IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 21-0475

MARK A. SORSAIA,

Respondent,

v.

HARLEE BEASLEY

Petitioner.

RESPONDENT'S BRIEF

Appeal from the May 17, 2021, Order
Circuit Court of Putnam County
Case No. 21-C-50

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I. INTRODUCTION

Respondent, Mark A. Sorsaia, Prosecuting Attorney of Putnam County, West Virginia, at his relationship to the State of West Virginia, by counsel, responds to an appeal filed by Petitioner Harlee Beasley. Petitioner's appeal challenges the Putnam County Circuit Court's order of May 17, 2021, which granted the Respondent's Petition for a Writ of Prohibition as to an earlier decision of the Putnam County Magistrate Court dismissing six criminal charges of animal cruelty against Petitioner. Because Petitioner fails to demonstrate reversible error, this Court should affirm.

II. ASSIGMENT OF ERROR

Petitioner advances a single assignment of error:

> The Circuit Court failed to apply the correct principles of statutory construction and therefore misinterpreted the exclusion for livestock contained in W. Va. Code 61-8-19(f).

Pet'r's Br. at 1.

III. STATEMENT OF THE CASE

On January 30, 2020, Putnam County Humane Officer, Shawn A. Martin, arrived at 5615 Bowles Ridge Road in Liberty, Putnam County, West Virginia, in response to a report of possible animal neglect occurring on the property. A.R. 5.[1] Upon arriving, Officer Martin observed five horses and a donkey on the property. A.R. 5. All of the animals appeared to be underweight. A.R. 5. While at the property, Officer Martin observed that there was no clean water for the animals,

[1] Petitioner originally filed an appendix on September 13, 2021. On October 1, 2021, Petitioner filed *Petitioner's Motion to File Revised Appendix*, in which Petitioner included additional documents from the proceedings below that were not available at the time of the filing of the original appendix. Although there has been no Order entered by this Court granting Petitioner's motion, Respondent does acknowledge that the documents included in the Petitioner's Amended Appendix are appropriately included. Thus, any reference to the appendix ("A.R.") is to the Amended Appendix filed by Petitioner on October 1, 2021.

and that the horses' rib and hip bones were visible through their skin. A.R. 5. It also appeared that the horses were suffering from "severe rain rot."[2] A.R. 5. Officer Martin spoke with Petitioner, the property and animal owner, and directed her to correct the issues noted and to properly care for her animals. A.R. 5.

Officer Martin returned to the property on February 12, 2020, to assess whether the animals' condition had improved. A.R. 5. He saw no discernible improvement in the animals' physical condition. A.R. 5. Although water was available for the animals, it was not potable due to the presence of algae growth. A.R. 5. Officer Martin photographed the animals and their living conditions and consulted with an equine rescue group and veterinarian, Dr. Clara Mason. A.R. 5. After reviewing the photographs and discussing the animals' circumstances, it was determined that the animals were in need of immediate medical treatment and should be seized. A.R. 5.

Officer Martin obtained a search warrant for Petitioner's property with the assistance of the Putnam County Sheriff's Office. A.R. 5. The search warrant was executed on February 25, 2020, at which time all five horses and the donkey were seized. A.R. 5. Officer Martin left a *Notice of Animal Seizure* at Petitioner's property. A.R. 1. Later that day, Petitioner arrived at the

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[2] "Rain rot" is a skin infection seen in horses who are exposed to overly wet or humid conditions. The condition is a bacterial infection that is transmittable to other horses, and any horse with the condition should be isolated to prevent further spread of the infection. The infection causes wounds on the horse's body, can cause pain, and other conditions such as matting, scabbing, and further infection. SALLIE S. HYMAN, VMD, *RAIN ROT*, TOTAL EQUINE VETERINARY ASSOCIATES, https://www.totalequinevets.com/client-center/resources/TEVApedia/equine-rain-rot (last visited on Nov. 3, 2021). Rain rot may be adequately prevented by practicing good hygiene such as regular bathing and grooming, and by providing horses with appropriate shelter to reduce exposure to environmental factors. Treatment may require antibiotic topical ointments or antibiotic injections. While the condition can be mild, failure to provide adequate treatment can result in serious complications and transmission to other horses or even humans. BRITTANI KIRKLAND, *RAIN ROT IN HORSES*, PENN STATE EXTENSION, https://extension.psu.edu/rain-rot-in-horses (last visited on Nov. 3, 2021).

Putnam County Magistrate Court to request a hearing to challenge the seizure of her animals. A.R. 2.

On February 26, 2020, Dr. Clara Mason evaluated the animals seized from Petitioner's property. A.R. 5. She concluded that the horses and donkey were underweight and had multiple skin conditions, including lice, alopecia[3], and open skin wounds. A.R. 5. She further concluded that the animals had been denied proper nutrition, basic animal husbandry, and proper dental and hoof care. A.R. 5. One of the horses seized from Petitioner's property was given a body score of "one"; two were given body scores of "two"; another was given a body score of "three"; and the last was given a body score of "four." A.R. 5. The donkey was given a body score of "three". A.R. 5. A body score of three is considered underweight.[4]

On August 14, 2020, the Putnam County Magistrate Court convened a hearing pursuant to Petitioner's request in Magistrate Court Civil Action Number 20-C-107. A.R. 3. At the hearing, Petitioner moved to dismiss the case asserting that the relevant code section—West Virginia Code § 7-10-4[5]—excluded farm livestock from the statute. A.R. 3. Petitioner also argued that "the Magistrate Court [did] not have jurisdiction to dispose of the case pursuant to" West Virginia Code § 7-10-4. A.R. 3. The Magistrate Court agreed with Petitioner, and granted her motion to dismiss. A.R. 3.

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[3] "Alopecia is the partial or complete lack of hairs in areas where they are normally present. It can be congenital or acquired. Congenital alopecias are noninflammatory and are the result of hair follicle damage or genetic diseases." KAREN A. MORIELLO, DVM, DACVD, ALOPECIA IN ANIMALS, MERCK MANUAL VETERINARY MANUAL, https://www.merckvetmanual.com/integumentary-system/integumentary-system-introduction/alopecia-in-animals (last visited Nov. 3, 2021).

[4] *See*, Pg. 21, *infra*.

