

ANIMAL LAW—DISCRIMINATION BASED ON APPEARANCE: THE DANGERS THAT FEAR, MISIDENTIFICATION, AND OVERREACTION POSE FOR ALL DOG OWNERS. *Holt v. City of Maumelle*, 307 Ark. 115, 817 S.W.2d 208 (1991).

## I. INTRODUCTION

Weela is a courageous canine, celebrated as a hometown hero. Seeing her owner's child in danger, Weela courageously knocks him out of the way, saving the child from a rattlesnake bite, instead taking the bite herself.<sup>1</sup> After recovering, she helps her community by braving strong flooded rivers, saving thirty children, twenty-nine dogs, and thirteen horses.<sup>2</sup> She takes the animals food by swimming against the tough currents, and stops some stranded people from crossing where the waters are too treacherous, leading them instead to a more shallow, calmer crossing.<sup>3</sup> For her courageous efforts, Weela is named Ken-L Ration's Dog Hero of the Year.<sup>4</sup>

Foxy's owner is an eighty-two year old woman with limited mobility.<sup>5</sup> One day, the woman slips on a patch of ice outside her home and breaks her hip.<sup>6</sup> She lays helpless in the single-digit temperatures, desperate to get a neighbor's attention through flashlight signals—all to no avail.<sup>7</sup> Foxy rests on top of her injured companion, keeping her from freezing to death, and barks incessantly until help arrives to investigate the commotion.<sup>8</sup> Officers say Foxy saved her owner from succumbing to the freezing temperatures.<sup>9</sup>

Gabby senses that something is not right, and races to the location where she spots the danger.<sup>10</sup> Jim, her owner's landlord, had been picking peaches from a tree when he suddenly fell from a twelve-foot ladder and was knocked unconscious.<sup>11</sup> Gabby licks his face to tell him everything is okay before running to her owner, Jeanne, about 100 yards away.<sup>12</sup> Gabby barks persistently at Jeanne, leading her to where Jim has fallen to the ground.<sup>13</sup> Jeanne calls for help, and Jim is air-lifted, receiving prompt, life-saving medical attention for multiple serious injuries.<sup>14</sup>

What do Weela, Foxy, and Gabby have in common? They are all "pit bull type" dogs. They belong to a class of dogs so often discriminated against in the local daily news, but rarely ever praised for their heroic acts. Also, all three are dogs that are banned from existing within the city limits of Maumelle, Arkansas for any longer than a quick veterinary visit.<sup>15</sup> This discrimination is based on nothing more than their physical resemblance to a group of breeds, "pit bulls," that the city deems inherently dangerous.<sup>16</sup> Whether a dog is banned under the ordinance is based on the discretion of a police officer, who is likely inadequately trained in the field of breed identification.<sup>17</sup>

Maumelle's ordinance banning certain breeds of dogs, as well as those that merely resemble certain breeds, has not gone unchallenged—as evidenced in the focal case of this article, *Holt v. City of Maumelle*.<sup>18</sup> Although the city previously repealed a similar ordinance after pressure from a resident who alleged that the ordinance was unfairly prejudicial, Maumelle re-enacted its breed-specific ban just a few years later.<sup>19</sup> In 1991, the Arkansas Supreme Court upheld Maumelle's ordinance, denying charges that it was unconstitutionally vague about what types of dogs were banned and that it violated due process guaranteed by the state constitution because dog owners were not given fair notice of what dogs were banned by the ordinance.<sup>20</sup> In the ten years since *Holt*, the issue has not been seriously revisited in Arkansas.

In August 2012, the American Bar Association (ABA) took an unprecedented step toward protecting dogs that are unfairly targeted by vague ordinances like Maumelle's. ABA House Resolution 100 urges all states and local governments to repeal breed-specific bans and other legislation that place overly burdensome restrictions on owners of certain dog breeds.<sup>21</sup> Rather, it encourages the lawmakers to implement breed-neutral policies that focus on dog behavior, as well as owner responsibility and accountability.<sup>22</sup> The ABA's decision follows the example set forth by a significant number of jurisdictions that have recognized the unfair

prejudice of breed-specific legislation and its ineffectiveness at reaching its primary goal—reducing the number of dog bite injuries.<sup>23</sup>

This article urges the city of Maumelle, along with municipalities in Arkansas and other states, to heed the recommendation of the ABA and repeal breed-specific dog ownership laws in favor of breed-neutral legislation, such as the model ordinance proposed herein. The background of this article will visit the court's holding in *Holt v. City of Maumelle*, which affirmed that the Maumelle ordinance did not violate due process and that it was not impermissibly vague under the Arkansas Constitution.<sup>24</sup> Next, this article will propose a model ordinance, which is crafted upon an analysis of the cause and effects of breed-specific legislation as well as the reasoning behind its repeal in favor of breed-neutral laws.<sup>25</sup> The analysis will examine jurisdictions that have enacted both types of laws as well as the subsequent results of each. Then, this article will argue that breed-specific legislation, such as the Maumelle ordinance, raises constitutional concerns, is ineffective in reducing the number of injuries caused by dog bites, and that breed-neutral legislation is a more effective and less discriminatory alternative. Finally, this article will conclude by urging municipalities to adopt the model ordinance set forth, because although most jurisdictions have upheld breed-specific legislation as constitutional, the vagueness and

discrimination embedded in such legislation still welcomes a significant number of lawsuits that would not arise under the model ordinance set forth.<sup>26</sup>

## II. HISTORY OF BREED-SPECIFIC LEGISLATION IN MAUMELLE, ARKANSAS

Maumelle, Arkansas is one of many communities in the United States that has a local ordinance banning dangerous dogs inside its city limits.<sup>27</sup> Maumelle's ordinance does not simply define a dog that is dangerous or potentially dangerous based on any threatening or vicious behavior; rather, Maumelle's ordinance bans particular dogs from the city belonging to, or possessing the physical characteristics common to certain breeds, namely "pit bull" type dogs.<sup>28</sup> The ordinance states that "[b]anned breeds of dogs are banned entirely and may not be owned or kept within the city," except for the limited exception of being brought into the city for a veterinary visit, during which the animal must be confined as a vicious animal.<sup>29</sup>

In 1986, Maumelle adopted its first breed-specific dog ordinance.<sup>30</sup> The ordinance banned dogs that substantially conformed to the descriptions of certain breeds, including American Pit Bull Terrier, as defined by two kennel clubs.<sup>31</sup> The ordinance also allowed law enforcement to enter any property in order to locate and confiscate an animal fitting the description of a prohibited breed.<sup>32</sup>

