

“WHAT IS A DANGEROUS DOG?” -

A LOOK AT THE PENNSYLVANIA DANGEROUS DOG LAWS
AND THE CONTROVERSY SURROUNDING BREED SPECIFIC LEGISLATION

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The Department of Agriculture covers many different areas of legislation, from amusement park rides, to farming laws and the dog laws. Though no one is completely sure why the dog laws fall within agricultural territory, it has been suggested that it stems from the fact that farmers began the raising and selling of dogs after tobacco became an inadequate source of income. For whatever reason the Department of Agriculture controls the dog laws, there is one thing certain: the Pennsylvania Dog Laws are a very controversial issue and politicians who attempt to tackle them are brave, to say the least.

The Pennsylvania Dog Laws cover many topics, including licensing, breeding, housing, and of course one of the most controversial topics, dangerous dogs. This paper is going to focus mainly on the Pennsylvania Dog Laws with regard to Dangerous Dogs. It will start with a basic discussion of the statutes governing dangerous dogs, then move onto case law regarding the interpretation of these statutes and amendments thereto. From there the paper will move into the more controversial issue of breed specific legislation and breed banning in states, municipalities, and even the private sector throughout the United States. Finally the paper will discuss the possible future for dangerous dogs in the State of Pennsylvania.

I. OVERVIEW OF THE PENNSYLVANIA DANGEROUS DOG STATUTE

Under the Pennsylvania Dog Laws definition section, a “Dangerous Dog” is defined as “a dog determined to be a dangerous dog under section 502-A.”¹ According to Section 502-A “[a]ny person who has been attacked by one or more dogs, or anyone on behalf of the person, a person whose domestic animal, dog or cat has been killed or injured without provocation, the state dog warden or the local police officer may file a

¹ 3 Pa. Stat. Ann. §459-102 (2009).

complaint before a magisterial district judge charging the owner or keeper of the dog with harboring a dangerous dog.”² “The owner or keeper of the dog shall be guilty of the summary offense of harboring a dangerous dog if the magisterial district judge finds beyond a reasonable doubt that the following elements of the offense have been proven: (1) the dog has done any of the following: (i) inflicted severe injury on a human being without provocation on public or private property; (ii) killed or inflicted severe injury on a domestic animal, dog or cat without provocation while off the owner’s property; (iii) attacked a human being without provocation; (iv) been used in the commission of a crime; [and] (2) the dog has either or both of the following: (i) a history of attacking human beings and/or domestic animals, dogs or cats without provocation, (ii) a propensity to attack human beings and/or domestic animals, dogs or cats without provocation[, which] may be proven by a single incident of the conduct described in (1)(i), (ii), (iii), or (iv); [and] (3) the defendant is the owner or keeper of the dog.”³

The result of the magisterial judge finding that a person is guilty of harboring a dangerous dog is that the dog is thereby classified as a dangerous dog for the purpose of the statute.⁴ Once a dog has been determined to be a dangerous dog the “Certification of Registration” requirement under 502-A becomes effective. According to that requirement “it is unlawful for an owner or keeper to have a dangerous dog without a certificate of registration issued under [article V-I].”⁵ Section 503-A lays out the requirements for the “Certificate of Registration” and gives the owner or keeper of the dog 30 days after

² 3 Pa. Stat. Ann §459-502-A (2009).

³ Id.

⁴ Id.

⁵ Id.

“receiving written notification from [the Department of Agriculture] that the dog has been determined to be dangerous . . . [to] comply with all the provisions of [section 503-A].”⁶

Section 503-A states that “[t]he owner or keeper of a dog who has been convicted of harboring a dangerous dog shall do all of the following: (1) Present sufficient evidence of a proper enclosure to confine a dangerous dog and the posting of a premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog. (2) Pay court-ordered restitution to a victim of a dangerous dog. (3) Permanently identify the dangerous dog by having a microchip implanted in the dangerous dog (4) Have the dangerous dog spayed or neutered (5) Obtain: (i) a surety bond in the amount of \$50,000 issued by an insurer authorized to do business within the Commonwealth, payable to any person injured by the dangerous dog; or (ii) a policy of liability insurance, such as homeowner’s insurance, issued by an insurer authorized to do business within the Commonwealth in the amount of at least \$50,000, insuring the owner for any personal injuries inflicted by the dangerous dog. The policy shall contain a provision requiring the secretary to be named as an additional insured for the sole purpose of being notified by the insurance company of cancellation, termination or expiration of the liability insurance policy.”⁷

There are other requirements imposed on the owner or keeper of a dangerous dog by section 503-A. “(1) The owner shall maintain and not voluntarily cancel liability

⁶ 3 Pa. Stat. Ann. §459-503-A (2009).

⁷ Id.

insurance required by this section during the period for which licensing is sought unless the owner ceases to own the dangerous dog prior to expiration of the license. (2) The owner or keeper shall notify the Bureau of Dog Law Enforcement, the State dog warden and the local police department within 24 hours if a dangerous dog is on the loose, is unconfined, has attacked another animal, has attacked a human being, had died or has been sold or donated. If the dangerous dog has been sold or donated, the owner shall also provide the Bureau of Dog Law Enforcement and the State dog warden with the name, address, and telephone number of the new owner or new address of the dangerous dog. (3) The new owner or keeper of the dangerous dog shall be required to comply with all of the provisions of [Act V-A] and regulations pertaining to a dangerous dog.”⁸

As for the control of a dangerous dog, that is regulated by section 504-A of the Pennsylvania Dangerous Dog Act.⁹ According to the act, “it is unlawful for an owner or keeper of a dangerous dog to permit the dog to be outside the proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person.”¹⁰ Section 504-A also mandates that “the muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal or from destroying property with its teeth.”¹¹

⁸ Id.

⁹ 3 Pa. Stat. Ann. §459-504-A (2009).

¹⁰ Id.

¹¹ Id.

The Pennsylvania Dangerous Dog Act also mandates that “the [Department of Agriculture] shall promulgate regulations for the establishment of a State registry for dangerous dogs.”¹²

Section 505-A of the Dangerous Dog Act provides for penalties for not complying with the requirements of the Act as well as for attacks by dangerous dogs. Under section 505-A subsection (a) “the owner or keeper of a dangerous dog . . . commits a misdemeanor of the third degree if: (1) the dangerous dog is not validly registered under [Act V-A], (2) the owner or keeper of the dangerous dog fails to comply with the provisions of section 503-A or 504-A, (3) the dangerous dog is not maintained in the proper enclosure, (4) the dangerous dog is outside of the dwelling of the owner or keeper of outside of the proper enclosure and not under physical restraint of the responsible person, (5) the dog is outside the dwelling of the owner without a muzzle, regardless of whether the dog is physically restrained by a leash, [or] (6) the dog is outside the dwelling of the owner or a proper enclosure without a muzzle and unsupervised, regardless of whether the dog is physically restrained by a leash.”¹³ Any subsequent violation under subsection (a) is considered a misdemeanor of the second degree, punishable by “a fine not to exceed \$5,000, plus the costs of quarantine, kennel charges and destruction of the dangerous dog.”¹⁴ If a subsequent violation occurs “[t]he dangerous dog [is to be] forfeited immediately by the owner or keeper to a dog warden or police officer and shall be placed in a kennel, or, if necessary, quarantined for a length of

¹² 3 Pa. Stat. Ann. §459-506-A (2009).

¹³ 3 Pa. Stat. Ann. §459-505-A (2009).

