

Seton Hall University

eRepository @ Seton Hall

Student Works

Seton Hall Law

2024

Regulating Small-Volume Dog Breeding: Exposing the Hidden Problem

Mafaaz Tanzeem

Follow this and additional works at: https://scholarship.shu.edu/student_scholarship



Part of the Law Commons

Table of Contents

- I. Introduction.....1
- II. The Regulation of Dog Breeding.....4
 - a. *Current Federal Law*.....5
 - b. *Divided State Laws*.....6
 - c. *Local Last Stands*.....8
 - d. *Overview of Regulation Effectiveness*.....11
- III. The Harm of Small-Volume Dog Breeding.....13
 - a. *Types of Small-Volume Breeding*.....13
 - b. *The Impact of Backyard Breeding*.....14
 - c. *Summing Up the Harms*.....18
- IV. Correcting the Flaws in Breeding Regulation.....18
 - a. *Reforming the Flaws*.....19
 - b. *Solutions Overview*.....25
- V. Conclusion.....26

I. Introduction

Imagine a prison in which thousands are held within a cell that can barely fit their full bodies. Metal rods obstruct the vision of the outside within the cage and each prisoner is left to deal with their cold, hard life without social interaction. This is the harsh reality for the millions of dogs that fruitlessly struggle to survive in conditions of malnourishment, physical neglect, and emotional trauma where their fates of inevitable euthanasia are sealed. The problem is simple. There are more dogs than there are people who want them.

Instead of trying to solve the problem before dogs are born, action is taken at the shelters. Thousands of dogs are surrendered to shelters every day, while being held there from just a couple of days to a few months at governmental expense.¹ In the end, nationally, about 390,000 dogs are killed in shelters each year.² In fact, even at “no-kill” shelters, up to 10% of those animals can be euthanized for “health related issues.”³ The true number of dogs that are affected is not clear as there is a lack of transparency behind the gruesome truth.

¹ See Shelter Intake and Surrender Pet Statistics, ASPCA, <https://www.asPCA.org/animal-homelessness/shelter-intake-and-surrender/petstatistics> (showing 390,000 dogs euthanized each year, and thousands are surrendered to shelters every day) (last visited Nov. 3, 2023).

² *Id.*

³ Greg Allen, “No-Kill Shelters Save Millions Of Unwanted Pets – But Not All Of Them,” NPR News, (NPR, December 31, 2014), <https://www.npr.org/2014/12/31/374218425/no-kill-shelters-save-millions-of-unwanted-pets-but-not-all-of-them> (last visited Nov. 15, 2023).

Financially, US taxpayers are paying more than 1 billion dollars each year for homeless dogs alone, and the need for euthanasia for many of those dogs has a mental health cost as well.⁴ For shelter workers, the anguish of having to put down animals can be a direct detriment to their well-being as, sometimes, it leads to suicide.⁵ Specifically, it was “found that animal rescue workers have a suicide rate of 5.3 in 1 million workers, the highest suicide rate among American employees and a rate shared only by firefighters and police officers.”⁶

The number of shelter animals can also be correlated to the amount of people getting their pets from places other than animal shelters or humane societies. The most common sources from which dogs are obtained as pets: friends/relatives – 20%, breeder – 34%, private party – 12%, and other – 32%.⁷ Many of these sources are difficult to track individually, and it is due partially to the number of uncontrolled breeding operations opening in the United States.

Some states have acknowledged that uncontrolled breeding has gone too far and have acknowledged it within their laws. The Florida legislature, for example, found that:

“[T]he uncontrolled breeding of dogs and cats in this state pose[s] risks to the well-being of dogs and cats, the health of humans and animals, and the agricultural interests in this state....

Uncontrolled breeding results in the birth of many more puppies and kittens than are needed to

⁴ The Humane Society of the United States estimated that American taxpayers spent approximately \$2.4 billion each year for municipalities to care for and dispose of homeless animals, with most of those funds being spent on dogs. Andrew N. Rowan, Animal Sheltering Trends in the U.S., THE HUMAN SOCIETY OF THE UNITED STATES, <https://www.animalhumanesociety.org/about/2018-annual-report> (last visited Nov. 7, 2023).

⁵ Laurie Mason Schroeder, “Amid wrenching hoarding cases, who rescues animal rescuers?” AP News (AP News, October 27, 2018), <https://apnews.com/general-news-27b737b718274cf2b80531f38a1e3091> (last visited Nov. 7, 2023).

⁶ *Id.*

⁷ According to the APPA, these are the most common sources from which primary methods cats and dogs are obtained as pets (Note: this information was based on a multiple response question, which results in the total % exceeding 100% individually for cats and dogs. In addition, the ‘other’ category includes all source categories that were reported by <10% of both dog and cat owners), See Shelter Intake and Surrender Pet Statistics, ASPCA, <https://www.asPCA.org/animal-homelessness/shelter-intake-and-surrender/petstatistics> (last visited Oct. 4, 2023).

provide pet animals to new owners or to replace pet animals that have died or become lost. This leads to many dogs, cats, puppies, and kittens being unwanted, becoming strays and suffering privation and death, being impounded and destroyed at great expense to the community, and constituting a public nuisance and public health hazard.”⁸

While other states have taken similar stances, it remains to be seen if future laws can catch up with the epidemic of puppy mill operations specifically. There is no way to know how many of these operations are currently active in the US as regulations are not expansive enough to document them. This has resulted in these puppy mills becoming a hidden engine for the flow of animals going into shelters.⁹ The small scale of breeding that these mills hide behind can be invisible to inspectors as many sellers prefer to keep their business of sites/areas where they can remain inconspicuous. Many of these sellers use Craigslist to with titles like “Re-Homing” to avoid detection and still convince unsuspecting families into purchasing their product.¹⁰ It also does not help that, with limited resources, inspectors don’t have the means to search for these businesses without wasting time and efficiency.¹¹

Puppy mills are also financially reliant on the high volume of sales which comes at the cost of quality of life of breeding and new-born dogs. They target people looking for “on-trend” dogs who buy them based on their looks; unfortunately, however, many of these pets come with tragic genetic defects and diseases.¹² In the end, people are often burdened with pets who have

⁸ FLA. STAT. ANN. § 823.15(1) (2023).

