁵⁵ Throughout these caselaw citations, *underlined italicized* text is emphasis added by me, not occurring in the original case text.