¹⁴ Id.

time to be determined by the department. After a period of 10 days, if not appeal has been filed and the necessary quarantine period has elapsed, the dangerous dog shall be destroyed humanely in an expeditious manner. If an appeal is filed, the dangerous dog shall remain confined at the owner's expense until the proceedings are completed." If a dangerous dog attacks a person or a domestic animal, dog or cat, the dog owner or keeper shall be guilty of a misdemeanor of the second degree, if the attack causes severe injury or death the owner or keeper shall be guilty of a misdemeanor of the first degree.¹⁵ The penalty for these two types of attacks is the same as the penalty for subsequent violations with respect to the dog. The dog is seized, placed in quarantine, and if no appeal is filed within 10 days the dog is to be humanely destroyed; or if an appeal is filed the dog remains in quarantine until the proceedings are completed.¹⁶ The costs of all of this are to be borne by the owner of the dangerous dog.¹⁷

Section 505-A also calls for mandatory reporting of dog attacks. According to the act "all known incidents of dog attacks shall be reported to the State dog warden, who shall investigate each incident notify the department if a dog has been determined to be a dangerous dog . . . [and] shall file a written report summarizing the circumstances of the attack with the police in the municipality where the owner of the dog resides or . . . where the attack occurred [and] the report shall be available for public inspection."¹⁸

There is another section within the Pennsylvania Dog Laws, outside of the act concerning dangerous dogs, which deals with dog bites. Section 502, titled Offenses of

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ 3 Pa. Stat. Ann. §459-505-A(e) (2009).

Dogs, deals with dog bites and the detention and isolation of dogs.¹⁹ According to section 502, “any dog which bites or attacks a human being is to be confined in quarters approved by a designated employee of the Department of Health, a State dog warden or employee of the Department of Agriculture, an animal control officer or a police officer . . . for a minimum of ten days.”²⁰ As for bite victims, “the investigating officer is responsible for notifying the bite victim of the medical results of the offending dog’s confinement [and a]ny cost to the victim for medical treatment [resulting from the bite or attack] must be paid [in full] by the owner or keeper of the dog.”²¹ Section 502 also discusses the fact that “medical results” within the act refers to “information as to whether the quarantined dog is still alive and whether it is exhibiting any signs of being infected with the rabies virus.”²² This section also notes that “if a nonlethal test for rabies is developed, the term [‘medical results’] shall mean the results of the test” and not the meaning discussed previously.²³ There is an exception to the confinement requirement for service dogs and police dogs that bite or attack in the line of duty and are “under the active supervision of a licensed doctor of veterinary medicine.”²⁴

II. CASE LAW INTERPRETATION OF THE DANGEROUS DOG STATUTE

¹⁹ 3 Pa. Stat. Ann. §459-502 (2009).

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

²⁴ Id.

The sections of the Pennsylvania Dog Laws regarding dangerous dogs and dog attacks are purposely broad. There is a lot of case law dealing with these statutory acts, discussing things such as what works to establish that a dog has a “propensity” to attack and whether there is a difference between a “vicious” dog and a “dangerous” dog. I will discuss some cases that offer a deeper insight into how the dangerous dog laws actually apply.

A. CRIMINAL CASES

In Commonwealth v. Bender, a 1996 case, the defendant was cited for maintaining a “dangerous dog” under section 502-A of the Pennsylvania Dog Law.²⁵ The defendant appealed after the district justice declared that the defendant’s dog was, in fact, a dangerous dog.²⁶ The defendant owned two dogs, a Husky and a Rottweiler. The Husky had a history of attacking cats, but the Rottweiler had never attacked any cats or people. The defendant’s neighbor was a cat owner. The two dogs escaped from defendant’s yard and were spotted with the neighbor’s cat in their mouths. The defendant got rid of the Husky after the incident, but kept the Rottweiler. Defendant argued that the Rottweiler was not a dangerous dog because it had no propensity or history of attacking cats, there had been neither prior problems with the dog nor any subsequent problems. Under section 502-A “the determination of a dog as a dangerous dog shall be made . . . upon evidence of a dog’s history or propensity to attack without provocation based upon an incident in which the dog . . . killed or inflicted severe injury on a domesticated animal

²⁵ Commonwealth v. Bender, 27 Pa. D.&C. 4th 153 (Pa. C.P. 1994).

²⁶ Id.

without provocation while off the owner's property."²⁷ From that provision the court determined that a "single incident [was] not necessarily determinative on the issue of whether a dog is a dangerous dog, otherwise the legislature would have so provided."²⁸ The court further held that the Rottweiler had no prior history of aggressiveness toward cats and only attacked the cat in this case because the Husky did so.²⁹ Therefore the Rottweiler is not a dangerous dog and the defendants are not guilty of harboring a dangerous dog.³⁰

The case of Eritano v. Commonwealth dealt with whether or not prior knowledge of a dangerous propensity was a requirement for the summary offense of harboring a dangerous dog.³¹ The facts are as follows: appellants, the Eritanos, permitted their children to visit the home of the Figleys. While there, their youngest daughter, Lauren, age 5, was given a piece of chicken. The Figley's dog, an Akita breed, lunged for the chicken that Lauren had and in doing so ended up biting the child on the face and neck causing multiple lacerations, which resulted in plastic surgery and permanent scarring. The dog had never attacked or bit an individual prior to this incident. The Eritanos filed a complaint with the district justice. Following a hearing, the district justice declared the dog dangerous, but the court of common pleas vacated the decision, holding that the dog was merely acting on its instincts when it bit at the meat the child was holding.³² The

²⁷ Id. at 156.

²⁸ Id.

²⁹ Id. at 156-7.

³⁰ Id. at 157.

³¹ Eritano v. Commonwealth, 547 Pa. 372 (1997).

³² Id. at 375-6.

Commonwealth Court affirmed the common pleas decision, “reasoning that before a determination of dangerousness can be made, evidence of the dog’s ‘history or propensity to attack’ must be demonstrated.”³³ In this case, the court believed that the dog’s history did not reveal any dangerous behavior and agreed with the court of common pleas that the injuries to Lauren were incidental, as the dog did not attack the child.³⁴ The holding was appealed by the Eritanos to the Supreme Court of Pennsylvania. The Supreme Court disagreed with the determination that the dog did not attack Lauren, arguing that “it would be contrary to the purpose of the Act to hold that a child whose injuries were so severe as to require plastic surgery had not been attack by the animal that inflicted the wounds.”³⁵ “If the lower courts’ narrow interpretation were to be adopted, a dog could repeatedly inflict severe injury upon individuals and not be declared dangerous if the injuries were inflicted while the animal was ‘playing’ or, as in this case, attempting to recover food.”³⁶ Meaning, “each incident would not be considered an ‘attack’ and therefore a ‘history or propensity to attack’ could never be established.”³⁷ The Supreme Court determined that the child was, in fact, attacked by the dog. However, it refused to find the Figleys guilty of harboring a dangerous dog, because it agreed with the Commonwealth Court that no history or propensity of dangerousness was established. The appellants, Eritanos, contend that one instance of a dog attack is sufficient to declare

³³ Id. at 376.

³⁴ Id.

³⁵ Id. at 377.

³⁶ Id.

