

## FIDO'S FALLACY

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### INTRODUCTION

“No insurance, no loan; no loan, no house; lack of insurance thus makes housing unavailable.”<sup>1</sup>

An increasing number of American households regard their companion animals as being as much a part of their family as they do their human family members, however, insurance companies are undermining the goals of state bans on Breed Specific Legislation by refusing to write homeowners' policies for people who own certain breeds of dogs. As a result, existing insurance regulations require many dog owners to choose between home ownership and the sharing their lives with members of their family. Thirty-five years after its inception, Breed Specific Legislation has proven to be ineffective in remedying the dog bite

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<sup>1</sup> N.A.A.C.P. v. Am. Family Mutual Ins. Co., 978 F.2d 287, 297 (7th Cir. 1992).

epidemic.<sup>2</sup> In response, a growing minority of states have banned Breed Specific Legislation.<sup>3</sup> Insurance companies have failed to follow the states' lead and continue to refuse to issue homeowner's policies for those that own particular breeds of dogs that the insurer deems dangerous purely based on their breed.<sup>4</sup> Insurers that deny coverage based on ownership of a particular breed are making faulty assumptions and improperly using dog bite statistics.<sup>5</sup> Preventing law-abiding homeowners from obtaining insurance is not the answer to the problem of dog bites. Better and more effective alternatives exist so that there is no need for insurance exclusions.<sup>6</sup>

Part I of this article reviews the rise and fall of Breed Specific legislation.<sup>7</sup> It discusses how highly-publicized dog attacks resulted in the legislature's quick-fix solution now commonly known as Breed Specific Legislation. It then addresses how this legislation did not achieve its desired goals and the current trend, evidenced by a growing minority of states, to ban Breed Specific Legislation. Part II discusses insurer's continuing breed based bans and the faulty assumptions that insurers rely upon to justify these bans. Finally, Part II concludes by identifying more reasoned and effective practices available to insurers.<sup>8</sup>

#### I. THE RISE AND THE FALL OF BREED SPECIFIC LEGISLATION

"[T]he principal laws governing the keeping of dogs as pets are state, local, and municipal ordinances."<sup>9</sup> In the interest of public safety and health, cities and states have the power to enact and

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<sup>2</sup> See *infra* note 62.

<sup>3</sup> See *infra* notes 72–92.

<sup>4</sup> See *infra* notes 102–115.

<sup>5</sup> See *infra* notes 93–101.

<sup>6</sup> See *infra* notes 139–163.

<sup>7</sup> See *infra* Part I.

<sup>8</sup> See *infra* Part II.

<sup>9</sup> Rebecca J. Huss, *The Pervasive Nature of Animal Law: How the Law Impacts the Lives of People and Their Animal Companions*, 43 VAL. U. L. REV. 1131, 1136, 1137 (2009) (citing the ruling of *Sentell v. New Orleans & Carrollton R.R. Co.*, 166 U.S. 698, 704 (1897)); Safia Gray Hussain, *Attacking the Dog-Bite Epidemic: Why Breed Specific Legislation Won't Solve the Dangerous-Dog Dilemma*, 74 FORDHAM L. REV. 2847, 2856 (2006) (stating that legislation regulating dogs is a valid exercise of the states' police power); Jonathan R. Shulan, *Animal Law-When Dogs Bite: A Fair, Effective, and Comprehensive Solution to the Contemporary Problem of Dog Attacks*, 32 U. ARK. LITTLE ROCK L. REV. 259, 262 (2010); see also MARY RANDOLPH, *EVERY DOG'S LEGAL GUIDE: A MUST-HAVE BOOK FOR YOUR OWNER* 2 (5th ed. 2005).

enforce ordinances pertaining to the keeping of animals, for purposes of this article, more specifically dogs.<sup>10</sup> Beyond the customary laws governing the keeping, breeding, and harboring of all dogs, some states and municipalities also impose additional regulations on specific breeds.<sup>11</sup>

Breed Specific Legislation, commonly referred to as BSL, regulates the sale, transport, or ownership of a particular breed or breeds on the belief that the breed is inherently vicious.<sup>12</sup> The regulations range from mandatory sterilization, muzzling, to an outright ban on ownership.<sup>13</sup> Irrespective of its substance, all BSL isolates certain breeds and attributes society's dog bite problem to solely those breeds.<sup>14</sup> BSL judges a dog, not on its own unique individual behavior and disposition, but rather on its identity as a member of a particular breed.<sup>15</sup> A targeted "breed of dog [is] . . .

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<sup>10</sup> See 4 AM. JUR. 2D *Animals* § 4; Hussain, *supra* note 9, at 2872, 2873 (explaining how these regulations may have minimal impact on public safety). Governments regulate dogs more strictly than other animals. See 4 AM. JUR. 2D *Animals* § 4.

<sup>11</sup> See *infra* note 13 (for examples of regulations).

<sup>12</sup> See Huss, *supra* note 9, at 1136, 1137 (providing an example of laws concerning transportation of certain animals); Shulan, *supra* note 9, at 263. Breed Specific Legislation is defined as a law or statute that equates the qualities of a dangerous dog with a certain breed, and bans or restricts certain breeds based on identity, not behavior of a specific animal. See Hussain, *supra* note 9, at 2854, 2859, 2873.

<sup>13</sup> See, e.g., San Francisco, Ca., Mandatory Spaying and Neutering of Pit Bulls; Exceptions § 43.1 (2005), [www.sfgov2.org/index.aspx?page=1061](http://www.sfgov2.org/index.aspx?page=1061) (mandating the mandatory sterilization of all pit bulls); MIAMI-DADE CNTY., FLA., CODE OF ORDINANCES §§ 5-17.2(b), 5-17.6(b) (1992) (showing an outright ban of newly acquired pit bulls, under penalty of civil violation and "[h]umane destruction" of the dog); DES MOINES, IOWA, CODE OF ORDINANCES §§ 18-41(6)–(9) (2001) (defining as high risk dogs, "Staffordshire terrier breed of dog; . . . The American pit bull terrier breed of dog; . . . The American Staffordshire terrier breed of dog; or . . . Any dog which has the appearance and characteristics of being predominately of the breeds of Staffordshire terrier, American pit bull terrier, American Staffordshire terrier."); *Alabama Breed-Specific laws*, DOGSBITE.ORG, <http://www.dogsbite.org/legislating-dangerous-dogs-alabama.php> (last modified Sept. 7, 2015) (declaring pit bulls inherently "dangerous" in some counties and banning ownership outright in others); see also *California Breed-Specific laws*, DOGSBITE.ORG, <http://www.dogsbite.org/legislating-dangerous-dogs-california.php> (last modified Dec. 6, 2015) (mandating that all pit bulls be sterilized in fifteen jurisdictions).

<sup>14</sup> See Linda S. Weiss, *Breed-Specific Legislation in the United States*, MICH. STATE UNIV. COLL. OF LAW ANIMAL LEGAL & HISTORICAL CTR. (2001), <https://www.animallaw.info/article/breed-specific-legislation-united-states>.

<sup>15</sup> Hussain, *supra* note 9, at 2859. "Breed-specific legislation regulates or bans ownership of particular breeds, typically providing that ownership of a target breed is prima facie evidence of ownership of a vicious or dangerous dog." *Id.* BSL is distinguished from dangerous dog laws which regulate dogs that are deemed

singled out as 'inherently dangerous to society,' regardless of the individual dogs' present or past behavior."<sup>16</sup>

### A. *The Rise*

In the 1980s, there were a number of dog attacks on humans.<sup>17</sup> These wide-ranging attacks were dubbed "the dog bite epidemic."<sup>18</sup> A number of serious injuries and fatalities caused by certain breeds, including pit bulls, brought about a perceived need for more stringent laws governing restraint of dogs.<sup>19</sup> At that time, BSL emerged as a quick fix to highly publicized attacks by specific breeds of dogs.<sup>20</sup> Although statistics reveal that all dogs can and

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dangerous or vicious based on documented complaints of prior conduct. "BSL identifies a dog as 'dangerous' based upon its breed alone and not based on any action or offense that the individual dog has ever committed." Yourdogsnext, *Your Dog's Next*, YOUTUBE.COM, <https://www.youtube.com/watch?v=0ol6fFOKe2I> (Aug. 9, 2007) (citing *Frequently Asked Questions*, HUMANS4ANTIBSL, <http://www.geocities.com/mncinder/FAQ.htm> (last visited Mar. 11, 2001)).

<sup>16</sup> Weiss, *supra* note 14; Lynn Marmer, *The New Breed of Municipal Dog Control Laws: Are They Constitutional?*, 53 U. CIN. L. REV. 1067, 1069 (1984). Under some circumstances this legislation may also lack exception for those members of the breed who are valuable assets to their communities, such as therapy dogs, assistance dogs, or advanced trained dogs such as drug dogs and search and rescue dogs. See Matthew Stoloff, *Breed Specific Legislation and the ADA*, LAW OFFICE OF MATTHEW STOLOFF (June 18, 2012), [stoloff-law.com/blog/breed-specific-legislation-and-the-ada/](http://stoloff-law.com/blog/breed-specific-legislation-and-the-ada/) (showing that an owner had to bring a lawsuit in order to get an exception to Iowa's pit ball restrictions for his trained pit bill).

<sup>17</sup> Larry Cunningham, *The Case Against Dog Breed Discrimination by Homeowners' Insurance Companies*, 11 CONN. INS. L. J. 1, 6 (2004).

<sup>18</sup> See Hussain, *supra* note 9, at 2849; Randall Lockwood, *Humane Concerns About Dangerous-Dog Laws*, 13 U. DAYTON L. REV. 267, 267–68 (1987); Kenneth M. Phillips, *Canine Homicides and the Dog Bite Epidemic: Do not Confuse them*, DOGBITELAW.COM, <http://www.dogbitelaw.com/dog-bite-statistics/canine-homicides-the-dog-bite-epidemic-do-not-confuse-them> (last visited Sept. 23, 2015).

<sup>19</sup> Marner, *supra* note 16, at 1067–68. BSL is based on the belief that Pit Bulls "have an inherent propensity to be vicious, and [therefore] present a constant threat to the public." JORDAN CURNUTT, CONTEMPORARY LEGAL ISSUES: ANIMALS AND THE LAW: A SOURCEBOOK 117 (2001).

