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## Breed-Specific Legislation Revisited: Canine Racism or the Answer to Florida's Dog Control Problems?

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1. See *State v. Peters*, 534 So. 2d 760, 763 n.4 (Fla. 3d Dist. Ct. App. 1988) (“[t]he differentiation between pit bulls and other breeds has been called ‘canine racism.’” (citing *Attacks by Pit Bulls Prompt Vicious-dog Laws*, CHRISTIAN SCI. MONITOR, July 3, 1987, at 1, 3)).

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“[I]n the Garden of Eden every animal obeyed Man willingly. But we blew it, and after the Fall all the animals lived as they pleased and paid us no heed. Except for dogs, who liked comradeship and loyalty enough to give us another chance.”<sup>2</sup>

## I. INTRODUCTION

Mary Rodgers wept as her dog was dragged away by animal control workers.<sup>3</sup> She could barely stand to watch as Sasha struggled with the workers, trying to break free to run up the familiar porch steps to her owner. There was confusion in her eyes as she looked at Mary. Mary’s instincts had told her to run after Sasha, to bring her back to the house where she had lived for years. But she did not. Instead, Sasha was forced into the back of a van and driven to animal control where she would be put to death.<sup>4</sup> One might think Sasha committed a grievous act to receive such a harsh punishment. But she did not. She had never bitten nor hurt anyone. Her sole infraction was that she was an American Staffordshire Terrier.<sup>5</sup> Mary had no choice but to let Sasha go. The county required Mary to have an

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2. Timothy Foote, *That is Not a Bad Dog—That’s a Splendid Dog*, SMITHSONIAN, Apr., 1992 at 60, 69 (describing author and animal trainer Vicky Hearne’s theory of the relationship between man and dog).

3. This story is fictional. However, it is an accurate example of what could happen in a municipality that bans pit bulls.

4. See *Two Seized Pit Bulls to Be Euthanized*, SARASOTA HERALD TRIB. (Fla.), Mar. 13, 2002, at BCE3; see also Sandra Amrhein, *Unwanted, Unloved and Facing a Death Sentence*, ST. PETERSBURG TIMES (Fla.), Jan. 13, 2002, at 1 (stating that the Pasco County Animal Control Center in Florida only adopts nineteen percent of the cats and dogs they take in each year, and that “[l]ast year, the shelter euthanized 3,531 of the 5,279 dogs brought in . . . [and] 3,796 of the 4,861 cats brought in”); Neal Thompson, *The Euthanizer: Not a Sheltered Life Death*, BALT. SUN, May 21, 2001, at 1E. (noting that the Baltimore shelter estimated that “euthanizing will continue at a pace of 10,000 to 12,000 a year”); Sally Kestin, *Too Late For Too Many*, SUN-SENTINEL (Fort Lauderdale, Fla.), June 23, 2002, at 1A.

5. American Staffordshire Terriers are one of the three recognized breeds of dog known commonly as a “pit bull.” See discussion *infra* Part IV.A.

extensive insurance policy in order to keep Sasha,<sup>6</sup> and although Mary continuously tried, no insurance company would insure her.<sup>7</sup>

In the 1980s, a spate of dog attacks prompted local governments across the country to ban pit bulls from many municipalities.<sup>8</sup> While many concerned citizens encouraged these bans, others believed that pit bulls were being unfairly singled-out.<sup>9</sup> Disgruntled owners claimed that such breed-specific bans violated their constitutional rights and numerous suits against municipalities followed.<sup>10</sup> One by one courts addressed each of the constitutional issues claimed by owners and in turn they dismissed each of them.<sup>11</sup> Courts responded to these suits almost uniformly.<sup>12</sup> The judiciary had spoken: in the absence of state legislation to the contrary, municipalities were free to ban specific breeds of dog.<sup>13</sup>

Recent dog attacks in Florida and other parts of the country have again brought the issue of banning particular breeds to the forefront.<sup>14</sup> Citizens in Florida, frustrated by the attacks, have called on their legislators to take action.<sup>15</sup> However, although courts have unanimously held that it is constitutional for municipalities to ban pit bulls, Florida cities and towns are unable to. Their hands are tied due to one line in section 767.14 of the *Florida Statutes* that prohibits local governments in Florida from banning

6. See discussion *infra* Part II.

7. See generally Wayne T. Price, *Choose—Beloved Pet or Homeowners Insurance?*, FLA. TODAY, May 13, 2002, at 1; Diana Marrero, *More Home Insurers Blacklist Some Breeds of Dogs*, FLA. TIMES-UNION, Jan. 24, 2001, at A1; Mary Shanklin, *Insurance Bite: A Vicious Breed of Dog Could Cost You Your Coverage*, ORLANDO SENTINEL, Jan. 7, 2001, at J1 (giving examples of people who were unable to get insurance coverage because of the breed of their dog).

8. See Michael Bosc, *Life Is The Pits for Pit Bulls*, U.S. NEWS & WORLD REP., Aug. 17, 1987, at 12.

9. See, e.g., Renee Graham, *Mean Dogs May Face Sanctions*, MIAMI HERALD, Aug. 10, 1987, at 1PB.

10. See discussion *infra* Parts III.C.1–5.

11. *Id.*

12. *But see Am. Dog Owners Ass'n v. City of Lynn*, 533 N.E.2d 642 (Mass. 1989) (holding that ordinance which banned pit bulls was unconstitutionally vague because of difficulty in determining if a dog was a pit bull).

13. See discussion *infra* Parts III.C.1–5.

14. See Erik Lacitis, *Every Dog, Big or Small, Must Have its Day in Obedience School*, SEATTLE TIMES, Apr. 2, 2002, at E1.

15. See, e.g., Editorial, *Pit Bull Ban*, SUN-SENTINEL (Fort Lauderdale, Fla.), May 16, 2002, at 24A; Dave Cebrat, Editorial, *Ban Pit Bull Dogs for Safety's Sake*, SUN-SENTINEL (Fort Lauderdale, Fla.), May 26, 2002, at 4F (calling for legislators to ban pit bulls).

any specific breed of dog.<sup>16</sup> This has created a situation in Florida where the judicial branch has pronounced breed-specific banning constitutional, but the legislative branch prohibits it. In a knee-jerk response to the most recent attacks, legislators have attempted to change the part of this statute that prohibits the banning of specific breeds.<sup>17</sup> Although these recent attempts have failed, they represent dissatisfaction with current dog control laws.<sup>18</sup> The resurfacing of this issue has prompted a closer analysis of the effectiveness of current laws in Florida. It has also triggered the question of whether breed-specific legislation is the answer to the dog control problem, or whether there are more effective alternatives.

This article begins by briefly discussing the issue of banning specific breeds of dogs. Part II details the prevalence of dog bites in the United States. Part III explains the current law in Florida pertaining to dangerous dogs. Part IV analyzes in detail the history of dangerous dog legislation in Florida. It also refers to Senate Bill 1644 that created section 767.14 of the *Florida Statutes*, and proposed measures to change this statute. Further, it explains significant prior case law pertaining to breed-specific legislation. It includes an analysis of the constitutional theories upon which suits have been brought and courts' decisions regarding these theories. Part V examines pit bulls as a breed, and discusses the prevalence of illegal dogfighting and how it relates to the perceived problems with pit bulls. Part VI discusses the problems involved with banning particular breeds and the ineffectiveness of this method of dog control. Part VII outlines several alternatives to breed-specific legislation and the implications of these alternate measures. Finally, in Part VIII, this article concludes that breed-specific legislation is not an effective method for resolving Florida's dog control problem. It explains that since this method is ineffective, it is not a rational means to achieve the legitimate government purpose of protecting the public welfare.

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16. FLA. STAT. § 767.14 (2001). "Nothing in this act shall limit any local government from placing further restrictions or additional requirements on owners of dangerous dogs . . . provided that no such regulation is specific to breed . . . ." *Id.*

17. See discussion *infra* Part III.B.

18. See *id.*

## II. THE PREVALENCE OF DOG BITES IN THE UNITED STATES

Today, over one-third of American households have a dog.<sup>19</sup> Despite their popularity, a significant number of dogs bite people every year.<sup>20</sup> While there are at least four hundred known breeds of dogs in the world,<sup>21</sup> only a few breeds have the reputation of being responsible for the most bites.<sup>22</sup> At the forefront of this list of “dangerous dogs”<sup>23</sup> is the dog commonly known as the pit bull.<sup>24</sup>

The prevalence of dog bites in the United States has caused many insurance companies to refuse homeowners’ insurance to people who own pit bulls or other dog breeds that the companies deem dangerous.<sup>25</sup> The Insurance Information Institute claims that one-third of homeowner’s liability claims are due to dog bites.<sup>26</sup> They further assert that these bites cost insurance companies \$310 million annually.<sup>27</sup> In addition, insurance companies allege that certain breeds bite more than other breeds, even though others disagree.<sup>28</sup>

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19. THE ANIMAL ASSISTANCE LEAGUE, FACTS: DOG BITE STATISTICS, at <http://www.animalassistanceleague.com/facts.htm> (last visited Mar. 22, 2003). “About 35% of American households owned a dog in 1994—a total dog population of over 52 million.” *Id.*

20. AM. VETERINARY MED. ASS’N, DOG BITE FACT SHEET, at <http://www.avma.org/press/dogbite/factsheet.asp> (last visited Mar. 22, 2003). According to the American Veterinary Medical Association, “[a]s many as 1 million people annually require medical treatment for dog bites. Dog attacks send more than 334,000 people to the emergency room each year.” *Id.*

21. See Mark Derr, *The Politics of Dogs*, THE ATLANTIC MONTHLY, Mar., 1990, at 49.

22. See Price, *supra* note 7. “Nationwide [Insurance Company] refuses to write policies to owners of chow chows, Doberman pinschers, German shepherds, pit bull terriers, Presa Canarios, Rottweilers and wolf hybrids.” *Id.* See also Shanklin, *supra* note 7. “A growing number of insurance companies have started blacklisting breeds such as Rottweilers, pit bulls, Doberman pinschers, German shepherds, chow chows and wolf hybrids.” *Id.*

23. See Price, *supra* note 7; Shanklin, *supra* note 7; Marrero, *supra* note 7.

24. See discussion *infra* Part IV.A.

25. See Price, *supra* note 7 (noting that Nationwide Insurance Co. and MetLife Auto & Home will not provide homeowners insurance for people who own pit bulls); Marrero, *supra* note 7.