In 1987, Steele Holt was charged under the dangerous dog ordinance and subsequently filed suit against the city and its animal control officer.<sup>33</sup> In exchange for repeal of the ordinance and a small sum of \$2,000, Mr. Steele agreed to drop all claims against the city and its officers on March 25, 1988.<sup>34</sup> On April 4, the city adopted a second dangerous animal ordinance that did not reference dogs at all, and also removed the previously existing provision allowing an officer to enter any property without notice.<sup>35</sup> Then on May 2nd, the city passed a third ordinance, which is still in effect today, that prohibits keeping certain breeds of dogs within the city, including the American Pit Bull Terrier.<sup>36</sup> Mr. Holt filed suit against the city, alleging that the ordinance was unconstitutionally vague, that it unconstitutionally included the pit bull within the classification of banned dogs, and that the new ordinance was a breach of the March 25th settlement agreement.<sup>37</sup>

In 1991, The Arkansas Supreme Court upheld the ordinance that named American Pit Bull Terriers, Staffordshire Bull Terriers, and American Staffordshire Terriers as banned breeds in Maumelle.<sup>38</sup> The court declared that the ordinance was not unconstitutionally vague in its classification of banned dogs, which includes: “any dog whose sire or dame” is one of the banned breeds; any dog whose owner registers or admits the dog as being one of the banned

breeds; any dog “conforming or substantially conforming” to one of the banned breeds as defined by one of two kennel clubs; or any dog “which is of the breed commonly referred to as ‘pit bull’ and commonly recognizable and identifiable as such.”<sup>39</sup> The court also concluded that the city had a reasonable basis under the state’s police power for including specific breeds in the list of banned dogs, namely for the purpose of preventing injury to people and property by dogs.<sup>40</sup>

### III. BREED-SPECIFIC LEGISLATION: AN INFERIOR AND INEFFECTIVE RULE OF LAW

The 1991 decision in *Holt v. City of Maumelle* remains the controlling law in Arkansas with regards to dangerous dog laws, and it specifically allows banning particular dogs based on certain physical characteristics that are common to typically banned breeds, often categorized as “pit bulls.” Various communities across the nation have implemented breed-specific dog bans similar to Maumelle’s, often times as the result of a highly publicized tragic accident involving a dog bite that kills or seriously injures a person.<sup>41</sup> However, the jurisdictions that enact these breed-specifics laws have not produced convincing results about the effectiveness of legislation that targets these breeds.<sup>42</sup> A growing number of jurisdictions have adopted breed-neutral legislation that focuses on the behavior of the animal as well as responsible dog ownership,<sup>43</sup> and

in August 2012, the ABA officially endorsed this approach to preventing dog bite injuries and encouraged the repeal of breed-specific laws.<sup>44</sup> Most experts agree that breed-neutral legislation is more effective and a less-intrusive means of reducing injuries caused by dog bites than breed-specific bans.<sup>45</sup>

A. A Model Dangerous Dog Ordinance

This article urges municipalities like Maumelle to implement breed-neutral legislation in place of current breed-specific legislation. What follows is a model that would be helpful to committees who are trying to shape new breed-neutral legislation for their area. There are certain issues that breed-neutral legislation needs to address, and the following model provides a roadmap to ensure that the proper requirements are met.<sup>46</sup>

**1.1 Dangerous Dog.** A “dangerous dog” shall be one that:

- a) Attacks a person or domestic animal, without provocation by a person or another animal or other reasonable justification, causing physical injury or death;
- b) Is possessed in violation of an order by a court of record, that order having set forth conditions for keeping said dangerous animal in accordance with state statute, or a local ordinance; or



c) Has engaged in or been trained for animal fighting as defined and proscribed by state law.

d) In determining whether a dog should be classified as a “dangerous dog”, the dog’s breed or physical characteristics shall not be considered.

**1.2 At-Risk Dogs.** A dog categorized as “at-risk” of becoming a dangerous dog shall be one that demonstrates behavior that would cause a reasonable person to actually believe that the dog may inflict serious bodily harm upon or cause the death of any person or domestic animal, such as:

a) Repeated charging against a fence or to the end of its lead in an attempt to attack;

b) Biting or attempting to bite a person or another domestic animal;

c) In an aggressive manner charging, baring teeth, growling, and snapping; or

d) Engaging in otherwise reasonably dangerous behavior toward a human or another domestic animal.

**1.3 Unlawful Designation of “At-Risk” or “Dangerous Dog.”** It shall be

unlawful to designate a dog as “dangerous” or “at-risk” based on aggressive behavior when:

- a) The animal has been provoked or attacked by a person;
- b) A person reasonably threatens to attack another person;
- c) A person is bitten while trying to stop an altercation between two or more animals;
- d) Any person is engaged in a physical attack against another person;
- e) A person has unlawfully entered upon the premises on which the allegedly aggressive animal is kept;
- f) An at-large domestic animal enters the premises where the dog is lawfully restrained;
- g) A dog is used by a law enforcement officer while engaged in law enforcement duties; or
- h) A person is engaged in capturing or attempting to capture an at-large animal in the absence of the owner on public property.

#### **1.4 Reporting and Finding of Potential Dangerous Dog Behavior.**

a) Any resident shall be permitted to make a complaint of a dog displaying “dangerous” or “at-risk” behaviors that they have personally observed.

b) Law enforcement shall immediately provide the accused animal’s owner with actual notice of the complaint, informing the owner of their right to commence a judicial proceeding to determine if there is probable cause to believe that the animal is “dangerous or “at-risk.”

c) If law enforcement has probable cause to believe that the animal is “dangerous” or “at-risk,” then law enforcement may commence such proceeding absent action by the owner if the owner does not respond to notice within ten (10) days.