<sup>20</sup> Cunningham, *supra* note 17, at 7. "Attacks led to editorials, which led to public outrage, which led to swift and spontaneous legislative action that was based on neither good science nor good law." *Id.*; CURNUTT, *supra* note 19, at 117. Despite the existence of dangerous-dog laws, which regulate ownership of dogs based on the animals' prior conduct, legislators have proposed an additional quick-fix solution in response to public outcry and extensive media coverage of attacks by specific breeds. See *Garcia v. Vill. of Tijeras*, 108 N.M. 116, 117, 119, 120 (N.M. 1988); see also *Vanater v. Vill. of S. Point*, 717 F. Supp. 1236, 1239 (S.D. Ohio 1989) (enacting ordinance because the mayor was concerned about the possible vicious nature of Pit Bills "which came to light from media reports and

do bite and inflict injury, extensive media coverage of serious pit bull attacks resulted in public fear of these dogs in particular.<sup>21</sup>

The growth in the population of the breed mixes commonly referred to as “pit bulls,”<sup>22</sup> combined with the media’s highly publicized portrayal of these dogs as aggressive fighting machines,<sup>23</sup> contributed to the pit bull’s rise to infamy and resulted

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calls from concerned citizens of South Point.”).

<sup>21</sup> See Devin Burstein, *Breed Specific Legislation: Unfair Prejudice & Ineffective Policy*, 10 ANIMAL L. 313, 326 (2004); David Favre, *Twenty Years and Change*, 20 ANIMAL L. 7, 15 (2013) (citing Safia Gray Hussain, *supra* note 9, at 2848–52 (2006) (“discussing breed-specific legislation, how ‘extensive media coverage of serious pit bull attacks has resulted in public fear of these dogs in particular’ and that ‘the lack of finite standards . . . makes it difficult to determine whether a particular dog should be categorized as a pit bull.’”)); Michael Fumento, *False Alarms*, FUMENTO.COM (1994), <http://www.fumento.com/crime/mediacritic.html>.

<sup>22</sup> See Dana M. Campbell, *Pit Bull Bans: The State of Breed-Specific Legislation*, GPSOLO (July/Aug. 2009), [www.americanbar.org/content/newsletter/publications/gp\\_solo\\_magazine\\_home/gp\\_solo\\_magazine\\_index/pitbull.html](http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/pitbull.html). “Pit bull” is not a breed of dog. *Id.*; see Paula Kiley-Placko, *Pit Bulls: Menace or Misunderstood?*, PKPLACKO.NET (Nov. 10, 1999), [www.pkplacko.net/PitBullArticle.html](http://www.pkplacko.net/PitBullArticle.html) (originally published in Susquehanna County Independent in two parts, dated Nov. 10 and Nov. 17, 1999); see also AMERICAN BAR ASS’N, A LAWYER’S GUIDE TO DANGEROUS DOG ISSUES 11 (Joan E. Schaffner ed., 2009); KAREN DELISE, THE PIT BULL PLACEBO: THE MEDIA, MYTHS AND POLITICS OF CANINE AGGRESSION 103 (2007). “Pit bull” is a generic term used to describe one of three specific breeds: the American pit bull terrier; the American Staffordshire terrier; and the Staffordshire bull terrier. Kiley-Packo, *supra*. The Bull Terrier/English Bull Terrier and the Staffordshire Bull Terrier are the result of crossbreeding that dates back to the 1800’s between Bulldogs and Terriers. See *id.* These breeds were crossbred primarily for baiting bulls or ratting. *Id.* The American Staffordshire Terrier, is a sub-breed which was also originally used to bait bulls. *Id.* The American Pit Bull Terrier, a descendent of the Staffordshire Bull Terrier, was bred specifically for dog fighting, and is still used illegally for dog fighting. *Id.*; Karen Lee Ziner, *Blood Sport*, PITBULL FORUM (May 2, 2004, 1:15AM), [www.pitbullforum.com/viewtopic.php?f=14&t=11179&sid=79313460d808443023db78e69271a733](http://www.pitbullforum.com/viewtopic.php?f=14&t=11179&sid=79313460d808443023db78e69271a733).

<sup>23</sup> Jamey Medlin, *Pit Bull Bans and the Human Factors Affecting Canine Behavior*, 56 DEPAUL L. REV. 1285, 1302 (2007); see Fumento, *supra* note 21. This can be attributed to the high publicity that dog attacks receive, especially when they are perpetrated by a controversial dog breed. See generally Weiss, *supra* note 14 (serving as an example of Florida’s reaction to pit bulls). Four attacks within days of each other best exemplify this point: day one, a Labrador mix attacked an elderly man, sending him to the hospital, one article appeared in the local paper; day two, a mixed-breed dog fatally injured a child, two stories appeared in the local paper; day three, a mixed-breed dog attacked a child, sending him to the hospital; one article appeared in the local paper; day four, two pit bulls that broke off their chains attacked a woman trying to protect her small dog, she was hospitalized, and her dog was uninjured - this attack was reported in more than 230 articles in national and international newspapers and on the major cable

in a public outcry for legislation banning these types of dogs.<sup>24</sup> For example, in 1980 Hollywood, Florida “passed an ordinance that required persons who owned pit bull dogs to ‘complete special registration forms and prove the possession of \$25,000 of public liability insurance.’”<sup>25</sup> Denver, Colorado, enacted legislation in the wake of a five-year surge in pit-bull attacks with the tipping point mauling of a man, bitten more than seventy times.<sup>26</sup>

The Denver ordinances enjoined residents from owning, transporting, harboring, or selling pit bulls.<sup>27</sup> If driving through Denver with a pit bull, one must have a permit evidencing intent to remove the dog from the city within six hours.<sup>28</sup> Prince George’s County, Maryland, also has BSL that consists of an outright ban of ownership of pit bulls within the county limits.<sup>29</sup>

Pit bulls are not the only dog breed associated with unprovoked attacks.<sup>30</sup> “[S]ince 1975, dogs belonging to more 30 breeds have been responsible for fatal attacks” on humans.<sup>31</sup> Over time, a number of breeds have been targeted by restrictions.<sup>32</sup> For

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news networks. AMERICAN BAR ASS’N, *supra* note 22, at 11.

<sup>24</sup> Alan M. Beck, *The Public Health Implications of Urban Dogs*, 65 AM. J. PUB. HEALTH 1315, 1316 (1975). As these breed populations grew, the injuries attributable to them escalated because of increased human interaction. *Id.*; see also Garcia, 108 N.M. at 119 (discussing the town of Tijeras, N.M. where a number of attacks by pit bulls caused a public outcry which led to a breed ban, and how before the ban 25 percent of the households in Tijeras owned a pit bull); Karyn Grey, *Breed-Specific Legislation Revisited: Canine Racism or the Answer to Florida’s Dog Control Problems?*, 27 NOVA L. REV. 415, 417, 418 (2003); Hussain, *supra* note 9, at 2851.

<sup>25</sup> Weiss, *supra* note 14 (citing Marmer, *supra* note 16, at 1068).

<sup>26</sup> Howard Pankratz, *Lawyers Aren’t Ready to Drop Challenge to Denver Pit Bull Ban*, THE DENVER POST, [www.denverpost.com/news/ci\\_10056705](http://www.denverpost.com/news/ci_10056705) (last updated Dec. 3, 2008, 8:11 PM). It is these kinds of seemingly unprovoked attacks that leave the public angry and frightened when it comes to the dogs designated as pit bulls. See Cunningham, *supra* note 17, at 6.

<sup>27</sup> DENVER, COLO. REV. MUN. CODE § 8-55(a) (2015).

<sup>28</sup> § 8-55(c)(5).

<sup>29</sup> PRINCE GEORGE’S CNTY., MD., MUN. CODE, § 3-185.01(a) (1997).

<sup>30</sup> Jeffery J. Sacks et al., *Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 and 1998*, 217 J. AM. VETERINARY MED. ASS’N 836, 836, 839 (2000).

<sup>31</sup> *Id.* at 837, 839.

<sup>32</sup> In analyzing trends for 100 years, the AKC notes a “correspondence between a breed’s prominence in the media and breed popularity.” Kristen E. Swann, *Irrationality Unleashed: The Pitfalls of Breed-Specific Legislation*, 78 UMKC L. REV. 839, 843 (2009–2010); Susan Miers Smith, *Top dog Breeds Registered by AKC, UKC*, THOUGHTS ON PAWS (Apr. 11, 2007), <http://blogcenter.readingeagle.com/thoughts-on-paw/top-dog-breeds-registered-by-akc-ukc/>. See, e.g., MANHATTAN, KAN., CODE § 6-25(c) (1987) (defining as inherently “dangerous,” the following breeds are listed: American Pit Bull Terrier,

example, “[i]n the 1960s, the Doberman pinscher pinscher was considered to be the most vicious dog.”<sup>33</sup> “In the 1970s, the German shepherd was the target.”<sup>34</sup> In the 1980s, the Doberman came back into focus but as a result of the confluence of gangs, drugs, and dog fighting<sup>35</sup>, it was ultimately overshadowed by the pit bull.<sup>36</sup> The pit bull’s unwitting connection to criminal activity further solidified its role as the “poster dog” for urban deviance.<sup>37</sup> Today, pit bulls remain the breed most frequently restricted by still existing ordinances.<sup>38</sup>

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American Staffordshire Terrier, Argentine Dogo, Cane Corso, Chow, Dogue de Bordeaux, Doberman Pinscher, Fila Brasileiro, German Shepherd, Perro de Presa Canario, Rottweiler, Staffordshire Bull Terrier).

<sup>33</sup> Bruce A. McKenna, *Breed Discrimination Laws: So Wrong in So Many Ways*, 58 FED. LAW. 4, 4 (2011).

<sup>34</sup> Between the mid-1960s and mid-1970s, a concurrent trend toward larger breeds—Great Danes, Siberian huskies, German shepherds and others—was observed in urban areas. Beck, *supra*, note 24, at 1316; McKenna, *supra* note 33, at 4; accord David Harris et al., *Dog Bites – An Unrecognized Epidemic*, 50 BULL. N.Y. ACAD. MED. 981, 994 (1974).