[5] West Virginia Code § 7-10-4 governs the civil procedures when an animal that is believed to be abused, neglected, or cruelly treated is seized. It does not govern criminal proceedings.

On August 20, 2020, the State filed a criminal complaint in Putnam County Magistrate Court Case Number 20-M-1547, charging Petitioner with six misdemeanor counts of animal cruelty—one count for each animal seized following the January and February 2020 investigation. A.R. 4. The matter was scheduled for a hearing on March 25, 2021. A.R. 6. At the hearing, Petitioner moved to dismiss the complaint arguing again that the magistrate court lacked jurisdiction to dispose of the case and that farm livestock were exempted from the criminal animal abuse statute in West Virginia Code § 61-8-19(f). A.R. 6. The Magistrate Court granted Petitioner's motion and dismissed the case. A.R. 6. The State then moved for a stay of execution so that it may seek relief in prohibition from the circuit court. A.R. 6. The Magistrate Court granted the State's motion. A.R. 6.

On April 13, 2021, the State filed its *Petition for Writ of Prohibition* in the Putnam County Circuit Court seeking to prohibit the enforcement of the Magistrate Court's order granting Petitioner's motion to dismiss the complaint in Case Number 20-M-1547. A.R. 9. The State argued that Petitioner's argument that West Virginia Code § 61-8-19(f) excludes livestock from criminal liability under the animal abuse statute was misplaced, and asserted that "[s]ubsection (f) merely exempts farm livestock from the statute 'if kept and maintained according to the usual and accepted standards of livestock.'" A.R. 14. The State went on to note that "to cause horses and donkeys to starve and become maimed through lack of the usual standards of care violates the law of this State—specifically W. Va. Code 61-8-19. Otherwise, there are no standards in this State to protect livestock from cruel or inhumane treatment." A.R. 14.

Petitioner responded with a hyper-technical misinterpretation of the statute's conjunctions:

> The only way in which [the State] could succeed in the reading of the paragraph is if the word "or" in the second line of the paragraph following "wildlife" would be changed to "and." [The State] wishes for the court to determine that the section, ". . . if kept and maintained according to usual and accepted standards of livestock,

. . ." modifies livestock. However, the modification is for wildlife kept under domestic conditions.

A.R. 17. Petitioner further argued that this Court had previously ruled that "farm livestock" was exempt according to the "strict language of the W. Va. Code," relying on a case that construed a separate civil forfeiture statute not at issue here. *See Daniel v. Stump*, No. 12-0890, 2013 WL 3184771 (W.Va. Sup. Ct. June 24, 2013) (memorandum decision). A.R. 17. In essence, Petitioner argued that because she *interpreted* the *civil* provisions of West Virginia Code § 7-10-4(h) to exclude livestock, the same must be true as it relates to her *interpretation* of the *criminal* animal abuse statute of West Virginia Code § 61-8-19. A.R. 17-18.

The Putnam County Circuit Court held a hearing on the State's Petition on May 5, 2021. A.R. 22. Then, Petitioner again claimed that the statutory provision requiring that livestock be "kept and maintained according to the usual and accepted standards of livestock" before being excepted from the statute was *actually* only a limit on wildlife kept pursuant to a permit. A.R. 26. In other words, Petitioner insisted the parts of the statute speaking to "accepted standards of livestock" do not apply to livestock itself. Petitioner also went on to assert that the punctuation, or lack thereof, in subsection (f) supported her position. A.R. 27. In support of this argument, she offered a rather confusing argument about the placement of "ors" in the statute; she insisted that, when one replaces the commas with "ors," the newly written statute clearly demonstrates that livestock is exempted from the (unmodified) statute. A.R. 27. Lastly, Petitioner again attempted to draw a corollary between the instant proceeding and this Court's memorandum decision in *Stump*, *supra*, that dealt with a distinct civil animal seizure proceedings. A.R. 28.

The Court noted that:

it doesn't make any sense in some ways if the phrase "if kept and maintained in accordance with the usual and accepted standards of livestock," and then it goes on.

> If that doesn't go back and modify all of those different provisions, then basically there's no recourse for cruelty to any animal if it's deemed to be livestock.

A.R. 28-29. Petitioner responded by stating that the proper recourse was to "bring [an action] in circuit court under Chapter 7, and you can bring it there and remove that as a civil action, just like they did in . . . *Stump*." A.R. 30. But the State responded by pointing out that West Virginia Code § 7-10-4 has nothing to do with criminal offenses for animal abuse or cruelty; it pertains to procedural due process issues commensurate with civil animal seizure cases. A.R. 30.

Petitioner also rhetorically asked the same question that she now presents before this Court: "[I]f it was cruelty or neglect to animals, why would they give an exemption and then turn around and say 'if kept by the reasonable standards'? [T]here wouldn't be a need for that exemption." A.R. 30. The court disagreed, noting that the language merely added a condition for the application of the exemption:

> Sure there would. If you had livestock—I mean it just adds another step, I guess, in terms of what they have to prove. They would have to prove that, in the case of livestock, you're not maintaining them in, I guess, a commercially reasonable way for the treatment of livestock.

A.R. 30.

At the conclusion of the hearing, the court agreed with the State and granted the *Petition*. A.R. 42. The Court ordered the case "proceed and be reinstated" in magistrate court. A.R. 42. On May 17, the court entered a written order in which it concluded that "subsection (f) of W. Va. Code §61-8-19 exempts farm livestock only 'if kept and maintained according to the usual and accepted standards of livestock." A.R. 20.

It is from this order that Petitioner now appeals.

IV. SUMMARY OF ARGUMENT

Petitioner's contention that West Virginia Code § 61-8-19(f) is ambiguous and requires this Court's interpretation is misplaced. West Virginia Code § 61-8-19(f) clearly exempts various acts under the express condition that such acts are done "lawfully"; it further exempts various animals when kept and maintained in accordance with the standards of care commensurate with those animals. W.Va. Code § 61-8-19(f). Contrary to Petitioner's argument, subsection (f) provides no unconditional exceptions from the statute. Because West Virginia Code § 61-8-19(f) is a "statutory provision which is clear and unambiguous and plainly expresses the legislative intent," this Court should refuse to resort to interpretation and "give[] full force and effect" to the statute as it is plainly written. Syl. Pt. 2, *State v. Epperly*, 135 W. Va. 877, 65 S.E.2d 488 (1951).