#### **1.5 Penalties and Restrictions Placed on Owners of Dogs Found to “Dangerous” or “At-Risk.”**

a) Once a judge has deemed a dog to be “dangerous” or “at-risk,” he may impose any or all of the following restrictions on the dog’s owner:

i) Required adult supervision of the animal other than when it is alone indoors;

ii) To be on a leash no longer than six feet when outdoors and under the control of a responsible adult;

iii) To place signs on the premises with words and pictures that would notify adults and children that there is a dangerous animal on the premises;

iv) Attendance by the animal and its owner at training and owner-education sessions at the cost of the owner;

v) Neutering or spaying at the cost of the owner;

vi) Implanting an identification microchip in the animal at the cost of the owner;

and

vii) Other reasonable fines or hearings subject to non-compliance with court-ordered restrictions.

b) However, the following penalties and restrictions may only be implemented in the most grave of circumstances, when a dog attack leads to serious bodily injury, causing broken bones, multiple sutures, or death:

- i) That a muzzle be placed on the dog when outside and not in an enclosure, the muzzle in no way interfering with the dog's vision or respiration, but preventing the animal from biting;
- ii) That the animal be placed in a padlocked enclosure at all times from which it cannot escape when the animal is unsupervised outdoors; and
- iii) That the dog owner obtain and maintain liability insurance in an amount to be determined by the judge, but not to exceed \$50,000, that would cover medical expenses and/or veterinary costs resulting from possible future altercations involving the animal.<sup>47</sup>

**B. Breed-Specific Legislation as a Knee-Jerk Reaction to Highly Emotional Events**

Breed-specific legislation, such as the ordinance upheld in *Holt v. City of Maumelle*, is often a knee-jerk reaction to an isolated dog bite incident resulting in serious injury or death. The community's citizens are highly affected by these incidents emotionally, and are often spurred by the media's intense negative portrayal of pit bulls.<sup>48</sup> Recent studies show that a child is 100 times more likely to suffer a serious injury or death caused intentionally by the child's parent or

caretaker than by a dog.<sup>49</sup> Additionally, more humans are killed annually by cows than by dogs.<sup>50</sup>

One author has noted that there are five times more people killed annually by lightning, falling coconuts, and hot tap water than by dog bites, as well as three times more people killed by bug bites than by dog bites.<sup>51</sup> Yet despite the relatively low number of fatalities caused by dog bites, dangerous dog laws are commonplace. Serious dog attacks involving the most vulnerable, such as children and the elderly, are viewed as especially troublesome.<sup>52</sup> When these instances are exacerbated by the recent extensive media coverage of pit bull attacks, the solution enacted is often swift and severe: breed-specific bans.<sup>53</sup> Often times, however, the attacks provoking such legislation do not even involve a dog that falls under a breed prohibited by the resulting ban.<sup>54</sup>

One example is a fatal attack in 2001 that sparked public outrage when Diane Whipple was mauled by her neighbor's two dogs near the front door of her home.<sup>55</sup> The dogs were not deterred by the efforts of their owner and the subsequent bloody scene was a testament to the harm that dogs can do to a human when they decide to attack.<sup>56</sup> Whipple's death brought dangerous dogs to the forefront of national media,<sup>57</sup> leading to widespread community discussions that have resulted in laws banning certain "dangerous" breeds. The problem with this logic is apparent when one notes that the dogs that viciously and mercilessly attacked Diane

Whipple were not pit bulls, but Presa Canarios—a breed not usually categorized along with pit bulls as banned.<sup>58</sup>

Almost weekly a news headline announces that a pit bull has caused destruction, and concerned citizens are interviewed about their safety. The media's negative portrayal of pit bulls often catapults the breed into the limelight in cases, such as Whipple's, when pit bulls were not even involved.

In a recent example, numerous farm animals in the Little Rock Zoo were attacked by dogs during the night, killing five and injuring several others.<sup>59</sup> The next morning, zookeepers spotted the dogs, and the zoo director stated that “[o]ne was a pit-bull apparently light in color, the other one is a brown and white pit-bull terrier mix, not very big dogs.”<sup>60</sup> The director went on to say that, according to officials, the dogs' descriptions were similar to those of a pack of dogs that had killed five animals in a community garden the previous week.<sup>61</sup> By the next day, however, the same media outlet released a follow-up to the story, saying that the dogs had returned, and that this time the city authorities said “they got a closer look and a new description.”<sup>62</sup> After being able to “get a good identification of them,” the General Curator said, “Honestly, when we got a really good look at them, I wouldn't necessarily call them pit bulls.”<sup>63</sup>

The Little Rock Animal Services Director said that “[o]ne was a brown and white terrier-shepherd mix and the other was a black and tan German Shepherd mix,” and that he did not believe the zoo case was related to the attack at the community garden because the descriptions of the dogs were not similar.<sup>64</sup>

Such instances of pit bull misidentification being spread by the media are not uncommon, and may ultimately contribute to unnecessary and ineffective laws banning pit bulls. It is true that pit bulls were involved in one-third of fatal dog attacks in the 1980’s and early 1990’s.<sup>65</sup> However, more than twenty-five other breeds were also implicated in dog bite fatalities during the same period<sup>66</sup>—for example, the Presa Canarios that killed Diane Whipple.<sup>67</sup> Even so, the total number of dogs who commit these vicious attacks annually represents less than 0.00004% of the American dog population—over two hundred times less than the proportion of American humans who kill other humans.<sup>68</sup> Selectively banning entire breeds of dogs based on these infinitesimal statistics seems simultaneously both over- and under-inclusive. Breed bans do not include all breeds of dogs responsible for fatal attacks; however, they also include the overwhelming majority of a breed that poses no significant danger to society.

### C. The Ineffectiveness of Breed-Specific Legislation at Reducing Dog-Bite Injuries



Several jurisdictions have implemented breed-specific bans targeting pit bulls, but these bans have not been more effective than breed-neutral dangerous dog laws in reducing the number of dog bite injuries.<sup>69</sup> Emotional responses to well-publicized, tragic attacks have led some cities and counties to take the breed-specific ban approach in attempts to reduce the number of dog bite injuries in their communities.<sup>70</sup> One justification for breed bans is the claim that the laws have been effective in reducing the number of dog bite injuries. For example, one Winnipeg newspaper boasts that since the area's 1990 pit bull ban, serious dog attacks have declined.<sup>71</sup> However, the study cited shows that the "average rate of hospitalizing bites in Winnipeg" went from 2.93 per 100,000 people annually pre-ban to 2.81 per 100,000 people annually post-ban.<sup>72</sup> The author goes on to compare Winnipeg with Brandon, a city without breed-specific legislation. She cites a statistic that points out that "for every hospitalization seen in Brandon youth, there were 1.28 hospitalizations before [breed-specific legislation] and 0.92 hospitalizations after [breed-specific legislation] in Winnipeg."<sup>73</sup> The city states that it enjoys support of the ban from its constituents, despite a poll indicating otherwise and the lack of concrete and convincing evidence regarding the ban's effectiveness.<sup>74</sup>