<sup>35</sup> While dog fighting was first outlawed in New York in 1867, “[b]y the mid-1980s dog fighting had crossed over into inner city African-American and Hispanic street culture, via prison gangs, and had begun to be celebrated in ‘rap’ music lyrics.” Seann Lenihann, *Stop Dogfighting by Addressing Supply Side Economics*, ANIMAL PEOPLE ONLINE (Nov. 20, 2013), <http://www.animalpeoplenews.org/anp/2013/12/13/stop-dogfighting-by-addressing-supply-side-economics/>. Twenty years later Michael Vick would revive national attention on this issue. Favre, *supra* note 21, at 11, n.18 (2013) (citing to the 1867 and current New York laws on animal fighting: “N.Y. Rev. Stat. [sic] ch. 375, §§ 1-10 (1867), (prohibition on animal fighting now codified at N.Y. AGM [sic] Law § 351 (Consol. 2012)[.]”); MARK DERR, A DOG’S HISTORY OF AMERICA: HOW OUR BEST FRIEND EXPLORED, CONQUERED, AND SETTLED A CONTINENT 97 (N. Point Press 1st ed. 2004) (noting that legal dog fighting continued elsewhere in the U.S. for decades after New York’s ban on dog fighting in 1867). Dog fighting has been a stubborn practice to eliminate, as it has been absorbed into broader social problems such as urban gang activity. See Francesca Ortiz, *Making the Dogman Heel: Recommendations for Improving the Effectiveness of Dogfighting Laws*, 3 STAN. J. ANIMAL L. & POL’Y 1, 19 (2010) (finding gang activity as a factor in the establishment and perpetuation of dog fighting that persisting most urban areas in the U.S.); McKenna, *supra* note 33, at 4.

<sup>36</sup> “The simultaneous drug crisis in the 1970s and 1980s thrust the pit bull into the spotlight, and Americans perceived the breed as the menace at the heart of the epidemic.” Swann, *supra* note 32, at 847; see McKenna, *supra* note 33, at 4 (discussing prominence of the pit-bull since the early 2000’s); Burstein, *supra* note 21, at 314 (2004) (discussing the negative media attention of pit bulls); see also Mark D. Uehling & Sue Hutchison, *The Macho Dog to Have*, NEWSWEEK, July 14, 1986, at 40.

<sup>37</sup> Medlin, *supra* note 23, at 1287–90. Pit bulls have been deemed so inextricably bound to the drug dealing that mere ownership may be admissible as evidence of possessing “tools of the drug trade.” U.S. v. Wheeler, 67 F. App’x. 296, 301 (6th Cir. 2003).

<sup>38</sup> See Huss, *supra* note 9, at 1139; Burstein, *supra* note 21, at 314 (discussing

*B. The Fall*

The goal of BSL was to protect the public from dog bites and sometimes more fatal attacks.<sup>39</sup> Rather than protection, BSL created a false sense of public security through oversimplification of the problem and under-inclusiveness in the solution.<sup>40</sup> Unless a dog that would be subject to a breed-based ordinance is registered, discovered, reported, or voluntarily turned in, enforcement of the ordinance is practically impossible.<sup>41</sup> There is no guarantee that owners will abide by the law.<sup>42</sup>

Another challenge posed by BSL is breed identification.<sup>43</sup> In a city with BSL, if city officials find what they deem to be a targeted breed, the dog is typically seized and impounded by the city.<sup>44</sup>

The breed identification made by those seizing the dog is used as the primary evidence in court cases or administrative hearing to enforce the ordinance.<sup>45</sup> Animal control officers are rarely required to attend breed identification training and many have no education beyond high school.<sup>46</sup>

This lack of uniform training in breed identification for city officials, and even veterinarians results in difficulty identifying

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how local governments enact breed specific legislation regulating pit bulls and other breeds); Grey, *supra* note 24, at 417 (discussing constitutionality of pit-bull bans); Hussain, *supra* note 9, at 2854; Medlin, *supra* note 23, at 1285–86.

<sup>39</sup> See Cunningham, *supra* note 17, at 6.

<sup>40</sup> Hussain, *supra* note 9, at 2864, 2869.

<sup>41</sup> *Id.* at 2871–72.

<sup>42</sup> See generally Marcy Setter, *Punish the Deed, Not the Breed: Pit Bull Education Packet 1* (2004), [http://www.pbrc.net/misc/PBRC\\_presspack.pdf](http://www.pbrc.net/misc/PBRC_presspack.pdf) (discussing background information about pit-bull breed information). “In Denver, . . . pit bull owners hide their dogs to avoid seizure and destruction.” Hussain, *supra* note 9, at 2873; see Nicholas Riccardi, *Denver’s Dogged Outlaws*, THE NATION (Aug. 2, 2005), <http://articles.latimes.com/2005/aug/02/nation/na-pitbulls2>.

<sup>43</sup> Favre, *supra* note 21, at 15; Hussain, *supra* note 9, at 2852.

<sup>44</sup> See Hussain, *supra* note 9, at 2861.

<sup>45</sup> See AMERICAN BAR ASS’N, *supra* note 22, at 26.

<sup>46</sup> Katie Bray Barnett, *Breed Discriminatory Legislation: How DNA Will Remedy the Unfairness*, 4 J. ANIMAL L. & ETHICS 161, 161–62 (2011) (citing *Career Opportunities in Animal Care & Control*, NATIONAL ANIMAL CARE & CONTROL ASS’N, <http://www.nacanet.org/?page=careeropps> (last visited Feb. 29, 2016)) (“under educational and training requirements it states ‘minimum high school or GED required . . . .’”); Campbell, *supra* note 22. Most states either do not have express provisions requiring training or reserve the animal control officer training to the municipality. See, e.g., ARIZ. REV. STAT. ANN. § 9-499.04(A) (1980); ARIZ. REV. STAT. ANN. § 11-1007 (1990); 3 PA. STAT. ANN. § 459-901(b)(B.1) (West 2008); OHIO REV. CODE ANN. § 1717.06 (LexisNexis 2003); S.C. CODE ANN. § 47-3-320 (1979); VA. CODE ANN. § 3.2-6556(A) (2008).

breeds.<sup>47</sup> In one veterinarian's experience,

most medium to large size dogs with straight, short/ medium length brown hair coats are cast as German shepherds or shepherd mixes, dogs with a black spot on their tongues are designated Chow mixes, and most medium sized, stocky, broad headed, small eared dogs with short hair coats are [identified as] pit-bulls or pit-bull mixes.<sup>48</sup>

BSL typically relies on the physical characteristics listed in the American Kennel Club (AKC) and United Kennel Club breed standard such as ear height and size, head size and shape, jaw structure, tail length, coat color and coat length.<sup>49</sup> The AKC has denounced the use of their standards for such purposes stating: “[b]reed standards are intended to serve as the written ideal of a dog which breeders can aspire to, not a benchmark for defining dangerous dogs.”<sup>50</sup> Very few people can identify a “pit bull” from other short-haired, broad-chested breeds.<sup>51</sup> This leads to uncertainty in the general population and the risk of arbitrary enforcement by police or neighbors.<sup>52</sup>

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<sup>47</sup> Barnett, *supra* note 46, at 161, 164 (citing Victoria L. Voith et al., *Comparison of Adoption Agency Breed Identification and DNA Breed Identification of Dogs*, 12 J. APPLIED ANIMAL WELFARE SCI. 253, 260 (2009)). Experienced veterinarians nationwide encounter the identification problem regularly. *Id.* at 164; see also Victoria L. Voith et al., *Shelter Medicine: A Comparison of Visual and DNA Identification of Breeds of Dogs* (2009), [www.nathanwinograd.com/linked/misbreed.pdf](http://www.nathanwinograd.com/linked/misbreed.pdf).

<sup>48</sup> Voith et al., *Shelter Medicine*, *supra* note 47. These broad generalizations can result in an all encompassing slippery slope that resulted in Germany, “which began by banning only a handful of breeds and ultimately enacted a law that regulated ownership of any dog standing over 15.7 inches tall and weighing over forty-four pounds.” Hussain, *supra* note 9, at 2873–74 (citing Karen Peak, *Why All Breeds Need to Fight* (2003), <http://www.westwinddogtraining.com/breedfight.pdf>; Dawn M. Capp, *American Pit Bull Terriers: Fact or Fiction* 31 (2004)).

<sup>49</sup> See *Dias v. City & Cnty. of Denver*, 567 F.3d 1169, 1173, 1180 (10th Cir. 2009); AMERICAN KENNEL CLUB, *Official Standard of the American Staffordshire Terrier* (June 10, 1936), <http://cdn.akc.org/AmericanStaffordshireTerrier.pdf>; AMERICAN BAR ASS'N, *supra* note 22, at 26.

<sup>50</sup> Barnett, *supra* note 46, at 161 (citing *AKC and Dog Owners Win Ruling Granting a Trial to Challenge Constitutionality of Denver Breed Ban*, AMERICAN KENNEL CLUB (May 28, 2009), <http://www.akc.org/press-center/press-releases/akc-and-dog-owners-win-ruling-granting-a-trial-to-challenge-constitutionality>).

<sup>51</sup> Favre, *supra* note 21, at 15 (citing *Pick the Pit*, PICKTHEPIT.COM, <http://www.pickthepit.com> (accessed Nov. 17, 2013) (an interactive site where viewers are encouraged to test their ability to identify pit bulls)).

<sup>52</sup> Favre, *supra* note 21, at 15. See *Am. Dog Owners Ass'n v. City of Lynn*, 533 N.E.2d 642, 644 (Mass. 1989) (declaring that the city's BSL was unconstitutional, in part, because animal control officials used conflicting standards by which to identify the pit bulls that were subject to the ordinance).

The American Veterinary Medical Foundation, among others, has declared BSL “inappropriate and ineffective.”<sup>53</sup> “Scientists and veterinarians cannot state with certainty . . . why certain dogs are more aggressive than others.”<sup>54</sup> What is known is that genes contribute to a dog’s behavior only minimally.<sup>55</sup> Breed is not the sole indicator of aggression; it is only one factor that is sometimes considered in an evaluation of a dog’s biting tendency.<sup>56</sup> Rather, “[a] dog’s tendency to bite depends on at least five different factors: heredity, early experience, later socialization and training, health, and victim behavior.”<sup>57</sup>

Despite repeated constitutional challenges to breed-specific legislation, courts have almost uniformly upheld these laws.<sup>58</sup> BSL has been upheld on the grounds that that such regulations “do not

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<sup>53</sup> American Veterinary Medical Association Task Force on Canine Aggression and Human-Canine Interactions, *A Community Approach to Dog Bite Prevention*, 218 J. AM. VETERINARY MED. ASS’N 1732, 1736 (2001). Various associations have taken a vocal public stance against breed discrimination laws. Among those organizations are the American Kennel Club, the American Veterinary Medical Association, the Best Friends Animal Society, the American Society for the Prevention of Cruelty to Animals, the American Dog Owners Association, the Westminster Kennel Club, and the Humane Society of the United States. Cunningham, *supra* note 17, at 39; *Changing the Perception of America’s Dogs*, BESTFRIENDS.ORG, <http://bestfriends.org/our-work/pit-bull-terrier-initiatives> (last visited Oct. 22, 2015).