⁹ See Shelter Intake and Surrender Pet Statistics, ASPCA, <https://www.asPCA.org/animal-homelessness/shelter-intake-and-surrender/petstatistics> (last visited October 4, 2023).

¹⁰ See Puppy Mills, ALDF, <https://aldf.org/issue/fighting-to-end-puppy-mills/> (last visited October 5, 2023).

¹¹ Jacob Luplow, “Serious Animal Welfare Act Violations Do Not Mean Quick Removal Of Dogs From Breeding Facilities,” Investigate Midwest (Investigate Midwest, October 12, 2014) (last visited Nov. 10, 2023).

¹² See Puppy Mills, ALDF, <https://aldf.org/issue/fighting-to-end-puppy-mills/> (last visited October 5, 2023).

been so abused physically and mentally, that they end up surrendering them or spending thousands of dollars to salvage what is left of the animal's life.

The lack of regulation and countermeasures against backyard breeding are direct causes of the widespread boom of puppy mills abusing animals and selling them without significant repercussions. Thus, state and local laws must pick up the slack of lagging federal regulation to quell the storm of puppy mills wreaking havoc on the pet industry and animal shelters alike. Therefore, this paper will analyze the present problems with unregulated, backyard dog breeding by addressing three major points: (1) Analyzing the current regulations at all relevant levels of law to find flaws with the way the status quo is handling small-volume breeding, (2) Demonstrating the negative consequences of unregulated backyard breeding and its harmful effects on communities, (3) Providing detailed solutions to bridge the gaps between present laws and ordinances and the tragic realities that animals and people are suffering from due to presence of puppy mills. The paper will conclude with a summarization of these points and a reflection on how the presented solutions can reduce the detrimental effects that small-volume breeding can have on communities.

II. The Regulation of Dog Breeding

The dog breeding regulations that are currently in place create a haven for small-volume breeders to create a substantial hold in the industry. A lack of governance from the federal and state levels has allowed these groups to escape registration or notification, because the laws, if any, simply do not apply to them. In fact, the only areas of law that have made any significant impact have been ones passed by local communities, mainly because they are the ones being directly affected.¹³ Unfortunately, the lack of oversight has allowed these local problems to be so

¹³ *Id.*

widespread that federal and state action is likely needed for any substantial correction towards small-volume breeding.

A. *Current Federal Law*

The only federal law that governs dog breeding is the Animal Welfare Act (“AWA”). Under it, businesses that use animals, like zoos, research institutions, and commercial pet breeders – must meet minimal animal care standards.¹⁴ Over time, additional standards have expanded the different types of animals covered, updated the standard of care, and increased fines for violations. The AWA heavily relies on the Secretary of Agriculture and the Animal and Plant Health Inspection Service (APHIS), a part of the United States Department of Agriculture, to enforce the rules and apply judgment on animal operations that break them.¹⁵

The AWA requires that commercial dog breeders who are selling animals be licensed.¹⁶ The process of determining whether a license can be issued also entails a clear inspection of the operation’s facilities and its abilities to meet minimum standards of humane animal treatment.¹⁷ The issue of concern to the AWA’s approach to regulation is the definition of a “retail pet store.” The APHIS defines a retail pet store as “a place of business or residence at which the seller, buyer, and the available animal for sale are physically present.”¹⁸ The retail pet stores exception provides that any breeder who sells dogs to people in person, whether in a parking lot or through

¹⁴ See Federal Licensing & USDA Standards, ASPCA, <https://www.asPCA.org/barred-from-love/laws-rules/federal-licensing-usda> standards#:~:text=Dog%20breeders%20who%20breed%20puppies,%2C%20brokers%20and%20For%20online. (last visited Nov. 10, 2023).

¹⁵ See Animal Welfare Act, USDA, [https://www.nal.usda.gov/animal-health-and-welfare/animal-welfare-act#:~:text=The%20Animal%20Welfare%20Act%20\(AWA\)%20requires%20wholesale%20breeders%20and%20dealers,treatment%20established%20by%20the%20AWA](https://www.nal.usda.gov/animal-health-and-welfare/animal-welfare-act#:~:text=The%20Animal%20Welfare%20Act%20(AWA)%20requires%20wholesale%20breeders%20and%20dealers,treatment%20established%20by%20the%20AWA) (last visited Nov. 10, 2023).

¹⁶ 7 U.S.C. § 2133 (2014).

¹⁷ *Id.*

¹⁸ 9 C.F.R. § 1.1.

Craigslist ads are not subject to fines under the AWA for those facts.¹⁹ Moreover, breeders who do sell dogs wholesale to businesses or on the internet could be subjected to these federal standards.²⁰

Another exception that small-volume dog breeders in particular benefit from is the *de minimis* exception under the AWA. These stores must be licensed if they make more than \$500 gross income from the sale of dogs during a calendar year and, if not, are not otherwise required to obtain a license.²¹ However, a way that breeders can escape mandatory licensing is by maintaining a total of 4 or fewer breeding female pet animals, because under the AWA this additional “loophole” exempts a breeding operation from having to be licensed.²² In fact, this loophole is one of the primary culprits for the spread of small-volume breeders who are therefore enabled to keep their businesses away from regulation. This, in turn, creates a larger burden for state actors who must solve these issues with little to no federal backing.

B. *Divided State Laws*

Though the intentions of some states appear to be in the right place, the actions being taken are misplacing the blame. For example, New York is aiming to ban the sale of dogs, cats, and rabbits from the state starting in 2024 to combat a rise in puppy mills which breed animals in squalid conditions for profit.²³ This legislation is holding the wrong group accountable as many

¹⁹ See RULES and REGULATIONS. DEPARTMENT OF AGRICULTURE. Animal and Plant Health Inspection Service. 9 CFR Parts 1 and 2. Animal Welfare; Retail Pet Stores and Licensing Exemptions, Animal Legal & Historical Center, (Animal Legal & Historical Center, August 2017), <https://www.animallaw.info/administrative/us-awa-animal-welfare-retail-pet-stores-and-licensing-exemptions> (last visited Nov. 10, 2023).