Studies suggest, however, that dog bite injuries have decreased dramatically in the last thirty-five years in virtually all areas of the United States.<sup>75</sup> While the dog and human populations continue to grow, the number of dog bites has declined across the nation since the 1970's, including an eighty-six percent reduction in Minneapolis, Minnesota; a ninety percent reduction in New York City, New York; and a ninety-one percent decrease in Baltimore, Maryland.<sup>76</sup> All three of these cities achieved this reduction in dog bite injuries through breed-neutral legislation; not one pit bull or any other animal was banned based solely on its breed.<sup>77</sup>

In comparison, Denver, Colorado, a city that implemented a breed-specific ban including pit bulls in 1989, has seen an eighty-five percent decrease in dog bite injuries in the same time period.<sup>78</sup> Denver's numbers are typical; there is no convincing evidence to show that municipalities with breed-specific legislation have seen a greater reduction in dog bite injuries than those that do not discriminate on the basis of breed or appearance.<sup>79</sup>

Additionally, since it enacted its pit bull ban, Denver has experienced serious injuries caused by bites from other types of dogs not included in the ban.<sup>80</sup> However, the city has refused to amend the ban and address the fact that other dogs continue to cause serious injuries.<sup>81</sup> In 1989, Denver's breed ban was invoked as a result of a fatal 1986 attack involving a "pit bull"

dog; then in 1998, a Denver child was killed by a dog not included in the breed ban.<sup>82</sup> Despite the fatal 1998 attack and other attacks that have occurred under the ban by dogs other than pit bulls, the city of Denver maintains that pit bulls are inherently more dangerous than other dogs and continues to support the ordinance.<sup>83</sup> Denver's reasoning may seem sound at first glance because it has experienced success rates similar to other jurisdictions; however, its flawed rationale has had grave effects. Since the enactment of Denver's pit bull ban, the city has seen no greater decrease in the number of dog bite injuries than other jurisdictions without breed-specific restrictions; yet from 2005 to 2007, 1,667 pit bulls were killed as a result of the city's ban.<sup>84</sup>

#### D. The ABA's Endorsement of Repealing Breed-Specific Legislation

Recognizing the ineffectiveness and discriminatory effects of breed-specific legislation, the ABA now officially endorses the repeal of all breed-specific legislation in favor of breed-neutral laws that focus on previous animal behavior and responsible pet ownership.<sup>85</sup> In August 2012, the ABA passed a House Resolution that states:

[T]he American Bar Association urges all state, territorial, and local legislative bodies and government agencies to adopt comprehensive breed-neutral dangerous dog/reckless owner laws that ensure due process protections for owners,

encourage responsible pet ownership and focus on the behavior of both dog owners and dogs, and to repeal any breed discriminatory or breed specific provisions.<sup>86</sup>

The resolution addresses breed-specific bans, as well as “onerous restrictions” placed on dogs and their owners, including requirements for special leashes, sterilization, micro-chipping, muzzling, and various other controls placed on certain breeds of dogs and breed owners.<sup>87</sup> The resolution recognizes that such laws are often the product of “panic policymaking” in reaction to emotional incidents, and that the laws largely ignore the impact that they have on property rights of dog owners.<sup>88</sup> According to the ABA’s included report, twelve states now prohibit breed-specific legislation, including Ohio, the only one of the twelve states to have previously implemented breed-specific vicious dog laws.<sup>89</sup> Most experts also support the trend in repealing breed-specific laws, including the American Humane Association, American Kennel Club, American Veterinary Medical Association, National Animal Control Association, Centers for Disease Control, and other prominent organizations.<sup>90</sup>

1. *Failure of Breed-Specific Legislation to Target the Real Issue*

Breed specific legislation fails to address the real problem—irresponsible pet owners.

Breed-specific legislation mostly targets dogs that have never displayed any violent behavior; the banned dog's only "crime" is having some physical characteristic often seen in pit bulls. The individuality of dogs is ignored, and the title of "menace" is given to any dog fitting a somewhat vague description, regardless of whether the animal poses any actual threat to the community.<sup>91</sup>

These bans characterize dogs, such as pit bulls, as an inherent danger,<sup>92</sup> even if they are model citizens like Weela, Foxy, and Gabby. These laws assume that "the potential for disaster is always just beneath the surface, and it is this potential danger that justifies blanket prohibitions" against ownership of these animals, regardless of their model behavior.<sup>93</sup>

The American Society for the Prevention of Cruelty to Animals (ASPCA) is an organization that has recognized the ineffectiveness of breed-specific legislation and urges its repeal.<sup>94</sup> It notes that in addition to breed, there are multiple factors that can contribute to a dog's aggression, all of which ought to be taken into account in regulating dangerous dogs.<sup>95</sup> Such factors include: "heredity, early experience, socialization and training, sex and reproductive status," chaining and tethering, selective breeding, abuse and neglect, and inadequate obedience training and supervision.<sup>96</sup> Some examples of breed-neutral laws that the ASPCA supports are

enhanced dog licensing laws, mandatory sterilization of shelter animals, focus on animal behavior, stiff penalties when a dog behaves aggressively, financial punishment for owners who are non-compliant, and laws that prohibit inhumane treatment or confinement.<sup>97</sup>

## 2. *Breed-Neutral Laws Satisfy the Constitution and Innocent Dog Owners*

Breed-neutral laws raise fewer constitutional concerns than breed-specific laws, and fewer innocent animals and owners suffer as a result.<sup>98</sup> Numerous breed-specific laws have been challenged as unconstitutional, namely for vagueness, violation of due process, and overbreadth.<sup>99</sup> Breed-specific legislation has been challenged in the courts with claims alleging several unconstitutional grievances: over-inclusive and under-inclusive; “not rationally related to legitimate legislative aims;” too vague to put dog owners on notice of violation of the law; deprivation of private property by the government without compensation; and “unconstitutionally oppressive” burdens concerning insurance, bonding, and licensing fees.<sup>100</sup> A vast majority of the courts have upheld laws banning pit bulls under the power of the state to legitimately exercise its police power by controlling dogs.<sup>101</sup>

For example, courts in Washington, Florida, Kentucky, Missouri, New Jersey, and Washington, D.C. have all explicitly upheld laws of municipalities banning certain breeds of

dogs.<sup>102</sup> The Washington Supreme Court, citing guidance from other jurisdictions, found that ordinances banning pit bulls need not give “painstaking definitions” of what constitutes a banned breed, that “mathematical certainty is not always essential” in identifying a dog that violates the ordinance, and that the phrase “pit bull” has a sufficient “discernible meaning.”<sup>103</sup> The court stated that as long as particular breeds were mentioned, a statute would be “sufficiently definite.”<sup>104</sup> This reasoning is consistent with how courts across the country have justified upholding breed-specific legislation.<sup>105</sup>

Nevertheless, the ABA and virtually all expert animal organizations agree that breed-neutral legislation is a more desirable means of the state’s exercise of police power to protect people from dog bite injuries.<sup>106</sup> While the courts have been nearly unanimous in upholding such laws against constitutional challenges,<sup>107</sup> the number of challenges brought still demonstrates that the laws are not widely accepted and that they invite a number of expensive lawsuits for the city or state to defend.