<sup>54</sup> Larry Cunningham, *supra* note 17, at 27.

<sup>55</sup> Deborah L. Duffy et al., *Breed Differences in Canine Aggression*, 114 APPLIED ANIMAL BEHAV. SCI. 441, 457 (2008), <http://140.122.143.143/yuyinghs/yuyinghsu/papers/DuffyHsuSerpell2008.pdf>.

*See generally* B.L. Hart & L. Hart, *Breed-Specific Profiles of Canine (Canis familiaris) Behavior*, in CURRENT ISSUES AND RESEARCH IN VETERINARY BEHAVIORAL MEDICINE 107, 107–13 (Daniel Mills et al. eds., 2005) (finding dogs of particular breeds have behavioral predispositions attributable to genetics as well as environmental and experiential factors).

<sup>56</sup> Rebecca Simmons, *Pooch Prejudice: Why Breed Bans Aren’t the Answer*, SECOND CHANCE DOBES (June 3, 2005), <http://www.secondchancedobes.com/forums/index.php?showtopic=775>. Several medical studies do not even include breed as a factor in determining biting propensity, instead listing heredity, sex, early experience, socialization and training, health, reproductive status, quality of ownership and supervision, and victim behavior. Hussain, *supra* note 9, at 2869. “Most of the factors contributing to dog bites are related to the level of responsibility exercised by dog owners.” (quoting a study published in the medical journal Pediatrics). *Pit Bull Ban Barks Up Wrong Tree*, WIS. ST. J. (July 24, 2005), 2005 WLNR 11702608.

<sup>57</sup> American Veterinary Medical Association, *supra* note 53, at 1736.

<sup>58</sup> *Breed-Specific laws State-by-State*, DOGSBITE.ORG, <http://www.dogsbite.org/legislating-dangerous-dogs-state-by-state.php> (last visited Sept. 7, 2015). *See, e.g.*, Toledo v. Tellings, 871 N.E.2d 1152, 1158–59 (Ohio 2007) (holding that state and city laws did not violate the procedural or substantive due process rights or the equal protection rights of pit bull owners).

amount to a violation of a dog owner's substantive due process."<sup>59</sup> "However, constitutionality does not determine a law's efficacy, efficiency, and fairness."<sup>60</sup> "Regardless of the legality of a particular law, the law may not achieve the desired result because it is impracticable for its purpose."<sup>61</sup>

Thirty-five years after its inception, BSL has proven to be ineffective in remedying the dog bite epidemic.<sup>62</sup> In Miami-Dade County, for example, a ban on pit bulls was passed in the late 1980s, but estimates indicate that as many as 50,000 pit bulls were living in Dade County over a decade later.<sup>63</sup> Denver has experienced a similar result and has seen a growth in the popularity of the pit bull.<sup>64</sup> Additionally, seven years after enacting a ban on pit bulls, Prince George's County, Maryland, put together a Task Force to conduct a study to determine whether the current BSL was in fact working or whether the county should return to the previously enforced Dangerous Dog Laws.<sup>65</sup> The Task Force results expressed several concerns including that the existing BSL punished good dog owners, whereas the law should hold the irresponsible dog owner responsible for dog attacks.<sup>66</sup> The task force also found that BSL was hard to enforce and created a backlog of Animal Control Commission cases.<sup>67</sup> "The task force recommended repealing the ban and strengthening the city's

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<sup>59</sup> Hussain, *supra* note 9, at 2857–58 (noting the ruling of *Nicchia v. New York*, 254 U.S. 228 (1920)). *But see* *American Dog Owners Ass'n v. City of Lynn*, *supra* note 52, at 646 (Supreme Judicial Court of Massachusetts found that the city's BSL was unconstitutional. The Court held that the ordinance was "void for vagueness" reasoning that it was "impossible to ascertain" whether a dog is a mixed-breed pit bull and that the ordinance failed to pass constitutional muster because it attempted to define pit bull as including any breed that, according to "common understanding and usage").

<sup>60</sup> Hussain, *supra* note 9, at 2868.

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

<sup>62</sup> "The efficacy of BDL is increasingly being questioned, as studies have not shown a decrease in bite incidents in the areas where restrictions or bans have been imposed." Huss, *supra* note 9, at 1139.

<sup>63</sup> Medlin, *supra* note 23, at 1312.

<sup>64</sup> *Id.* at 1289–90, 1312, 1314. Authorities estimate that there are still 4,500 pit bulls residing within the city limits. *Id.* at 1312.

<sup>65</sup> PRINCE GEORGE'S CNTY., MD., MUN. CODE § 3-185.01; Hussain, *supra* note 9, at 2872.

<sup>66</sup> *See* VICIOUS ANIMAL LEGISLATION TASK FORCE, REPORT OF THE VICIOUS ANIMAL LEGISLATION TASK FORCE 5 (2003), [http://www.animalfarmfoundation.org/files/Report\\_of\\_the\\_Vicious\\_Animal\\_Legislation\\_-\\_Prince\\_Georges\\_County\\_-\\_2003.pdf](http://www.animalfarmfoundation.org/files/Report_of_the_Vicious_Animal_Legislation_-_Prince_Georges_County_-_2003.pdf) [hereinafter TASK FORCE REPORT].

<sup>67</sup> *Id.* at 12.

dangerous-dog law.”<sup>68</sup>

Other counties have indicated that BSL is just not working.<sup>69</sup> While the United Kingdom has proscribed the sale and breeding of pit bulls since 1991, the law has had no impact on the number of dog attacks.<sup>70</sup> Similarly, published studies from Scotland and Spain, comparing dog-bite data before and after BSL was enacted, suggest that BSL is ineffective in reducing dog bites.<sup>71</sup>

### C. State Bans on Breed Specific Legislation

States and local governments have spent millions of dollars attempting to enforce BSL, and many have failed.<sup>72</sup> As a result, many states have discussed repealing, or have actually repealed, BSL after realizing its enforcement was too costly<sup>73</sup> and that the banning of certain breeds was not effectively curbing dog bites.<sup>74</sup> Of the eighteen states that currently ban breed specific legislation, half enacted statutes between the late eighties and late nineties.<sup>75</sup> The remaining nine states have all enacted their statutes over the last three-years.<sup>76</sup>

By the end of the twentieth century, nine states including

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<sup>68</sup> Hussain, *supra* note 9, at 2872 (citing TASK FORCE REPORT, *supra* note 66, at 14).

<sup>69</sup> Hussain, *supra* note 9, at 2871–72.

<sup>70</sup> *Pit Bull Ban Barks Up Wrong Tree*, *supra* note 56.

<sup>71</sup> AMERICAN BAR ASS'N, *supra* note 22, at 35.

<sup>72</sup> Sandy Miller, *The High Cost of Breed Discriminatory Legislation*, NAT'L INSTITUTE OF CANINE EXPERTS (May 29, 2009, 3:58 PM), <https://niceorg.wordpress.com/2009/06/01/the-high-cost-of-bsl/>. “Prince George’s County, MD, spends more than \$250,000 annually to enforce its ban on Pit Bulls. In 2003, a study conducted by the county on the ban’s effectiveness noted that ‘public safety is not improved as a result of [the ban],’ and that ‘there is no transgression committed by owner or animal that is not covered by another, non-breed specific portion of the Animal Control Code (i.e., vicious animal, nuisance animal, leash laws).” *Breed Specific Legislation*, ASPCA, <https://www.aspc.org/fight-cruelty/dog-fighting/breed-specific-legislation> (last visited Sept. 9, 2015); *see also* Hussain, *supra* note 9, at 2872–73.

<sup>73</sup> Hussain, *supra* note 9, at 2871–72. Costs associated with BSL “include additional animal control staff necessary for enforcement of the law, kenneling both for dogs awaiting a determination of breed and for dogs whose owners appeal such determinations, and veterinary care for kenneled dogs.” *Id.* at 2871. The Prince George’s County, Maryland, Task Force found that the cost of maintaining a single pit bull throughout the entire adjudicative process was approximately \$68,000. *Id.* at 2872 (citing TASK FORCE REPORT, *supra* note 66, at 7).

<sup>74</sup> Huss, *supra* note 9, at 1139; TASK FORCE REPORT, *supra* note 66, at xiii–xiv (Attachment J) (citing other jurisdictions that repealed BSL and have opted for “more responsible dog ownership” and “better enforcement of generic law”).

<sup>75</sup> *See infra* notes 77–83.

<sup>76</sup> *See infra* notes 87–89.

Minnesota, California, New Jersey, Pennsylvania, Florida<sup>77</sup>, Illinois, Texas, Oklahoma, and New York had all banned breed specific legislation.<sup>78</sup> In 1989, Minnesota became the first state to codify legislation proscribing its cities and counties from adopting ordinances regulating dangerous or potentially dangerous dogs based solely on the specific breed of the dog.<sup>79</sup> Less than six months later, California, by statute, permitted its cities and counties to enforce dangerous dog laws but at the same time banned any law that regulated a dog based on its breed.<sup>80</sup> Shortly thereafter, New Jersey, Pennsylvania, and Florida each banned then existing local regulations that targeted dogs by breed.<sup>81</sup> In 1991, Texas and Illinois joined these states, followed by Oklahoma in 1992.<sup>82</sup> The

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<sup>77</sup> Florida limits its ban to local ordinance adopted after October 1, 1990. The remaining restriction is intended to be applicable to dogs which are commonly referred to as “pit bulls” and which are defined herein. This article is designed to regulate these pit bull dogs and to ensure responsible handling by their owners through confinement, registration, and liability insurance. See Huss, *supra* note 9, at 1139 (citing FLA. STAT. § 767.14 (2008)).

<sup>78</sup> CAL. FOOD & AGRIC. CODE § 31683 (West 2006); FLA. STAT. § 767.14 (1990); 510 ILL. COMP. STAT. 5/15(a)(3) (1991); MINN. STAT. § 347.51(8) (1989); N.J. STAT. ANN. § 4:19-36 (West 2015); N.Y. AGRIC. & MKTS. LAW § 107(5) (MCKINNEY 1998); OKLA. STAT. tit. 4, § 46(B) (2006); 3 PA. CONS. STAT. ANN. § 459-507-A(c)(d) (West 1990); TEX. HEALTH & SAFETY CODE ANN. § 822.047 (West 1991).