²⁰ *Id.*

²¹ “Any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than \$500 gross income from the sale of such animals during any calendar year and is not otherwise required to obtain a license,” 9 C.F.R. § 2.1(a)(3)(ii) (2023).

²² 9 C.F.R. § 2.1(a)(3)(iii).

²³ Zack Fink, “Hochul signs bill banning retail sale of pets,” Spectrum News (Spectrum News, December 15, 2022) (last visited Nov. 10, 2023).

of these retail stores are licensed by the AWA and are under inspection.²⁴ The real crackdown of puppy mills can only happen when legislation is enacted to combat and offset protections afforded to backyard breeders by the AWA.

Texas is a state that has recently taken a stance against the first exception that AWA provides regarding large scale, in-person operations that avoid wholesale or online selling. Since September 1st of 2023, Texas law requires that dog or cat breeders with five or more adult unspayed females obtain a license to operate under the Texas Occupations Code.²⁵ Pursuant to the U.S. Constitution's Supremacy Clause, state laws may not be less strict compared to federal laws, but they can place a higher standard than the ones set forth by the federal government in most cases. Here, Texas decided to mandate a license for large animal breeders, regardless of relevant federal exemptions, to counteract a growing problem of sheltered animals in the state. But most states continue to follow regulations like Texas' previous standard where they only recognize dog or cat breeders who have 11 or more adult females.²⁶ However, despite the reform as evidenced by Texas, these laws neglect the importance of increasing regulation on smaller-scale operations, as those are the ones that are silently taking over the pet industry and shelters alike.

Unfortunately, virtually all states also have some type of extra exemption that breeders can take refuge within to avoid regulation. Specifically, Virginia has a law that defines a commercial dog breeder as any person who, during any 12-month period, maintains 30 or more

²⁴ *Id.*

²⁵ Christianna Barbosa, "New Texas law will close dog, cat breeding loophole," KXAN News, (KXAN News, August 26, 2023), <https://www.kxan.com/news/new-texas-law-will-close-dog-cat-breeding-loophole/> (last visited Nov. 10, 2023).

²⁶ *Id.*

adult female dogs for the primary purpose of the sale of their offspring;²⁷ but this law ignores the large margin it leaves for individuals to still hold a large operation within the state's borders. By giving a wide playground for potential violators, the state's influx of new puppies who are abused will likely decrease but not in a significant way. These violators are creative with methods to avoid detection and will likely push the limits of every loophole they can access.

In general, the laws of states within the US target "commercial" breeders - which ignores the issue of small-volume breeders almost entirely. It may seem unlikely that a person's neighbor who recently took up a hobby in breeding dogs could have a devastating impact on a community, and that assumption would probably be correct. However, when that one neighbor turns into thousands of individuals in a single city, then the issue becomes obvious to local municipalities.

Though state regulation does add further protections against widespread breeding, as compared to federal law, the oversight is limited by the state's lack of attention towards small volume breeders. The non-existent oversight burden small communities and puts a substantial burden on those local areas to fix a problem they simply do not have the assets to deal with properly.

C. Local Last Stands

Without sufficient help from the federal or their own state governments, many cities and towns are forced to regulate dog breeding on their own to prevent an outbreak of breeding abuse within their communities. One such example is Harrison, N.J., a city which has mandated that an establishment wherein or whereon the business of boarding or selling dogs or breeding dogs for

²⁷ VA. CODE ANN. § 3.2-6500 (2023).

sale is carried on, except a pet shop, will be categorized as a “Kennel.”²⁸ Moreover, these “Kennels” must be required to have a license for the sale of their dogs so as to not contract violations from the city.²⁹ Many backyard breeders would undoubtedly fall into this category, and, subsequently, would thus trigger an inspection of their facilities. This, in turn, could lead to a presumed decrease in breeders altogether. This is a positive step that many other communities in New Jersey have also implemented to fight backyard breeding.³⁰ However, the sad reality is that this burden on the cities exists due to a lack of action on the federal and state levels.

Some cities have taken it upon themselves to enact strict ordinances that would require the notice and registration of all litter that is produced by anyone before there can be any sale of the puppies. Albuquerque, New Mexico, for example, is a city that has required owners to apply for a litter permit within one week of the birth of the litter and limits households to four permits each year, with no more than one permit for each female dog being bred.³¹ The city also has a reporting system designed to spot breeders who do not comply with ordinances by having an active hotline for breeding violations.³²

Another city to increase regulation far beyond those made by its state is Miami, Florida. There, hobby breeders who sell more than two litters per year per household shall be deemed to be pet dealers and shall be regulated as such.³³ These regulations can range from different fines

²⁸ HARRISON, N.J., CODE OF ORDINANCES § 6.08.010 (2023).

²⁹ HARRISON, N.J., CODE OF ORDINANCES § 6.08.090 (2023).

³⁰ ELIZABETH, N.J., CODE OF ORDINANCES § 6.04.100 (2023); TEWKSBURY TWP., N.J., CODE OF ORDINANCES § 6.04.100 (2023); STRATFORD BOROUGH, N.J., CODE OF ORDINANCES § 6.04.060 (2023).

³¹ ALBUQUERQUE, N.M., CODE OF ORDINANCES §§ 9-2-3-7(b) & (c) (2023).

³² Illegal Pet Sales, CITY OF ALBUQUERQUE, <https://www.cabq.gov/pets/education-resources/illegal-pet-sales> (last visited October 15, 2023).

³³ MIAMI, F.L., CODE OF ORDINANCES § 5-13(a) (2018).

to other penalties that the city itself implements.³⁴ This license mandate also demonstrates a way to regulate pet sales to a point that can make a significant difference in communities in which backyard breeding has taken over.

Cities also face an uphill battle when fighting the growing overpopulation of dogs entering shelters. Lexington County in Kentucky is a locale that has blamed “backyard breeders” as the main culprit for its shelters being incapable of retaining all its animals.³⁵ Moreover, the main county shelter’s capacity contains about 128 pets, but it has held over 200 by the direct result of a breeding dump of unwanted puppies.³⁶ However, the number of incoming animals further ballooned when animal control officials reported that over 500 animals entered their system during the month of July of this year. with many of them being the byproduct of these breeding operations.³⁷ The strain it takes on local bodies to house and maintain these animals cannot be understated. However, this county enacted a new ordinance that would require dogs to have a microchip registered with their owner’s name and address with the cost of this chip only being \$10.³⁸ A simple solution like this is likely needed in many different cities nationwide as the epidemic of abuse breeding is becoming all too common of an occurrence.