26. Price, *supra* note 7.

27. *Id.*

28. Compare Marrero, *supra* note 7 (discussing the perception among insurers that certain breeds are more dangerous than others), with Price, *supra* note 7 (quoting Stephanie Shain, director of outreach for the Washington D.C.-based Humane Society of the United States: “the breed is not an accurate indicator if a dog is going to be aggressive or not”).

Not all insurance companies refuse insurance coverage to people based solely on a dog's breed.<sup>29</sup> However, based on a dog's history, even these companies may require that the policy contain a provision that if the dog bites someone, the insurance company does not have to pay.<sup>30</sup> For homeowners who are unable to get insurance from a private company, they can usually fall back on the state's Joint Underwriting Association (JUA) to cover them.<sup>31</sup> However, although "[t]he JUA will insure homeowners with breeds known for being vicious," even the JUA "will not cover any dog-related claims."<sup>32</sup> Aside from dogs that are considered dangerous, insurance companies are not likely to provide coverage if any type of dog, regardless of breed, has ever bitten a person.<sup>33</sup>

This creates a problem for homeowners who have a dog that is blacklisted. Homeowners insurance is vital for people who are buying a house.<sup>34</sup> If they do not have it, then they are personally liable for the damages done by their dogs.<sup>35</sup> Furthermore, without insurance, homeowners will not be able to get a mortgage. This leaves them in a predicament of choosing between their family pet and owning a home.<sup>36</sup> People who choose to have insurance instead of their dog often have to leave their pet at an animal shelter and hope that someone adopts them.<sup>37</sup>

Owning dogs can preclude people from owning homes, forcing them to rent instead. However, many apartment complexes will not allow tenants to have certain breeds of dogs.<sup>38</sup> Landlords fear that they will be sued if a

29. See Shanklin, *supra* note 7 (noting that State Farm and Allstate will consider factors other than breed before denying coverage).

30. See Price, *supra* note 7.

31. Shanklin, *supra* note 7 (stating "[The JUA is a] state-supported insurance pool [that] covers homeowners when no other insurance company will. The JUA will insure homeowners with breeds known for being vicious . . .").

32. *Id.*

33. See Marrero, *supra* note 7 (stating "you can almost kiss your chances of getting future coverage goodbye if your dog, even a poodle, pierces human flesh").

34. *Id.*

35. FLA. STAT. § 767.04 (2001).

36. See Price, *supra* note 7.

37. Shanklin, *supra* note 7; see also Marrero, *supra* note 7 (stating "Danya Parks, a programs manager of the Jacksonville Humane Society . . . said most of the 15,000 dogs the shelter takes in each year are in fact rottweilers, German shepherds, chow chows and pit bulls. And it may be even harder to find them homes if people find insurance companies will not protect them when they take those dogs in.").

38. See Price, *supra* note 7.

tenant's dog bites another tenant or guest.<sup>39</sup> Their fears are not unfounded. Landlords can be held liable if a dog bites someone on their premises.<sup>40</sup>

Insurance companies are generally given a good deal of latitude in refusing coverage to potential customers that they view as high-risk.<sup>41</sup> For example, insurance companies can refuse coverage to people who are predisposed to a certain illness or have a preexisting medical condition.<sup>42</sup> Although this may seem unfair, local governments cannot mandate companies to provide coverage for people.<sup>43</sup>

### III. CURRENT FLORIDA LAW PERTAINING TO DAMAGE BY DOGS

Florida has had significant experience with breed-specific legislation. Pit bulls became a hot issue in the 1980s, and Florida was not immune to the pit bull hysteria that had gripped the country.<sup>44</sup> A number of municipalities enacted ordinances to deal with dangerous dogs, some specifically banning pit bulls.<sup>45</sup> The City of Miami ordinance, for example, required owners to have \$50,000 of insurance in order to be able to keep their pet.<sup>46</sup> The state

39. See Shanklin, *supra* note 7 (stating "after a number of people have been bitten at her rental houses, [animal shelter director and dog lover, Lorrie Nassofer] will no longer allow canines at those homes . . . [I]ast month, her insurance company paid \$85,000 to the family of a child who was bitten at one of Nassofer's rental houses").

40. See § 767.04; *see also* Giaculli v. Bright, 584 So. 2d 187 (Fla. 5th Dist. Ct. App. 1991); Bessent v. Matthews, 543 So. 2d 438 (Fla. 1st Dist. Ct. App. 1989); Olave v. Howard, 547 So. 2d 349 (Fla. 3d Dist. Ct. App. 1989); Vasques v. Lopez, 509 So. 2d 1241 (Fla. 4th Dist. Ct. App. 1987); Robinson v. Espinosa, 502 So. 2d 527 (Fla. 3d Dist. Ct. App. 1987); Anderson v. Walthal, 468 So. 2d 291 (Fla. 1st Dist. Ct. App. 1985).

41. See State v. Peters, 534 So. 2d 760, 763 (Fla. 3d Dist. Ct. App. 1988) (noting that city could not require insurance companies to issue policies to pit bull owners).

42. See Am. Sun Life Ins. Co. v. Remig, 482 So. 2d 435, 436 (Fla. 5th Dist. Ct. App. 1985).

43. See *Peters*, 534 So. 2d at 763.

44. See, e.g., Graham, *supra* note 9 (stating "[t]hat hysteria reached a peak in California this summer. After two pit bull attacks in nine days, more than 300 pit bulls were turned into the Los Angeles County Animal Care and Control Department.").

45. Christopher Wellisz, *Doggone! Caring Officer Retires*, MIAMI HERALD, Jan. 21, 1988, at 1BR (stating that "[i]n 1979 . . . [a] pit bull . . . severely mauled a 6-year-old Hollywood boy, Frankie Scarbrough. The attack prompted a controversial ordinance controlling pit bulls.").

46. MIAMI-DADE COUNTY, FLA., CODE § 5-17.3 (Supp. 1999).

In order to protect the public and to afford relief from the severe harm and injury which is likely to result from a pit bull dog attack, every owner of a pit bull dog shall maintain and be able to provide evidence of the owner's financial ability to respond in damages up to and including the amount of fifty thousand dollars (\$50,000) for bodily injury to



legislature, however, had not yet enacted any statutes to deal with dangerous dogs.<sup>47</sup>

#### A. Chapter 767 of the Florida Statutes

The legislature responded to the outcry for dog control laws by enacting *Florida Statutes* sections 767.10–15.<sup>48</sup> The legislature specifically stated, in its legislative findings, that its reasoning for enacting these statutes was to correct the inadequacy of the current laws in dealing with unprovoked dog attacks.<sup>49</sup> It established and defined the factors necessary to determine that a dog is legally “dangerous,” and therefore subject to certain restrictions.<sup>50</sup>

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or death of any person or damage to property which may result from the ownership, keeping or maintenance of such dog.

*Id.*

47. See Fla. H.R. Comm. on Local Gov’t & Vet. Aff., HB 839 (2001) Staff Analysis 2 (final Mar. 20, 2001) (on file with comm.) [hereinafter H.R. Comm. HB 839 Staff Analysis].

Prior to 1990, animal control was generally regulated on a local basis, as the Florida Statutes did not specifically provide for regulating dangerous dogs. However, in 1990, the Legislature passed HB 1345 which provided a procedure for certain dogs to be classified as dangerous and required that such dogs be registered. The bill also established requirements for control and confinement of dangerous dogs, as well as an appeals procedure.

*Id.*

48. FLA. STAT. § 767.10–.15 (2001). This statute was created by Senate Bill 1644. The bill passed favorably through the Agriculture, Judiciary-Criminal, and Appropriations Committees. The Senate then voted on it, and the next day, the House unanimously passed the bill. See H.R. Comm. HB 839 Staff Analysis, *supra* note 47.

49. See § 767.10.

The Legislature finds that dangerous dogs are an increasingly serious and widespread threat to the safety and welfare of the people of this state because of unprovoked attacks which cause injury to persons and domestic animals; that such attacks are in part attributable to the failure of owners to confine and properly train and control their dogs; that existing laws inadequately address this growing problem; and that it is appropriate and necessary to impose uniform requirements for the owners of dangerous dogs.

*Id.*

50. § 767.11(1)(a)–(d).

“Dangerous dog” means any dog that according to the records of the appropriate authority:

Has aggressively bitten, attacked, or endangered or has *inflicted severe injury on a human being* on public or private property;

Has more than once *severely injured or killed a domestic animal* while off the owner’s property;

Section 767.12 provides, in detailed description, the process for classifying a dog as dangerous.<sup>51</sup> It authorizes animal control employees to investigate occurrences that may lead to a dog being considered dangerous.<sup>52</sup> While an investigation is occurring, the dog in question may either be impounded or held under certain restrictions by his owner.<sup>53</sup> However, a dog will not be considered dangerous if it was protecting someone from an “unjustified attack.”<sup>54</sup> After allowing the owner to appear at a hearing, animal control will then determine whether the dog in question is in fact dangerous.<sup>55</sup> The owner can appeal the decision,<sup>56</sup> but if he loses, he will

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Has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting; or

Has, *when unprovoked, chased or approached a person* upon the streets, sidewalks, or any public grounds *in a menacing fashion* or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.

*Id.* (emphasis added).

51. § 767.12.

52. § 767.12(1)(a).