In contrast, breed-neutral laws, such as the model proposed by this note, do not have many of the inherent challenges found in breed-specific legislation, because breed-neutral laws do not single out particular breeds or dogs that appear to have characteristics of certain breeds.<sup>108</sup>

Therefore, the equal protection and due process challenges do not infiltrate breed-neutral laws as they do breed bans.<sup>109</sup> Dog laws based on previous animal behavior and responsible ownership practices that clearly set forth the proper procedures for dog owners to follow—specifically the aforementioned model ordinance—would not present these types of constitutional obstacles for law enforcement. More importantly, if dogs were targeted based on vicious behavior and owners who raise their dogs irresponsibly were targeted as well, innocent pets and pet owners would be free to live their lives peacefully and without fear of law enforcement taking the animal based solely on the animal’s appearance.

### 3. *The Challenge of Identifying Dogs by Breed*

Identifying a dog as belonging to a particular breed can be challenging, even to highly trained professionals. The group of dogs commonly called “pit bulls” usually contains Staffordshire bull terriers, American Staffordshire terriers, and American Pit Bull terriers.<sup>110</sup>

Neither the American Kennel Club nor the United Kennel Club recognizes a “pit bull” breed.<sup>111</sup>

This is why most pit bull bans, like the one in Maumelle, include any dog appearing to substantially conform to the physical characteristics of any of the aforementioned breeds.

However, the physical characteristics of dogs identified as pit bulls can vary greatly: from



weighing less than twenty-five to over one hundred pounds; having natural or cropped ears; and having coats that are solid, brindled, or spotted in various colors.<sup>112</sup> Furthermore, other “hallmark features” of dogs identified as pit bulls, such as “a broad skull, prominent cheek muscles, and a short muzzle; a compact, muscular body with well-sprung ribs; or a smooth, close coat” are likewise commonly found in other non-pit bull type breeds.<sup>113</sup> Therefore, it follows that dog breeds are inherently difficult to identify based on their appearance alone.<sup>114</sup> When you add the fact that “pit bull” refers to a group of breeds rather than one in particular, the difficulty of identification multiplies.<sup>115</sup> This not only makes the identification of dogs hard for law enforcement officers, but highlights why breed bans do not give adequate notice to dog owners that they may be in violation of the ban; they simply may not know whether or not their dog falls within the banned category.<sup>116</sup> Under the proposed model ordinance, the difficulties in identifying a dog’s breed are irrelevant and unnecessary.

Furthermore, attempts to make breed distinctions based on appearance, particularly in dogs of mixed heritage, have been shown to be extremely inconsistent with DNA breed analysis of the dogs.<sup>117</sup> In one study cited by the ABA, animal adoption agency personnel were asked to identify the breed or breeds of dogs with unknown origins based on appearance.<sup>118</sup> The study

showed that “[i]n only 25% percent of the dogs was least one of the breeds proposed by the adoption agency personnel detected as a predominant breed by DNA analysis. In 87.5% percent of the dogs, breeds were detected by DNA analysis that none of the adoption agency personnel named in their responses.”<sup>119</sup>

The discrepancy in the identification of dogs based on appearance versus identification based on their actual genes is important because, where breed-specific legislation is concerned, a visual identification of a dog’s breed can literally determine whether the dog lives or dies.

Additionally, the identification of breed by appearance can be even more difficult in young puppies. It is hard for even a veterinarian to pinpoint a puppy’s breed without knowledge of its parentage.<sup>120</sup>

Nevertheless, the breed determination that a vet makes about a puppy can determine the course of the dog’s life, including whether it is adopted or euthanized.<sup>121</sup> Furthermore, as the dogs grow and their physical characteristics change, so too will the dog’s identified breed.<sup>122</sup> The implication of these changes under a breed ban is that a dog once thought to be safe under the ban could potentially come to be in violation if he grew to display certain physical characteristics causing a law enforcement officer or neighbor to think it looks like a “pit bull.” Under breed-

neutral laws, such as the proposed model ordinance, these visual identifications would be unnecessary and physical changes a dog may undergo throughout its development would be irrelevant.

#### 4. *The Transformation of Animals from Mere Property to Family Members*

Concern about “animal rights” have become a mainstream phenomenon in recent years, and animals are beginning to be thought of more like part of the family and less like property. While the law is distinct from morality, it cannot be denied that the two are closely connected in many ways.<sup>123</sup> Numerous laws throughout history have been implemented or rejected based on moral grounds, such as laws concerning desegregation, interracial marriage, homosexual relationships, and many more.<sup>124</sup>

Since the 1970’s, society’s moral concern for animals has grown, including the treatment of “research animals, farm animals, zoo animals, . . . wildlife,” and pets.<sup>125</sup> Astoundingly, with over forty-six million households now including a dog, “pet owners spend approximately \$270 million per year on pet health insurance, and they expect medical care for their pets that is similar to human medicine.”<sup>126</sup> It is not surprising then, that while twenty years ago, estate gifts to pets were presumed invalid under the law because a human beneficiary was required, forty-six

states now have statutory law enacting valid pet trusts, allowing a pet owner to ensure funds will be available for the proper care of a pet after the owner is deceased.<sup>127</sup>

“Society has . . . taken elements of the moral categories it uses for assessing the treatment of people and is in the process of modifying these concepts to make them appropriate for dealing with historically unprecedented issues in the treatment of animals.”<sup>128</sup> While the law still considers animals as property, it is obvious that, at the very least, animals have become “moral objects of concern” to mainstream America.<sup>129</sup> This is not surprising since many households have brought the family dog from its traditional place in a lonely backyard to the indoors, sharing their owners’ homes, lives, food, and furniture.<sup>130</sup> It is only natural that, as animals become an everyday part of mainstream homes and lives, society will become increasingly morally concerned for those animals. It is not argued here that animals ought to be granted rights like those of humans. However, the growing moral concern for animals is another reason why there is an understandable popular disdain for laws that allow police to capture and kill certain dogs based solely on appearance.