Even if the statute were ambiguous, this Court should reject Petitioner's interpretation as completely inconsistent with the "spirit, purposes and objects of the general system of law of which it is intended to form a part." Syl. Pt. 2, *State v. McClain*, 211 W. Va. 61, 561 S.E.2d 783 (2002). Nothing suggests that the Legislature intended to unconditionally exempt all farm livestock from the animal cruelty statute. Such an interpretation is completely inapposite to the various statutory provisions relating to treatment of animals, especially in light of this Court's recognition that "legislatures who drafted and passed [a statute] were familiar with all existing law, applicable to the subject matter . . . and intended the statute to harmonize completely with the same and aid in the effectuation of the general purpose and design thereof." *Id.* To completely exempt an entire class of animals with no regard to the types of cruel or inhumane treatment is inconsistent with the broad swath of law in support of the humane treatment of *all* animals. Petitioner's argument is completely baseless, and her request for relief should be soundly rejected.

V. STATEMENT REGARDING ORAL ARGUMENT

Pursuant to West Virginia Rule of Appellate Procedure 18(a)(4), oral argument is unnecessary in this case as the facts and legal arguments are adequately presented in the briefs and in the record, and the decisional process would not be significantly aided by oral argument.

VI. ARGUMENT[6]

A. Standard of Review

The standard of appellate review of a circuit court's order granting relief through the extraordinary writ of prohibition is *de novo*." Syl. Pt. 1, *Martin v. W. Virginia Div. of Lab. Contractor Licensing Bd.,* 199 W. Va. 613, 486 S.E.2d 782 (1997). The current case presents an issue solely of statutory interpretation of West Virginia Code § 61-8-19(f), and whether the lower court's interpretation of that statute was erroneous. Thus, this Court's review is plenary. "'Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review.' Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.,* 194 W. Va. 138, 459 S.E.2d 415 (1995)." Syl. Pt. 1, *State v. Butler,* 239 W. Va. 168, 799 S.E.2d 718 (2017).

B. West Virginia Code § 61-8-19(f) excepts farm livestock from the criminal animal abuse statute, but only when kept according to the usual and accepted standards of care for livestock.

Petitioner insists that subsection (f) of West Virginia Code § 61-8-19 unconditionally excludes all farm livestock from the criminal animal abuse statute. Pet'r's Br. at 1. In deciding

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[6] Although raised below, Petitioner does not advance in her instant petition any jurisdictional issue. This abandonment by the Petitioner is well taken. There is no basis to apply a civil statute's jurisdictional requirement to a criminal statute. The proceedings are procedurally dissimilar, and involve different interests among the parties involved. Hence, even if Petitioner's argument as to the jurisdictional considerations in a civil proceeding under Chapter 7 is valid, it has no application to any provision in Chapter 61 of the West Virginia Code.

whether Petitioner's argument is correct, this Court's task begins with the analysis of the statutory text. "The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature." Syl. Pt. 3, *State v. Woodrum*, 243 W. Va. 503, 845 S.E.2d 278 (2020) (quotation marks omitted) (citing Syl. Pt. 1, *Smith v. State Workmen's Comp. Comm'r,* 159 W. Va. 108, 219 S.E.2d 361 (1975)). "A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect." Syl. Pt. 2, *State v. Epperly*, 135 W. Va. 877, 65 S.E.2d 488 (1951).

West Virginia Code § 61-8-19 provides, in part:

(a)(1) It is unlawful for any person to intentionally, knowingly or recklessly,

(A) Mistreat an animal in a cruel manner;

(B) Abandon an animal;

(C) Withhold;

(i) Proper sustenance, including food or water;

(ii) Shelter that protects from the elements of weather; or

(iii) Medical Treatment, necessary to sustain normal health and fitness or to end the suffering of any animal;

(D) Abandon an animal to die;

(E) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;

(F) Ride an animal when it is physically unfit;

(G) Bait or harass an animal for the purpose of making it perform for a person's amusement;

(H) Cruelly chain or tether an animal; or

(I) Use, train or possess a domesticated animal for purpose of seizing, detaining, or maltreating any other domesticated animal.

W. Va. Code § 61-8-19(a)(1). Any person who violates these provisions is guilty of a misdemeanor and subject to a jail sentence of not more than six months, and a fine of not more than two-thousand dollars. W. Va. Code § 61-8-19(a)(2). In addition, anyone who "intentionally tortures, or mutilates or maliciously kills and animal," or aids or authorizes any person to engage in such conduct, is guilty of a felony and subject to a prison sentence of not less than one nor more than five years and a fine of not less than one-thousand dollars no more than five-thousand dollars. W.Va. Code § 61-8-19(b).

With the above statutory provisions in mind, Petitioner insists that subsection (f) of the statute *unconditionally excludes* all farm livestock from the above provisions. Subsection (f) provides:

> The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131, *et seq.*, and the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

W. Va. Code § 61-8-19(f). Petitioner's argument does not clearly identify how the statute is ambiguous. It appears that Petitioner's argument rests on her desire for this Court, not to construe an ambiguity, but rather, to adopt her self-serving interpretation that is completely at odds with the plain meaning of the statutory provisions. As this Court held in *Crockett v. Andrews*:

> Ambiguity is a term connoting doubtfulness, doubleness of meaning of indistinctness or uncertainty of an expression used in a written instrument. It has been declared that courts may not find ambiguity in statutory language which laymen are readily able to comprehend; nor is it permissible to create an obscurity or uncertainty in a statute by reading in an additional word or words.

153 W. Va. 714, 719, 172 S.E.2d 384, 387 (1970). When the statute is clear, "the court must apply the statute as it is written" as it is "only when a court determines that a statute is ambiguous" that

it may "then go on to interpret the meaning of the statute by considering" the various sources pertinent statutory construction. *State ex rel. Lorenzetti v. Sanders*, 235 W. Va. 353, 361, 774 S.E.2d 19, 27 (2015).

While this Court has held that an ambiguous statute is one that is "susceptible of two or more constructions or of such a doubtful or obscure meaning that reasonable minds might be uncertain or disagree as to its meaning," *Mace v. Mylan Pharm., Inc.*, 227 W. Va. 666, 673, 714 S.E.2d 223, 230 (2011) (internal quotation marks and citation omitted), the fact that the parties *disagree* as to the meaning of the statute does not, "of itself render [the] provision ambiguous." *Estate of Resseger v. Battle*, 152 W. Va. 216, 220, 161 S.E.2d 257, 260 (1968).