A common trend as set forth in most local ordinances regarding breeding also requires unique identifiers to be present in relevant documentation of the litter being sold.³⁹ This creates a

³⁴ *Id.*

³⁵ Kailee Kokes, “Lexington shelter faces massive overpopulation, animal control targets ‘backyard breeders,’” Lexington County Chronicle (Lexington County Chronicle, September 8, 2023) <https://www.lexingtonchronicle.com/stories/lexington-shelter-faces-massive-overpopulation-animal-control-targets-backyard-breeders,69295> (last visited Nov. 10, 2023).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Nedra Rhone, “In Georgia, backyard dog breeders bring big cost to public,” The Atlanta Journal-Constitution (The Atlanta Journal-Constitution, August 16, 2023), <https://www.ajc.com/life/opinion-in-georgia-backyard-dog-breeders-bring-big-cost-to-public/MDFXCWAZHBFRJWLOEP4RJKFZU/> (last visited Nov. 10, 2023).

way for officers and the public to report any inconsistencies and identify the violator.⁴⁰ This transparency is met with an innate challenge, though, as small-volume breeders can evade a registration system by simply going to different counties or cities to make their sales through sites like Craigslist.⁴¹ Nevertheless, it is a measure that helps to reduce the number of breeders who can escape inspection from the authorities.

D. Overview of Regulation Effectiveness

The federal and state laws place too much of a burden on consumers and municipalities that do not have the resources that they do. Unfortunately, this leads to the exceptions that are used as loopholes, like *de minimis* acting counterintuitively to the needs of a community affected by backyard breeding.⁴² Along with exemptions also given to some breeders who do have to license through federal and state laws, the loopholes that these breeders can use have created an underground system for pet sales.⁴³ The government relies on consumers to pick breeders who are ethical instead of ones who are not, but these expectations are almost impossible to sustain without a lack of information and proper policing. In fact, there is a significant risk that the average consumer could be sold pets that have lived in poor conditions and have never been properly taken care of by the breeders.⁴⁴

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² USDA, “Questions and Answers: Thresholds for De Minimis Activity and Exemptions From Licensing under the Animal Welfare Act,” USDA (USDA Animal and Plant Health Inspection Service, August 3, 2016), <https://www.aphis.usda.gov/aphis/newsroom/factsheets/questions-and-answers-awa-deminimis#:~:text=No.-,The%20current%20AWA%20regulations%20exempt%20any%20breeder%20who%20maintains%20four,exhibition%20from%20obtaining%20a%20license> (last visited Nov. 10, 2023).

⁴³ *Id.*

⁴⁴ Lisa Lake, “A new dog...and scammers’ old tricks,” FTC Consumer Advice, (FTC, November 13, 2014) (last visited Nov. 10, 2023).

As demonstrated, significant reform efforts are being made at some local levels to counteract the mistakes and seeming indifference by state and federal legislators, but budgets and manpower are their primary limitations coupled with every municipality having their own individual regulations. The volume at which small-volume breeding has increased has especially crippled municipalities that are too remote or small to counter the growth. If a breeder from Harrison, New Jersey goes to New Brunswick, New Jersey, tracking that breeder would be extremely difficult due to the innate lack of unity between municipalities. Similarly, even at the state level, inspectors may not be alerted to a violation of - for example, too many litters being sold if there is no statewide notification requirement.

In fact, state enforcement agencies themselves have admitted to not being proactive. In a survey conducted by the Missouri Better Business Bureau of states that have licensing statutes, almost one-third of the relevant government representatives claimed to make no effort to identify unlicensed breeders.⁴⁵ Moreover, those that indicated that they do try their best to uncover violators often find it too hard due to understaffing, the volume of puppy advertisements, and the difficulty in identifying whether the breeder is in violation in the first place.⁴⁶

Given the lack of transparency, it seems inevitable that these loopholes would lead to stress not only on the regulatory framework they belong to, but also on the animals that are suffering from breeder abuse. Unfortunately, unless a movement of state regulation comes about, it is very unlikely that the system will be fixed any time soon. However, that does not preclude cities and local communities from trying to implement standards like those of Miami and

⁴⁵ See BETTER BUSINESS BUREAU, THE PUPPY INDUSTRY IN MISSOURI: A STUDY OF THE BUYERS, SELLERS, BREEDERS AND ENFORCEMENT OF THE LAWS 4 (2010), <https://stlouis.bbb.org/Storage/142/Documents/Puppy%20Mills%20study.pdf> (last visited Nov. 13, 2023).

⁴⁶ *Id.*

Albuquerque. The way this problem gets fixed will probably be through consistent and active participation from agencies and consumers to prevent the abuse that these animals face daily.

III. The Harm of Small-Volume Dog Breeding

It probably makes sense why current regulation is focused on large-scale puppy mills. They are often responsible for a larger volume of harm that small-volume breeders simply do not produce. In fact, the average backyard breeder may not even have a fraction of the impact a puppy mill does.⁴⁷ However, when one backyard breeder turns into a thousand, the once harmless hobbyist can turn into a mountain of problems for local entities. Coupled with the fact that some of those breeders may be in it solely for profit, the potential abuse that animals face under the guise of innocence could highlight why more regulation is needed for dog breeding to become a more humane practice for everyone involved.⁴⁸

A. Types of Small-Volume Breeding

Laws like the AWA assume that the small-volume breeder category is filled by either a hobbyist breeder or one that is inadvertently placed into the breeder category. It might just be a small family that wants to pass the bloodline of their personal dog and share his puppies with the neighbors. The puppies are probably not sold for anything close to profit and the family makes sure to only give them to people who will be loving owners. The breeder might also just be someone who let their dog roam around and end up having a litter without them knowing. They

⁴⁷ Brian Fitzpatrick and Sara Amundson, "Raising the bar for compassionate care in dog breeding," GoErie (GoErie, May 13, 2021), <https://www.goerie.com/story/opinion/2021/05/13/op-ed-raising-the-bar-for-compassionate-care-in-dog-breeding/5040004001/> (last visited Nov. 13, 2023).