#### E. The Widespread Acceptance of Breed-Neutral Laws

Breed-neutral laws have met success where implemented and also enjoy a greater support of the community than their breed-specific counterparts. The major common goal of both breed-specific and breed-neutral legislation is to reduce the number of injuries caused by dog bites.<sup>131</sup> However, breed-specific legislation has not proven to be an effective means of significantly lowering the number of dog bite injuries that occur.<sup>132</sup> The simple reason for their ineffectiveness in reducing dog bite injuries is that breed bans do not adequately address the problem of dog bites. While pit bulls and Rottweilers cause a disproportionate number of serious or fatal injuries by dog bites, they do not account for most dog bites.<sup>133</sup> Studies have shown that bans on pit bulls did not reduce the total number of dog bites, even after the pit bull population in the area had drastically declined.<sup>134</sup>

While breed bans deal specifically with breeds that are deemed more likely to seriously injure or kill, instead, laws are needed that address the entire scope of the dog bite epidemic.<sup>135</sup> Implementing controls on just a couple of breeds produces narrow results that are incapable of solving the larger dog bite problem.<sup>136</sup> Therefore, one could reasonably conclude that breed-neutral laws that place the same standards on every dog and dog owner, regardless of the dog's breed, would produce more widespread and noticeable results.

Oklahoma is one state that has legislation prohibiting the regulation of dangerous or potentially dangerous dogs based on breed.<sup>137</sup> In 2007, the Oklahoma Attorney General issued an opinion that effectively struck down a local ordinance that had attempted to ban breeds based on a study by the Center for Disease Control.<sup>138</sup> The study designated as “dangerous” certain breeds having the highest number of dog-bite fatalities or to be the most likely to seriously injure or kill.<sup>139</sup> The Attorney General advised that the ordinance violated a state statute that read “potentially dangerous or dangerous dogs may be regulated through local, municipal and county authorities, provided the regulations are not breed specific.”<sup>140</sup> Twelve states have passed similar legislation prohibiting breed-specific regulation of dogs.<sup>141</sup>

As previously mentioned, Minneapolis, New York City, and Baltimore are all examples of cities that have seen an eighty-six to ninety-one percent reduction in dog bites since 1971 without the help of breed-specific legislation, by regulating nothing other than the interaction between people and their pets.<sup>142</sup> There is no evidence that any area with breed-specific legislation can boast higher success rates than those that regulate dog ownership without regard to breed.<sup>143</sup> Denver, with its 1,667 pit bulls killed from 2005 to 2007, is a poster child for what needless harm arises from breed-specific laws.<sup>144</sup> In 1986, both Denver and Portland, Oregon had

dog bite-related fatalities.”<sup>145</sup> Portland passed a breed-neutral ordinance that allowed authorities to identify a dog as dangerous based on its behavior, without any regard to the dogs’ breed.<sup>146</sup> Unlike Denver, Portland has not had any human fatalities by dog bite since the ordinance was enacted and, in contrast to Denver’s track record, this result was achieved without any dogs being taken or killed based on appearance alone.<sup>147</sup>

The ASPCA is one of the many expert animal organizations that join the ABA in promoting breed-neutral regulations on dogs and dog owners due to their “clear, positive effects.”<sup>148</sup> The ASPCA recognizes that regulation of dangerous dogs is a serious concern to the community and to law enforcement.<sup>149</sup> However, the “absence of scientific data indicating the efficacy of breed-specific laws, and the unfair and inhumane targeting of responsible pet guardians and their dogs that inevitably results when [breed-specific] laws are enacted,” has led the ASPCA to promote a combination of breed-neutral regulations that hold dog owners responsible for their reckless behavior and their dog’s subsequent aggression.<sup>150</sup>

Finally, since breed-neutral laws enjoy more widespread support from organizations like the ASPCA, veterinarians, kennel clubs, dog trainers, animal control, and now the ABA,<sup>151</sup> there could be greater cooperation within the community in carrying out breed-neutral policies, like

the proposed model ordinance. With these various groups working together to pass effective legislation that does not target specific breeds and their owners, animosity would likely dissipate amid the effective, routine enforcement of behavior-focused dangerous dog laws where only the guilty are punished.

#### IV. CONCLUSION

In conclusion, the city of Maumelle and other state and local lawmakers are respectfully urged to follow the lead of states such as Oklahoma and the suggestions of the ABA, ASPCA, and many other credible organizations across the nation and end the era of *Holt v. City of Maumelle*. Breed-specific legislation like the Maumelle ordinance is overly vague in its categorization of what dogs are banned and makes it difficult for dog owners to know whether or not they are in violation of the ordinance. Dogs cannot be adequately identified based on the visual inspection of professionals, much less the visual inspection of a police officer with minimal training in identifying dog breeds.

Also, numerous studies show that breed-specific legislation is not effective in reducing the number of dog bite injuries. There is insufficient evidence that pit bull bans like Maumelle's reduce the number of injuries from dog bites. The result is that thousands of loving, playful,



well-behaved family dogs are killed every year, and the families who love them suffer needless grief. Breed-neutral laws are a non-discriminatory alternative that have proven results in reducing the number of dog bite injuries. Irresponsible dog owners should be punished for their actions, and breed-neutral laws accordingly focus on dog behavior and the dog owner's actions.

Maumelle, and municipalities like Maumelle, can rid their law enforcement, courts, and residents of the inherent difficulties associated with breed-specific legislation by repealing breed bans, and adopting the model ordinance proposed by this note. The proposed ordinance corrects the concerns created by breed-specific legislation, namely it is not vague or overbroad, difficult breed identification is irrelevant and unnecessary, and dog owners will have adequate notice of when their dog has been classified as “dangerous” or “at-risk.” Last, but certainly not least, at a time when many people consider pets as part of their family, we should not tear those pets away solely because of how they look—not when there are other, more effective means available. It is time for lawmakers to do what most courts have not and put a stop to the bullying and discrimination of targeted breeds and innocent dog owners.

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<sup>1</sup> *Weela, Ken-L Ration's Dog Hero of the Year (1993)*, PITBULLS ON THE WEB, <http://>

<http://pbrc.net/petbull/articles/weela.html> (last visited Jan. 11, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Jill Harness, *Heroic Pit Bulls*, (April 20, 2009, 8:41 AM)

<http://www.neatorama.com/2009/04/20/heroic-pit-bulls/>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Heroic Pit Bull: Dog Finds Help for Injured Neighbor*,

<http://pbrc.net/petbull/articles/thomson.html> (last visited Jan. 11, 2014).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> MAUMELLE, ARK. CITY CODE § 10-134(h)(1) (2010).