³⁷ Id.

the animal as dangerous. The Supreme Court disagreed. The Court determined that the words “history” and “propensity” within the statute clearly “implies successive occurrences” and therefore more than one event is required.³⁸ “The statutory language does not refer to an isolated incident, but rather a continued pattern of behavior.”³⁹ The Court reasons that “an incident” in which the dog attacks, as stated in the statute, refers to the event that brings the question of a dog’s dangerousness before the district justice, however, the determination of the dog as dangerous must be based on evidence of a “history or propensity to attack.”⁴⁰ Although it was established that the dog did attack Lauren, there was no evidence to show that the dog had a “history or propensity to attack”; therefore, the dog Commonwealth Court was correct to affirm the determination that the dog was not dangerous.⁴¹

From the Bender, and Eritano cases it is obvious that the court believed that the intention of the legislature was to make sure that the owner of a dog is put on notice as to the dog’s nature to attack and that a “propensity” or “history” of attacking is established before determining that the dog in questions is a “dangerous dog.”⁴² The common law rule at this time also provided “that the dog owner was only liable for injuries inflicted by his dog if he knew or had reason to know of the dog’s propensity to be dangerous.”⁴³ This concept became known as “the ‘one bite rule’ since one instance of a dog biting an

³⁸ Id. at 379.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id. at 379-80.

⁴² Bender, 27 Pa. D.&C. 4th 153; Eritano, 547 Pa. 372.

⁴³ Eritano, 547 Pa. 372 at 379 n.9.

individual would put an owner on notice of the dog’s vicious propensity and make the owner liable for subsequent acts of a similar character,” but not liable for that first bite.⁴⁴ However, as a response to Erintano, (which was argued in 1996 and decided in 1997), the Legislature issued the 1996 amendments to the dog laws, including the act regarding dangerous dogs.⁴⁵ These amendments made it clear to the courts that it was not the legislature’s intention to allow this “first bite” exception. The abolition of the “one bite rule” occurred in the case of Commonwealth v. Hake.⁴⁶

In Commonwealth v. Hake the appellant was found guilty of a summary offense of harboring a dangerous dog in violation of the “Dangerous Dog Statute” of the Pennsylvania Dog Law and was fined \$200.⁴⁷ On appeal the court addressed on first impression whether or not under the 1996 amendments to the statute, owners or keepers of dogs should be criminally liable for every unprovoked attack on a human being, including the first one.

The facts in Hake are as follows.⁴⁸ The 7 year old victim was returning home from school when a Pit Bull Terrier ran out of a house and bit the child on the leg. A passerby tried to help but was physically unable to restrain the dog, so she ran across the street for help. The dog pursued the woman across the street and grabbed her leg causing her fall; the dog then continued to bite down on the woman’s leg. An officer approached the scene while the dog was still on top of the woman. At that same time, the defendant

⁴⁴ Id.

⁴⁵ Erintano, 547 Pa. 372.

⁴⁶ Commonwealth v. Hake, 738 A.2d 46 (Pa. Commw. Ct. 1999).

⁴⁷ Id.

⁴⁸ Id.

arrived on the scene and dislodged the dog from the victim and put the dog in her car. The defendant was issued a citation which read that the defendant was the “owner or keeper . . . harboring a dog named ‘Ice’ [a male pitbull] that did attack two people without provocation”⁴⁹ The trial court found the defendant guilty of harboring a dangerous dog.⁵⁰

On appeal the defendant argued that “the Court’s imposing criminal liability on the keeper of a dog for the dog’s first attack is contrary to Pennsylvania law and that the 1996 amendments to the Dog Law did not change the longstanding rule that an owner must have notice of a dog’s vicious propensity to be held liable for an attack.”⁵¹ The court determined that the defendant’s argument is flawed, as the 1996 amendments no longer require that the dog be found specifically “dangerous.”⁵² “After the amendments, the Senate imposes liability where . . . a dog, while on public or private property, inflicts severe injury on a human being without provocation”⁵³ The court also notes that “the 1996 amendments specifically provide that the propensity to attack may be proven by a single incident of the infliction of severe injury or attack on a human being”⁵⁴ Therefore the court was clearly within its limits to find a “‘propensity’ to attack human beings by virtue of the attack in question, even if it [was] only the first attack.”⁵⁵ The

⁴⁹ Id. at 47.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ Id. at 48.

⁵⁴ Id. at 49.

⁵⁵ Id.

court realized that this interpretation may impose absolute criminal liability for any unprovoked attack by the dog, but believes that such an interpretation is not without basis in the dog statute.⁵⁶

The defendant also argued that “criminal liability generally requires ‘scienter’, and that under cases interpreting the prior language of the Statute, the courts held that the owner must have not only actual knowledge of propensity of the dog to attack, but must have constructive knowledge that the attack at issue was forthcoming.”⁵⁷ The court held that this argument was clearly not applicable after the 1996 amendments and that “scienter” is not a necessary element of a violation.⁵⁸ “The 1996 amendments added specific words such as ‘single incident’ to ensure that where it is clear from one attack that a dog is dangerous, . . . the ‘owners or keepers’ [of said dog] are criminally liable for the summary offense of harboring a dangerous dog.”⁵⁹ “The 1996 amendments effectively removed the previous ‘one free bite’ interpretation and the Statute now permits liability for the dog’s first bite.”⁶⁰ Therefore, the court affirmed the summary offense conviction and appellant was held criminally liable for the attack committed by her dog, despite the fact that it was the dog’s first attack.⁶¹

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id. at 50.

⁶⁰ Id.

⁶¹ Id.

In Commonwealth v. Baldwin, the court was again forced to determine whether or not a single incident was sufficient to establish a propensity to attack; as well as whether or not the statute required that the injury inflicted be severe.⁶² In Baldwin, the appellant owned a dog that attacked and bit her neighbor, Mrs. Molster, when she was walking home. The dog at issue was a 105-pound mixed breed Labrador. The dog jumped on Mrs. Molster, knocking her down and causing her to bruise her hip and elbow, and impinge a nerve on her elbow as well. The dog also clamped his mouth down on Mrs. Molster's finger, causing lacerations on the top portion of the finger, but no puncture wounds on the bottom portion. As a result of these injuries Molster was required to undergo four weeks of physical therapy. The Defendant, Baldwin, was charged with violating Section 502-A of the Dog Law and was found guilty after a hearing before a District Justice.⁶³ Baldwin appealed to the trial court, which also found her guilty of harboring a dangerous dog. The "[d]og had a propensity to attack human beings without provocation as evidenced by the attack on Molster when she was simply walking home and did not excite or provoke him and tried to retreat from his advances."⁶⁴ The issue on appeal was whether "the dog has either or both a history of attacking human beings and/or domestic animals without being provoked and/or a propensity to attack human beings without provocation."⁶⁵ This is the element that Baldwin contends has not been met.⁶⁶ The court discusses the Hake case and the holding that "the 1996 amendments specifically provide that the propensity to attack

⁶² Commonwealth v. Baldwin, 767 A.2d 644 (Pa. Commw. Ct. 2001).

⁶³ Id. at 645.

⁶⁴ Id. at 646.

⁶⁵ Id.