⁴⁸ *Id.*

may just try to get rid of them, or they might sell their pups for a profit. However, a category that is often overlooked is the type of person who solely does it to make money.

This type of breeder is the one that lives within the crowd and sells puppies for thousands of dollars in cash without consequence. Such “small” breeders are usually left to their own devices, because he evades any law by keeping only 4 female breeding dogs. Backyard breeders like this can create a factory of reproduction where abuse is advertised as healthy specialized “designer” breeds of dogs that consumers are persuaded to buy for ridiculously high prices.⁴⁹ These breeders use the people who fall in love with a certain breed to take dogs that often come with a host of medical conditions that go untreated on top of the high price tag of the initial buy.⁵⁰ Unfortunately, the reality is a tragic one that favors those who know how to avoid being caught, rather than those who follow the rules.

Understanding that breeders can come in with overriding financial motivations is important to consider when regulation is enacted. It is better to make requirements stricter to avoid animal or consumer abuse by individuals who are not properly governed by law, because it can be painful for those on the receiving end of the current free-for-all type system.

B. The Impact of Backyard Breeding

Backyard breeders have created a myriad of issues that are unsolved and have remained unsolved for several decades. Among these issues are overpopulation of dogs and a lack of protection for both dogs and consumers.

⁴⁹ Lisa Lake, “A new dog...and scammers’ old tricks,” FTC Consumer Advice, (FTC, November 13, 2014) (last visited Nov. 10, 2023).

⁵⁰ *Id.*

First, backyard breeders are a huge source of dogs that end up in shelters.⁵¹ This is because their business model entails looking for a buyer after the puppies are born.⁵² If a puppy does not sell, then that puppy is considered excess inventory and must be disposed of, usually by leaving them on the side of a road - an action that the authorities would likely never trace back to the original breeder.⁵³

One of the most important exemptions that small-volume breeders have at their disposal is from “puppy lemon laws” that over 20 states have enacted in some form.⁵⁴ These laws typically allow buyers to exchange a purchased puppy for a new one or require the seller to pay damages if the puppy exhibits sickness or defects within a short period of time after the sale was initially made.⁵⁵ The reason why backyard breeders escape this liability, as noted previously, is because they are not defined as breeders in many state laws, and therefore they are permitted to escape any liability under lemon laws.⁵⁶

These breeders then have a method for the sale of the puppy to avoid any repercussion. By keeping most, if not all, as a personal transaction, they can avoid liability for health issues the animal is suffering from. This is typically done through a lack of screening provided to the buyer and false reassurances the seller likely makes to ease the tensions buyers might have.⁵⁷ A major

⁵¹ See Melissa Riesen, *The Pet Overpopulation Crisis: How Training the Public Can Make a Difference*, 1 J. OF APPLIED COMPANION ANIMAL BEHAV. 1, 22 (2007) (last visited Nov. 10, 2023).

⁵² See Jenna Stregowski, *Signs of a Bad Breeder or a Backyard Breeder: Learn Which Dog Breeders to Avoid*, The Spruce (updated Oct. 11, 2017) (last visited Nov. 10, 2023).

⁵³ See Jacqueline M. Logan, *Detailed Discussion of Emerging Issues in Municipal Ordinances*, Animal Legal & Historical Center (2013) (last visited Nov. 10, 2023).

⁵⁴ Jami Barnett, “Pet purchase protection laws,” *Consumer Affairs* (Consumer Affairs, November 2, 2022) (last visited Nov. 10, 2023).

⁵⁵ Charlotte Walden, “Table of Pet Purchaser Protection Acts,” Animal Historical Center (Animal Historical Center, 2017), <https://www.animallaw.info/topic/table-pet-purchaserprotection-acts> (last visited Nov. 10, 2023)

⁵⁶ *Id.*

⁵⁷ Grace Gale, “Regulating Backyard Breeders,” *The Regulatory Review* (The Regulatory Review, March 12, 2020) (last visited Nov. 10, 2023).

chain reaction occurs if the buyer struggles to maintain the pet she bought because of mental, physical, and social issues.⁵⁸ These dogs grow up in an often unsanitary and hostile environment. Consumers who purchase puppies from small-volume breeders are generally not protected by “puppy lemon laws,” which provide recourse for the sale of puppies with illnesses or defects.⁵⁹ Due to this, many consumers are left to send their dog to a shelter to be held without the possibility to have lived a proper life with a family that loved it.

Breeders can often be cruel individuals. To cut costs, people who sell pets illegally do not always seek to provide these animals with proper care. For example, one buyer in Jacksonville, Florida was offered the pick of six puppies, but in his view, he saw the conditions that the breeding parents were in. The father and mother were tied up – the mother had a chain gripping her neck – and did not have any visual shelter around them.⁶⁰ Unfortunately, even after reporting the person responsible, the result to the breeder was a small \$250 fine.⁶¹ The law, as it currently stands in most jurisdictions, does not provide clear methods of removing these animals from abusive situations.

The exact conditions that breeding animals and their pups live in vary, but most are simply treated as fungible products. A general combination of common living conditions these dogs suffer through is shown here:

“They are usually confined to areas with minimal shelter from extreme weather and have no ability to eat and sleep in areas other than where they defecate. The sick or dying ones receive little or no veterinary care. They often suffer from malnutrition or disease because of inadequate or unsanitary food and water. They are continuously bred until

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Jim Schoettler, “Backyard Breeders, puppy mills pose danger to dogs, cats and consumers,” The Florida Times-Union (The Florida Times-Union, June 16, 2012), <https://www.jacksonville.com/story/news/2012/06/17/backyard-breeders-puppy-mills-pose-danger-dogs-cats-and-consumers/15863715007/> (last visited Nov. 10, 2023).