(1)(a) An animal control authority shall investigate reported incidents involving any dog that may be dangerous and shall, if possible, interview the owner and require a sworn affidavit from any person, including any animal control officer or enforcement officer, desiring to have a dog classified as dangerous. Any animal that is the subject of a dangerous dog investigation, that is not impounded with the animal control authority, shall be humanely and safely confined by the owner in a securely fenced or enclosed area pending the outcome of the investigation and resolution of any hearings related to the dangerous dog classification. The address of where the animal resides shall be provided to the animal control authority. No dog that is the subject of a dangerous dog investigation may be relocated or ownership transferred pending the outcome of an investigation or any hearings related to the determination of a dangerous dog classification. In the event that a dog is to be destroyed, the dog shall not be relocated or ownership transferred.

*Id.*

53. *Id.*

54. § 767.12(1)(b).

A dog shall not be declared dangerous if the threat, injury, or damage was sustained by a person who, at the time, was unlawfully on the property or, while lawfully on the property, was tormenting, abusing, or assaulting the dog or its owner or a family member. No dog may be declared dangerous if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

*Id.*

55. § 767.12(1)(c).

After the investigation, the animal control authority shall make an initial determination as to whether there is sufficient cause to classify the dog as dangerous and shall afford

have to register the dog pursuant to certain conditions.<sup>57</sup> The owner also has an obligation to notify authorities if certain instances occur.<sup>58</sup> However, given the likelihood that a dangerous dog may bite again, the penalties for a violation of this section seem lenient.<sup>59</sup>

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the owner an opportunity for a hearing prior to making a final determination. The animal control authority shall provide written notification of the sufficient cause finding . . . and, if requested, [a] hearing shall be held as soon as possible, but not more than 21 calendar days and no sooner than 5 days after receipt of the request from the owner. Each applicable local governing authority shall establish hearing procedures that conform to this paragraph.

*Id.*

56. § 767.12(1)(d).

57. § 767.12(2)(a).

(2) Within 14 days after a dog has been classified as dangerous by the animal control authority or a dangerous dog classification is upheld by the county court on appeal, the owner of the dog must obtain a certificate of registration for the dog from the animal control authority serving the area in which he or she resides, and the certificate shall be renewed annually. Animal control authorities are authorized to issue such certificates of registration, and renewals thereof, only to persons who are at least 18 years of age and who present to the animal control authority sufficient evidence of:

- (a) A current certificate of *rabies vaccination* for the dog.
- (b) A *proper enclosure* to confine a dangerous dog and the posting of the premises with a *clearly visible warning sign* at all entry points that informs both children and adults of the presence of a dangerous dog on the property.
- (c) Permanent identification of the dog, such as a *tattoo* on the inside thigh or electronic implantation.

*Id.* (emphasis added).

58. § 767.12(3)(a)–(d).

(3) The owner shall immediately notify the appropriate animal control authority when a dog that has been classified as dangerous:

- (a) Is loose or unconfined.
- (b) Has bitten a human being or attacked another animal.
- (c) Is sold, given away, or dies.
- (d) Is moved to another address.

Prior to a dangerous dog being sold or given away, the owner shall provide the name, address, and telephone number of the new owner to the animal control authority. The new owner must comply with all of the requirements of this act and implementing local ordinances, even if the animal is moved from one local jurisdiction to another within the state. The animal control officer must be notified by the owner of a dog classified as dangerous that the dog is in his or her jurisdiction.

*Id.*

59. See § 767.12(7) (“Any person who violates any provision of this section is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500.”).

Section 767.14 in particular gives municipalities a significant amount of leeway in enacting ordinances pertaining to the control of dogs.<sup>60</sup> However, one important line of Section 767.14 restricts how municipalities could treat specific breeds.<sup>61</sup> Section 767.14 specifically authorizes municipalities to enact further restrictions that are deemed necessary to protect the public against dangerous dogs.<sup>62</sup> However, these restrictions cannot be breed-specific.<sup>63</sup> The statute allows ordinances that were enacted prior to its passage to remain in force, but no new breed-specific ordinances can be enacted.<sup>64</sup>

These additions to Chapter 767 seemed to address the problem communities had with how to handle dangerous dogs. However, the process has been criticized as being too lengthy.<sup>65</sup> Also, municipalities have taken issue with the restriction prohibiting breed-specific bans.<sup>66</sup>

## B. *Subsequent Attempts to Change the Statute*

### 1. House Bill 355

After it was enacted in 1990, no legislative challenges to the potentially controversial section 767.14 were raised until the 2000 legislative session. In 2000, Representative Tracy Stafford introduced a bill to amend section 767.14 by removing the line that restricts municipalities from regulating specific breeds.<sup>67</sup> The bill was reviewed favorably by the House Committee on Community Affairs, which added an amendment to streamline the process for classifying a particular dog as “dangerous.”<sup>68</sup> The House Committee on Community Affairs noted that although the Florida League of Cities supported the bill, the Humane Society was opposed to it.<sup>69</sup> There are numerous reasons why the Humane Society opposes breed-specific legislation:

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60. § 767.14.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. See Fla. H.R. Comm. on Agric., HB 355 (2000) Staff Analysis (rev. Feb. 1, 2000) (on file with comm.) [hereinafter H.R. Comm. HB 355 Staff Analysis].

66. See discussion *infra* Part III.B.

67. Fla. HB 355 (2001), available at

<http://www.flsenate.gov/data/session/2000/House/bills/billtext/pdf/h0355.pdf>.

68. See H.R. Comm. HB 355 Staff Analysis, *supra* note 65, at 6.

69. *Id.*

Although it supports the bill's intent to enhance public safety, the [Humane] Society does not feel [that] allowing local governments to enact ordinances that could place restrictions regarding ownership of certain dog breeds is the answer. According to the Society, the problem the bill is addressing may not be a "breed of dog" problem but rather a pet ownership and enforcement issue. The Society also states breed specific ordinances will unfairly penalize responsible dog owners, and it is these responsible dog owners, whose dogs do not pose a threat, who will make an effort to comply with any new ordinances. In addition, it appears as though the bill does not provide any restrictions on what breed of dogs local governments can further restrict. However, the Society does *support* any attempt to streamline the existing statute regarding the dangerous dog classification and appeal process. It believes that by streamlining the appeal process, the law will be easier to enforce and will minimize animal authorities' reluctance to classify a dog as dangerous.<sup>70</sup>

The bill was then placed on the calendar to be voted on, but died on the calendar after a month.<sup>71</sup>

## 2. House Bill 839

Although a challenge to section 767.14 had just failed in the previous legislative session, in 2001 there was another attempt to amend it. Responding to pressure from the City of Fort Lauderdale that pit bulls were scaring tourists on the beach, the Broward Legislative Delegation voted to again try to change the statute.<sup>72</sup> This time they strategically crafted a bill that would change the statute only as it pertained to Broward County.<sup>73</sup> Representative Stacy Ritter, a Broward Democrat, sponsored House Bill 839,

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70. H.R. Comm. HB 355 Staff Analysis, *supra* note 65, at 6 (emphasis in original).

71. E-mail from Division of Statutory Revision to author (June 20, 2002, 18:30 EST) (on file with author). The e-mail states:

[a]ll bills die at the end of the legislative session after sine die adjournment. Bills that are not passed are reported as having died wherever they were in the legislative process at the time the session is adjourned. "Died on the calendar" means a bill was out of committee and on the calendar when it died.

*Id.*

72. See Buddy Nevins, *Bill Advances Pit Bull Ban Lauderdale*, SUN-SENTINEL (Fort Lauderdale, Fla.), Feb. 2, 2001, at 5B.

73. Fla. HB 839 (2001), available at <http://www.flsenate.gov/data/session/2001/House/bills/billtext/pdf/h0839.pdf>.

which if passed would allow municipalities within Broward County to regulate certain breeds in public places.<sup>74</sup> In the Florida Legislature, county-specific legislation, if agreed upon by the respective local delegation, usually passes with little resistance.<sup>75</sup> However, whether it was because Broward Democrats have little clout in a Republican-controlled legislature or because lawmakers feared that it could set a precedent for counties statewide, HB 839 died on the House calendar.<sup>76</sup>

### C. *Significant Prior Case Law*

Dogs have historically not enjoyed a great deal of deference in American courts. In the landmark case *Sentell v. New Orleans*,<sup>77</sup> the plaintiff sued a railway company, alleging that it had negligently killed his dog.<sup>78</sup> The United States Supreme Court held that an ordinance requiring owners to register their dogs was valid, and in the absence of registration, they were “qualified” property and not subject to the same protection as “complete” property.<sup>79</sup> The Court also indicated that their lack of protection by criminal laws was also indicative of their status as “imperfect” property.<sup>80</sup> The Court reasoned that, although at common law dogs were considered property, in

#### 74. *Id.*

WHEREAS, there have been numerous incidents of tourists being threatened by pit bulls on public beaches, and

WHEREAS, there were 115 pit bull and pit-mix bites in Broward County in 1999 alone, and

WHEREAS, the number of attacks by these breeds far exceeds those of other breeds, and

WHEREAS, there is concern for the safety of the citizens of Broward County and its tourists in public places,

NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Each municipality located within the geographic boundaries of Broward County, Florida, shall have the option of adopting an ordinance regulating the control and confinement of dogs in public places, with the authority for such regulations to be specific to breed, including mixed breeds.

#### *Id.*

75. See Buddy Nevins, *Broward County Democrats Fear for Local Legislation*, SUN-SENTINEL (Fort Lauderdale, Fla.), Mar. 4, 2001, at 1G.

76. See Britanny Wallman, *House Advances Dog-Ban Bill*, SUN-SENTINEL (Fort Lauderdale, Fla.), Mar. 21, 2001, at 6B (noting that “[c]ommittee members unanimously approved the bill”).

77. 166 U.S. 1169 (1897).

78. *Id.*

79. *Id.* at 1170.