West Virginia Code § 61-8-19 clearly sets forth the types of cruel and inhumane conduct that, if carried out against an animal, may subject a person to criminal liability. The statute itself places no qualifiers on what it means by "animals", and, thus, such terms must "be given [its] common, ordinary and accepted meaning in the connection in which [it] is used." Syl. Pt. 1, *State v. Cole*, 160 W. Va. 804, 238 S.E.2d 849 (1977). West Virginia Code § 19-9-1(b) defines "animal" as "any domestic equine or bovine animal, sheep, goat, swine, dog, cat or poultry." Thus, by the Legislatures express terms, the use of the word "animal" includes all animals, regardless of whether such animal may be properly considered "livestock."

It is clear, then, that by using the term "animal" in West Virginia Code § 61-8-19, the legislature included those animals that are also considered livestock. There being no limitation on what the Legislature intended when referring to "animals" for purposes of the statute requires this Court to presume the Legislature intended such a definition.

Thus, each of the provisions in West Virginia Code § 61-8-19 applies equally to all animals, whether livestock or of some other classification. The question before this Court then turns to the

impact of subsection (f). Petitioner contends that subsection (f) serves to *unconditionally* except all livestock from the provisions of the statute. Pet'r's Br. at 8. But in order to reach this conclusion, Petitioner relies on a hyper-technical argument regarding the placement of commas, semicolons, "ors" and where particular words appear in relation to those punctuation marks. Such an overt manipulation of the statutory language as proffered by Petitioner creates the very ambiguity she now insists this Court must clarify.

Subsection (f) contains two independent clauses separated by the disjunctive "or". This Court has recognized that "[i]t is axiomatic that 'where the disjunctive "or" is used, it ordinarily connotes an alternative between the two [or more] clauses it connects.'" *State v. Saunders*, 219 W. Va. 570, 574, 638 S.E.2d 173, 177 (2006). Thus, the use of the disjunctive "or" in subsection (f) connotes alternatives between the two clauses that appear before and after it.

The first independent clause provides the subject of the statutory provision—"the provisions of this subsection"— and its predicate—"do not apply". The object of the first clause is "the lawful acts of hunting, fishing, trapping or animal training"; and the object of the second is "farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms." W.Va. Code §61-8-19(f), in part. Thus, each clause, if read on its own, provides: (1) "The provisions of this section do not apply to the lawful acts of hunting, fishing, trapping or animal training"; and (2) "The provisions of this section do not apply to livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management."

The phrase "lawful acts" modifies the series that it precedes. In other words, only the "lawful act of hunting" or the "lawful act of fishing," etc. falls under the exception. Thus, if one engages in the act of hunting in an "unlawful manner," the plain reading of the statute would not

exclude any act that identified in subsections (a) and (b) from criminal liability. The items in the second clause are modified by the phrase "if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management." W. Va. Code § 61-8-19(f), in part.

Despite Petitioner's claims to the contrary, subsection (f) clearly sets forth two independent clauses, and "what modifies what" is clearly and plainly discernible from a plain reading of the words of the statute.[7] As it relates to the instant proceeding the statute may be read to say: "provisions of this section do not apply . . . to farm livestock . . . if kept and maintained according to usual and accepted standards of livestock." W. Va. Code § 61-8-19(f), in part. To read a contrary interpretation simply belies the plain reading of the statute.

Moreover, no comma or other punctuation is required when separating two independent clauses when "the main clauses are closely linked," or "when the subject of the second independent clause, being the same as the first, is not repeated." BRYAN A. GARNER, GARNER'S MODERN ENGLISH USAGE, 749 (Oxford Univ. Press 4th ed. 2016). The current structure of the statute is clear; the first clause excludes certain acts if done lawfully, while the second excludes certain animals if kept in accordance with the usual and accepted standards of care for that respective animal or class of animal. The Legislature intended to separate the two clauses by the disjunctive "or", clearly setting "farm livestock" and the following series apart from the provisions of the first clause. Moreover, "farm livestock" appears with other similar items (*i.e.*, animals), and certain acts performed involving those livestock are excepted from criminal liability if done in accordance

[7] *See* Subsection C, *infra* for detailed analysis into "last antecedent rule" verses "series-qualifier rule."

with the accepted standards of care for livestock. To place farm livestock in the first clause would be placing it with various excluded types of *acts*.

To illustrate this point, assume that an individual is charged with animal cruelty under West Virginia Code § 61-8-19 for branding his cattle with a hot iron. Under the animal cruelty statute, the branding of an animal with a hot iron would certainly fall under the provision prohibiting the "[m]istreat[men] of an animal in a cruel manner." W. Va. Code § 61-8-19(a)(1)(A). Such an act could also fall under subsection (b) of the statute which prohibits the "mutilation" of an animal. W. Va. Code § 61-8-19(b). In applying the statute to the hypothetical facts, we look to the "plain meaning of its provision[s] in the statutory context, informed when necessary by the policy that the statute was designed to serve." *West Virginia Human Rights Comm'n v. Garretson*, 196 W. Va. 118, 123, 468 S.E.2d 733, 738 (1996). Moreover, "[s]tatutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be gathered from the whole of the enactments." Syl. Pt. 3, *Rollins v. Mason County Bd. Of Educ.*, 200 W. Va. 386, 489 S.E.2d 768 (1997) (citing Syl. Pt. 3, *Smith v. State Workmen's Comp. Comm'r*, 159 W. Va. 108, 219 S.E.2d 361 (1975)).

First, we must ascertain whether "cattle" are contemplated within the animal cruelty statute. West Virginia Code § 19-9-1(b), defines "animal" as "any domestic equine, or bovine animal, sheep, goat, swine, dog, cat or poultry." Hence, any of the enumerated offenses in the animal cruelty statute apply when performed on cattle. This is because the provisions of subsection (a) and (b) do not limit the term "animal" beyond that which provided in West Virginia Code § 19-9-1(b). At this point, we have decided that the act of branding an animal with a hot iron falls under the provisions of the animal cruelty statute, and that the term "animal" as used in the statute, includes cattle.