⁶⁶ Id.

may be proven by a single incident of the infliction of severe injury or attack on a human being.”⁶⁷ The court also notes that the 1996 amendments to the Dog Law “clearly address the legislature’s response to holdings, such as Eritano, which required multiple incidents before liability could . . . be established.”⁶⁸ The legislature added the “single incident” language within the amendments in order to ensure that the court had no difficulty in interpreting their intentions to hold the owner of a dog criminally liable for the summary offense of harboring a dangerous dog where it is clear from one attack that a dog is dangerous.⁶⁹ The defendant concedes that a single incident is sufficient to establish a propensity to attack. As for the severity of the injury, the defendant argues that the dog’s “single action of pushing down Molster and not biting down on her finger, as evidenced by a lack of puncture wounds on the bottom portion of her finger, does not reach the level of severity or deliberateness needed to show a propensity to attack from a single incident.”⁷⁰ “[N]othing in Section 502-A . . . requires that the injury from the single incident be severe, but only that the single incident shows a propensity of the dog to attack human beings as deduced from the nature of the attack.”⁷¹ In this case “there was more than sufficient evidence to support the trial court’s finding that this single incident evidenced the propensity of [the dog] to attack humans because it attacked and bit

⁶⁷ Id. (citing Hake, 738 A.2d 46).

⁶⁸ Baldwin, 767 A.2d at 646 (citing Eritano, 547 Pa. 372).

⁶⁹ Baldwin, 767 A.2d at 646-47.

⁷⁰ Id. at 646.

⁷¹ Id.

Molster without provocation.”⁷² Therefore, the court upheld the conviction of Baldwin for harboring a dangerous dog.

In Commonwealth v. Austin, the court was again called upon to discuss the “severe injury” language of the statute.⁷³ Robert Austin owned a dog that he kept on his property, which adjoined the property of Valerie Tantlinger, the victim.⁷⁴ Valerie was walking near the rear of her property when she heard a noise behind her and turned just in time to see Austin’s dog as it lunged at her, knocked her down, and inflicted four puncture wounds on her leg. Ms. Tantlinger was able to scare the dog away with a piece of pipe and avoid further injury. Austin was charged with and later convicted of harboring a dangerous dog. He appealed the conviction arguing that “the Commonwealth was required to prove that Tantlinger had sustained serious injuries before [he] could be found guilty of harboring a dangerous dog.”⁷⁵ According to subsection (a)(1)(i) of the Pennsylvania Dangerous Dog Law, the dog must have “inflicted severe injury on a human being without provocation on public or private property.”⁷⁶ The court determines that “a plain reading of the statute demonstrates that a dog owned by a given individual must commit only one of the offenses listed under each of subsections (1) and (2)” of the dangerous dog law.⁷⁷ According to the court, Austin’s dog was guilty of “attack[ing] a

⁷² Id. at 647.

⁷³ Commonwealth v. Austin, 846 A.2d 798 (Pa. Commw. Ct. 2004).

⁷⁴ Id. at 799.

⁷⁵ Id. at 800.

⁷⁶ 3 Pa. Stat. Ann. §459-502-A(a)(1)(i) (2009).

⁷⁷ Austin, 846 A.2d at 801.

human being without provocation” under subsection (a)(iii) of the Law.⁷⁸ The court also cited the Baldwin opinion in stating that “nothing in Section 502-A of the Dog Law requires that the injury from the single incident be severe, but only that a single incident shows a propensity of the dog to attack human beings as deduced from the nature of the attack.”⁷⁹

B. CIVIL CASES

The previously discussed cases were all criminal case where the court determined either that the owner had sufficient knowledge of the dog’s vicious tendencies or that the attack in question itself established a sufficient propensity to classify the dog as a dangerous dog. Therefore, defendants were found guilty and criminally convicted of harboring a dangerous dog. What happens if the case is a civil action, rather than a criminal one, and the defendants had no previous knowledge that their dog was vicious? That is exactly what happened in the 2005 case of Kormos v. Urban.⁸⁰

In Kormos, Jennifer Kormos brought a civil action against the Defendants, John Urban and Heather Cain in order to recover money damages for bodily injuries she sustained as a result of being bitten by the Defendants’ German Shepherd, Rockefeller. The Defendants were granted a compulsory nonsuit and Kormos appealed.⁸¹ Kormos argued that according to the amended language of the criminal statute, known as the “Dangerous Dog Law,” the Defendants may held liable for the actions of their dog

⁷⁸ Id. at 800 (citing 3 Pa. Stat. Ann. §502-A (2009)).

⁷⁹ Austin, 846 A.2d at 801 (citing Baldwin, 767 A.2d at 646).

⁸⁰ Kormos v. Urban, 2005 Pa. D.&C. LEXIS 361 (Pa. County Ct. 2005).

⁸¹ Id. at 1.

despite the fact that it cannot be proven by a preponderance of the evidence that either owner had any knowledge of the dog's alleged dangerous propensity.⁸² The issue here is that Plaintiff, Kormos, is hoping to have the criminal statute and amendments thereof apply to her civil action against the Defendants. The court refuses to extend the statute to civil litigation. "[I]n order for a dog owner to be held civilly liable for an unprovoked bite, the injured party must establish that the dog owner either knew or should have known of the dog's dangerous propensity."⁸³ "Nothing surrounding the passage of [the] amended Dog Law, nor in the amended language of the Dog Law, itself, changes the . . . necessary elements for this civil cause of action."⁸⁴ The elements required for a civil dog bite action are as follows: "(1) [that] the domestic animal displays vicious tendencies; (2) [that] the animal's owner has reason to know of know that the animal has those dangerous propensities; and (3) [that] the owner of said animal failed to prudently act in response to those vicious or dangerous propensities."⁸⁵ In this case, Kormos "failed to present sufficient evidence to establish that Defendants' dog had a vicious propensity . . . she merely presented evidence that Rockefeller bit her."⁸⁶ The court determined that aside from the fact that the dog had bitten Kormos, the evidence clearly established that the particular dog was not an aggressive domestic animal.⁸⁷ The Plaintiff also "failed to establish that either of these Defendants violated any of the sections of the amended Dog

⁸² Id. at 7.

⁸³ Id. at 5.

⁸⁴ Id.

⁸⁵ Id. at 4.

⁸⁶ Id. at 5.

⁸⁷ Id. at 5-6.

Law when this first, unprovoked attack occurred.”⁸⁸ The evidence did establish, however, that the owners of the dog had place the dog on a secure leash prior to the incident, but a third party released the dog from its leash without the owners’ permission or knowledge while the owners were not present.⁸⁹

The court states that if it were to extend this criminal statute to civil causes of action it would most “certainly have a chilling effect on pet ownership” as “every dog owner in [the] Commonwealth would be burdened with a strict liability standard.”⁹⁰ This means that every dog owner would be held civilly liable for every bite inflicted by its pet, even the first one.⁹¹ “Nothing in the legislative history reveals that the Legislature intended for this amendment of a criminal statute to apply to [civil dog bite cases].”⁹² “The purpose of the amendment [was] to ensure that pet owners do not keep dangerous animals, and to punish them if they do[; as well as] . . . provide citizens with greater protection.”⁹³ “The Legislature did not repeal the [previously] recognized duty of an owner of a domestic animal to exercise ordinary care, nor did it [affirmatively act to] extend a dog owner’s civil liability beyond the[] original parameters.”⁹⁴ “If it was the intent of the Legislature to hold dog owners strictly liable for unprovoked attacks by their

⁸⁸ Id. at 6.

⁸⁹ Id. at 10.

⁹⁰ Id. at 9.

⁹¹ Id.

⁹² Id.

⁹³ Id.