80. *Id.*

the absence of a statute, there was no criminal liability if they were the subjects of larceny.<sup>81</sup> The Court noted that even if dogs were considered “complete” property, they would still be subject to the police power of the state, and could still be destroyed if they endangered public health.<sup>82</sup> The Court also noted that while some dogs should enjoy the protection of the legislature, ones that are considered dangerous should not.<sup>83</sup>

However, as there is now criminal liability for theft of a dog, this original justification for considering dogs imperfect property is weakened.<sup>84</sup> Also, although this early case does not explicitly address the constitutionality of banning a particular breed of dog, it indicated that a dog should be destroyed only if it is without an owner or if it is vicious.<sup>85</sup> However, this case also relied on other decisions which held as constitutional ordinances which allowed police officers or ordinary citizens to kill any dog that was outside the confines of its owner’s home, even if the person who killed the dog knew that it had an owner.<sup>86</sup>

The treatment of dogs has changed since *Sentell* was decided. Given the popularity of dogs in America, and the subsequent rise in their status, it seems no longer relevant to rely on this case as good law.<sup>87</sup> As animal control divisions or Humane Societies have been established to deal with stray dogs in communities across America, it seems arcane to rely on a case that allowed people to shoot dogs on the street.<sup>88</sup> To do so would be akin to relying on *Plessy v. Ferguson*,<sup>89</sup> or other overturned cases that, in retrospect, have served to embarrass the Supreme Court.<sup>90</sup> Despite its current irrelevance, *Sentell* has been relied upon by recent courts to uphold breed-specific regulations.<sup>91</sup>

81. *Id.*

82. *Sentell*, 166 U.S. at 1171.

83. *Id.*

84. See Lynn Marmer, *The New Breed of Municipal Dog Control Laws: Are They Constitutional?*, 53 U. CIN. L. REV. 1067, 1070 n.16 (1984) (noting cases that have strengthened the status of dogs as property).

85. See *Sentell*, 166 U.S. at 1171.

86. *Id.*

87. See THE ANIMAL ASSISTANCE LEAGUE, FACTS: DOG BITE STATISTICS, at <http://www.animalassistanceleague.com/facts.htm> (last visited June 27, 2002).

88. See generally Sally Kestin, *Too Late for Too Many*, SUN-SENTINEL (Fort Lauderdale, Fla.), June 23, 2002, at 1A.

89. 163 U.S. 537 (1896).

90. In *Plessy*, a case which was later overturned, the United States Supreme Court condoned racial discrimination. *Id.*

91. *Vanater v. Vill. of S. Point*, 717 F. Supp. 1236, 1241–42 (S.D. Ohio 1989); *Colo. Dog Fanciers, Inc. v. City and County of Denver*, 820 P.2d 644, 653 (Colo. 1991); *State v.*

While many people were pleased that cities were restricting or banning pit bulls, others were unhappy. Owners claimed that their constitutional rights were being violated by the ordinances.<sup>92</sup> Dog owners sued on the grounds that the ordinances were unconstitutionally vague, violated their equal protection and due process, and were an improper use of the police power.<sup>93</sup> However, with rare exception,<sup>94</sup> courts upheld the validity of the ordinances.<sup>95</sup> Several dog owners sued, but the Florida courts decided as the courts in other jurisdictions had.<sup>96</sup> A close study of a Florida case gives an understanding of the issues that were brought up in other cases across the country. In *State v. Peters*,<sup>97</sup> pit bull owners challenged a City of North Miami ordinance which mandated special regulations for pit bulls.<sup>98</sup> The

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*Peters*, 534 So. 2d 760, 765 (Fla. 3d Dist. Ct. App. 1988); *Hearn v. City of Overland Park*, 772 P.2d 758, 766 (Kan. 1989); *Garcia v. Vill. of Tijeras*, 767 P.2d 355, 362 (N.M. Ct. App. 1988); *State v. Anderson*, 566 N.E.2d 1224, 1226 (Ohio 1991); *State v. Robinson*, 541 N.E.2d 1092, 1094 (Ohio Ct. App. 1989); *Am. Dog Owners Ass'n v. City of Yakima*, 777 P.2d 1046, 1048 (Wash. 1989).

92. See discussion *infra* Part III.

93. See discussion *infra* Part III.C.1–5.

94. See, e.g., *Am. Dog Owners Ass'n v. City of Lynn*, 533 N.E.2d 642 (Mass. 1989) (holding that ordinance which banned pit bulls was unconstitutionally vague because of difficulty in determining if a dog was a “pit bull”). The court, referring to the trial judge, stated:

The judge found that there is no scientific means, by blood, enzyme, or otherwise, to determine if a dog is a particular breed or any mixture thereof; that the dog officers of the city of Lynn used conflicting, subjective standards for ascertaining what animals are to be defined as “Pit Bulls” under all of the ordinances in question; and that the ordinances failed to provide law enforcement officials with ascertainable standards by which to enforce the ordinance. Based on these findings, his ruling that the third ordinance—listing three types of dogs, (American Staffordshire, Staffordshire Pit Bull Terrier or Bull Terrier), two of “dubious existence,” and one (“any mixture thereof”) impossible to ascertain—was void for vagueness, was clearly correct.

*Id.* at 646.

95. See cases cited *supra* note 91.

96. See discussion *infra* Parts III.C.1–5.

97. 534 So. 2d 760 (Fla. 3d Dist. Ct. App. 1988).

98. *Id.* at 764. The ordinance provides:

WHEREAS, dogs commonly referred to as ‘Pit Bulls’ were for centuries developed and selectively bred for the express purpose of attacking other dogs or other animals such as bulls, bears, or wild hogs; and

WHEREAS, in developing a dog for this purpose, certain traits were selected and maximized by controlled breeding, including extremely powerful jaws, a high sensitivity to pain, extreme aggressiveness towards other animals, and a natural tendency to refuse to terminate an attack once it has begun; and



ordinance in question required owners to take special precautions in order to keep a pit bull.<sup>99</sup>

### 1. Vagueness

The owners in *Peters* claimed that the ordinance violated their constitutional rights on several grounds. The first was that the definition of pit bull used by the ordinance was unconstitutionally vague because it included “alternative and sometimes inconsistent definitions of ‘pit bull.’”<sup>100</sup> They also claimed that according to the ordinance, a dog could technically not conform to the definitions yet still be considered a pit bull.<sup>101</sup> While the

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WHEREAS, in addition to statistical evidence that Pit Bull Dogs have a greater propensity to bite humans than all other breeds, there exists overwhelming evidence in the form of individual experiences, that the Pit Bull is infinitely more dangerous once it does attack; and

WHEREAS, the Pit Bull’s massive canine jaws can crush a victim with up to two thousand (2,000) pounds of pressure per square inch – three times that of a German Shepherd or Doberman Pinscher, making the Pit Bull’s jaws the strongest of any animal, per pound; and

WHEREAS, after consideration of the facts, this Council has determined that the following Ordinance is reasonable and necessary for the protection of the public health, safety and welfare.

*Id.*

99. *Id.* at 762. The court noted that:

[The ordinance] regulates the ownership of pit bulls by requiring their owners to carry insurance, post a surety bond, or furnish other evidence of financial responsibility in the amount of \$300,000 to cover any bodily injury, death or property damage that may be caused by the dog. The ordinance also requires that owners register their pit bulls with the City and confine the dogs indoors or in a locked pen. The ordinance defines pit bulls by reference to characteristics of the breed established by the American Kennel Club (AKC) and the United Kennel Club (UKC).

*Id.* at 762.

100. *Peters*, 534 So.2d at 762. The ordinance provides:

(a) The term ‘Pit Bull Dog’ as used within this Article shall refer to any dog which exhibits those distinguishing characteristics which:

(1) Substantially conform to the standards established by the American Kennel Club for American Staffordshire Terriers or Staffordshire Bull Terriers; or

(2) Substantially conform to the standards established by the United Kennel Club for American Pit Bull Terriers.

*Id.* at 762.

101. *Id.* “Technical deficiencies in the dogs [sic] conformance to the standards in paragraph (b) shall not be construed to indicate that the subject dog is not a ‘Pit Bull Dog’ under this ordinance.” *Id.* (alteration in original).

court admitted that the definitions of “pit bull” in the ordinance lacked “mathematical certainty,” it stated that absolute certainty was not necessary for constitutionality.<sup>102</sup> The court noted that the main concern with vague ordinances is that people would not have proper notice of what conduct is prohibited.<sup>103</sup> However, the court determined that pit bull owners had a sufficient understanding of the ordinance terms to determine if their dogs were included in it.<sup>104</sup> They further determined that the issue of “whether a dog is covered by the . . . ordinance is a matter of evidence, not . . . constitutional law.”<sup>105</sup> In this case, they found that the weight of evidence showed that the dogs in question were under the realm of the city ordinance.<sup>106</sup>

Courts have commonly upheld ordinances against vagueness challenges.<sup>107</sup> Central to the upholding of these ordinances is the notion that pit bulls are an easily identifiable breed.<sup>108</sup> However, this notion has been widely criticized.<sup>109</sup> There are two definitions of dogs that the American Kennel Club (AKC) recognizes as pit bulls, and one under the United Kennel Club’s (UKC) definition.<sup>110</sup> Municipalities have acknowledged that they need to include all three, sometimes conflicting, definitions in order to include each breed commonly known as a pit bull.<sup>111</sup>

102. *Id.* at 767.

103. *Peters*, 534 So. 2d at 767.

104. *Id.* at 768.

105. *Id.*

106. *Id.*

107. *See, e.g.*, *Hearn v. City of Overland Park*, 772 P.2d 758, 763 (Kan. 1989); *Garcia v. Vill. of Tijeras*, 767 P.2d 355, 357–58 (N.M. Ct. App. 1988); *State v. Robinson*, 541 N.E.2d 1092, 1095 (Ohio Ct. App. 1989).

108. *See, e.g.*, *Garcia*, 767 P.2d at 357 (stating “[t]he trial court found that the American Pit Bull Terrier is a recognized breed of dog readily identifiable by laymen. We understand the trial court’s finding to have been that the breed can be identified by persons who are not qualified to be dog show judges.”).

109. *See* discussion *infra* Part V.A.