The analysis must next move to subsection (f). A plain reading of subsection (f) provides, in part: "[t]he provisions of this section do not apply to . . . livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock." W. Va. Code § 61-8-19(f). Subsection (f) clearly serves to exclude certain acts carried out against certain types of animals from criminal liability. To apply subsection (f) to the current hypothetical, two questions must be answered: (1) is "cattle" considered livestock; and (2) is the act of branding cattle one that is appropriately conducted "according to the usual and accepted standards of livestock."

We can answer the first question by resorting to West Virginia Code § 19-10B-2(d), which defines "livestock" as "cattle, horses, swine, sheep, goats or any other animal of the bovine, equine, porcine, ovine or caprine specie, and domestic poultry." The second question can be answered by referring to the "Livestock Care Standards." *See* W. Va. C.S.R. § 61-31-1, *et seq.* (proposed July, 2, 2021).[8] Under the Livestock Care Standards, "branding" is listed as an appropriate act when performed on beef cattle, bison, veal, and dairy cattle. W. Va. C.S.R. §§ 61-31-13 -14 (proposed July 2, 2021). Thus, the person charged under the animal abuse statute in this hypothetical is not subject to criminal liability for branding his cattle. While cattle are certainly animals and are covered by the statute, the statute expressly excludes acts that are done "according to the usual and accepted care of livestock." There is no ambiguity that the Legislature intentionally excluded such conduct *only when carried out against beef cattle, bison, veal, and dairy cattle.*

If we were to change the hypothetical and instead assume the animal was a horse, such an act would *not* be excluded as the act of branding is not among the list of accepted standards of care for equine. *See* W. Va. C.S.R. § 61-31-15 *et seq.* (proposed July 2, 2021). Thus, subsection (f) is

[8] *See also*, Pg. 24, fn. 9, *infra.*

not ambiguous; it clearly identifies what is excluded, and sets for the conditions that must be met in order for the exclusion to apply. The utility of this exclusion is also readily apparent. At first glance, the act of burning a symbol or mark into the skin of an animal seems to meet the definition of cruel mistreatment of an animal. There is no dispute that if a dog or cat was subject to such conduct, it would absolutely fall under the provisions of this statute. But as we can see, based on the Legislature's clear reference to the Livestock Care Standards, certain acts that are performed on livestock are not viewed in the same manner when performed on other animals. But this exclusion cannot be read to indicate a legislative intent to completely exclude livestock from the animal cruelty statute. Such a conclusion is unsupported by any legal precedent, and is a clear violation of public policy and the general notion that all animals should be treated with dignity and in a humane manner.

Petitioner's claims of ambiguity are unfounded. Her argument presumes the statute is ambiguous without actually identifying how, when giving each word and phrase its commonly accepted meaning, that a reasonable person could not ascertain what is being excluded. Petitioner only argues that her *interpretation* is correct and that this Court should agree with her and adopt a similar interpetation. This is not sufficient for showing ambiguity within the language of a statute. This Court should accordingly reject Petitioner's claims that the statute is ambiguous, and West Virginia Code § 61-8-19 should be applied as written.

C. Petitioner has failed to identify how West Virginia Code § 61-8-19(f) is ambiguous, and merely argues that this Court should disregard its long-standing precedent of refraining from judicial manipulation of statutes and adopt her self-serving interpretation of subsection (f).

As noted above, Petitioner's argument primarily focuses on her interpretation of West Virginia Code § 61-8-19, rather than identifying an ambiguity within the language of the statute. The distinction here, while nuanced, is important. Petitioner's argument is one of false cause: she

claims that because she interprets the statute in one way—regardless of whether her interpretation is correct—that any contradictory interpretation must mean the statute is ambiguous. But this flawed logic does not provide a basis for this Court finding ambiguity within a statute. In *Andrews v. Crockett*, *supra*, this Court defined ambiguity as "connoting doubtfulness, doubleness of meaning or indistinctness or uncertainty of an expression used in a written instrument." *Crockett*, at 718, 172 S.E.2d at 387. While there is no bright-line rule or indicator for an ambiguous statute, this Court has routinely held "[i]n statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself . . . where . . . that examination yields a clear answer, judges must stop." *Woodrum*, at 510, 845 S.E.2d at 285. The main take-away from this point is that the mere presence of differing interpretations does not, of itself, lead to the conclusion that a statute is ambiguous. *Battle, supra*, at 220, 161 S.E.2d at 260.

Petitioner clearly asserts that both she and the State disagree as to what subsection (f) of West Virginia Code §61-8-19 says. Pet'r's Br. at 8. Petitioner does not, however, identify how this disagreement indicates that the statute is "susceptible of two or more constructions or of such doubtful or obscure meaning that reasonable minds might be uncertain or disagree as to its meaning." *Mace v. Mylan Pharm., Inc.*, 227 W. Va. 666, 673, 714 S.E.2d 223, 230 (2011). The phrase "reasonable minds" is an important one; Petitioner obviously has a clear interest in how subsection (f) is interpreted. If her interpretation is correct, she is completely immune from criminal liability. If incorrect, her criminal case in which she faces six misdemeanor counts of animal abuse will continue. Petitioner's interest in the proceedings and how the statute is interpreted has a substantial impact on her life. Thus, Petitioner's reliance on the fact that both she and the State have differing opinions as to what the statute says has little bearing on the ultimate

issue before this Court. Simply stated, Petitioner would certainly prefer that the statute be interpreted to exclude from criminal liability to very acts she is accused of committing.