<sup>79</sup> “A statutory or home rule charter city, or a county, may not adopt an ordinance regulating dangerous or potentially dangerous dogs based solely on the specific breed of the dog. Ordinances inconsistent with this subdivision are void.” MINN. STAT. § 347.51(8) (effective Aug. 1, 2008, with BSL ban added by amendment effective April 17, 1989).

<sup>80</sup> CAL. FOOD & AGRIC. CODE § 31683 (effective Jan. 1, 2006 as amended, and BSL ban effective in original stat. effective Sept. 24, 1989). With caveat that: “[c]ities and counties may enact dog breed-specific ordinances pertaining only to mandatory spay or neuter programs and breeding requirements, provided that no specific dog breed, or mixed dog breed, shall be declared potentially dangerous or vicious under those ordinances.” CAL. HEALTH & SAFETY CODE § 122331 (2006).

<sup>81</sup> FLA. STAT. § 767.14; N.J. STAT. ANN. § 4:19-36; 3 PA. CONS. STAT. ANN. § 459-507-A. “The provisions of this act shall supersede any law, ordinance, or regulation concerning vicious or potentially dangerous dogs, any specific breed of dog, or any other type of dog inconsistent with this act enacted by any municipality, county, or county or local board of health.” N.J. STAT. ANN. § 4:19-36. “A local ordinance otherwise dealing with dogs may not prohibit or otherwise limit a specific breed of dog.” 3 PA. CONS. STAT. ANN. § 459-507-A(c). “Nothing in this act shall limit any local government from placing further restrictions or additional requirements on owners of dangerous dogs or developing procedures and criteria for the implementation of this act, provided that no such regulation is specific to breed. . . .” FLA. STAT. § 767.14.

<sup>82</sup> 510 ILL. COMP. STAT. 5/15 (effective July 22, 2010, with BSL ban added by amendment effective July 1, 1991); OKLA. STAT. tit. 4, § 46 (effective June 7, 2006 and BSL ban effective in original stat. Feb. 1, 1992); TEX. HEALTH & SAFETY CODE ANN. § 822.047 (effective Sept. 1, 1991). “A county or municipality may place additional requirements or restrictions on dangerous dogs if the requirements or

last of these first nine states to enact a ban was New York in 1998.<sup>83</sup> New York permits the enforcement of dangerous dog laws but at the same time bans programs that regulated dogs in a manner specific to breed.<sup>84</sup>

Following the enactment of the New York statute, seven years passed before another state would ban breed specific legislation.<sup>85</sup> In 2005, Maine empowered its municipalities to adopt stringent regulations regarding animal control but banned them from adopting breed specific ordinances, laws, or regulations.<sup>86</sup> Seven years after that, in 2012, Colorado and Massachusetts enacted statutes prohibiting the regulation of dogs based on breed.<sup>87</sup> The subsequent year, four states including Connecticut, Nevada, Rhode Island, and Virginia followed suit.<sup>88</sup> Most recently, South

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restrictions: (1) are not specific to one breed or several breeds of dogs. . . ." TEX. HEALTH & SAFETY CODE ANN. § 822.047. "Vicious dogs shall not be classified in a manner that is specific as to breed." 510 ILL. COMP. STAT. 5/15. "Potentially dangerous or dangerous dogs may be regulated through local, municipal and county authorities, provided the regulations are not breed specific." OKLA. STAT. tit. 4, § 46.

<sup>83</sup> AGRIC. & MKTS. LAW § 107 (effective Jan. 1, 2011, with BSL ban effective Sept. 1, 1998).

<sup>84</sup> § 107(5). Nothing contained in this article shall prevent a municipality from adopting its own program for the control of dangerous dogs; provided, however, that no such program shall be less stringent than this article, and no such program shall regulate such dogs in a manner that is specific as to breed." § 107(5).

<sup>85</sup> See *infra* note 86 (for the next state after New York).

<sup>86</sup> ME. REV. STAT. tit. 7, § 3950 (2015) (effective May 1, 2013, with BSL ban approved May 20, 2005).

Each municipality is empowered to adopt or retain more stringent ordinances, laws or regulations dealing with the subject matter of this chapter, including the establishment of fees necessary and appropriate to finance the cost of animal control services, except that municipalities may not adopt breed-specific ordinances, laws or regulations. Any less restrictive municipal ordinances, laws or regulations are invalid and of no force and effect.

§ 3950.

<sup>87</sup> § 18-9-204.5 (2015) (effective Sept. 1, 2012); MASS. GEN. LAWS ch. 140, § 157 (2015) (effective Oct. 31, 2012). "Nothing in this section shall be construed to prohibit a municipality from adopting any rule or law for the control of dangerous dogs; except that any such rule or law shall not regulate dangerous dogs in a manner that is specific to breed." COLO. REV. STAT. § 18-9-204.5(emphasis removed). "No city or town shall regulate dogs in a manner that is specific to breed." MASS. GEN. LAWS ch. 140, § 157.

<sup>88</sup> CONN. GEN. STAT. § 7-148 (2015) (effective Oct. 1, 2013); NEV. REV. STAT. § 202.500 (2015) (effective Oct. 1, 2013); R.I. GEN. LAWS § 4-13-43 (2015) (effective July 16, 2013); VA. CODE ANN. § 3.2-6540.1 (2015) (effective July 1, 2013). "Regulate and prohibit the going at large of dogs and other animals in the streets and public places of the municipality and prevent cruelty to animals and all

Dakota and Utah have joined the growing minority of states to ban breed specific legislation.<sup>89</sup>

These states have begun to realize that the focus of legislators should be on implementing and enforcing generic, non-breed specific dangerous dog laws.<sup>90</sup> Dangerous Dog Laws focus on restricting and regulating owners and their dogs after the individual dog has been deemed dangerous due to past behavior.<sup>91</sup>

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inhuman sports, except that no municipality shall adopt breed-specific dog ordinances.” CONN. GEN. STAT. § 7-148. “A dog may not be found dangerous or vicious[ ] . . . [b]ased solely on the breed of the dog; or . . . [b]ecause of a defensive act against a person who was committing or attempting to commit a crime or who provoked the dog.” NEV. REV. STAT. § 202.500. “No city or town may enact any rule, regulation or ordinance specific to any breed of dog or cat in the exercise of its power to further control and regulate dogs, cats or other animals as authorized by this chapter.” R.I. GEN. LAWS § 4-13-43.

No canine or canine crossbreed shall be found to be a vicious dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a vicious dog if the threat, injury, or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal’s owner or custodian; (ii) committing, at the time, a willful trespass upon the premises occupied by the animal’s owner or custodian; or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times.

VA. CODE ANN. § 3.2-6540.1(C).

<sup>89</sup> S.D. CODIFIED LAWS § 40-34-16 (2015) (approved March 14, 2014); UTAH CODE ANN. § 18-2-101 (West 2015) (effective Jan. 1, 2015).

No local government . . . may enact, maintain, or enforce any ordinance, policy, resolution, or other enactment that is specific as to the breed or perceived breed of a dog. This section does not impair the right of any local government unit to enact, maintain, or enforce any form of regulation that applies to all dogs.” S.D. CODIFIED LAWS § 40-34-16. “(1) A municipality may not adopt or enforce a breed-specific rule, regulation, policy, or ordinance regarding dogs. (2) Any breed-specific rule, regulation, policy, or ordinance regarding dogs is void.

UTAH CODE ANN. § 18-2-101.

<sup>90</sup> See *supra* notes 86–88.

<sup>91</sup> Dangerous Dog Laws commonly contain “four components: (1) a definition of a ‘dangerous dog’ or ‘vicious dog’; (2) a procedure for officially declaring a dog dangerous; (3) restrictions applicable to those dogs officially declared dangerous; and (4) penalties for violating the restrictions[ ] . . .” Hussain, *supra* note 9, at 2854–2855. Cynthia A. Mcneely & Sarah A Lindquist, *Dangerous Dog Laws: Failing to Give Man’s Best Friend a Fair Shake at Justice*, 3 J. ANIMAL L. 99, 112 (2007). Some local governments have also enacted potentially dangerous-dog laws. These laws provide communities with an even greater sense of protection, whereas dangerous-dog laws may not classify a dog as dangerous until it inflicts serious bodily injury or death on a human, potentially dangerous-dog laws generally permit a dog to be categorized as potentially dangerous and thus subject to regulations after an unprovoked bite that results in minimal or no injury. See, e.g., CAL. FOOD & AGRIC. CODE § 31602 (West 1989) (defining a potentially

By regulating dangerous dogs, state and local governments can focus their efforts on dogs that are likely to cause injuries instead of targeting an entire breed.<sup>92</sup>

## II. INSURANCE BREED BASED BANS

Insurance companies are undermining the goals of state bans on BSL by refusing to write homeowners' policies for people who own aggressive dogs.<sup>93</sup> A constant criticism of BSL has been that it leads to Breed Discrimination Laws (BDL) such as regulations by insurance companies that refuse to issue policies to owners of certain breeds solely based on the breed. Insurance bans on entire breeds are increasingly unreasonable in light of state bans on breed specific legislation and the social utility of pets, particularly dogs.<sup>94</sup> Dogs are members of the family; even the legal system has evolved to recognize pets as more than mere chattel.<sup>95</sup> As social perceptions of dogs have changed, our laws have adjusted to reflect

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dangerous dog as one that bites a person and causes less severe injury than muscle tears, disfiguring lacerations, or injuries that require multiple sutures or corrective or cosmetic surgery); OKLA. STAT. tit. 4, § 44 (1991) (defining a potentially dangerous dog as one that without provocation "bites on a human either on public or private property . . ."); MD. CODE ANN., CRIM. LAW § 10-619(c)(1)(i) (West 2002) (defining a potentially dangerous dog as one who "has inflicted a bite on a person while on public or private real property").

<sup>92</sup> See Cunningham, *supra* note 17, at 7–12; e.g., MICH. COMP. LAWS §§ 287.321, 287.322 (2004) (allowing local governments to seize dangerous animals and have them tattooed, insured, fenced, sterilized, destroyed, or any other action appropriate to protect the public); OKLA. STAT. tit. 4 § 44 (allowing for heightened regulation of animals declared dangerous by their conduct, but prohibits local governments from enacting breed-specific legislation); see also *Dutch Government to Lift 15-Year Ban on Pit Bulls*, ORLANDO SENTINEL (June 10, 2008), [http://articles.orlandosentinel.com/2008-06-10/news/world10\\_1\\_1\\_netherlands-ban-on-pit-pit-bulls](http://articles.orlandosentinel.com/2008-06-10/news/world10_1_1_netherlands-ban-on-pit-pit-bulls) (reporting that the Netherlands lifted a fifteen-year ban on pit bulls and announced its intent to focus on local leashing laws and owner education).