110. Compare AMERICAN KENNEL CLUB, AMERICAN STAFFORDSHIRE TERRIER DESCRIPTION, at <http://www.akc.org/breeds/recbreeds/amstaff.cfm> (last visited June 27, 2002), and AMERICAN KENNEL CLUB, STAFFORDSHIRE BULL TERRIER DESCRIPTION, at <http://www.akc.org/breeds/recbreeds/stbult.cfm> (last visited June 27, 2002), with UNITED KENNEL CLUB, STAFFORDSHIRE BULL TERRIER DESCRIPTION, at <http://www.ukcdogs.com/Terriers/StaffordshireBullTerrier.std.htm> (last visited June 27, 2002), and UNITED KENNEL CLUB, AMERICAN PIT BULL TERRIER DESCRIPTION, at <http://www.ukcdogs.com/Terriers/AmericanPitBullTerrier.std.htm> (last visited June 27, 2002).

111. *See, e.g.*, *State v. Peters*, 534 So. 2d 760, 762 (Fla. 3d Dist. Ct. App. 1998) (noting that the challenged ordinance included the AKC and UKC definitions for the three types of pit bull).

Municipalities often attempt to include any dog that has any mix of “pit bull” in them within their ordinance’s definition of pit bull.<sup>112</sup> It is sometimes apparent that a dog is, by definition, one of the breeds commonly known as a pit bull.<sup>113</sup> However, the evidentiary method for determining when a dog is a pit bull or pit bull mix can be confusing and difficult.<sup>114</sup>

## 2. Equal Protection

The owners also challenged the ordinance on the grounds that it “violate[d] the equal protection clauses of both the federal and state constitutions.”<sup>115</sup> They claimed that “it irrationally differentiates between owners of pit bulls and owners of other . . . dogs.”<sup>116</sup> They also claimed that the definition of pit bull used in the ordinance did not “include within the pit bull definition half-breed pit bulls . . . which may be as vicious as purebred pit bulls.”<sup>117</sup> The court responded by explaining that “the constitutional guarantee of equal protection of the laws does not guarantee that all dog owners will be treated alike; at most, the only guarantee is that all owners of defined pit bulls will be treated alike.”<sup>118</sup> The court also stated that “a law is not constitutionally defective simply because it contains classifications

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112. See, e.g., *Vanater v. Vill. of S. Point*, 717 F. Supp. 1236, 1239 (S.D. Ohio 1989). The ordinance in question included

any Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog, or any mixed breed of dog which contains, as an element of its breeding the breed of Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of Staffordshire Bull Terrier or American Staffordshire Terrier by a qualified veterinarian.

*Id.*

113. See *Am. Dog Owners Ass’n, Inc. v. City of Lynn*, 533 N.E.2d 642, 646 (Mass. 1989).

114. *Id.* at 647.

Unlike an ordinance which generally prohibits the keeping of a “vicious dog” . . . the Lynn Pit Bull ban ordinance depends for enforcement on the subjective understanding of dog officers of the appearance of an ill-defined “breed,” leaves dog owners to guess at what conduct . . . is prohibited, and requires “proof” of a dog’s “type” which, unless the dog is registered, may be impossible to furnish. Such a law gives unleashed discretion to the dog officers charged with its enforcement, and clearly relies on their subjective speculation whether a dog’s physical characteristics make it what is “commonly understood” to be a “Pit Bull.”

*Id.*

115. *Peters*, 534 So. 2d at 763.

116. *Id.*

117. *Id.*

118. *Id.*

which are underinclusive.”<sup>119</sup> Courts in other jurisdictions have addressed other equal protection challenges.<sup>120</sup> A common one has been that ordinances banning pit bulls are overinclusive because they include dogs that have never shown any signs of being vicious; however, these challenges were each summarily dismissed.<sup>121</sup>

### 3. Due Process

The third theory that the owners in *Peters* relied upon was that the ordinance violated their due process.<sup>122</sup> The owners claimed, and the trial court agreed, “that the insurance requirement was ‘unconstitutionally oppressive’ in that it required pit bull owners to buy insurance even though the evidence presented showed that no insurance company would write a policy covering the harms which might be wrought by pit bulls.”<sup>123</sup> However, the appellate court cited *Sentell* and noted that even if the requirement was oppressive, it was not unconstitutional.<sup>124</sup> It also noted that since municipalities likely had the power to completely ban pit bulls, they could at least regulate them.<sup>125</sup>

### 4. Police Power

Although the owners in *State v. Peters* did not raise the issue of whether a municipality had the power to regulate a specific breed, several other courts decided that question in the affirmative.<sup>126</sup> For example, the court in *Vanater v. Village of South Point*<sup>127</sup> noted that it is within the police power of a local government to regulate dogs.<sup>128</sup> It also held that so long as there was a rational relationship between the government’s action and the health

119. *Id.*

120. *See Vanater*, 717 F. Supp. at 1236; *Colorado Dog Fanciers, Inc. v. Denver*, 820 P.2d 644 (Colo. 1991); *Hearn v. City of Overland Park*, 772 P.2d 758 (Kan. 1989); *Garcia v. Vill. of Tijeras*, 767 P.2d 355 (N.M. Ct. App. 1988).

121. *Id.*

122. *Peters*, 534 So. 2d at 765.

123. *Id.*

124. *Id.*

125. *Id.*

126. *See, e.g., Hearn*, 772 P.2d at 765; *State v. Anderson*, 566 N.E.2d 1224, 1225 (Ohio 1991); *State v. Robinson*, 541 N.E.2d 1092, 1094 (Ohio Ct. App. 1989) (holding that breed-specific regulation of dogs is a valid exercise of police power).

127. 717 F. Supp. 1236 (S.D. Ohio 1989).

128. *Id.* at 1241.

and safety of the general public, an ordinance regulating dogs would be upheld.<sup>129</sup> Moreover, the court stated that municipalities could enact ordinances as long as they did not conflict with the provisions of any state statutes.<sup>130</sup>

### 5. Overbroad and Overinclusive

Florida courts have not yet dealt with the issue of whether or not a breed specific ordinance or regulation is overbroad or overinclusive.<sup>131</sup> This is probably due to the above stated Florida statute that bans any regulation or ordinance that is breed-specific.<sup>132</sup> However, since the Statute does not apply to local ordinances enacted prior to October 1, 1990, there are still ordinances, enacted before this date, which do ban pit bulls.<sup>133</sup> Therefore, considering the publicity surrounding breed-specific legislation, an overbroad or over inclusive attack in Florida is not unlikely in the near future.

Although Florida has not ruled on this specific issue, numerous jurisdictions have upheld breed-specific legislation against challenges that they are over inclusive or overbroad.<sup>134</sup> The contention is that a total ban on a specific breed includes “more dogs than is necessary to accomplish the goal of protecting the public.”<sup>135</sup> Furthermore, regulations or ordinances that ban specific breeds, such as pit bulls, treat them all as inherently dangerous

129. *Id.*

As this Ordinance [banning pit bulls] does not affect any fundamental rights such as voting or the freedom of speech and does not make a “suspect classification” such as a law based on race or nationality, the test to determine its constitutionality is whether it has a rational relationship to a legitimate state interest.

*Id.* at 1242. See also *Hearn*, 772 P.2d at 766; *Anderson*, 566 N.E.2d at 1225; *Holt v. City of Maumelle*, 817 S.W.2d 208, 210 (Ark. 1991).

130. See, e.g., *Vanater*, 717 F. Supp. at 1241.

131. In *Peters*, the court did not address whether the ordinance in question was overinclusive or overbroad. *Peters*, 534 So. 2d at 760.

132. See FLA. STAT. § 767.14 (2001).

133. See, e.g., MIAMI-DADE COUNTY, FLA., CODE § 5-17 (1999).

134. “An ordinance is ‘overbroad’ only if it is possible that under its terms conduct which is protected by the First Amendment may be affected.” 3299 N. Fed. Highway, Inc. v. Bd. of County Comm’rs of Broward County, 646 So.2d 215, 225 (Fla. 4th Dist. Ct. App. 1994) (citing *Operation Rescue v. Women’s Health Ctr., Inc.*, 626 So. 2d 664, 674-75 (Fla. 1993)).

135. Sallyanne K. Sullivan, *Banning The Pit Bull: Why Breed-Specific Legislation Is Constitutional*, 13 U. DAYTON L. REV. 279, 289 (1988).

and are therefore overbroad or overinclusive.<sup>136</sup> However, jurisdictions that have dealt with this attack have concluded, “the overbreadth doctrine applies only if the legislation is applicable to conduct protected by the First Amendment, which category does not include the ownership of dogs.”<sup>137</sup> Additionally, in *Colorado Dog Fanciers, Inc. v. Denver*,<sup>138</sup> the court said that an overbreadth challenge could not be used to attack the statute, as it was not guaranteed by the First Amendment.<sup>139</sup> Thus, relying on what other jurisdictions have concluded, an attack that a breed specific ordinance is over inclusive or overbroad would not have a good chance of surviving in Florida.

#### IV. PIT BULLS AS A BREED

##### A. Characteristics

There are actually two breeds classified by the AKC, and one by the UKC, that are known as pit bulls. It is a common conception that pit bulls have very strong jaws that can exert almost 2000 pounds of pressure in one bite.<sup>140</sup> They are also known for their determination in not releasing their jaws once they bite.<sup>141</sup> It is also alleged that pit bulls are unpredictable and

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136. See *Colo. Dog Fanciers, Inc. v. City and County of Denver*, 820 P.2d 644, 645 (Colo. 1991). The Court held “[t]he dog owners . . . assert[ion] that the city ordinance treats all pit bulls and substantially similar dogs as inherently dangerous and is, therefore, unconstitutionally overbroad . . . is without merit.” *Id.* at 650. See also *State v. Robinson*, 541 N.E.2d 1092, 1097 (Ohio Ct. App. 1989) (holding that “[t]he statutes [regulating pit bulls] are neither vague nor overbroad and do not violate appellant’s constitutional due process protections”); *Am. Dog Owners Ass’n v. City of Yakima*, 777 P.2d 1046, 1048 (Wash. 1989) (holding that a local “ordinance [was] constitutional even though some inoffensive pit bulls might be banned”); and *Vanater v. Vill. of S. Point*, 717 F.Supp. 1236, 1246 (S.D. Ohio 1989) (holding that a local “[o]rdinance [was] not overbroad as drawn”).