Petitioner's argument that her interpretation is the most reasonable one is no more compelling than her others. In *Crockett,* this Court rejected the contention that a statute was ambiguous simply because the party claiming the ambiguity believed their "interpretation is reasonable and fair." 153 W. Va. 714, 719, 172 S.E.2d 384, 387 (1970). The factual considerations before the Court in *Crockett* involved the Police Civil Service Commission's interpretation of a rule pertaining to granting of seniority to police officers; an act necessary to allow one to advance in rank within the force. *Id.* at 716, 172 S.E.2d at 384. The Police Civil Service Commission interpreted the rules to require that seniority be granted based on continuous and unbroken years of service, and not by total years of service that may be separated by periods of non-service. *Id.* The petitioner in *Crockett* had served two stints with the police force. *Id.* When he applied for seniority, however, the Commission refused to credit his years of service during his first stint before taking some time away from the force. *Id.* Petitioner argued that the plain reading of the rule did not provide for such an interpretation, and that he was entitled to seniority based on his total years of service. *Id.* In referencing the statute in question, this Court noted that the statute "unequivocally provides that each competitor shall receive '5 points for each full year of service he has had with the department." *Id.* at 719, 172 S.E.2d at 387. The Court went on to state:

> Is this not language which laymen are readily able to comprehend? Should the Police Civil Service Commission be permitted to read into that rule the words 'uninterrupted', 'consecutive', 'continuous' or any like words so as to create an ambiguity and thereby call for interpretation? *Application of the above principles of law to the plain language clearly requires an answer in the affirmative to the first question and a distinct answer in the negative to the second.*

Id. (emphasis added). While noting that the Police Civil Service commission had failed to identify any ambiguity in the statute, it noted that if their interpretation is more reasonable, "then it is within

their province to amend the rule to obtain that result. This, however, must be done as provided by statute, *not by interpretation.*" *Id.* (emphasis added).

The facts in the instant case are analogous to those in *Crockett*. A layman reading subsection (f) could not reasonably construe the words of the statute to unconditionally exclude livestock, despite clearly referencing the accepted standards of care for livestock as a condition for their exclusion from the statute. As outlined in the hypothetical discussed in Section B, *supra*, there is no reasonable interpretation of the statute that supports the idea that the legislature intentionally used the term livestock, but then intended for the phrase "standards of livestock" to apply, not to livestock, but to some other class of animals. Such a dubious interpretation is completely baseless and has no support.

Moreover, Petitioner's interpretation, by her own admission, requires the adding or omission of words or phrases from the statute in order for it to make logical sense. Petitioner posits that "or" between "trapping" and "animal training" should be removed and replaced with a comma. Pet'r's Br. at 17. Petitioner also asserts that the comma between "farm livestock" and "poultry" should be replaced with a semicolon, thus indicating the intent to include "farm livestock" in the first provision excluding certain "lawful acts." Pet'r's Br. at 17. Petitioner then advances that the phrase "nor to" should be added after the inserted semicolon following "farm livestock." Pet'r's Br. at 17. But all of these actions require this Court to go against its own precedent, which clearly establishes that:

> It is not for this Court arbitrarily to read into a statute that which it does not say. Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obligated not to add to statutes something the legislature purposely omitted.

Butler, at Syl. Pt. 6 (citing *Brooke B. v. Ray*, 230 W. Va. 355, 738 S.E.2d at 415 (1995). Thus, Petitioner essentially asks this Court to "read into" the statute words or phrases, or to modify and

manipulate words or phrases to say something that it clearly and plainly does not say. Had the legislature intended the statute to read as she suggests, this Court is to presume that the Legislature would have drafted the relevant provisions accordingly. *See State v. J.E.*, 238 W. Va. 543, 549, 769 S.E.2d 880, 886 (2017) ("we are guided by the precept that 'courts must presume that a legislature says in a statute what it means and means in a statute what it says there." (internal citation omitted)).

In addition, as noted above, Petitioner's own revision would create a clear and obvious ambiguity within the statute that is not present in its current form. "Hunting," "fishing," "trapping," and "animal training" are all excluded under the condition that each of those acts are done in a "lawful manner." To conclude otherwise would require this Court to read out the phrase "lawful acts of" that currently appear within the statute. If "farm livestock" is included in this series, then it is also subject to the modifying phrase "lawful acts of." This creates a clear problem; if Petitioner's argument that "farm livestock" was intended to be a part of the preceding series of acts, and, further, was intended to be unconditionally excluded, using the phrase "nor to" rather than "or" would be the more appropriate method to indicate such intent. But that is not present. Petitioner's suggested reading of the statute merely adds "farm livestock" to the series identifying what "lawful acts" are excluded from the statute. None of the items in the series are unconditionally excluded, and it cannot be said that, by adding farm livestock to the series, that farm livestock should be unconditionally excluded.

In addition to the grammatical analysis discussed, *supra*, the use of the disjunctive "or" in a series or list also has a distinct purpose. Under the current language of the statute, there are two disjunctive "ors" that appear, both of which have a different purpose. The disjunctive "or" that appears between "trapping" and "animal training" pertains to the disjunctive *series* for which

"animal training" is a part. The "or" between "trapping" and "animal training" does not serve to sever "animal training" from the preceding series, but rather to indicate the *end* of the series by illustrating that any one of the preceding acts may be excluded if done in a "lawful" manner. The "or" that appears between "animal training" and "farm livestock," however, while still disjunctive, indicates the end of the first *clause*, and the beginning of the second. This is further illustrated by the placement of a comma immediately following "farm livestock," which clearly indicates the beginning of a new series of items that are excluded subject to conditions identified later in the clause. If the first clause of subsection (f) read as Petitioner suggests, "farm livestock" would then become a part of the preceding series, thus being modified by "lawful acts." This interpretation *creates* an ambiguity rather than quell any perceived one. The Legislature intended the first clause to clearly exclude certain "lawful acts" from the provision. The following series simply identifies the types of "lawful acts" that are excluded. Including "farm livestock" into that series makes no logical sense, and cannot be applied without some additional word or phrase being added to the statute.

Petitioner's argument is not an argument of ambiguity; it is one asking this Court to, "under the guise of 'interpretation,' modif[y], revise[], amend[], or rewrite[e]" West Virginia Code § 61-8-19(f) to comport with her self-serving interpretation. *State v. Ward*, 245 W. Va. 157, __, 858 S.E.2d 207, 212 (2021). Because this Court's "function as a reviewing Court is to interpret [the statute] as written[, its] job is not to contort [the statute] to make it conform" with Petitioner's desired result. *J.E., supra,* at 551, 769 S.E.2d at 888. Nor is a "judicial challenge . . . 'a license for [this Court] to judge the wisdom, fairness or logic of legislative choices.'" *Butler*, at 176, 799 S.E.2d at 726 (citing *MacDonald v. City Hosp., Inc.*, 227 W. Va. 707, 722, 715 S.E.2d 405, 420 (2011)). Thus, Petitioner's argument glosses over the foundational consideration that would allow

this Court to interpret West Virginia Code § 61-8-19(f); she only asserts that her interpretation is correct, and because it is different than that of the state, the statute is ambiguous. For the reasons set forth above, this is not a basis for finding ambiguity within the language of a statute. This Court should reject Petitioner's request for this Court to resort to statutory interpretation, and further deny her request for relief.