⁶¹ *Id.*

they can no longer produce offspring, then they are killed or discarded. Finally, the puppies are taken from their mothers before they are ready and have serious emotional or physical problems.”⁶²

The huge number of dogs also does not properly account for the pain a single breeding mother has to go through. Some dogs may live indoors and socialize with the family but still suffer from health problems that they otherwise would not have - if not for their owner’s negligence. Dogs can be overbred to the point of not having enough time in between litters to fully recover, turning them into a sort of machine. Moreover, though they may live in better conditions than some other breeding dogs, the abuse female dogs receive from constant breeding can result in mammary tumors or mastitis that may signal an end to their usefulness to the owner.⁶³

The motivation for people to operate such unethical businesses is enhanced by how easy it is to avoid taxes on their puppy sales. The Internal Revenue Service estimates that 63% of "low visibility" income -- that not reported independently by an employer, for example -- is improperly excluded from federal tax returns.⁶⁴ These “low visibility” businesses are often small pet shops that do a poor job of reporting their earnings to avoid taxes.⁶⁵ It also does not help that some pet shops still get a steady supply of their inventory from small-volume breeders. The incentives to underreport can save these individuals thousands of dollars, so why would they not

⁶² Ronnie Casey, “Backyard breeding is wrong,” Red Bluff Daily News (Red Bluff Daily News, April 29, 2023) (last visited Nov. 10, 2023).

⁶³ Moe, L. “Population-based incidence of mammary tumours in some dog breeds.” *Journal of reproduction and fertility*. Supplement vol. 57 (2001): 439-43 (last visited Nov. 13, 2023).

⁶⁴ Federal Compliance Research: Tax Gap Estimates for Tax Years 2008-2010, INTERNAL REVENUE SERVICE (May 2016), <https://www.irs.gov/pub/irssoi/pl415.pdf> (last visited Nov. 13, 2023).

⁶⁵ *Id.*

do it? Here, the problem lies in the inadequate enforcement of the regulation and, in most cases, failure to track every dog efficiently.

It is important to take another look at those pet shop suppliers to find that many small-volume breeders may not even report a dollar of their income in communities without strict rules. Moreover, local ordinances, even the most progressive ones, as well as sales tax are likely ignored completely by backyard breeders. This is because the amount of money that four breeding dogs can provide people is significant. Dog breeders with four female breeding dogs can often make between \$16,000-\$72,000 in revenue every year.⁶⁶ With a sum like that, it is clear why backyard breeding is so popular.

C. Summing Up the Harms

Unlicensed small-volume breeding is more than a nuisance, it is a crippling problem for communities that do not have the resources to combat it. With tools like the exemptions given to them by state and federal governments, these breeders frequently evade and abuse the law without regard towards other people or their animals. These animals suffer the most, as these breeders can shorten their lifespans, breed them to have terrible defects, withhold any kind of medical care, and separate them from any meaningful social interaction leaving them a shell of the animal they could have been. Money's influence on people's actions is great, but at the cost of so many others, state and local authorities need to pick up the slack of the federal government to produce statewide-efficient solutions to quell the disturbance this epidemic has caused.

IV. Correcting the Flaws in Current Breeding Regulation

⁶⁶ Danielle Muhlenberg, "How Much Do Dog Breeders Make?," Paw Leaks (Paw Leaks, July 8, 2023), <https://pawleaks.com/dog-breeder-salary/> (last visited Nov. 13, 2023).

The current regulations promulgated at the federal, state and local level in most jurisdictions are simply not enough. Allowing breeders to abuse the system in a way that causes societal problems is a burden that can destroy communities. Stricter fixes like licensing requirements have been overlooked in favor of just focusing on large-scale puppy mills, but in fact this is the underlying reason why people too often forget the impact that these small-volume breeders can have. The level of abuse that they cause in the dogs that they are responsible for can produce some of the most inhumane treatment imaginable, but applying several of the different types of reform can fight this injustice. Here, the solutions present in local ordinances can be used as a foundation for states to carry out sweeping reform and as a starting point for cities that are lacking any similar protections.

A. Reforming the Flaws

By nature, small-volume breeding does not carry much risk on an individual level, but ignoring the impact a large amount of these breeders can have on a community is the flaw. The AWA seeks to target larger-scale breeders because those can have a sweeping effect on many animals from the same supplier. However, it also ignores hobbyist, inadvertent, or small abusive breeders entirely. Federally, these laws are not likely to change without significant lobbying and bipartisanship to enact a bill. This amount is required, because the net impact a single person who breeds can have been often quite minimal. The activity itself truly can be an accident or a hobby that a person responsibly conducts, and, thus, policing it from a federal level does not make sense. Each state and city have its own needs; thus, the federal government should designate more money and subsidize states to create tailored laws to reduce strains on cities.

A major flaw in federal exemptions is the *de minimis* standard. This standard was applied so that “Animal & Plant Health Inspection Service (“APHIS”) could focus “its limited budget

and inspection and enforcement staff on entities that pose the greatest risks to animal welfare and public safety.”⁶⁷ The number of “sight unseen sales” have risen and the APHIS’ definition of a “retail pet store” has created an obvious loophole to avoid detection from federal authorities.⁶⁸ In one of the leading cases concerning this issue, in *Doris Day Animal League v. Veneman*, his primary defense against this belief was that “ ‘retail dealers ... are already subject to a degree of self-regulation and oversight by persons who purchase animals from the retailers' homes.’ ” 301 F.3d 297 (D.C. Cir. 2003). However, this defense has not stood the test of time as thousands of breeders have abused this type of thinking and have punished their communities for it. The court also found that the regulatory definition of “retail pet store” was adequate and declined to amend the definition on the ground that the best interest of animal welfare was supporting the department that came up with the definition.⁶⁹

State actors are the first line of defense that people have to combat abusive breeders. They have larger budgets and have more manpower to find and eliminate breeders that do not comply with regulations. However, even with these resources, it is nearly impossible to scope out potential violators without cities instrumenting their own abilities. That is why one of the first helpful remedies would be to increase the funding sent to “at-risk” areas where there has been a prevalent number of abusive cases reported. These municipalities would not be hard to detect, as many of them have reported cases of dog abuse repeatedly over the past few years.⁷⁰ These funds could be used to prevent excess puppies and reduce the “people shield” that backyard breeders use by reducing the cost of getting a dog spayed or neutered. This could help eliminate or at least

⁶⁷ *Associated Dog Clubs of N.Y. State, Inc. v. Vilsack*, 75 F. Supp. 3d 83, 88 (D.D.C. 2014).