137. Russell G. Donaldson, *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, 90 (1990).

138. 820 P.2d 644, 650 (Colo. 1991).

139. *Id.* at 650.

140. Graham, *supra* note 9 (stating “[a] 55-pound pit bull bites with the force of 1,800 pounds per square inch—twice the force of a German shepherd or Doberman. Its jaws and teeth are designed so that the dog can clamp onto an object with its front incisors while chewing with its back molars.”).

141. See, e.g., Sullivan, *supra* note 135, at 283.

inherently vicious.<sup>142</sup> It has been said that "Pit Bull Dogs have a greater propensity to bite humans than all other breeds...[and] that the Pit Bull is infinitely more dangerous once it does attack."<sup>143</sup> Because of their strength and determination, pit bulls have been exploited by drug dealers and others who use them as guard dogs.<sup>144</sup>

However, despite their maligned reputation, pit bull advocates insist that the conceptions about pit bulls are false. The American Kennel Club, for example, believes that American Staffordshire Terriers are good pets for children.<sup>145</sup> The AKC similarly encourages ownership of Staffordshire Bull Terriers, maintaining that they have a good temperament.<sup>146</sup> The American Temperament Test Society, an organization that tests the temperament of different breeds of dogs,<sup>147</sup> has rated pit bulls as having a better temperance than many other breeds of dogs.<sup>148</sup>

142. Compare MIAMI-DADE COUNTY, FLA., CODE § 5-17 (1999) (stating that pit bulls have an "inbred propensity to attack other animals"), with Price, *supra* note 7 (quoting Stephanie Shain, director of outreach for the Washington, D.C.-based Humane Society of the United States: "the breed is not an accurate indicator if a dog is going to be aggressive or not").

143. *Peters*, 534 So.2d at 764.

144. See, e.g., Graham, *supra* note 9.

[Pit bulls] have become the dog of choice among drug dealers and other street criminals. The dogs are the latest weapon to protect drug caches and crackhouses.

Last November, Capt. Tom Thompson of the Palm Beach County Sheriff's led members of the sheriff's Organized Crime Bureau through the wooden gate of a suburban West Palm Beach home during a drug bust. In addition to three pounds of marijuana and records documenting drug transactions, the officers also found 40 pit bulls guarding the house. In the past year, according to a Los Angeles survey, more than 60 percent of the drug houses raided in that area used pit bulls as [guard dogs].

*Id.*

145. "Over the past 50 years, careful breeding has produced today's American Staffordshire Terrier who is affectionate, reliable, and an especially good dog for children. The American Staffordshire Terrier is a happy, outgoing, stable, and confident dog who makes a wonderful family pet." AMERICAN KENNEL CLUB, AMERICAN STAFFORDSHIRE TERRIER DESCRIPTION, at <http://www.akc.org/breeds/recbreeds/amstaff.cfm> (last visited June 27, 2002).

146. AMERICAN KENNEL CLUB, STAFFORDSHIRE BULL TERRIER DESCRIPTION, at <http://www.akc.org/breeds/recbreeds/stbult.cfm> (last visited June 27, 2002). "Staffordshire Bull Terriers are gentle, affectionate, trustworthy, and loyal." *Id.* "From the past history of the Staffordshire Bull Terrier, the modern dog draws its character of indomitable courage, high intelligence, and tenacity. This, coupled with affection for its friends, and children in particular, its off-duty quietness and trustworthy stability, makes it a foremost all-purpose dog." *Id.* "The Staffordshire Bull Terrier has great affection for people." *Id.*

147. "The American Temperament Test Society, Inc. (ATTS) is a national not-for-profit organization . . . for the promotion of uniform temperament evaluation of purebred and spayed/neutered mixed-breed dogs." AMERICAN TEMPERAMENT TEST SOCIETY, INC., GENERAL

### B. *Illegal Dogfighting*

One reason that some pit bulls may be considered vicious is that they are commonly used in illegal dogfights.<sup>149</sup> Illegal dogfighting involves people gathering together and pitting dogs against each other to fight.<sup>150</sup> The dogs fight until only one is left standing.<sup>151</sup> It is a brutal, but widespread phenomenon and a popular underground ritual.<sup>152</sup> People bet money on the fights and raise dogs specifically for the purpose of winning these fights.<sup>153</sup> The breeders encourage and train these dogs to be vicious, often forcing them to run on treadmills and feeding them small dogs so that they learn to like the taste of blood.<sup>154</sup> These dogs usually suffer severe abuse.<sup>155</sup> Owners can make a significant amount of money by having dogs that are as menacing as possible, therefore they encourage these negative characteristics in their dogs.<sup>156</sup> A man currently serving time in the Leon County jail for

INFORMATION ABOUT THE ATTS, at <http://www.atts.org/about.html> (last visited June 27, 2002) [hereinafter *About ATTS*]. It administers uniform tests to dogs around the country and evaluates the pass rate per breed. *Id.* The average pass rate for all breeds is 80%. *Id.*

148. Currently, the American Pit Bull Terrier has a passing rate of 82.7%; the Staffordshire Bull Terrier passes at 81.6%, and the American Staffordshire Terrier passes at 82.2%. On average, pit bulls are rated as having a better temperance than the Miniature Poodle, which passes at 76.7% and the Shih Tzu, which passes at 76.5%. See AMERICAN TEMPERAMENT TEST SOCIETY, INC., ATTS BREED STATISTICS, at <http://www.atts.org/stats1.html> (last visited June 27, 2002).

149. See Tony Bridges, *Criminals Get Kicks From Blood and Fur: Clues Pointing to Dogfighting Rings*, TALLAHASSEE DEMOCRAT, June 2, 2002 at 1 (stating “[d]ogfighting has been popular in the southern United States since the practice first arrived from 19th-century England. However, what was considered a ‘sport of gentlemen’ for more than 100 years has now become a form of street entertainment found in nearly every urban center in America.”); see also Ethel Yari, *Woman’s Best Friend: Animal Control Officer Rescues Injured Pit Bull*, SUN-SENTINEL (Fort Lauderdale, Fla.), May 5, 2002, at 1.

150. Bridges, *supra* note 149.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. See Yari, *supra* note 149, at 1. Bones (a mixed pit bull who had been stolen from his owner and used for dogfights) had “his ear bitten off, one eye permanently damaged, and his face transformed into a road map of crisscrossed stitches and scars from years of competitive dogfighting . . . He had open lacerations all over his body and face and couldn’t walk because he was bitten on one leg joint.” *Id.*

156. Bridges, *supra* note 149 (stating “[s]ome . . . [keep] detailed records of fighting pedigrees and training their dogs like welterweight boxers. They plan matches down to the last detail, are extremely careful to avoid police and bet serious money on the fights.”).



animal cruelty said, “[s]ome people do it for the money, because there is a lot of money to be made.”<sup>157</sup> His partner, who was also involved in dogfighting said, “I’ve heard of some people making as much as \$40,000 to \$50,000 on one fight.”<sup>158</sup> Although this underground practice is widespread, it is often difficult for police to break up dogfighting rings.<sup>159</sup>

A secondary problem that dogfighting has caused is the theft of pit bulls.<sup>160</sup> Pit bulls are often stolen and the male dogs trained to fight, while the females are used for breeding.<sup>161</sup> Other stolen dogs are used for “bait.”<sup>162</sup> This also creates an atmosphere where the genetic lines become tainted by the encouragement of vicious propensities.<sup>163</sup> Even if these dogs are rescued from their cruel conditions, they have already been trained for fighting and may come from bloodlines where viciousness was encouraged. Sadly enough, animal control officials and the Humane Society will put these dogs to sleep instead of allowing them to be adopted because they may pose a danger to people.<sup>164</sup>

Even if pit bulls are banned, individuals who participate in dogfighting will likely not turn their backs on this lucrative pastime. Other dogs can be trained to be vicious or to be used for fighting. Further, the people who are already engaged in criminal behavior will not likely adhere to the provisions of a ban and will continue to illegally keep pit bulls.

There are currently animal cruelty laws that punish people who engage in dogfighting.<sup>165</sup> However, the problem lies with enforcing these laws.<sup>166</sup> Also, the penalties have to be significant enough to deter these participants away from this lucrative practice. If the penalty is not significant enough, or the enforcement is lax, there is not enough incentive to end this practice.

157. *Id.*

158. *Id.*

159. *Id.*

160. *See id.*; *see also* Kathleen Chapman, *Spate of Pit Bull Thefts Leads to Arrest of Suspect*, PALM BEACH POST, May 16, 2002, at 2B.

161. Bridges, *supra* note 149.

162. *Id.*

163. *Id.*

164. *See Two Seized Pit Bulls to Be Euthanized*, *supra* note 4 (“[t]he [seized pit bull] dogs cannot be adopted because of the violent training they received as puppies”).

165. *See* FLA. STAT. § 828.12 (2001) (providing guidelines for punishing people found guilty of animal cruelty).

166. *See* Bridges, *supra* note 149 (noting that “dogfighters are insular, and rarely open their groups to strangers”). Also, the fights occur in places that authorities may not suspect, such as in the woods or in someone’s home. *Id.*

## V. THE PROBLEM WITH BANNING PARTICULAR BREEDS

### A. *No Clear Definition of 'Pit Bull'*

Although many courts have upheld ordinances against vagueness challenges, there is still a valid argument that definitions of "pit bull" can be confusing and hard to apply.<sup>167</sup> When called to testify in a hearing to determine the constitutionality of the Dade County Ordinance, even the President of the AKC said "that based on looks alone he could not identify Lassie as a Collie."<sup>168</sup> He said that "he would have to examine the dog's certificate of pedigree."<sup>169</sup> Both he and the UKC President indicated that it was difficult to say with certainty that a certain dog is a pit bull.<sup>170</sup> This leads to a situation where people whose dogs are not registered, or who do not know exactly what type of dog they have, are not on adequate notice of what behavior (or in this case breed) is proscribed.<sup>171</sup>

Given the difficulty in visually distinguishing what breed a dog is, one might think that testing a dog's DNA will give a definitive answer. However this is not the case. Even scientists who study canine genetics note that there

167. See *Am. Dog Owners Ass'n, Inc. v. Lynn*, 533 N.E.2d 642, 646 (Mass. 1989).

The court stated:

[T]here may, indeed, be some dogs which, because of registration, known percentage or close conformance in appearance to commonly accepted standards representative of "Pit Bull," would be "commonly understood" to be "Pit Bulls." The evidence . . . indicated, however, that some dogs might appear to be "Pit Bulls" yet belong to a breed "commonly understood" not to be "Pit Bulls," and that some dogs, "commonly understood" by the owner or dog registry to be a breed "known as Pit Bull" might not appear to be "Pit Bulls," and so escape the notice and enforcement efforts of the Lynn dog officers.