<sup>16</sup> *Id.* § 10-134(f).

<sup>17</sup> *See id.* § 10-134(a). This subsection states that the office of animal services bears the responsibility of determining which dogs conform to the banned breeds outlined in the ordinance. However, the ordinance does not indicate what standards are to be used in making this determination or what, if any, training officers must undergo in order to be qualified to make this judgment call. *Id.*

<sup>18</sup> *Holt v. City of Maumelle*, 307 Ark. 115, 817 S.W.2d 208 (1991).

<sup>19</sup> *Id.* at 116, 817 S.W.2d at 209.

<sup>20</sup> *Id.* at 118–19, 817 S.W.2d at 210–11.

<sup>21</sup> Randy J. Ailment, A.B.A. Rep. H. Del., Resolution 100 (Aug. 2012), *available at* [http://www.americanbar.org/content/dam/aba/administrative/mental\\_physical\\_disability/Resolution\\_100.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/mental_physical_disability/Resolution_100.authcheckdam.pdf) [hereinafter Ailment, Resolution].

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<sup>22</sup> *Id.*

<sup>23</sup> Randy J. Ailment, A.B.A. Rep. H. Del., Resolution 100 Report, 1 (Aug. 2012),

*available at*

[http://www.americanbar.org/content/dam/aba/administrative/house\\_of\\_delegates/resolutions/201](http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/201)

[2\\_hod\\_annual\\_meeting\\_100.doc-18k-2012-11-10](http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2012_hod_annual_meeting_100.doc-18k-2012-11-10) [hereinafter Ailment, Report].

<sup>24</sup> *See infra* Part II.

<sup>25</sup> *See infra* Part III.

<sup>26</sup> *See infra* Part IV.

<sup>27</sup> MAUMELLE, ARK. CITY CODE §§ 10-133, 10-134 (2010).

<sup>28</sup> *Id.* § 10-134(f).

<sup>29</sup> *Id.* § 10-134(f), (h)(1). Subsection (f) of the Maumelle ordinance reads:

Banned breeds of dogs are banned entirely and may not be owned or kept within

the city. Banned breeds of dogs are any of the following: (1) American Pit Bull

Terrier. (2) Staffordshire Bull Terrier. (3) American Staffordshire Terrier. (4)

American Bulldog. (5) Any dog whose sire or dame is a dog of a breed which is

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defined as a banned breed of dog under this section. (6) Any breed of dog whose owner registers, defines, admits or otherwise identifies the dog as being of a banned breed. (7) *Any dog conforming or substantially conforming to the breed of American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or American Bulldog as defined by the United Kennel Club or American Kennel Club.* (8) *Any dog which is of the breed commonly referred to as “pit bull” and commonly recognizable and identifiable as such.*

*Id.* § 10-134(f) (emphasis added).

<sup>30</sup> *Holt v. City of Maumelle*, 307 Ark. 115, 116, 817 S.W.2d 208, 209 (1991).

<sup>31</sup> *Id.*, 817 S.W.2d at 209.

<sup>32</sup> *Id.*, 817 S.W.2d at 209.

<sup>33</sup> *Id.*, 817 S.W.2d at 209.

<sup>34</sup> *Id.*, 817 S.W.2d at 209.

<sup>35</sup> *Id.*, 817 S.W.2d at 209.

<sup>36</sup> *Holt*, at 116, 817 S.W.2d at 209.

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<sup>37</sup> *Id.* at 116–17, 817 S.W.2d at 209–10. The court found that no breach of contract had occurred, but this note focuses on the court’s treatment of the ordinance’s language and does not address the breach of contract issue. *Id.* at 119, 817 S.W.2d at 211.

<sup>38</sup> *Id.* at 118–19, 817 S.W.2d at 210–11.

<sup>39</sup> *Id.* at 117, 817 S.W.2d at 210.

<sup>40</sup> *Id.* at 118–19, 817 S.W.2d at 210–11.

<sup>41</sup> Ailment, Report, *supra* note 23.

<sup>42</sup> *Id.* at 5–7

<sup>43</sup> *Id.* at 1. Currently, twelve states prohibit breed-specific legislation, including Ohio, the only state of the twelve that once implemented breed-specific legislation. *Id.*

<sup>44</sup> *Id.* at 10.

<sup>45</sup> *Id.* at 1–2

<sup>46</sup> This proposed model ordinance exclusively addresses the categorization of dangerous and potentially dangerous dogs. It does not purport to cover animals deemed a public nuisance, which may be adequately addressed in a separate ordinance.

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<sup>47</sup> This model ordinance was compiled by obtaining various elements of model ordinances proposed by the following resources: American Veterinary Medical Association, *A community approach to dog bite prevention*, JAVMA, Vol. 218, No. 11, June 1, 2001, available at <https://www.avma.org/public/Health/Documents/dogbite.pdf>; Coalition for Living Safely with Dogs, *Model Elements for Your Community's Dangerous Dog Ordinance* (February 2007), <http://www.livingsafelywithdogs.org/webdocuments/AllInfoPacketPieces.pdf>; Coalition for Living Safely with Dogs, *Sample Ordinance*, [http://www.livingsafelywithdogs.org/mm\\_frameset\\_dbl.htm](http://www.livingsafelywithdogs.org/mm_frameset_dbl.htm). (Last visited on Feb. 2, 2013); Parker Municipal Code Section 9.03.060, 2008, available at <http://www.codepublishing.com/wa/bothell/Bothell09/Bothell0903.html>.

<sup>48</sup> Safia Gray Hussain, Note, *Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won't Solve the Dangerous-Dog Dilemma*, 74 FORDHAM L. REV. 2847, 2848 (Apr. 2006).

<sup>49</sup> Cynthia McNeely & Sarah A. Lindquist, *Dangerous Dog Laws: Failing to Give Man's Best Friend a Fair Shake at Justice*, 3 J. ANIMAL L. 99, 100 (2007).

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<sup>50</sup> *Id.* at 99.

<sup>51</sup> Bernard E. Rollin, *Animal Ethics and Breed-Specific Legislation*, 5 J. ANIMAL L. 1,1 (2009).

<sup>52</sup> *See* Hussain, *supra* note 48, at 2847–48.

<sup>53</sup> *Id.* at 2848.