⁶⁸ *Doris Day Animal League v. Veneman*, 315 F.3d 297 (D.C. Cir. 2003).

⁶⁹ *Id.*

⁷⁰ Lindsey Basye and Rebecca Lindstrom, “The furry faces of Pennsylvania animal cruelty laws,” 11 Alive (11 Alive News, November 11, 2019), <https://www.11alive.com/article/news/investigations/the-reveal/pa-animal-cruelty-law-faces/85-2617e44b-7c1d-491d-9f61-0f0215e1be83> (last visited Nov. 13, 2023).

reduce the number of people who inadvertently get placed in positions where their dog gets pregnant with litters that they do not want.

This type of subsidization for sterilization would also significantly reduce the number of dogs that are capable of reproducing in low-income communities. The cost of sterilization can sometimes make it inaccessible for families who do not have assets to spare. Moreover, these families might be willing to sterilize their pets if the price was reduced, because about 30% pet owners who do not spay, or neuter say they do so because the cost is too high in their areas.⁷¹ A potential way for these programs to be more common would be to slightly raise the cost of licensing fees to supplement the loss of income from spaying fee reductions.

States can also raise awareness of the risks of not sterilizing pets and the potential financial and emotional costs associated with making that decision. Creating a statewide program that targets lower income areas and educating them about the risks that breeding animals can create in their communities may influence people to go ahead and sterilize in greater numbers.⁷² If done correctly, people can thereby reduce the ability for pets to turn people into inadvertent owners of litters, and, as stated above, can reduce the shield that small-volume breeders often hide behind a bit more. States should also implement a requirement of sterilization before allowing the sale of animals to any private individuals. Several states have explicit laws that mandate this rule to prevent buyers from continuing the issue that these small-volume breeders are responsible for originally.⁷³

⁷¹ Joshua Frank, "An Interactive Model of Human and Companion Animal Dynamics: The Ecology and Economics of Dog Overpopulation and the Human Costs of Addressing the Problem," 32 *Human Ecology* 107, 115 (2004). (last visited Nov. 10, 2023).

⁷² Julia Moffitt, "Indianapolis low-cost animal clinic helping prevent overpopulation," WTHR (WTHR, October 5, 2021), <https://www.wthr.com/article/life/pets/to-the-rescue/face-low-cost-animal-clinic-spay-neuter/531-4f697249-6379-4b56-b4f2-8098c1ece89d> (last visited Nov. 10, 2023).

⁷³ GA. CODE ANN. § 4-14-3 (2023); COLO. REV. STAT. § 35-80-106.4 (2023); DEL.

Unfortunately, the best way to influence states to conduct such actions is to promote it as primarily being an overpopulation solution. In the past, states have treated reforms unfavorably if their breeders have believed the “so-called” reforms were intended to target hobbyist breeders along with backyard breeders. Specifically, the de minimis requirement being reduced to numbers like 2 breeding females instead of 4 could be seen as a huge burden for breeders who do not mistreat their pets.⁷⁴ However, the risks of allowing the de minimis exception that the federal government has permitted to continue is too great. The current rule raised the maximum number of female breeding dogs, cats, or certain species a person could maintain from three to four to be exempt from licensing, provided they sold only offspring from those animals born and raised on their premises for pets or exhibition.⁷⁵ However, that rule still has led to rampant abuse from breeders who often dump dogs and feign innocence whenever confronted with legal action. Consequently, it is much more likely that the individual states could introduce overpopulation reform rather than any significant changes for small-volume, and perceived, low-risk behaviors like hobbyist breeding.

Another possible reform that states or local governments might employ as a solution is the requirement of microchipping, which has shown to be an effective measure to counter many of the problems associated with dog breeding in general. These chips are about the size of a grain

CODE ANN. tit. 16, § 3016F (2023); N.J. STAT. ANN. § 4:19-15.30 (2023); UTAH CODE ANN. § 11-46-203 (2017); ME. STAT. tit. 7, § 3939-A(1) (2023).

⁷⁴ USDA, “Questions and Answers: Thresholds for De Minimis Activity and Exemptions From Licensing under the Animal Welfare Act,” USDA (USDA Animal and Plant Health Inspection Service, August 3, 2016), <https://www.aphis.usda.gov/aphis/newsroom/factsheets/questions-and-answers-awa-deminimis#:~:text=No.-,The%20current%20AWA%20regulations%20exempt%20any%20breeder%20who%20maintains%20four,exhibition%20from%20obtaining%20a%20license> (last visited Nov. 10, 2023).

⁷⁵“80 FR 3463 (2015) corrected an oversight in the 2013 final rule that neglected to raise the number in one provision of the regulations related to animal purchases by dealers and exhibitors.” Adam P. Karp, “Adopt, Don’t Shop: Legislative Fiat,” Idaho State Bar (Idaho State Bar, May 5, 2023), <https://isb.idaho.gov/blog/adopt-dont-shop-by-legislative-fiat/> (last visited Nov. 13, 2023).

of rice and bond within 24 hours to the pet's subcutaneous tissues to hold it in place.⁷⁶

Microchipping has proven to be very safe. The British Small Veterinary Association keeps track of reports of adverse reactions to microchips, and since 1996, only 391 adverse reactions have been reported out of over four million microchipped animals.⁷⁷ This technology remains active for about 25 years, which is much more than the average lifespan of a dog.⁷⁸ These facts are important, because microchipping can make a huge impact on illicit pet sales. The microchip emits a frequency that can be detected by scanners to look up a registration number, and this can be used to track dogs as they are sold through to the public.⁷⁹ Thus it appears that mandating breeders to chip pets can be an effective and inexpensive measure and may help to reveal the small-volume breeding operations that plague communities.

Puppy mills and backyard breeders alike will likely refrain from doing business in areas where microchips are common and required to make a sale, because they would not want to have their operations to be noticed. They may be afraid that harmful information can likely be traced back to them, and their suspicious behavior of not having pets microchipped may catch up to them. Cities like Houston, Texas have already required pet owners to microchip their dogs, and it has had a direct effect on illegal behavior.⁸⁰ Chips also allow information like licenses to be stored and have a moderate cost of only cost \$15 dollars in Houston.⁸¹ However, the chips aren't

⁷⁶ Virginia-Maryland College of Medicine, "5 Things You Need to Know About Microchipping Your Pet," (Virginia-Maryland College of Medicine, June 8, 2023), <https://vetmed.vt.edu/news/2023/microchipping-your-pet.html> (last visited Nov. 13, 2023).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Dylan McGuinness, "Houston to require microchips for dogs and cats, bar pet shops from suing 'puppy mill' breeders," Houston Chronicle (Houston Chronicle, January 19, 2022), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Houston-to-require-microchips-for-dogs-and-cats-16787759.php> (last visited Nov. 13, 2023).