⁹⁴ Id.

animals not known to have a dangerous propensity, [it] would have stated so.”⁹⁵ The court does not believe that it is within its jurisdiction to change the common law precedent based on the amendments to a criminal statute.⁹⁶ It is also noted that none of the civil precedent cited by the Plaintiff take the position “that a dog owner can be held civilly liable for the first, unprovoked attack on another, when the dog has shown no dangerous tendency or predisposition and when the dog’s owner has not acted negligently.”⁹⁷

The result in Kormos is far different from the result in criminal situations, such as the Hake and Baldwin cases presented.⁹⁸ Basically what the previous cases have established with respect to the Dangerous Dog Law is that prior to the 1996 amendments the courts found it prudent to grant “one free bite” to dogs before establishing that the animal was dangerous. However, after those amendments any bite inflicted by the animal, including the first, was sufficient to classify the animal as a dangerous dog and criminally convict the owner of harboring a dangerous dog. Although after reading Kormos, it is obvious that civilly the court still follows the “one free bite” rule.⁹⁹ In a civil suit, the owner of the dog must have knowledge, or be in a position where they should have knowledge, that their dog has a dangerous propensity before they can be held civilly liable for damages incurred by a bite victim. But what establishes prior knowledge that the animal is dangerous? According to Snyder v. Milton Auto Parts, Inc., the court

⁹⁵ Id.

⁹⁶ Id. at 10.

⁹⁷ Id.

⁹⁸ Kormos, 2005 Pa. D.&C. LEXIS 361; Baldwin, 767 A.2d 644.

⁹⁹ Kormos, 2005 Pa. D.&C. LEXIS 361.

must determine the existence of the prerequisite knowledge on a case-by-case basis.¹⁰⁰

The facts of every case are different, and it is the specific facts of the case that establish whether or not the owner had previous knowledge of his dog's dangerous propensity.

In Snyder, the defendant owned a business known as Milton Auto Parts, Inc. where he scrapped used automobiles and salvaged the parts.¹⁰¹ The business was surrounded by a fence, inside of which were several watchdogs. Plaintiff, Snyder, was a 9 year old boy who was working across the street at a flea market. The boy had just helped a patron load a purchase into his car when he was walking back to the flea market and heard something following him. He turned and saw a large dog, which then lunged at him and grabbed the boy by the throat. The boy was knocked to the ground and suffered injuries to his neck, hand, and armpit. The trial court held that the evidence was insufficient to show that the defendant had prior knowledge of the dog's vicious propensities and entered a compulsory non-suit.¹⁰² On appeal the court was left to decide whether or not the injured boy had produced evidence from which a jury could conceivably find that the owner of the dog had prior knowledge of the dog's dangerous propensities. The evidence presented suggested that the dog attacked the boy "in the manner of a trained attack dog; that signs were placed all about the premises reading 'Beware of Dogs'; the [dog in question had been] seen on occasions prior to the attack jumping on the restraining fence and trying to get out at anyone who came around; this dog . . . had escaped from the ground on prior occasions . . .; and [all of defendant's] dogs

¹⁰⁰ Snyder v. Milton Auto Parts Inc., 285 Pa. Super. 559 (Pa. Super. Ct. 1981).

¹⁰¹ Id. at 560.

¹⁰² Id.

were locked up during the day and let out at night . . . [and] the owner should have realized that such confinement may well create dangerous propensities.”¹⁰³ Based on these facts, the court determined that the appellant presented sufficient evidence of the owner’s prior knowledge of the dog’s dangerousness such that the finder of fact could have inferred that the dogs were capable of causing harm and that the owner knew of such capabilities.¹⁰⁴ Basically, this case establishes the fact that whether or not an owner has sufficient knowledge of a dog’s dangerous propensity is to be determined on a case-by-case basis. The individual facts of each case are what work to determine whether the owner retains the level of knowledge required to impose liability.

Now that the court has established how and when to determine the dangerousness of a dog based on an incident of attack or bite; what happens if your dog is overly friendly and hurts someone while merely trying to greet them? The Superior Court of Pennsylvania addressed this issue in Clark v. Clark.¹⁰⁵ In Clark, the defendant asked his mother to take care of his dog while he was out of town. When Mrs. Clark (Plaintiff) went to her son’s house to check on the dog, the dog (a forty to fifty pound Scotch Collie) ran up behind her and struck her in the back of the knees causing her to fall and fracture her hip. The Plaintiff brought an action for damages for personal injuries. The jury returned a verdict for plaintiff, but the trial court granted the defendant’s judgment notwithstanding the verdict.¹⁰⁶ On appeal the Superior Court reversed.¹⁰⁷ The Court

¹⁰³ Id. at 561.

¹⁰⁴ Id. at 563.

¹⁰⁵ Clark v. Clark, 207 Pa. Super. 193 (Pa. Super. Ct. 1965).

¹⁰⁶ Id.

¹⁰⁷ Id. at 199.

discusses a previous case, Groner v. Hendrick, in which a Great Dane jumped on the plaintiff and knocked her down causing injury; the defendant was aware that the dog had jumped on people on previous occasions.¹⁰⁸ In Groner, the court held that “a large, strong, and over-friendly dog may be as dangerous as a vicious one, and . . . [that] the dog’s behavior at home is enough to bring knowledge to his owners, when considered together with its size and their apparent knowledge that it might jump on people.”¹⁰⁹ In Groner, the court discussed an Alabama case, which stated: “the law makes no distinction between an animal dangerous from viciousness and one merely mischievous or dangerous from playfulness, but puts on the owner of both the duty of restraint when he knows of the animal’s propensities.”¹¹⁰ In the Clark case, “the defendants admitted that the dog was playful and had a habit of jumping on people; that the dog had a talent for playing football; that the dog would strike with her body, just as a tackler would; that plaintiff had never taken care of the dog before; and that they did not advise plaintiff of the playful habit and frolicsome nature of the dog.”¹¹¹ Therefore, the court determined that the granting of judgment n.o.v. was in error and the jury was correct in concluding that the defendants were liable.¹¹² The Clark case, along with the Groner case discussed within, establishes that a large, overly-friendly dog can be just as dangerous as a vicious

¹⁰⁸ Id. at 195 (citing Groner v. Hendrick, 403 Pa. 148 (1961)).

¹⁰⁹ Clark, 207 Pa. Super. at 195-6 (citing Groner, 403 Pa.).

¹¹⁰ Clark, 207 Pa. Super. at 196 (citing Groner, 403 Pa. 148 (quoting Owen v. Hampson, 258 Ala. 228 (1952))).

¹¹¹ Clark, 207 Pa. Super. at 196.

¹¹² Id.

dog and such playful behavior warrants the determination that the dog is dangerous for purposes of the Pennsylvania Dog Law.¹¹³

In a much older civil case, the court was called upon to decide if a violation of the Dog Law constituted negligence per se on the part of the owner, thereby making them liable for the acts of their dogs even if the elements required to establish liability under the dog statute have not been met. Miller v. Hurst was a case brought by the parents of a child who was injured by the defendant's dog.¹¹⁴ At the time of the incident, in which the dog (a German Shepherd) bit the child, the dog was roaming free in the neighborhood.¹¹⁵ According to the Pennsylvania Dog Law at the time of this case, "it is unlawful for the owner or keeper of any dog to fail to keep at all times such dog either (1) confined within the premises of the owner, or (2) firmly secured by means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secured, or (3) under the reasonable control of some person, or when engaged in lawful hunting or field training accompanied by an owner or handler."¹¹⁶ The defendant, Elvin Hurst, permitted his German Shepherd dog to roam the neighborhood without restraint, and the dog ended up entering the neighboring property where Scott Miller, age six, was playing outside. When Scott attempted to pet the dog it bit him and tore open his cheek, requiring the boy to undergo plastic surgery and leaving him with a permanent scar on his face. The plaintiffs exhibited evidence that the owner of the dog was aware that the dog became nervous around children and also knew that children resided in the area and frequently played

¹¹³ Clark, 207 Pa. Super. 193; Groner, 403 Pa. 169.