D. Even if this Court finds West Virginia Code § 61-8-19(f) to be ambiguous, general statutory construction and interpretation principles demonstrate the legislature intended farm livestock to be excluded from the criminal animal abuse statute only when certain conditions are met.

Even if one were to assume, *arguendo*, that West Virginia Code § 61-8-19(f) is ambiguous, Petitioner's interpretation is completely without merit. Petitioner posits that "if the Legislature meant to create a conditional exception for livestock, why . . . did it need to create an exception at all?" Pet'r's Br. at 13. The answer to this question is simple: farm animals are not the same as domestic pets, and, thus, an act that may be wholly appropriate when pertaining to livestock, would be completely inappropriate if performed on a dog or cat. For example, while the branding of cattle is wholly appropriate, the same cannot be said for a cat. Moreover, the castration methods that are generally accepted for livestock would certainly run afoul of the criminal provisions set forth in West Virginia Code § 61-8-19 if performed on a dog. The failure to recognize the difference between a cow that is raised for slaughter, and a dog or cat that is kept as a family pet does not mean the distinction does not exist. There is a legitimate and necessary reason to carve out a special, *conditional* exception for farm livestock from the animal cruelty statute.

But, Petitioner's argument seems to hinge on her application of what this Court has described as the "last antecedent rule." *See* Pet'r's Br. at 15. The last antecedent rule provides that "referential and qualifying words and phrases, where no contrary intention appears, refer

solely to the last antecedent and do not extend to or include others more remote." *Woodrum*, at 511, 845 S.E.2d at 286; *See also*, *Jama v. Immigr. & Customs Enf't,* 543 U.S. 335, 343 (2005) (recognizing "the grammatical rule of the last antecedent, according to a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." (internal quotation marks and citations omitted)). In other words, Petitioner acknowledges that the "modifying phrase" of the second clause is "if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl, or wildlife or game farm production or management," but that it only applies to the "last antecedent"—the term "wildlife kept in private or licensed game farms." Pet'r's Br. at 15; 17. While this is correct if the last antecedent rule applied, it nevertheless provides no solace to Petitioner's argument as the rule "is not absolute, and can assuredly be overcome by other indicia of meaning." *Paroline v. United States*, 572 U.S. 434, 447 (2014). In such circumstances, courts have resorted to a "series-qualifier" rule, which provides "[w]hen several words are followed by a clause which is applicable as much to the first and other words to the last, the natural construction of the language demands that the clause be read as applicable to all." *Id.* (citing *Porto Rico Railway, Light & Power Co. v. Mor*, 253 U.S. 345, 348 (1920)).

If construed as ambiguous, the "series qualifier" rule outlined in *Paroline*, *supra*, is the more appropriate tool for statutory construction. *See*, *State v. Whindleton*, No. 19-0333, 2020 WL 2735448, at *6, n. 9 (W. Va. Sup. Ct. May 26, 2020) (memorandum decision) (Court identified "series qualifier rule" as a "cannon of statutory construction."). As noted above, subsection (f) contains two clause, both including distinct series of "acts" (first clause), and items or animals (second clause). The first clause is modified by the phrase "lawful acts of", which appears *before* the series that identifies the specific acts. In the second clause, however, the modifying clause

appears at the *end* of the series. Much like the phrase "lawful acts of" equally modifies all of the acts in the preceding series, the phrase "if kept and maintained" modifies all of the items in the series that comes before it. This notion is consistent with this Court's long-standing precedent which provides "words in different parts of a statute must be referred to in their proper connections, giving each in its place its proper force." Syl Pt. 9, *Old Dominion Bldg. & Loan Ass'n v. Sohn*, 54 W. Va. 101, 46 S.E. 222 (1903).

Before proceeding further into an analysis into whether the last antecedent rule or the series qualifier rule is the more appropriate cannon of statutory construction in the present case, it is worth noting that the "standards of care" for the various animals outlined above is not a theoretical or abstract idea. The West Virginia Department of Agriculture has set forth Livestock Care Standards that, if violated, subject the person who violates those provisions to criminal penalties. *See generally,* W. Va. C.S.R. 61-31-1 *et seq.* (2016). Most recently, the Legislature has enacted an emergency rule [9] titled "Livestock Care Standards." W. Va. C.S.R. § 61-31-1 *et seq.* (proposed July 2, 2021).[10] The rule "governs the care and well-being of livestock," and mandates, as it relates to equine, that "[w]ater containers shall be cleaned regularly and free of any hazard"; that horses shall be provided with a "diet sufficient to maintain a healthy weight and body condition"; and that

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[9] On June 30, 2021, the West Virginia Department of Agriculture filed with the West Virginia Secretary of State's office its draft 61 CSR 31 due to the repeal by statute of the previous legislative provision. (document may be found at: apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=54391&Format=PDF). On July 30, 2021, the West Virginia Secretary of State's Office approved the proposed rule, which, by its own terms "governs the care and well-being of livestock including, beef cattle, bison, veal, dairy cattle, equine, swine, small ruminant, and poultry, and captive cervid in the state of West Virginia. (document may be found at: apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=54588&Format=PDF).

[10] Document can be found at: https://www.westlaw.com/Document/I93B65CF2E03611EB9D479616906F63F3/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0

any "body score of less than 'three' (3) is unacceptable; unless that animal is under the supervision of a licensed veterinarian." *Id.* Also, the rule provides that "[i]n the event of a communicable disease the state veterinarian shall place an equine [in] quarantine which shall be a minimum of 200 yards from any animal." *Id.* Most importantly to the instant analysis is the final provision at the end of the rule in which it specifically provides that "*[a] person who violates any provision of this rule is subject to the penalties prescribed in West Virginia Code § 61-8-19.*" *Id.* (emphasis added).