<sup>93</sup> See Stanley Coren, *14 Dog Breeds Blacklisted by Insurance Companies*, PSYCHOLOGY TODAY (May 27, 2014), <https://www.psychologytoday.com/blog/canine-corner/201405/14-dog-breeds-blacklisted-insurance-companies>.

<sup>94</sup> Cunningham, *supra* note 17, at 5.

<sup>95</sup> Huss, *supra* note 9, at 1136 (finding that surveys indicate "that 71% of people with dogs and 64% of people with cats consider their companion animals to be like a child or family member, and 93% of these people agree that the benefits of having a pet are companionship, love, company, and affection"). According to a 2015 survey of pet ownership in the United States, a majority of households, 65%, own a pet, including almost 78 million dogs living as pets in the United States. *Pet Industry Market Size & Ownership Statistics*, AM. PET PRODUCTS ASS'N, [http://americanpetproducts.org/press\\_industrytrends.asp](http://americanpetproducts.org/press_industrytrends.asp) (last visited Sept. 8, 2015).

those changes.<sup>96</sup> Therefore, it would stand to reason that as states ban BSL, insurers would cease their BDL practice.<sup>97</sup>

Despite the growing number of states that have banned breed specific legislation, insurance companies continue to refuse to issue homeowner's policies for those that own particular breeds of dogs that the insurer deems dangerous.<sup>98</sup>

To date, Pennsylvania is the only state to expressly include a ban on discriminatory insurance practices in its statutory ban on BSL.<sup>99</sup> Insurer decisions as to "uninsurable dogs" are based solely on the dogs' breed and do not take into account the individual dog's characteristics, temperament, and history.<sup>100</sup> Certain types of dogs, sometime referred to as "blacklisted breeds," including Pit Bulls, Chow Chows, Dobermans, Rottweilers, Boxers, Akitas, Great Danes, and Siberian Huskies are often excluded from homeowner insurance policies, or their coverage is not renewed.<sup>101</sup>

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<sup>96</sup> *Sentell v. New Orleans & Carrollton R.R. Co.*, 166 U.S. 698, 701, 702 (1897). "[F]rom time immemorial, [dogs have] been considered as holding their lives at the will of the legislature[.]" *Id.* at 702. The modern view, however, is that dogs are property and that the government's ability to regulate them is not without limitation. See Tracey Bateman Farrell, 4 AM. JUR. 2D *Animals* § 6 (2002) (recognizing modern trend to afford dogs full property status, but also acknowledging state power to decide whether to afford dogs such status).

<sup>97</sup> See Cunningham, *supra* note 17, at 14–16.

<sup>98</sup> *Id.* Some insurance companies have outright bans on specific breeds – the usual suspects being Pit Bulls, Rottweilers, German Shepherds, Doberman Pinchers, Chow Chows, Wolf hybrids, and Presa Canarios. Catey Hill, *11 Riskiest Dog Breeds For Homeowners and Renters*, FORBES (May 30, 2012, 10:57AM), <http://www.forbes.com/sites/cateyhill/2012/05/30/11-riskiest-dog-breeds-for-homeowners-and-renters/>; *The Adoption Process: Questions to Ask Yourself*, THE HUMANE SOC'Y OF THE U.S. (Oct. 28, 2009), [http://www.humanesociety.org/issues/adopt/tips/adoption\\_questions\\_ask\\_yoursel f.html](http://www.humanesociety.org/issues/adopt/tips/adoption_questions_ask_yoursel f.html).

<sup>99</sup> 3 PA. CONS. STAT. ANN. § 459-507-A(d) (West 2015) ("No liability policy or surety bond issued pursuant to this act or any other act may prohibit coverage from any specific breed of dog."); see *Bulletin No. 2003-07-INS*, MICH. DEPT OF INS. & FIN. SERVS. (Sept. 4, 2003), [http://www.michigan.gov/difs/0,5269,7-303-12900\\_12906-86214--,00.html](http://www.michigan.gov/difs/0,5269,7-303-12900_12906-86214--,00.html) (explaining that an administrative ruling in Michigan prohibits insurance companies from refusing to issue insurance or renew policies based solely on the breed of a dog or dogs in a household).

<sup>100</sup> Cunningham, *supra* note 17, at 4, 12. "[I]nsurance companies are now refusing to insure households that contain certain breeds, regardless of that particular animal's history; and if [the] dog [has ever bitten] someone, . . . [making it] difficult for the owner to find insurance." Rebecca J. Huss, *No Pets Allowed: Housing Issues and Companion Animals*, 11 ANIMAL L. 69, 125–26 (2005) (citing Grey, *supra* note 24, at 419–21) (discussing insurance issues relating to dangerous dogs). See generally Harold W. Hannah, *Survey of Illinois Law: Animal Control Law: Liability for Animal-Inflicted Injury*, 24 S. ILL. U. L.J. 693, 693, 694 (2000) (discussing Illinois law relating to dog bites).

<sup>101</sup> *The Adoption Process: Questions to Ask Yourself*, *supra* note 98. "[A]s a

A. *Insurance Companies Have Failed To Follow The States' Lead*

“[I]nsurance companies operate at the pleasure of the states.”<sup>102</sup> States may regulate insurance as an exercise of their police power.<sup>103</sup> The composition and conduct of an insurance company is “not a right but a privilege granted by the [s]tate . . . to promote the public welfare.”<sup>104</sup> “States have the power . . . to regulate the insurance contracts . . . [and] to declare that the terms and conditions of those contracts and to impose additional duties and obligations.”<sup>105</sup> “The power to regulate insurance is so strong that a state may take over the entire business of insurance if it decides it is in the public interest to do so.”<sup>106</sup>

The general purpose of insurance is to externalize cost by transferring risk from an insured party to an insurer.<sup>107</sup> Homeowner’s insurance protects an insured in the case of financial loss through the administration of property damage and liability provisions.<sup>108</sup> Dog bites are covered by liability insurance which mainly protects an insured from losses incurred as a result of bodily injury, medical payments, and property damage created by the property owner’s negligence.<sup>109</sup>

The Humane Society has documented the number of people being denied insurance because they own a specific breed of dog.<sup>110</sup>

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general rule, insurance companies tend to resist covering these 11 types of dogs — or any mix of these breeds — most often[.] . . . Pit Bulls & Staffordshire Terriers, Doberman Pinschers, Rottweilers, German Shepherds, Chows, Great Danes, Presa Canarios, Akitas, Alaskan Malamutes, Siberian Huskies, [and] Wolf-hybrids[.]” Hill, *supra* note 98; see Kiley-Placko, *supra* note 22 (discussing commonly excluded breeds).

<sup>102</sup> Cunningham, *supra* note 17, at 47–48 (citing Blue Cross & Blue Shield of Central New York, Inc. v. McCall, 674 N.E.2d 1124, 1126 (N.Y. 1996)) (“[T]he organization of an insurance company and the conduct of the business of writing insurance is not a right but a privilege granted by the [s]tate subject to the conditions imposed by it . . .”).

<sup>103</sup> *Id.* at 48 (citing Bekken v. Equitable Life Assurance Soc’y., 293 N.W. 200, 211 (N.D. 1940)).

<sup>104</sup> *Id.* (citing Blue Cross & Blue Shield of Central New York, Inc., 674 N.E.2d at 1126).

<sup>105</sup> *Id.* (citing Bekken, 293 N.W. at 211).

<sup>106</sup> *Id.*

<sup>107</sup> ROBERT COOTER & THOMAS ULEN, LAW AND ECONOMICS 354 (4th ed. 2004).

<sup>108</sup> Cunningham, *supra* note 17, at 13.

<sup>109</sup> *Id.* at 13–14.

<sup>110</sup> Brian Sodergren, *Insurance Companies Unfairly Target Specific Dog Breeds*, HUMANE SOC’Y OF THE U.S., <https://web.archive.org/web/20090707221314/http://www.hsus.org:80/pets/issues>

Enforcing insurance bans for many means precluding home ownership because a mortgage cannot be obtained without insurance.<sup>111</sup> Limiting homeownership may have adverse effects on a community.<sup>112</sup> Homeownership has been shown to increase the community's desirability.<sup>113</sup> According to Habitat for Humanity, homeowners are more likely than renters to be politically active (especially in local politics), more likely to invest in solving local problems, more likely to improve the community's appearance, and more likely to belong to local organizations.<sup>114</sup> Yet, insurers justify these exclusions on the reasoning that their survival is dependent on minimizing risks, and thereby reducing the number of claims.<sup>115</sup>

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[\\_affecting\\_our\\_pets/insurance\\_companies\\_unfairly\\_target\\_specific\\_dog\\_breeds.html](#) (last visited Mar. 2, 2016), *noted* in Cunningham, *supra* note 17, at 13.

<sup>111</sup> Cunningham, *supra* note 17, at 3, 5 (explaining the author's struggle with buying a home for him and his Chow Chow mix and Rottweiler in a city where there were breed restrictions on those two breeds). Even military families have been impacted, in late 2007 "the U.S. Army issued a memo detailing pet policy changes for privatized housing on military installations; the memo bans American or English Staffordshire Bull Terriers, Rottweilers, Chow Chows, Doberman Pinschers, and wolf hybrids as well as a host of other pets . . ." Campbell, *supra* note 22.

<sup>112</sup> People that live in single family homes are more likely to have a dog than people that live in other types of residences. AM. PET PROS. MFRS. ASS'N, 2007-2008 APPMA NATIONAL PET OWNERS SURVEY 5 (2007).

<sup>113</sup> *Benefits of Homeownership*, HABITAT FOR HUMANITY N.Y.C. 1, 1, 3, <http://www.habitatnyc.org/pdf/advocate/homewonership.pdf> (last visited Mar. 2, 2016).

<sup>114</sup> *Id.* at 3, 4. When considering what type of household is most likely to contain a pet, households categorized as "parents" rank at the top. AM. PET PROS. MFRS. ASS'N, *supra* note 112, at 5. "[A] significant number of pet owners believe that pets are good for children or teach children responsibility. Studies focusing on the impact of having companion animals in the lives of children show that pet ownership 'provides long-term mental and emotional benefits for children and adolescents.'" Huss, *supra* note 100, at 71 (citing Lynette A. Hart & Aline H. Kidd, *Potential Pet Ownership in U.S. Rental Housing*, 19 CANINE PRACTICE 24, 25 (1994)). "More than 75 percent of children in the [U.S.] live with pets, and children are more likely to grow up with a pet than with both parents." MARC BEKOFF, *THE EMOTIONAL LIVES OF ANIMALS* 19-20 (2007); *see also* GAIL F. MELSON, *WHY THE WILD THINGS ARE: ANIMALS IN THE LIVES OF CHILDREN* 36, 37, 38 (2001).