¹¹⁴ Miller v. Hurst, 302 Pa. Super. 235 (Pa. Super. Ct. 1982).

¹¹⁵ Id. at 238.

¹¹⁶ Id. at 242 (citing 3 P.S. §460-702 (1965)).

outside. However, the plaintiffs failed to prove that the dog had previously exhibited vicious tendencies or had ever bitten anyone. Without evidence that the owner knew that the dog had a dangerous propensity there is no civil cause of action under the Dog Law. It was for this reason, and in reliance on the case of Freeman v. Terzuya, that the trial court entered a nonsuit.¹¹⁷ “No matter how innocent the victim may be or how serious the injury sustained, the owner of the dog is not responsible for the consequences of the dog’s bite if he has no reason to know the viciousness or dangerous propensities of the dog beforehand.”¹¹⁸ Prior to this case, the previous notion was held to be true even if the defendant owner violated the Dog Law of Pennsylvania.¹¹⁹

However, in this case the court determined that “a society which has become as urbanized as it presently exists in Pennsylvania can no longer permit dogs to run free without imposing responsibility upon their owners for damages caused to persons or property by such roving dogs.”¹²⁰ The court believed the intention of the legislature when it enacted the dog laws was to protect the public from personal injury, property damage, and other hazards created by roving dogs.¹²¹ According to the Restatement (Second) of Torts, Section 286, a “court may adopt as the standard of conduct of a reasonable man the requirements of a legislative enactment . . . whose purpose is found to be exclusively or in part (a) to protect a class of persons which includes the one whose interest is invaded, and (b) to protect the particular interest which is invaded, and (c) to protect that interest

¹¹⁷ Miller, 302 Pa. Super. at 242 (citing Freeman v. Terzuya, 229 Pa. Super. 254 (Pa. Super. Ct. 1974)).

¹¹⁸ Miller, 302 Pa. Super. at 242 (citing Andrews v. Smith, 324 Pa. 455 (1936)).

¹¹⁹ Miller, 302 Pa. Super. at 242.

¹²⁰ *Id.* at 243.

¹²¹ *Id.*

against the kind of harm which has resulted, and (d) to protect that interest against the particular hazard from which the harm results.”¹²² Therefore, the court sees no reason “for failing to adopt the requirement of the [Dog Law] statute as the standard for determining whether a person has complied with the common law duty to exercise ordinary care.”¹²³ The court then concludes “that an unexcused violation of the Dog Law is negligence per se.”¹²⁴ By so holding, the court overruled Freeman v. Terzya, and joined the “growing number of states which have acknowledged the potential danger of allowing dogs to run at large in an urban society.”¹²⁵ In this case, Hurst’s negligence in allowing his dog to roam the neighborhood at large was sufficiently connected to the injuries sustained to make out a prima facie case of negligence.¹²⁶

III. BREED SPECIFIC LEGISLATION

The most debated topic in the area of Dangerous Dog Laws is Breed Specific Legislation (BSL). Breed Specific Legislation refers to the singling out of certain breeds with respect to state laws, city ordinances, or private organizational policies. It has become a societal belief that certain breeds of dogs are more likely to attack individuals than other breeds, are stronger than other breeds, and are therefore more dangerous than other breeds. Therefore, these breeds are discriminated against with respect to laws, rules, and regulations throughout the country. The article that provided most of the information

¹²² Id. at 243 (citing Restatement (Second) of Torts §286).

¹²³ Miller, 302 Pa. Super. at 243-44.

¹²⁴ Id. at 244.

¹²⁵ Id. (citing Freeman, 229 Pa. Super. 254).

¹²⁶ Miller, 302 Pa. Super. at 245.

discussed within this paper on the topic of BSL was written by a student of Dickinson School of Law and published in the Penn State Law Review in the winter of 2004.¹²⁷ The Comment explores the constitutionality and effectiveness of BSL and proposes alternative methods of tackling society's dangerous dog problem.¹²⁸ However, so as not to be one sided, this paper will also discuss the viewpoint of those who support and encourage the continuation of BSL in America.

Today in the United States there is what could rightfully be characterized as a "dog bite epidemic."¹²⁹ "Every forty seconds, someone in the United States seeks medical treatment for a dog bite."¹³⁰ The American Veterinary Medical Association ("AVMA") estimates that one dozen dog attacks prove fatal each year.¹³¹ It is estimated that insurance companies pay out 310 million dollars annually for dog bite claims.¹³² Hospital costs alone for dog-bite related visits to the emergency rooms are estimated to be 102.4 million dollar annually.¹³³

Communities concerned with the severity of dog-bite related problems sometimes enact laws that target specific breeds for control.¹³⁴ These breed specific laws target dogs believed to pose a higher risk, such as: Pit Bulls, Rottweilers, German Shepherds,

¹²⁷ Heather K. Pratt, Comment, *Does Breed Specific Legislation Take a Bite out of Crime?*, 108 Penn St. L. Rev. 855 (2004).

¹²⁸ Id. at 857.

¹²⁹ Id. at 856.

¹³⁰ Id.

¹³¹ Id.

¹³² Id. at 857.

¹³³ Id. at 856.

¹³⁴ Id. at 857.

Huskies, Alaskan Malamutes, Doberman Pinschers, Chow Chows, Great Danes, St. Bernards, and Akitas.¹³⁵ Different actions are taken in different areas with respect to these breeds. Some municipalities simply ban certain breeds, while others allow these so called “dangerous breeds” to remain within the city limits, so long as specific requirements are met.¹³⁶ An example of these requirements comes from a Cincinnati ordinance, which allows Pit Bulls within city limits, but imposes severe restrictions, including: “(1) limiting the number of Pit Bulls to no more than one per household, (2) requiring annual police registration, with color photographs, (3) mandating tattoos and implanted microchip identification, (4) specifying confinement to mean locked pens with tops, (5) requiring Pit Bulls to be muzzled and walked on a leash no longer than three feet, (6) regulating transit, and (7) stipulating that owners purchase at least \$50,000 in liability insurance.”¹³⁷ Although Pit Bulls are often singled out in various ordinances, it is not the only breed that communities are singling out. The list of high risk dogs above basically make up the majority of dogs being “banned” or “restricted” by these acts of breed specific legislation.

Corporate America is also beginning to foray into the area of breed specific legislation. For instance, several insurance companies, fearing liability, refuse to issue policies to owners of “blacklisted breeds.”¹³⁸ However, some states have begun to propose legislation that prohibits insurers from making insurance coverage decisions

¹³⁵ Id. at 857.

¹³⁶ Id. at 871.

¹³⁷ Id.

¹³⁸ Id. at 861.

based on breed ownership.¹³⁹ Insurance companies are not the only businesses to ban breeds though. In 2002, American Airlines announced that it would no longer ship Rottweilers, Doberman Pinschers, American Staffordshire Terriers, Bull Terriers, American Pit Bull Terriers, and any mixed breeds containing one or more of those breeds.¹⁴⁰ The ban, however, was lifted in May 2003 and instead the company implemented new containment requirements for all breeds.¹⁴¹

A. CONSTITUTIONAL CHALLENGES

There have been several attempts to argue the constitutionality of breed bans, but they usually end unsuccessfully. The common challenges against the bans fall within the areas of due process infringement and equal protections rights. There are two types of due process arguments commonly brought against BSL. One being under the “Void-for-Vagueness” Doctrine, and the second being a Takings argument.

i. “VOID-FOR-VAGUENESS” DOCTRINE

Vague laws are unconstitutional because they can “trap the innocent” by failing to provide adequate knowledge of what constitutes a violation.¹⁴² There are two elements required to invoke the void-for-vagueness doctrine, “(1) the average person must be able to tell whether his or her conduct is forbidden, and (2) the legislature must establish minimal guidelines for law enforcement, ensuring that enforcement is neither arbitrary

¹³⁹ Id.