⁸¹ *Id.*

a panacea as enforcement of improper breeding is still difficult. This is largely because compliance rates are extremely low -- at just about 4%.⁸² This limitation is indicative of a system that doesn't yet have popular support and has not yet garnered state legislative or federal support, especially for funding of the program. This is unfortunate, since the program could expose illegal breeders more easily if none of the puppies they sell were microchipped and they were consistently being fined for these mistakes.

Clearly, microchips have a demonstrated ability to combat illicit behavior. However, the main benefit of having these chips would be that they can restrict a steady source of income for small-volume breeders. Pet stores would be liable if they bought puppies who were not chipped if that was a requirement of the state or local government. Here, an inspection could lead to several fines and that alone would likely deter some pet stores from buying bulk puppies from breeders who are trying to unload them.⁸³ Crippling the source of income for illicit breeders would be one of the most effective ways to stop them from continuing business.

A final suggested way to further regulation to police small-volume breeders would be to push local government regulations to increase. Municipalities know the most about their individualized problems, and though uniformity with nearby counties is difficult, enacting strict regulations like mandating licenses has proven effective in many locations. For example, municipalities in New Jersey have specifically targeted de minimis exemptions by requiring that all dog breeders get licensed before being allowed to sell within the municipality.⁸⁴ By working closely with their counties and municipalities to achieve a consolidated front, states could help

⁸² *Id.*

⁸³ *Id.*

⁸⁴ HARRISON, N.J., CODE OF ORDINANCES § 6.08.090 (2023); ELIZABETH, N.J., CODE OF ORDINANCES § 6.04.100 (2023); TEWKSBURY TWP., N.J., CODE OF ORDINANCES § 6.04.100 (2023); STRATFORD BOROUGH, N.J., CODE OF ORDINANCES § 6.04.060 (2023).

ease the burden by enacting statewide laws to help deter breeders from conducting business beyond local jurisdictional lines. The very least that states can do to support these efforts would be to increase budgets targeted for these municipalities so that they can enforce the rules effectively.

One illustration of a municipality leading by example is Albuquerque, New Mexico, a city that has aggressively taken it upon itself to instrument changes to the existing law to limit abuse within its jurisdiction.⁸⁵ That city's requirements of the addition of permits for litters born to the owner's dogs has been shown to limit the amount of leeway that small-volume breeders have.⁸⁶ Moreover, this is a way too keep track of illicit breeding operations, as litters that come into sale at pet stores or other methods may expose the small-volume breeder completely.

Whether through licenses, chips, or funding, an immediate solution to these issues of harmful dog breeding will require action in some form or another. Municipalities, specifically, must take action to influence and bring to light the issues that backyard breeders' insight with their prevalent existence. Taking actions like cutting the price of sterilization of pets or reducing the price of getting a license may improve the compliance rates to a level where it is easier to detect illegal activity. Increasing fines for not complying with local ordinances would also act as a deterrence for those trying to evade the laws. Microchipping seems to be perhaps the best way to identify dogs, and locate breeders who have abused these dogs or dumped them in the past. Regardless of what method these municipalities choose, they must also take some affirmative

⁸⁵ ALBUQUERQUE, N.M., CODE OF ORDINANCES §§ 9-2-3-7(b) & (c) (2023).

⁸⁶ Illegal Pet Sales, CITY OF ALBUQUERQUE, <https://www.cabq.gov/pets/education-resources/illegal-pet-sales> (last visited October 15, 2023).

action to build a case for larger reforms at the state or federal level to truly craft significant solutions to existing conditions.

B. Solutions Overview

The various methods of reforming these laws and adjusting them to local communities appear to be theoretically possible, but difficult to enforce without some sense of unity. Often, communities choose to ignore the problem or discount the effect that abuse breeders can have on the animals' shelters within their municipalities. These breeders evade and expose the flaws in current regulation and abuse thousands of animals in the process. The federal government should enact stricter legislation. States should provide more financial support to municipalities along with passing promulgating standards that would reduce the burden on local communities. Counties and municipalities must implement successful tactics as have already been accomplished in other municipalities to make a significant difference in their communities. The most effective methods would likely be, as discussed: mandating licenses for all dogs who are breeding, requiring permits and written notice when having litters for sale, and microchipping of dogs that would otherwise be untraceable to the original owner. By implementing these tactics, dog abuse and overpopulation would likely be reduced in a significant way.

V. Conclusion

So far, small-volume dog breeding has apparently not been an important concern to the state or the federal government. Most reforms that have occurred from those levels of government have had only passive effects on that type of breeding, and none of them specifically have targeted backyard breeders. This makes sense in some way, because different municipalities require different types of aid. Some municipalities may not have a breeding problem, but others

may be really struggling. This is just the nature of things, but financial support is something the individual states should offer to ease the burden of lower income municipalities or those without substantial animal control services.

Many of the local jurisdictions, especially certain cities, have demonstrated innovation and a step in the right direction for the most part, since so many have not only introduced ways to expose abusive breeders and correct not only overpopulation, but have also truly cared for dogs in general. However, a veiled curtain is still present blocking inspectors looking to isolate violators in the sea of hobbyist breeders, and currently there is no viable solution that can fully solve this problem.

The legislative and regulatory changes that are listed in this paper, however, create a foundation for where to start trying to implement reform. Combating the detrimental effects of unethical small-volume breeding may best start from the ground up, and remembering, most importantly, the lives of animals that depend on this change to happen. The days of caged, sick, and malnourished animals would decrease in number if even some of these changes were approved and enforced in affected cities. Therefore, the welfare of animals and people who are affected by backyard breeding must be dependent on sweeping legal changes that would instrument a stricter and safer society for all involved.