<sup>115</sup> Cunningham, *supra* note 17, at 4. In 1995, State Farm Insurance Company paid out \$70 million in response to 11,000 dog-related insurance claims. Kenneth Phillips, *All Dog Bite Statistics*, DOG BITE LAW, <http://dogbitelaw.com/PAGES/statistics.html> (last visited Oct. 5, 2015). Eleven years later, in 2006, insurance payments deriving from dog bite claims totaled \$322.4 million. *Dog Bite Liability*, INS. INFO. INST. (May 2015), <http://www.iii.org/media/hottopics/insurance/dogbite/>. "The insurance industry estimates it pays more than \$1 billion [per year] in homeowners' liability claims resulting from dog bites." American Veterinary Medical Association, *supra* note 53, at 1733; *see also* Hussain, *supra* note 9, at 2850 (discussing the effects of dog

*B. Insurance Bans Are Based On Faulty Assumptions*

Insurers that deny coverage based on ownership of a particular breed are making faulty assumptions and using dog bite statistics improperly.<sup>116</sup> Experts in the dog industry have generally deemed statistics on attacks unreliable.<sup>117</sup> Many statistics attempt to quantify dog attacks and identify which breeds cause the most attacks; however, there are many problems with the resulting statistics.<sup>118</sup>

First, it is challenging for experts to come up with national statistics on dog bites and attacks because there is no national reporting system.<sup>119</sup> The Center for Disease Control (“CDC”) conducted a five-year study on dog bites; collecting data from the Humane Society of the United States and media reports concerning dog bite fatalities.<sup>120</sup> It reported that Pit Bulls were responsible for fourteen attacks on humans, whereas Rottweilers were responsible for a total of twenty-three.<sup>121</sup> The problem with interpreting these numerical results concern the lack of narrative associated with these results.<sup>122</sup> Most of the studies do not distinguish between an aggressive attack, an unprovoked attack,

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bites on the insurance industry). *But see* Cunningham, *supra* note 17, at 15 (“Damage due to lightning, fire, and mold all individually account for more claims payouts than all liability claims combined.”).

<sup>116</sup> Cunningham, *supra* note 17, at 4.

<sup>117</sup> *Id.* at 17–27 (discussing several different studies related to dog bites and the statistical limitations of each); Kenneth Phillips, *The Problem with Statistics*, DOGBITELAW.COM, <http://dogbitelaw.com/vicious-dogs/the-problem-with-statistics> (last visited Mar. 2, 2016). Dog-bite statistics are admittedly incomplete; there is disagreement as to the empirical accuracy of public health officials’ observations. *See, e.g.*, CTR. FOR DISEASE CONTROL & PREVENTION, *Nonfatal Dog Bite–Related Injuries Treated in Hospital Emergency Departments–United States, 2001*, 52 MORBIDITY & MORTALITY WKLY. RPT. 605 (2003), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5226a1.htm> (noting limitations of findings because many dog-bite victims do not seek medical attention).

<sup>118</sup> Cunningham, *supra* note 17, at 28–30 (discussing problems with numerators and denominators).

<sup>119</sup> *Id.* at 30.

<sup>120</sup> CTR. FOR DISEASE CONTROL & PREVENTION, *Dog Bite Related Fatalities–United States, 1995-1996*, 46 MORBIDITY & MORTALITY WKLY. RPT. 463 (1997), <http://www.cdc.gov/mmwr/preview/mmwrhtml/00047723.htm>.

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

<sup>122</sup> *See* Phillips, *supra* note 117. These attacks resulted from a variety of circumstances including organized dog fighting, responses of dogs to mistreatment, dogs acting as attack or guard animals, or the unexpected neighborhood altercation. *See* Cunningham, *supra* note 17, at 20–21.

a confused and scared bite, or an accidental nip.<sup>123</sup> One study used data collected from hospital emergency rooms and included bites that resulted when: a dog's food was taken away, injuries resulting from dog fights, and bites from a disoriented dog that had been in a car accident.<sup>124</sup> These varying narratives that underlie the injuries illustrate the lack of reliability in the numerical results.<sup>125</sup>

In another study, the CDC selected dog bite cases from incidents reported to the Denver Animal Control during a one-year period.<sup>126</sup> The results were limited to those dogs that had bitten a non-household member and whose victim sought medical attention for the bite.<sup>127</sup> Ultimately, the researchers concluded that their study required further analysis, such as the determination of each dog's breed and an analysis of the victim's behavior in each bite situation.<sup>128</sup> The most important result that the researchers say readers should take from the study is that owners "may be able to reduce the likelihood of owning a dog that will eventually bite" through owner behavior and breed selection based on owner lifestyle.<sup>129</sup>

Second, representatives in the insurance industry have admitted that "[t]he industry isn't positioned to determine which dogs should be deemed vicious. . . . [W]e're certainly not dog experts or veterinarians."<sup>130</sup> The insurance industry's approach to dog bite liability therefore seems to have little to no connection to the actual facts behind dog bites and specific breeds, but everything to do with preventing excessive and undesirable costs.<sup>131</sup>

Finally, breed discrimination does not take into account particular owner issues, such as the type of individual that purchases a particular breed of dog.<sup>132</sup> Much of the problem with

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<sup>123</sup> Phillips, *supra* note 117.

<sup>124</sup> Cunningham, *supra* note 17, at 20–21; *see also* CTR. FOR DISEASE CONTROL & PREVENTION, *supra* note 117.

<sup>125</sup> Cunningham, *supra* note 17, at 17.

<sup>126</sup> Kenneth A. Gershman et al., *Which Dogs Bite? A Case-Control Study of Risk Factors*, 93 J. AM. ACAD. OF PEDIATRICS 913, 913 (1991), [http://townhall.townofchapelhill.org/agendas/2009/03/23/6a/6a-4-which\\_dogs\\_bite.pdf](http://townhall.townofchapelhill.org/agendas/2009/03/23/6a/6a-4-which_dogs_bite.pdf).

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

<sup>128</sup> *Id.* at 916.

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

<sup>130</sup> Cunningham, *supra* note 17, at 15–16.

<sup>131</sup> *Id.* at 66–67.

<sup>132</sup> Dog-centric laws provide for destruction or impoundment of the dog, leaving irresponsible owners with little or no punishment. As a result, "the dog suffers the consequences of its owner's irresponsibility." Hussain, *supra* note 9, at 2876

dogs that attack is attributable to irresponsible ownership.<sup>133</sup> Studies reveal that problem behavior, by both dog and owner, generally precede a majority of attacks.<sup>134</sup>

Unfortunately, not every dog owner is responsible or sensible. Generally, the dog owners that pose the greatest threat are those who obtain an aggressive dog as a status symbol or to use as a weapon, neglecting to properly care for and contain their dogs.<sup>135</sup>

The “blame-the-deed-not-the-breed’ narrative” reasons that the publicized issues associated with pit bulls are primarily the result of misuse of these dogs by dogfighters.<sup>136</sup> “Suppress dogfighting, . . . and pit bulls will become safe dogs.”<sup>137</sup> This failure to consider a dog owner’s personal behavior with and knowledge of his own dog ignores the reality that “a good owner can virtually eliminate the dangers posed by an aggressive dog.”<sup>138</sup>

### C. Alternatives to Breed-Based Bans

A more reasoned approach by insurers requires consideration of

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(citing Setter, *supra* note 42, at 20).

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

<sup>134</sup> Sacks et al., *supra* note 30, at 840. Problem behaviors by owners may include permitting a dog to roam freely or failure to abide by statutorily required safety precautions. *Id.*

<sup>135</sup> Burstein, *supra* note 21, at 323–24. See Brief for The American Dog Owners’ Association et al. as Amici Curiae Supporting Petitioners, United States v. Michael Vick, et al. (E.D. Va. 2007) (No. 3:07-cr-00274-HEH-4), at 9 (noting that Pit Bulls are collateral victims of the “poor training, mistreatment, and neglect” of the breed over the past few decades).

<sup>136</sup> Lenihann, *supra* note 35.

<sup>137</sup> *Id.* This outcome is in fact a reality. *Id.* One example is the Michael Vick dogfighting case, in which fifty of Vick’s fighting dogs were seized and about to be euthanized, since conventional wisdom dogs trained to fight to the death are too dangerous and cannot be retrained. However, in an unprecedented move, the court agreed with amicus briefs filed by animal welfare groups, and appointed a special master—animal law professor Rebecca Huss. Huss acted as a guardian for the dogs to oversee temperament evaluations to be done on each dog by a team of behaviorists. As a result, only one dog was destroyed owing to temperament and one was euthanized for medical reasons; the other forty-seven were saved and shipped to rescue groups, where they were rehabilitated and are now enjoying media attention as service dogs and beloved companions. Brief for The American Dog Owners’ Association et al. as Amici Curiae Supporting Petitioners, *supra* note 135, at 31 (for the recommendation of the brief); Rebecca J. Huss, *Lessons Learned: Acting as a Guardian/Special Master in the Bad Newz Kennels Case*, 15 ANIMAL L. 69, 70–79 (2008); see also *Six Years Post-Rescue – The Vick Dogs at Home*, BADRAP.ORG, <http://www.badrapp.org/six-years-later> (last visited Sept. 15, 2015) (updating the Vick dogs’ new lives).

<sup>138</sup> Burstein, *supra* note 21, at 323; see *supra* note 137 (Vick’s rehabbed dogs).

human behavior.<sup>139</sup>

‘Any dog—literally any dog—can be a bad dog if the owner is a bad owner or the breeder is a bad breeder[.]’<sup>140</sup>

Where a dog that does not exhibit “bad” behavior is punished just for the way it looks, that dog’s character is wrongly overshadowed by the “influence of the public’s perception of the breed.”<sup>141</sup> Punishment should fall on the shoulders of irresponsible owners who allow dogs regardless of breed to run loose and to cause harm.<sup>142</sup> Laws “are enacted to regulate and respond to human behavior – not canine behavior.”<sup>143</sup> “The inherent failure of . . . BDL is in its failure to recognize that people should be responsible for controlling their animals.”<sup>144</sup> Breed-based bans fail both “by ignoring the effects of ownership and environment on a dog’s behavior and by ignoring or eliminating the rights of responsible owners.”<sup>145</sup>

Regulations pertaining to injuries caused by dogs should not infringe on the rights of responsible dog owners. Existing insurance regulations require many dog owners to choose between home ownership and the sharing their lives with members of their family.<sup>146</sup>

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<sup>139</sup> Cunningham, *supra* note 17, at 39.