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² Id. at 862.

nor discriminatory.”¹⁴³ Several cases have tried to argue that the language “pit bull” in an ordinance or a statute is unreasonably vague and therefore requires that said regulation be declared void. However, the courts have always managed to find some way around the vagueness and keep the law intact. For example, an ordinance passed by the Village of South Port in Ohio “prohibited owning or harboring a ‘Pit Bull Terrier’ or ‘any other type of vicious dog’ within the Village limits.”¹⁴⁴ The Plaintiffs in the case challenged the use of the term “Pit Bull Terrier” as being vague enough that an owner of an American Staffordshire Terrier (a dog of the same breed as the Pit Bull Terrier, but registered with the American Kennel Club rather than the Continental Kennel Club) would not realize that this law also applied to them. “The Ohio court reasoned that because an ordinary person could easily find guidance in a dictionary or virtually any dog book to ascertain whether the ordinance applied to him or her, the ordinance was not unconstitutionally vague.”¹⁴⁵ The Ohio court also stated that “in order for a plaintiff to sustain a challenge for facial vagueness, a plaintiff must prove not that a statute or municipal ordinance is imprecise, but that there is no standard at all iterated in the law.”¹⁴⁶ A dog owner has a very low chance of success in a void-for-vagueness claim against a breed specific regulation, because “a dog owner [would] be hard pressed to argue that they do not know what kind of dog they own” and therefore do not know if the regulation applies to them.¹⁴⁷

¹⁴³ Id. at 862.

¹⁴⁴ Id. at 863.

¹⁴⁵ Id.

¹⁴⁶ Id. at 864.

¹⁴⁷ Id. at 868-69.

ii. TAKINGS ARGUMENT

Plaintiffs have also objected to the breed specific regulations on the basis that such laws result in the taking of property without just compensation. Although “many states consider dogs to be personal property, the term ‘qualified’ is still used, and dogs, as property, are treated differently from other personal property.”¹⁴⁸ According to the New Mexico courts, “such objections are without merit because when there is a legitimate exercise of police power, deprivations of private property are permissible.”¹⁴⁹ Denver, Colorado has a “Pit Bulls Prohibited” ordinance in place, and when it was challenged under the takings theory the Colorado Supreme Court struck down the plaintiff’s claim, reasoning “that the ordinance, because it permitted the owner of a Pit Bull who had a Pit Bull license and who complied with other minimum requirements to keep the dog, did not [constitute] a taking.”¹⁵⁰

iii. EQUAL PROTECTION ARGUMENT

The final theory commonly used to challenge BSL regulations is that of equal protection. There have been numerous unsuccessful equal protection challenges to BSL. For example, “[t]he Supreme Court of Kansas . . . struck down plaintiffs’ argument that a city ordinance regulating the ownership of Pit Bulls was unconstitutional because it

¹⁴⁸ Id. at 860.

¹⁴⁹ Id. at 865.

¹⁵⁰ Id.

‘singled out’ a particular breed of dog.”¹⁵¹ The court in that case stated: “The equal protection clause is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state’s objective” and that “some measure of inequality in a law’s application does not render the law unconstitutional.”¹⁵² “[I]f the law does not reach a suspect class or infringe upon fundamental rights, the law must be upheld as reasonable.”¹⁵³ Again in Denver, Colorado a plaintiff attempted to challenge the “Pit Bulls Prohibited” ordinance, this time on the grounds of a violation of the equal protection clause, and again the court struck down the argument. The Supreme Court of Colorado believed, just as the court in Kansas did, that one must determine the whether the ordinance is rationally related to the legitimate government interest.¹⁵⁴ The Colorado Supreme Court stated that “the government had a legitimate interest in protecting the health and safety of its citizens and that a law banning Pit Bulls was reasonably related to that [interest] because Pit Bull attacks are unlike other dog attacks,” they are more serious than other attacks and occur more often, and are more likely to result in death than attacks by other breeds.¹⁵⁵ In a Pennsylvania case, the court also applied the rational basis test, and determined that “the township acted reasonably when it enacted an ordinance that applied only to Pit Bulls and was likewise justified in concluding that Pit Bulls are dangerous per se.”¹⁵⁶ In a Florida case the Court of Appeals for the Third District stated

¹⁵¹ Id. at 866.

¹⁵² Id.

¹⁵³ Id.

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id. at 866-67.

that “for an equal protection claim to stand, a plaintiff must demonstrate not that he or she was treated differently from other dog owners, but that he or she was treated differently from other Pit Bull owners.”¹⁵⁷

In summary, it is very highly unlikely that a plaintiff attempting to challenge one of these breed specific legislative or municipal acts on a constitutional basis would be successful. Owning a dog is not considered a fundamental right, and dog owners are not a suspect class, and therefore laws passed to regulate dog ownership will likely be upheld so long as the laws are reasonable.¹⁵⁸

B. ARGUMENTS OPPOSING BREED SPECIFIC LEGISLATION

According to the author of the Penn State Law Review Comment, breed bans are not the answer to fixing the problem of frequent dog attacks.¹⁵⁹ Although appealing to some as a quick fix, BSL will not work in the long run. The proper focus is the dog owner, not the dog.¹⁶⁰ “The American Veterinary Medical Association (“AVMA”), the Humane Society of the United States (“HSUS”), the American Society for the Prevention of Cruelty to Animals (“ASPCA”), and the Centers for Disease Control (“CDC”) all oppose breed bans, asserting that the responsibility for dog related injuries lies with the owner, not the dog, because most often dogs that bite have not been properly

¹⁵⁷ Id. at 867.

¹⁵⁸ Id. at 868.

¹⁵⁹ Id. at 857.

¹⁶⁰ Id.

socialized.”¹⁶¹ According to the HSUS, “any dog can be dangerous.”¹⁶² Breed bans may make the public feel more secure, and they may seem like a good idea to a political attempting to show he or she is tough on dog crimes, but they are not the best solution to the dog bite problem.¹⁶³ Some more plausible alternatives to breed bans include more stringent enforcement of current laws, including the restraint and licensing laws as well as the dangerous and vicious dog laws. Also, exempting “good dogs” when breed specific legislation is enacted.¹⁶⁴

C. ARGUMENTS IN SUPPORT OF BREED SPECIFIC LEGISLATION

In an article written, somewhat ironically, by the President of People for the Ethical Treatment of Animals (“PETA”), an argument is made for a breeding ban on Pit Bulls. Ingrid Newkirk writes that unknown to many people, most Pit Bulls that end up in shelters are euthanized immediately due to the overpopulation of this breed, an action that she, as the President of PETA, supports. She argues that the only way to stop this from happening is to stop creating new Pit Bulls by banning the breeding of them.¹⁶⁵ Newkirk states “[t]hese dogs were [originally] designed specifically to fight other animals and kill them, for sport.”¹⁶⁶ “A Pit Bull can take down a bull weighing in at over a thousand

¹⁶¹ Id. at 857-58.