With these standards in mind, the notion that the phrase "if kept and maintained according to usual and accepted standards of livestock," only applies to "wildlife kept in private or licensed game farms," despite the Legislature clearly including "farm livestock" in the series for which the clause modifies, simply makes no logical sense. Pet'r's Br. at 17. To demonstrate the preposterous results that would flow from such an interpretation, consider one who owns and operates a private game farm for trophy deer hunting purposes. By Petitioner's interpretation, so long as the owner keeps and maintains those deer in accordance with the accepted standards of livestock, he is immune from criminal prosecution under West Virginia Code § 61-8-19(f). If this were true, however, that would mean that the owner could brand, dehorn, or place a nose ring on his deer and be completely immune from prosecution, as each of those acts are accepted under the livestock care standards. W. Va. C.S.R. § 61-31-13 (proposed July 2, 2021); *see* fn. 10, *supra.* This interpretation also fails to account for the fact that there are different standards of care for different types of livestock. The standards of care for beef cattle is different from those for equines. The standards of care for swine are different from those applicable to poultry. Thus, Petitioner's own interpretation *creates the ambiguity*, and the statute could not reasonably be applied because there is simply no way to ascertain what specifically applies to wildlife when they are subjected to the

standards of care for livestock. Moreover, there is an *entire article* in the West Virginia Code that deals entirely with wildlife and their standards of care. *See* W. Va. Code § 20-2-1 *et seq.* Thus, there simply is no rational purpose to specify that wildlife kept on private or licensed game farms are subject to a standard of care designed for livestock when there are clear statutory guidelines for the care and treatment of that exact class of animal.

In returning to the applicability of the last antecedent rule or the series qualifier rule, one can easily see the inherent flaw in Petitioner's argument from a substantive perspective. But from the perspective of statutory construction, Petitioner's interpretation is equally as dubious. As noted in *Sohn, supra*, "words in different parts of a statute must be referred to in their proper connections, giving each in its place its proper force." *Id.* at Syl. Pt. 9. Thus, the phrase "if kept and maintained according to usual and accepted standards of livestock" should apply to livestock, just as the same standards for poultry should apply to poultry, the standards for gaming fowl to gaming fowl, and the standards for wildlife to wildlife. The last antecedent rule cannot be applied to subsection (f) without completely changing the obvious and clear intention of the Legislature in drafting the statute. In other words, because the general application of the last antecedent rule "can assuredly be overcome by other indicia of meaning," *Paroline,* 572 U.S. at 447, this Court should decline to apply such rule and instead look to the more appropriate "series-qualifier" rule. Under the "series-qualifier" rule, the modifying provision of the second clause clearly applies to all items in the series it modifies.

Finally, Petitioner correctly notes in her brief that "statutory interpretation can rely upon the examination of other statutes, particularly those which contain a body of law with similar purpose." Pet'r's Br. at 15. As this Court noted:

> A statute should be read and applied as to make it accord with the spirit, purposes and objects of the general system of law of which it is intended to form a part; it

> being presumed that the legislators who drafted and passed it were familiar with all existing law, applicable to the subject matter, whether constitutional, statutory or common, and intended the statute to harmonize completely with the same and aid in the effectuation of the general purpose and design thereof, if its terms are consistent therewith.' Syl. Pt. 5, *State v. Snyder*, 64 W. Va. 659, 63 S.E. 385 (1908).

Syl. Pt. 2, *State v. McClain*, 211 W. Va. 61, 561 S.E.2d 783 (2002). Petitioner then points to subsection (h) of West Virginia Code § 7-10-4 in support of her interpretation that livestock are exempted. But this argument is misplaced. While analyzing the provisions of West Virginia Code § 7-10-4, within the context of a case involving the civil seizure of approximately fifty head of cattle, this Court recognized that "some comment is warranted concerning the interplay between Code 7-10-4 (1923) and a corresponding criminal statute, W. Va. Code 61-8-19 (1923)." *Anderson v. George*, 160 W. Va. 76, 80, 233 S.E.2d 407, 409 (1977). The Court went on to note:

> Code 7-10-4(1923) draws a distinction between owners who abandon, neglect, or cruelly treat animals and owners who willfully abandon, neglect, or cruelly treat animals. With respect to the latter group, provision is made for returning animals into their owners custody under bond and after boarding expenses are paid, if the owner is convicted of an offense relating to animal mistreatment; if, however, the owner is acquitted of a criminal charge relating to animal mistreatment, there is some ambiguity regarding whether the owner is liable for boarding expenses. With respect to the former group, liability for boarding expenses appears to be fixed, regardless of the outcome of any criminal prosecution; indeed, the statute apparently contemplates that there would be no criminal prosecution unless the animal mistreatment were willful.

Id. Although dealing with a more nuanced legal question than the one currently at issue in the present case, the key take-aways pertinent to the instant case are: (1) livestock are not unconditionally excluded from the statute that Petitioner claims this Court should look to for guidance; and (2) this Court acknowledged one's exposure to criminal liability under West Virginia Code § 61-8-19 for the mistreatment of livestock. *Id.*

Thus, to the extent that this Court finds any ambiguity within West Virginia Code § 61-8-19(f), it should interpret subsection (f) to exclude livestock only if they are kept and maintained

according to the usual accepted standards of livestock. There is simply no basis to reach any other conclusion. Moreover, Petitioner's argument and proposed manipulation of West Virginia Code § 61-8-19(f) is wholly inappropriate under this Court's prevailing precedent, and should be completely rejected as without any legal basis.

Petitioner has failed to demonstrate that West Virginia Code § 61-8-19(f) is ambiguous and, thus, warrants this Court's interpretation. Even if this Court finds the statute to be ambiguous, Petitioner's interpretation completely belies the conclusion one may reasonably reach as to the statute's meaning after applying the accepted statutory construction and interpretation principles. Finally, Petitioner has failed to demonstrate any error by the lower Court in its granting of the State's Petition for a Writ of Prohibition. Petitioner's request for relief should be rejected, and the lower court's order granting the State's Petition for a Writ of Prohibition should be affirmed.

VII. CONCLUSION

For the foregoing reasons, the May 17, 2021 Order of the Putnam County Circuit Court granting the State's Petition for a Writ of Prohibition should be affirmed.

Respectfully Submitted,

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 21-0475

MARK A. SORSAIA,

Respondent,

v.

HARLEE BEASLEY

Petitioner.

CERTIFICATE OF SERVICE

I, William E. Longwell, counsel for Mark A. Sorsaia, the Respondent, hereby certify that I have served a true and accurate copy of the foregoing **Respondent's Brief** upon counsel for Petitioner, by depositing said copy in the United States mail, postage prepaid, on this day, November 12, 2021, and addressed as follows:

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