<sup>140</sup> Mike McKee, *A Legal Career Goes to the Dogs: L.A. Solo Represents the Human Victims of Canine Attacks*, RECORDER (Dec. 27, 1999), <http://dogbitelaw.com/press/legal-career-goes-to-dogs-the-recorder-profile-kenneth-phillips>; *see also* Lisa Fernandez, *Chihuahuas Attack Officer*, CONTRA COSTA TIMES, Dec. 31, 2005, at F4 (reporting that a police officer, attacked by five Chihuahuas, was treated at a hospital for bites inflicted mostly around the ankles).

<sup>141</sup> Geordie Duckler, *On Redefining the Boundaries of Animal Ownership: Burdens and Benefits of Evidencing Animals’ Personalities*, 10 ANIMAL L. 63, 79 (2004), [https://www.animallaw.info/sites/default/files/vol10\\_p63.pdf](https://www.animallaw.info/sites/default/files/vol10_p63.pdf).

<sup>142</sup> *See, e.g.*, Hussain, *supra* note 9, at 2877–78. In Michigan, if a dangerous dog fatally attacks a person, the state may charge the owner with involuntary manslaughter. *Id.* (citing MICH. COMP. LAWS ANN. § 287.323(1) (West 2003)).

<sup>143</sup> McKenna, *supra* note 33, at 5.

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

<sup>145</sup> Hussain, *supra* note 9, at 2883.

<sup>146</sup> Huss, *supra* note 100, at 125–26. Many pet owners consider their animals to be family members. *Id.* at 70. (citing AM. VETERINARY MED. ASSN. (AVMA), U.S. PET OWNERSHIP & DEMOGRAPHICS SOURCEBOOK 12, 16 (2002)). Relying on surveys that indicate that 71% of people with dogs and 64% of people with cats consider their companion animals to be like a child or family member, and 93% of these people agree that the benefits of having a pet are companionship, love, company, and affection. Huss, *supra* note 9, at 1134, 1136 (citing AM. PET PROS. MFRS. ASS’N, 2007-2008 APPMA NATIONAL PET OWNERS SURVEY 7 (2007)). “Surveys have found that twenty to almost fifty percent of people would refuse rescue assistance if it meant leaving their pets behind.” Huss, *supra* note 9, at 1136; *see also* *Nearly*

“Preventing law-abiding homeowners from obtaining insurance is not the answer to the problem of dog bites. Better and more effective alternatives exist” so that there is no need for insurance exclusions.<sup>147</sup> Requiring proof of spay or neuter would be a positive step as studies indicate that on the whole spayed or neutered dogs act more peaceably.<sup>148</sup> Other constructive solutions would include, developing stronger and more reliable statistics as to dog bites and breeds that are the cause, enforcing existing laws more vigorously, and controlling the population of strays and dogs that are permitted off leash.<sup>149</sup> Conversely, a complete exclusion on dog bites would not be effective because plaintiffs may be left with no means of recovery against an uninsured owner even where liability can be proven.<sup>150</sup> As the best predictor of future behavior is past behavior, insurers may be justified in charging higher premiums, or in denying coverage to those who own dogs that have unjustly bitten in the past.<sup>151</sup> “Risk classification is an accepted practice in the insurance industry[,]” therefore insurers can “write policies for families with ‘dangerous’ dog breeds [and] . . . [under those circumstances charge] higher premiums.”<sup>152</sup>

Insurers may write policies that exclude injuries resulting from dog fighting.<sup>153</sup> This would be “a socially acceptable solution

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*Half of Americans Won't Flee Without Fido*, PRNEWSWIRE (Oct. 15, 2007), <http://www.prnewswire.com/news-releases/nearly-half-of-americans-wont-flee-without-fido-58575947.html> (citing to a survey showing that forty-seven percent of people in the U.S. would refuse rescue assistance if it would require leaving without their family pet). Compare with Leslie Irvine, *Providing for Pets During Disasters: An Exploratory Study* (2004) <http://www.colorado.edu/hazards/research/qr/qr171/qr171.html>.

<sup>147</sup> Cunningham, *supra* note 17, at 60 (citing Dan Hattaway, *Dogs and Insurance*, 210 J. AM. VETERINARY MED. ASS'N 1143, 1143 (Apr. 15, 1997)); see, e.g., Hussain, *supra* note 9, at 2883. Calgary, Canada, halved the number of aggressive dog incidents through strict enforcement of its licensing laws. Brian C. Anderson, *Scared of Pit Bulls? You'd Better Be!*, CITY J. (Spring 1999), [http://www.city-journal.org/html/9\\_2\\_scared\\_of\\_pit.html](http://www.city-journal.org/html/9_2_scared_of_pit.html).

<sup>148</sup> See, e.g., McNeely & Lindquist, *supra* note 91, at 107 (citing statistical data on the comparative aggressiveness of unneutered male dogs in KAREN DELISE, FATAL DOG ATTACKS: THE STORIES BEHIND THE STATISTICS 9–12 (2002) “[U]nneutered males are 2.6 times more likely to bite than neutered males, and male dogs are 6.2 times more likely to bite than females.” McNeely & Lindquist, *supra* note 91, at 143 n.112.

<sup>149</sup> Cunningham, *supra* note 17, at 61.

<sup>150</sup> *Id.* at 58. The homeowner would be solely responsible for the judgment, lose any equity in home, car, savings, and/or have wages garnished. *Id.*

<sup>151</sup> *Id.* at 5.

<sup>152</sup> *Id.* at 58.

<sup>153</sup> *Id.* at 36. “Dogfighting today appears to be more culturally prominent than at any time since British queen Elizabeth I openly attended dogfights and bear-

because of the unclean hands of the [purported] ‘victims.’”<sup>154</sup> “Insurers and local governments could partner . . . to educate the public about . . . ways of socializing and approaching dogs.”<sup>155</sup> This would begin to remedy the part of the problem that is caused by irresponsible dog ownership, as “[the] dog is [only] as good as his owner trains him to be.”<sup>156</sup>

“Given the benefits of interacting with companion animals to such a . . . [majority] of the U.S. population, it is [imperative] . . . the legal system . . . facilitate responsible pet ownership.”<sup>157</sup> The AKC “believes that insurance companies should determine coverage of a dog-owning household based on the dog’s deeds, not the dog’s breed.”<sup>158</sup> “If a dog is a well-behaved member of the household and the community, there is no reason to deny or cancel coverage.”<sup>159</sup> “In fact, insurance companies should consider a dog an asset, a natural alarm system whose bark may deter intruders and prevent potential theft.”<sup>160</sup>

To this end, AKC “offers a Canine Good Citizen program – an education and certification program that emphasizes responsible dog ownership and training for dogs and owners alike.”<sup>161</sup> “Governmental entities across the United States have endorsed this program as a means by which to reduce the incidence of dog bites.”<sup>162</sup> Such programs should be instructive for insurance companies in appreciating dog ownership in today’s society and coming to a better understanding so that breed bans are not the only solution.<sup>163</sup>

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baiting events, more than 400 years ago.” Lenihann, *supra* note 35. “As of 1961, dogfighting had been technically illegal in every state for 40 years, yet dogfighters still openly advertised their ‘champions’ and ‘grand champions,’ listing by name [sic] the dogs they had defeated.” *Id.*

<sup>154</sup> Cunningham, *supra* note 17, at 36.

<sup>155</sup> *Id.* at 63.

<sup>156</sup> *Id.* at 61.

<sup>157</sup> Huss, *supra* note 100, at 72.

<sup>158</sup> *Canine Legislation Position Statement*, AM. KENNEL CLUB, [http://www.akc.org/pdfs/canine\\_legislation/position\\_statements/Homeowners\\_In\\_surance\\_and\\_Dangerous\\_Dogs.pdf](http://www.akc.org/pdfs/canine_legislation/position_statements/Homeowners_In_surance_and_Dangerous_Dogs.pdf) (last visited Sept. 14, 2015).

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*; Cunningham, *supra* note 17, at 38.

<sup>161</sup> McKenna, *supra* note 33, at 6.

<sup>162</sup> *Id.*

<sup>163</sup> *See Become a CGC Evaluator*, AM. KENNEL CLUB, <http://www.akc.org/dog-owners/training/canine-good-citizen/evaluators/> (last visited Sept. 14, 2015); *Just What is a CGC and Why Should My Dog Get One?*, P & I DOG TRAINING, <http://www.pidogtrainingservice.com/canine-good-citizen/> (last visited Sept. 14, 2015).

## CONCLUSION

The role dogs serve has evolved from property to family member.<sup>164</sup> A majority of American households consider their dogs to be a member of the family with a growing numbers of pet owners treating them as a child.<sup>165</sup> No longer beasts of burden kept solely to serve their owners, dogs now share in all the comforts of their human companion's home.<sup>166</sup> Insurance bans on entire breeds have become increasingly unreasonable in light of state bans on BSL and the social utility of dogs.<sup>167</sup> As social perceptions of dogs have changed our laws have adjusted to reflect those changes, evidence in part by the growing bans on BSL.<sup>168</sup>

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<sup>164</sup> William Root, "Man's Best Friend": Property or Family Member? An Examination of the Legal Classification of Companion Animals and its Impact on Damages Recoverable for their Wrongful Death or Injury, 47 VILL. L. REV. 423, 423, 444 (2002).

<sup>165</sup> *Id.* at 437.

<sup>166</sup> See Brandon Keim, *Dogs and Cats Are Blurring the Lines Between Pets and People*, WIRED (Apr. 8, 2014, 6:30AM), <http://www.wired.com/2014/04/citizen-canine-cats-dogs-personhood/>.

<sup>167</sup> See Cunningham, *supra* note 17, at 56; Coren, *supra* note 93; *Breed Specific Legislation (BSL) FAQ*, NAT'L CANINE RES. COUNSEL, <http://nationalcanineresearchcouncil.com/dog-legislation/breed-specific-legislation-bsl-faq/> (last updated Aug. 11, 2014).

<sup>168</sup> *Breed Specific Legislation (BSL) FAQ*, *supra* note 167.