¹⁶² Id at 858.

¹⁶³ Id.

¹⁶⁴ Id. at 875-78.

¹⁶⁵ Ingrid Newkirk, *Controlling an animal as deadly as a weapon*, San Francisco Chronicle, June 8, 2005, http://articles.sfgate.com/2005-06-08/opinion/17375624_1_pit-peta-office-people-and-other-animals.

¹⁶⁶ Id.

pounds, so a human being a tenth of that weight can easily be seriously hurt or killed.”¹⁶⁷

She also makes the argument that Pit Bulls are the most abused breed of dogs “on the planet” which is another reason why they should be banned.¹⁶⁸ According to Newkirk, “[Pit Bulls] are kept for protection by every drug dealer and pimp in every major city and beyond . . . and [constantly have to be taken from] people who beat and [starve] them.”

In an article written after Denver issued its ban on Pit Bulls within city limits discusses what sets Pit Bulls apart as a breed and why the breed should be banned. After using Pit Bulls to take down bulls became outlawed, breeders adjusted the characteristics of the dogs to make them better at fighting other dogs.¹⁶⁹ The justification for banning the breed is not based on the argument that every Pit Bull has a higher than average propensity to attack, but rather than as a group, Pit Bulls, compared to other breeds, have a higher propensity to exhibit unique behavioral traits during an attack.¹⁷⁰ These traits include: strength, “Pit Bulls are muscular and unusually strong for their size”; manageability and temperament; unpredictability of aggression, “Pit Bull dogs, unlike other dogs, often give no warning signals before they attack”; tenacity, “Pit Bulls trained for fighting are valued for ‘gameness’ – their tenacious refusal to give up a fight”; pain tolerance, “Pit Bulls . . . would not retreat [from a fight], even when considerable pain was inflicted on the dog”; and manner of attack, “Pit Bulls inflict[] more serious wounds than other breeds because they tend to attack the deep muscles, to hold on, to shake, and

¹⁶⁷ Id.

¹⁶⁸ Id.

¹⁶⁹ Kory A. Nelson, *One City’s Experience – Why Pit Bulls are More Dangerous and Breed Specific Legislation is Justified*, Muni Lawyer, Vol 46, No. 4, July/Aug. 2005, <http://www.dogbitelaw.com/pitbullDenver.pdf>.

¹⁷⁰ Id.

to cause the ripping of tissues; Pit bull attacks [have been] compared to shark attacks.”¹⁷¹ The article also discussed expert testimony rebutting the presumption that Pit Bulls are not bred to attack humans. The expert said that although that was the case originally, the demand for the breed today means that breeders likely do not have the incentive to “cull ‘human aggressive’ dogs.”¹⁷² The expert also discussed the effect of owning multiple Pit Bulls and the “pack attack” theory that owning more than one Pit Bull leads to an increased chance of attacks and deadlier attacks at that.¹⁷³ Also, the article talks about the fact that these animals are bred to increase the frequency of their aggressive behavior, and that increased frequency cannot be lowered by further breeding.¹⁷⁴ It is for reasons such as these that the author believes that breed specific legislation should remain a viable option for cities dealing with dog attack problems.

D. PENNSYLVANIA AND BREED SPECIFIC LEGISLATION

There is currently a state law in Pennsylvania that disallows municipalities to enact breed specific legislation. According to Section 507-A(c) of the Dangerous Dog Act, “[t]hose provisions of local ordinances relating to dangerous dogs are hereby abrogated[;] a local ordinance otherwise dealing with dogs may not prohibit or otherwise limit a specific breed of dog.”¹⁷⁵ Section 507-A(d) refers to insurance coverage, and states that “no liability policy or surety bond issued pursuant to this act or any other act

¹⁷¹ Id.

¹⁷² Id.

¹⁷³ Id.

¹⁷⁴ Id.

¹⁷⁵ 3 Pa. Stat. Ann. §459-507-A (2009).

may prohibit coverage from any specific breed of dog.”¹⁷⁶ Therefore, in Pennsylvania it is illegal to discriminate against dogs based on their breed. There is nothing suggesting the Pennsylvania is, at any point in the near future, going to repeal this act and allow breed specific legislation.

E. MY OPINION ON BREED SPECIFIC LEGISLATION

As the owner, proud owner I must add, of a Pit Bull, I have formed my own opinions on the issue of Breed Specific Legislation. I personally believe that BSL is not the answer to the dog attack issues facing the United States. BSL will not help alleviate the problem. It takes responsible dog ownership and better enforcement of the dog laws already in place to keep attacks from happening. It is the owner, not the dog, responsible for the misbehavior of the dog. Any dog can be aggressive; any dog can attack a human. The way that a dog acts depends, in my opinion, almost entirely upon how it was raised. I will admit that breeding has something to do with the temperament of a dog, and the characteristics bred into the animal determine the kind of ownership and training the dog needs. However, it is the owner’s responsibility to train the dog to behave properly around humans as well as other animals. Before purchasing my dog, realizing that it was of a controversial breed and a breed that requires extra attention, I did my research. I read many articles as to the specific needs of the dog and how to train a Pit Bull to be a good house pet. Despite the fact that the dog is powerful and capable of being trained to fight, it can just as easily be trained to be a gentle family pet. After purchasing my Pit Bull I took the task of training him very seriously. My Pit Bull has grown into a perfect house pet; he has also managed to change the minds of many people who had formed negative

¹⁷⁶ Id.

opinions of the breed. I realize that Pit Bulls are not the only breed being discriminated against by BSL, other breeds are facing this legal euthanasia as well. From the information analyzed within this paper, it is my opinion that BSL is not the best option available to fix the dog attack problems facing our nation.

IV. CONCLUSION

In conclusion, the Pennsylvania Dog Laws, especially those in regards to Dangerous Dogs, are quite controversial. There has been a significant amount of court action put into the interpretation of the laws, as well as action on behalf of the Legislature to make their intentions in drafting these statutes clear. It has effectively been established that criminally, the owners of dogs are not granted leniency of “one free bite” before being convicted of the summary offense of harboring a dangerous dog. Prior to the 1996 amendments the courts had previously found this common law, “one free bite,” rule applicable to criminal cases. It was for this reason that the Legislature felt it necessary to enact the amendments to make clear that they did not intend this “one free bite” rule to apply before convicting a defendant of harboring a dangerous dog. However, civilly the “one free bite” rule still exists and allows the dog, in effect, a “free bite” before its owner is held civilly liable for the animal’s behavior. It has also been established by the courts that not only viciousness makes an dog a dangerous dog. A large, overly-friendly dog that may jump on someone and hurt them is considered just as dangerous as a vicious dog that would bite, and therefore the owners of said “overly-friendly” dog are guilty of harboring a dangerous dog.

Finally, the issue of breed specific legislation is one of the most controversial surrounding the topic of Dangerous Dogs. Breed specific laws have been enacted in several cities and by several private sector businesses throughout the country. There is much debate over whether or not these laws achieve the ends they are intended to achieve. It is the specific characteristics of these so called “vicious breeds” that cause people to want them banned. However, those who oppose BSL believe that it is not the dog that causes dog related problems, but rather irresponsible owners; therefore, banning the breed of dog does no good to stop the reprehensible behavior of the owners who made them vicious. As stated, I am of the group opposing BSL, and believe that all states should follow in the footsteps of Pennsylvania and pass laws that outlaw breed specific legislation.