*Id.* at 646.

168. See *Derr*, *supra* note 21, at 51.

169. *Id.*

170. "They both testified that they could not name a dog's breed by comparing the animal with an official standard." *Id.*

171. *Id.*

Although the Dade County ordinance was upheld, the New York regulation was suspended by the state supreme court after being challenged by the AKC and other groups . . . . Ironically, nearly everyone involved with dogs recognizes these breed-specific bans as bad legislation, passed in response to hysterical media reports of fatal attacks by "pit bulls."

*Id.*

is very little difference genetically between breeds.<sup>172</sup> In light of the difficulty involved in concluding that a dog is a particular breed, ordinances that ban particular breeds are inherently vague.

#### B. *Other Breeds Will Be Bred for Fighting*

As some municipalities banned pit bulls, Rottweilers, who have several of the same characteristics as pit bulls, became more popular.<sup>173</sup> If one type of dog is banned, people who look for those characteristics will just encourage them in a similar type of dog.<sup>174</sup> In a study of breeds of dogs that caused human deaths, researchers found that as pit bull-related deaths decreased in the 1990s, deaths caused by Rottweilers increased.<sup>175</sup> Presently, Rottweilers top the list of dogs that cause the most fatalities.<sup>176</sup> Despite an initial drop in total number of dog bite-related fatalities, the number of casualties actually seems to be steadily increasing after more pit bull bans were enacted.<sup>177</sup> This phenomena seems to support the theory that people who are determined to have a vicious dog will raise a vicious dog, regardless of whether or not pit bulls are banned.<sup>178</sup> Therefore, instead of focusing on banning a particular breed, it would be more effective to focus on regulating the behavior of dog owners.<sup>179</sup>

172. See Derr, *supra* note 21, at 52 (stating “in a comparison of two American Staffordshire terriers with a whippet, one terrier appeared more closely related to the whippet than to the other terrier”).

173. See Jeffrey J. Sacks et al., *Special Report: Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 and 1998*, 217 J. AM. VETERINARY MED. ASS’N 836, 838–39 (2000).

174. Christopher Sherman, *Rottweiler Owners Hope Show Helps Repair Image*, ORLANDO SENTINEL, Mar. 31, 2002, at 1.

175. See Sacks, *supra* note 173, at 839; see also Sherman, *supra* note 174 (stating “[b]etween 1981 and 1990, pit bulls were involved in 43 dog bite-related fatalities while Rottweilers had only six. However, between 1991 and 1998, Rottweiler cases jumped to 33 while pit-bull killings dropped to 21.”).

176. Sacks, *supra* note 173, at 837.

177. *Id.*

178. See Sherman, *supra* note 174 (noting “Dr. Randall Lockwood, canine behavior specialist and vice president for research and educational outreach for the Humane Society in Washington, D.C., said . . . the new fighting dog of choice could be the Presa Canario—the dogs that killed Diane Whipple in January 2001 in San Francisco.”).

179. See AMERICAN KENNEL CLUB, BREED-SPECIFIC LEGISLATION IN MILWAUKEE (Jan. 24, 2002), at <http://www.akc.org/love/dip/legislat/Milwaukee.cfm>. “The American Kennel Club believes that dog owners should be responsible for their dogs and that laws should impose appropriate penalties on irresponsible owners. In order to be effective, such

C. *Excludes Dogs That May Be Dangerous and Includes Dogs That Are Not*

Municipalities seem to ban pit bulls because they believe that they are the primary source of dog attacks. However, the ineffectiveness of the bans may leave citizens with a false sense of security.<sup>180</sup> For example, the dogs that attacked and killed Diane Whipple in January 2001 were Presa Canarios.<sup>181</sup> These dogs are not even on several lists of “dangerous dogs” that insurance companies have formulated.<sup>182</sup> Experts agree that there are a number of factors that contribute to whether a dog will be vicious or not.<sup>183</sup> Furthermore, pit bull owners often insist that their dogs are not vicious.<sup>184</sup>

Special precautions should be taken for dogs that pose a threat to humans or other animals. However, the criteria for determining that a dog is “dangerous” should be, as provided for in Florida Statute section 767.12,<sup>185</sup> based on whether a dog, regardless of breed, has ever attacked or bitten a person or other animal. Owners who properly train their dogs should not be punished because of those who abuse their pets.

D. *Not an Effective Means of Solving Dog Bite Problem*

It should be noted that most courts that decided that bans are constitutional did so before there was significant time to analyze the effects of such bans. Therefore, they deferred to the judgment of the respective govern-

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legislation should not single out specific breeds or phenotypic classes of dogs. Deeds, not breeds, should be addressed.” *Id.*

180. *See, e.g.,* Graham, *supra* note 9 (stating “Dennis Moore, Director of the Palm Beach County Animal Regulation Division . . . said targeting pit bulls with the county’s proposed vicious animal ordinance would have been a ‘serious mistake’ because other breeds can be equally threatening.”).

181. *See* Sherman, *supra* note 174.

182. *See* Price, *supra* note 7; Shanklin, *supra* note 7.

183. *See* Sacks, *supra* note 173, at 839 (discussing several factors that contribute to whether a dog will be likely to bite “including heredity, sex, early experience, socialization and training, health (medical and behavioral), reproductive status, quality of ownership and supervision, and victim behavior”); Price, *supra* note 7 (stating “[t]he Veterinary Medical Association said a dog’s tendency to bite depends on at least five factors: heredity, early experience, later socialization and training, health and victim behavior”).

184. *See* Elena Cabral, *Pit Bull Attack Spurs Push for Dog Law*, MIAMI HERALD, Mar. 12, 2000 at 1WB (noting that owner of pit bull that bit a dog said that his dog would never hurt a person).

185. FLA. STAT. § 767.12 (2001).

ments involved and accepted their findings as sound. However, in the years after breed-bans were first enacted, data shows that the number of dog bites have actually increased.<sup>186</sup> Furthermore, there is no scientific evidence to prove that breed-specific bans are effective.<sup>187</sup> On the contrary, the number of dog bite-related deaths have increased since bans were first enacted, which indicates that they are not effective.<sup>188</sup> Therefore, if the bans are not effective, they are not a rational means for achieving a governmental interest, and subsequently are not constitutional.

#### E. *Opens Pandora's Box*

The pit bull is not the only type of dog that has been the target of bans. As their popularity increased, Rottweiler bites became more prevalent and therefore may also be targeted.<sup>189</sup> If Rottweilers can be banned, then German Shepherds, Great Danes, or Golden Retrievers might be next. There is nothing to stop a municipality that bans one breed from continuing to ban different breeds. Furthermore, the banning of one breed makes it likely that another will be banned, as irresponsible owners choose another dog to use for fighting or otherwise encourage vicious tendencies.<sup>190</sup> Also, the likelihood that specific breeds will attack and others will not is negated by the fact that even unlikely dogs might bite or kill. In 2000, a Pomeranian,<sup>191</sup> which is generally considered to be a harmless dog, killed a baby.<sup>192</sup> Since local governments are given significant leeway to regulate dogs, under the provisions of House Bill 839, municipalities could conceivably ban any dog.

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186. Sacks, *supra* note 173, at 837.

187. *Id.* at 839–40.

188. See discussion *infra* note 173.

189. See Sacks, *supra* note 173, at 837.

190. See discussion *infra* Part IV.B.

191. See AMERICAN KENNEL CLUB, POMERANIAN DESCRIPTION, at <http://www.akc.org/breeds/recbreeds/pomer.cfm> (last visited June 27, 2002). The Pomeranian is described as:

[A] compact, short-backed, active toy dog. He has a soft, dense undercoat with a profuse harsh-textured outer coat. His heavily plumed tail is set high and lies flat on his back. He is alert in character, exhibits intelligence in expression, buoyant in deportment, and is inquisitive by nature. The Pomeranian is cocky, commanding, and animated as he gaits. He is sound in composition and action.

*Id.* Further, the average Pomeranian weighs in at a mere three to seven pounds, much less than the average pit bull. See *id.*

192. See Lacitis, *supra* note 14.

This gives too much power to local governments to ban whatever breed is popularly deemed the most dangerous at a given point in time.

## VI. ALTERNATIVES TO BREED-SPECIFIC LEGISLATION

Although these recent attempts to ban specific breeds have failed, they continue to be an issue. Given that breed-specific legislation is not effective and raises constitutional concerns, more effective alternatives need to be explored. There are several other things that legislators and municipalities can do to minimize the number of dog bites that occur.

### A. Training

Pit bulls are strong dogs that have the ability to cause damage if they bite.<sup>193</sup> However, the likelihood that they will bite is significantly lessened if they have proper training.<sup>194</sup> Even a dog that has been treated improperly can be trained to be a well-adjusted dog.<sup>195</sup> For example, animal trainer Vicky Hearne rescued a pit bull that was to be destroyed by animal control.<sup>196</sup> Authorities had given up on him, but Hearne trained him so that he eventually scored high on a temperance test.<sup>197</sup> Hearne insists that pit bulls are not inherently bad dogs and that with proper training, they can make good pets.<sup>198</sup>

There are currently no regulations that require dog owners to take their dogs to obedience school. People often do not know how to relate to and properly treat their dog.<sup>199</sup> Even if a dog owner does not have malicious intentions, they may lose control over the dog or inadvertently condone errant behavior in the dog.<sup>200</sup> It is imperative for owners to understand how to properly handle their dog.<sup>201</sup>

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193. See discussion *infra* note 173.