<sup>54</sup> *See id.*

<sup>55</sup> *Id.* at 2847.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Hussain, *supra* note 48, at 2848.

<sup>59</sup> Max Seigle, *Dogs kill 5 farm animals at Little Rock Zoo*, TODAY'S THV (Oct. 11, 2012, 9:55 PM), <http://www.todaysthv.com/news/story.aspx?storyid=230356>.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*



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<sup>62</sup> Max Seigle, *New details on Little Rock Zoo Dog attack*, TODAY'S THV (Oct. 12, 2012, 9:48 PM), <http://www.todaysthv.com/news/story.aspx?storyid=230486>.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Hussain, *supra* note 48, at 2851.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 2848.

<sup>68</sup> McNeely & Lindquist, *supra* note 49, at 109.

<sup>69</sup> See Nat'l Canine Research Council, *Denver: Selective Counting and the Cost to Dogs and People*,

[http://www.nationalcanineresearchcouncil.com/uploaded\\_files/tinymce/Denver\\_fnl%5B1%5D.p](http://www.nationalcanineresearchcouncil.com/uploaded_files/tinymce/Denver_fnl%5B1%5D.pdf)

df (last visited on Jan. 11, 2014).

<sup>70</sup> Ailment, Report, *supra* note 23.

<sup>71</sup> Joyanne Pursaga, *Fewer dog bites since pit bull ban*, WINNIPEG SUN (July 9, 2012, 3:41 PM), <http://www.winnipeg.sun.com/2012/07/09/fewer-dog-bites-since-pit-bull-ban>.

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* A poll on the website where the article is published asks Winnipeg Sun readers, “Do you support Winnipeg's pit bull ban?” As of March 8, 2013, the results showed that sixty-five percent did not support the ban, and only thirty-four percent did. *Id.*

<sup>75</sup> Nat'l Canine Research Council, *supra* note 69.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *See id.* (stating that thirty-eight hospitalizing, non-fatal incidents involving children and dog bites occurred in Denver between 1994-1999, and noting that officials have not openly considered banning the breeds that allegedly caused these incidents).

<sup>81</sup> Nat'l Canine Research Council, *supra* note 69.

<sup>82</sup> *Id.*

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Ailment, Resolution, *supra* note 21.

<sup>86</sup> *Id.*

<sup>87</sup> Ailment, Report, *supra* note 23.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 1–2.

<sup>91</sup> Devin Burstein, *Breed-Specific Legislation: Unfair Prejudice & Ineffective Policy*, 10

ANIMAL L. 313, 317 (2004).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Am. Soc. for the Prevention of Cruelty to Animals, *Position Statement on Breed-*

*Specific Legislation*, <http://www.aspca.org/about-us/aspca-policy-and-position-statements/breed->

specific-legislation (last visited Jan. 11, 2014).

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<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *See* Ailment, Report, *supra* note 23, at 2.

<sup>99</sup> *See e.g.*, *McNeeley v. U.S.*, 874 A.2d 371 (D.C. 2005); *Koorn v. Lacy Twp.*, 78 Fed.Appx. 199 (3rd Cir. 2003); *Am.Dog Owners Ass'n v. Dade Cnty., Fla.*, 728 F.Supp. 1533 (S.D. Fla. 1989); *Bess v. Bracken Cnty. Fiscal Court*, 210 S.W.3d 177 (Ky. Ct. App. 2006); *City of Pagedale v. Murphy*, 142 S.W.3d 775 (Mo. App. E.D. 2004); *Am. Dog Owners Ass'n v. City of Yakima*, 777 P.2d 1046 (Wash. 1989).

<sup>100</sup> Russell G. Donaldson, Annotation, *Validity and Construction of Statute, Ordinance or Regulation Applying to Specific Dog Breeds, Such as "Pit Bulls" or "Bull Terriers"*, 80 A.L.R.4th 70, § 2[a] (1990).

<sup>101</sup> *Id.*

<sup>102</sup> *See e.g.*, cases cited *supra* note 99.

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<sup>103</sup> *Am. Dog Owners Ass'n.*, 777 P.2d at 1048. The Washington Supreme Court cited court opinions from multiple jurisdictions across the nation where a minimal statutory definition of what constituted a banned breed was deemed sufficient. *Id.*

<sup>104</sup> *Id.* (declining to follow a Massachusetts court that held a statute was “not sufficiently definite” in that was “devoid of *any* reference to a particular breed”).

<sup>105</sup> *See e.g.*, cases cited *supra* note 99.

<sup>106</sup> Ailment, Report, *supra* note 23, at 1–2.

<sup>107</sup> Donaldson, *supra* note 100.

<sup>108</sup> Hussain, *supra* note 48, at 2861.

<sup>109</sup> *Id.*

<sup>110</sup> Kristen E. Swann, Note, *Irrationality Unleashed: The Pitfalls of Breed-Specific Legislation*, 78 UMKC L. REV. 839,840 (Spring 2010).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 854.

<sup>113</sup> *Id.*

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<sup>114</sup> Ailment, Report, *supra* note 23, at 3.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 7.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *See* Swann, *supra* note 110, at 839.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Rollin, *supra* note 51.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 2.

<sup>126</sup> Shidon Aflatooni, *The Statutory Pet Trust: Recommendations for a New Uniform Law*

*Based on the Past Twenty-One Years*, 18 *Animal L.* 1, 2–3 (2011).

<sup>127</sup> *Id.* at 4.

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<sup>128</sup> Rollin, *supra* note 51, at 3.

<sup>129</sup> *Id.* at 5.

<sup>130</sup> McNeely & Lindquist, *supra* note 49, at 103.

<sup>131</sup> Am. Soc. for the Prevention of Cruelty to Animals, *supra* note 94.

<sup>132</sup> Kenneth M. Phillips, *Canine homicides and the dog bite epidemic: do not confuse them*, <http://dogbitelaw.com/dog-bite-statistics/canine-homicides-the-dog-bite-epidemic-do-not-confuse-them.html> (last visited Jan. 11, 201).

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> OKLA. STAT. tit. 4, § 46 (2006).

<sup>138</sup> Regulation of Dangerous Dogs Based on Breed, Okla. Op. Att’y Gen. 28 (2007).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

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<sup>141</sup> Ailment, Report, *supra* note 23.

<sup>142</sup> Nat'l Canine Research Council, *supra* note 69.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> Am. Soc. for the Prevention of Cruelty to Animals, *supra* note 94.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Ailment, Report, *supra* note 23 at 1–2.