194. See Sacks, *supra* note 173, at 839–40.

195. See generally, Foote, *supra* note 2, at 63–66 (discussing how animal trainer Vicky Hearne rescued and successfully rehabilitated a pit bull who was to be euthanized).

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. Foote, *supra* note 2 (discussing animal trainer Vicky Hearne's theories on effective and ineffective methods for training dogs).

201. See Price, *supra* note 7.

Educating dog owners can benefit both dog owners and insurance companies. For example, once State Farm instituted an education program for its policyholders, their dog claims significantly decreased.<sup>202</sup> If other insurance companies follow this example, they might reduce the number of bites caused by all breeds, including pit bulls.

### B. Crackdown on Dogfighting

One way to counter the negative characteristics often attributed to pit bulls is to more severely punish those that participate in dogfighting. Presently, there is not enough incentive for those who participate in this practice to cease doing so. Currently in Florida, the penalties for animal cruelty are codified in section 828.12 of the *Florida Statutes*.<sup>203</sup> However, this does not adequately punish those who are involved in this practice. Gambling, theft and animal cruelty are all involved in dogfights but prosecuting these criminals has proved difficult.<sup>204</sup> First, both local and state government need to recognize that there is a problem. Second, the Florida Legislature needs to enact stiffer penalties for people who engage in dogfighting. Municipalities should also allocate sufficient resources to eliminate this practice. While pit bulls appear to be the dog of choice amongst proponents of dogfighting, if pit bulls are eliminated, another breed can just as easily be trained to fight. By punishing the people who abuse pit

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The Insurance Information Institute said the responsibility for a dog becoming either a menace or a well-behaved pet rests with the owner and offers these tips to help keep dogs from biting:

- Have a dog spayed or neutered. Studies show dogs are three times more likely to bite if they are not fixed.
- Socialize your dog so the dog will know how to act with people and animals.
- Discourage children from disturbing a dog that is eating or sleeping.
- Play non-aggressive games with your dog such as "fetch." Playing aggressive games like "tug of war" can encourage aggressive behavior.
- Avoid exposing your dog to situations in which you are unsure of the dog's response.
- Never approach a strange dog, and avoid eye contact with a dog that appears threatening.

*Id.*

202. See Shanklin, *supra* note 7 (noting that dog claims went from costing \$76.2 million in 1997 to \$73.5 million in 1999).

203. FLA. STAT. § 828.12 (2001).

204. § 775.082(4)(a). Pursuant to section 775.082(4)(a), a person convicted of animal cruelty can serve up to one year in prison. *Id.*

bulls, we can help cleanse the pit bull bloodlines of vicious tendencies and at the same time prosecute the people who can easily exploit any other breed.<sup>205</sup>

### C. *Regulate Breeders*

Dogs can be predisposed to certain traits because of their breeding.<sup>206</sup> Because anyone with a dog can be a breeder, not all breeders are even registered or regulated. Breeders often inbreed dogs to try to promote “pure” lines, but in doing so they often encourage defective traits.<sup>207</sup> However, even though it is against breed-specific legislation,<sup>208</sup> the American Kennel Club has been criticized for its role in the perpetuation of irresponsible breeding practices.<sup>209</sup> It indirectly condones inbreeding by concentrating on a dog’s appearance,<sup>210</sup> “fail[ing] to take a stand against the puppy mills and pet stores that exploit purebred dogs,”<sup>211</sup> and “defin[ing] purity in a breed according to an outmoded notion that is destructive of the health of the

205. See Derr, *supra* note 21 (noting “[t]he perpetrators are both mixed breeds and non-registered purebred animals made vicious by people. Those who illegally fight dogs today do so with animals whose bloodlines they jealously guard and maintain.” *Id.* at 52).

206. See *id.* at 52.

207. See Derr, *supra* note 21.

208. See generally AMERICAN KENNEL CLUB, BREED-SPECIFIC LEGISLATION IN MILWAUKEE, at <http://www.akc.org/love/dip/legislat/Milwaukee.cfm> (last visited Mar. 22, 2003).

209. See Derr, *supra* note 21 (criticizing the AKC’s encouragement of aesthetic characteristics in dogs; arguing that inbreeding has weakened breed bloodlines and caused dogs’ health to suffer).

210. *Id.* at 50.

[T]he AKC defines quality in a dog primarily on the basis of appearance, paying scant heed to such other canine characteristics as health, temperament, and habits of work. Over the years this policy has led to destructive forms of inbreeding that have created dogs capable only of conforming to human standards of beauty. Many can no longer perform their traditional tasks – herding, tracking, hunting – while more than a few cannot live outside a human-controlled environment.

*Id.*

211. *Id.*

[The AKC] will neither refuse to register those animals – although many dogs, produced and sold under inhumane conditions, are of questionable pedigree and genetic fitness—nor cooperate with authorities seeking to regulate them. The result has been a decline, which even the AKC recognizes, in the quality of the animals that nearly 500,000 Americans buy from retailers each year.

*Id.*



dogs.”<sup>212</sup> The AKC should educate breeders and cooperate with authorities to identify and report people who engage in detrimental breeding practices.

#### D. Owner Liability

Under the common law, dog owners faced liability only if they had knowledge that their dog was likely to bite.<sup>213</sup> Today in Florida, dog owners face civil liability for any injuries caused by their dogs.<sup>214</sup> Section 767.13 of the *Florida Statutes* provides guidelines for the penalties that an owner might incur as a result of their dog’s behavior.<sup>215</sup> For example, “[i]f a dog that has previously been declared dangerous attacks or bites a person or a domestic animal without provocation, the owner is guilty of a misdemeanor of the first degree,”<sup>216</sup> which is punishable for up to one year in prison.<sup>217</sup> However, if a dog’s owner knew that his dog was vicious but did not take

212. *Id.*

213. 2 DAN B. DOBBS, *THE LAW OF TORTS* § 344 (1st ed. 2001).

Under the common law rules, the keepers of a dog were not strictly liable for harms caused by the dog unless they knew of the animal’s abnormal propensity to cause harm. But statutes and ordinances often contribute to much larger liabilities for dog owners or keepers. Some statutes, for example, provide expressly or by implication that the owner of a dog is liable for a bite regardless of whether the dog was vicious or known to be vicious, so long as the plaintiff was in a public place where she could lawfully be. Ordinances and leash laws potentially imposing liability are also common. . . . Although the statutes usually leave room for defenses based upon provocation or trespass by the plaintiff, the effect is that in many instances, an unconditional strict liability is imposed for dog bite injuries.

*Id.* (internal citations omitted).

214. FLA. STAT. § 767.04 (2001). This section provides:

The owner of any dog that bites any person while such person is on or in a public place, or lawfully on or in a private place, including the property of the owner of the dog, is liable for damages suffered by persons bitten, regardless of the former viciousness of the dog or the owners’ knowledge of such viciousness. However, any negligence on the part of the person bitten that is a proximate cause of the biting incident reduces the liability of the owner of the dog by the percentage that the bitten person’s negligence contributed to the biting incident. . . . However, the owner is not liable, except as to a person under the age of 6, or unless the damage are proximately caused by the negligent act or omission of the owner, if at the time of any such injury the owner had displayed in a prominent place on his or her premises a sign easily readable including the words “Bad Dog.” The remedy provided by this section is in addition to and cumulative with any other remedy provided by statute or common law.

*Id.*

215. § 767.13.

216. *Id.*

217. § 775.082(4)(a).

reasonable precautions, that owner could be “guilty of a misdemeanor of the second degree,”<sup>218</sup> and is punishable for up to sixty days in prison.<sup>219</sup> Lastly, “[i]f a dog that has previously been declared dangerous attacks and causes severe injury to or death of any human, the owner is guilty of a felony of the third degree,”<sup>220</sup> and can face up to five years in prison.<sup>221</sup> Pursuant to these sections, an owner is responsible for paying the fees incurred by their dog while it is confined by animal control.<sup>222</sup>

### VIII. CONCLUSION

Dog bites may be a serious problem in the United States, but banning specific breeds is not an effective method for controlling the problem. Due process requires that government restrictions be rationally related to a legitimate governmental objective. Protecting citizens is a legitimate governmental objective, and restrictions on dogs can be rationally related to that legitimate objective. However, the ineffectiveness of banning particular breeds negates the theory that it is a rational means of resolving the problem. Therefore, with its use, there is a gap between the government’s objective and the means to achieve it. Since courts defer to the findings of a legislature, these findings must be reexamined if they are purported to support breed bans. Given the ineffectiveness of breed-specific bans, courts should not consider them to be rational.

Although there is case law to the contrary, the definitions used by ordinances that ban pit bulls are inherently vague. Given the difficulty in determining what breed a dog is, the ordinances often do not give owners adequate notice of whether or not their dog is covered. When a veterinarian or animal control worker is called upon to determine whether or not a dog is a pit bull, it leaves dogs at the mercy of a subjective, unreliable method. Furthermore, statutes banning a particular breed are both overinclusive and underinclusive. Statutes pertaining to all dangerous dogs are a more effective and fair method of dealing with potentially vicious dogs.

Given the inherent problems with breed-specific legislation, alternatives to its use, both legislative and non-legislative, should be explored and implemented. In order to curb the negative effects of illegal dogfighting, there should be harsher penalties in place for offending participants.

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218. § 767.13(2).

219. § 775.082(4)(b).

220. § 767.13(3).

221. § 775.082(3)(d).

222. § 767.13(1)–(3).

Municipalities should also be more proactive in eliminating this practice. While the legislature and cities can both be effective in mitigating the dog bite problem, it is ultimately the responsibility of dog owners to take necessary precautions to make sure that their dog, regardless of breed, is a safe and happy member of the community.