

2016

Pit Bull Lives Matter: Ineffectiveness Breeds Unconstitutionality in Miami-Dade's Breed-Specific Legislation

Meghan Hays

Follow this and additional works at: <https://scholarship.stu.edu/stlr>



Part of the [Law Commons](#)

Recommended Citation

Meghan Hays, *Pit Bull Lives Matter: Ineffectiveness Breeds Unconstitutionality in Miami-Dade's Breed-Specific Legislation*, 29 ST. THOMAS L. REV. 59 (2016).

Available at: <https://scholarship.stu.edu/stlr/vol29/iss1/4>

This Article is brought to you for free and open access by the STU Law Journals at STU Scholarly Works. It has been accepted for inclusion in St. Thomas Law Review by an authorized editor of STU Scholarly Works. For more information, please contact jacob@stu.edu.

PIT BULL LIVES MATTER: INEFFECTIVENESS BREEDS UNCONSTITUTIONALITY IN MIAMI-DADE'S BREED-SPECIFIC LEGISLATION

MEGHAN HAYS*

INTRODUCTION**

"Pit Bull Attack Leaves Man Dead on South Side."¹ "3-Month-Old Boy, Mauled To Death By Pit Bull."² "Woman Mauled by Pet Pit Bull."³ Media stories over the past several decades have painted pit bull dogs as monsters and unprovoked killers. The term "Pit Bull" has become synonymous with negative words such as "dangerous," "vicious," and "killer" over the past thirty years.⁴ Despite the loyal, loving nature of these

* J.D., Florida Agricultural and Mechanical University College of Law, 2016; B.A., University of Central Florida, 2009. The author gratefully acknowledges Randall S. Abate, Professor of Law, Florida Agricultural and Mechanical University College of Law, for his valuable support and guidance.

** Brett Buchanan, *Axl Rose Launches Dog Lives Matter Movement*, Alternative Nation (Oct. 10, 2016), <http://www.alternativenation.net/axl-rose-launches-dog-lives-matter-movement/>. After a New York police officer fired a shot into a pit bull in February of 2016, Guns N' Roses frontman, Axl Rose, began a movement for the breed. *Id.* The author notes how this movement has received support across the country. While there have been numerous, important movements with similar phrasing, this title was not meant to relate to any of those other movements.

1. *Pit Bull Attack Leaves Man Dead on South Side (VIDEO)*, HUFFINGTON POST (Mar. 20, 2015, 5:12 AM), www.huffingtonpost.com/2010/01/18/pit-bull-attack-leaves-man_427024.html (reporting that a fifty-six year old man was found dead due to a pit bull attack).

2. Cavan Sieczkowski, *Rayden Eugene Bruce, 3-Month-Old Boy, Mauled to Death by Pit Bull (VIDEO)*, HUFFINGTON POST (Sept. 26, 2012, 10:50 AM), www.huffingtonpost.com/2012/09/26/rayden-eugene-bruce-3-month-old-mauled-pit-bull-texas_n_1915839.html (discussing a three-month old boy was mauled to death by a four-year-old pit bull).

3. *Woman Mauled by Pet Pit Bull in San Francisco Bay Area Home*, BREAKING2NEWS (Mar. 2, 2015), <http://www.breaking2news.com/woman-mauled-by-pet-pit-bull-in-san-francisco-bay-area-home/>; Peter Fimrite and John King, *Pregnant Pacifica Woman Killed by Family Pit Bull*, SFGATE (Aug. 11, 2011, 9:20 PM), <http://www.sfgate.com/bayarea/article/Pregnant-Pacific-woman-killed-by-family-pit-bull-2335449.php> (reporting that a woman was found mauled and killed by her pit bull); Peter Fimrite, *Pet Pit Bull Attacks, Mauls Pinole Woman*, S.F. CHRON. (Mar. 1, 2015), <http://www.sfchronicle.com/bayarea/article/Pet-pit-bull-attacks-mauls-pinole-woman-6109240.php>.

4. See Brian C. Anderson, *Scared of Pit Bulls? You'd Better Be!*, CITY J. (Spring 1999), <http://www.city-journal.org/html/scared-pit-bulls-you'd-better-be-11995.html> (arguing that the presence of pit bulls in a neighborhood can threaten a neighborhood's quality of life like prostitutes and drug dealers and endorsing characterizations of the pit bull breed as dangerous, innately aggressive and vicious, and prone to killing). See generally Jon Bastian, *How Did Pit Bulls Get Such a Bad Rap?*, CESAR'S WAY, <https://www.cesarway.com/about-dogs/pit>

dogs, they have been abused, neglected, thrown into shelters, and destroyed by the millions.⁵ Public hysteria and media hype have created a terrible reputation for this good-natured animal. As a result, breed-specific legislation has been enacted all over the world to restrict and ban these poor animals,⁶ forcing them into hiding and resulting in the destruction of approximately one million of them every year.⁷

Although breed-specific legislation has as many opponents as it does supporters, these laws have managed to remain in place for the past several decades. Miami-Dade County's pit bull ban⁸ is no exception. Miami-Dade County's pit bull ban unconstitutionally regulates pit bull dogs and their owners. Although it portrays a purpose of protecting the public, the pit bull ban is completely ineffective in reducing dog bites in Miami-Dade County and should be repealed. Despite overwhelming evidence that contradicts the negative portrayals of the pit bull breed,⁹ challenges to breed-specific laws have consistently been difficult to overcome. Various forms of breed-specific legislation have remained in place throughout the nation even though data has shown such legislation has failed to fulfill its stated goal of reducing dog bites. Breed-specific legislation ignores the real problem of irresponsible ownership and instead unfairly discriminates against animals solely because of their breed.

Part I of this Article reviews the history of the pit bull breed and the

bulls/how-did-pit-bulls-get-a-bad-rap (last visited Nov. 18, 2016) (discussing the history of the pit bull breed and the beginning change in public perception about the pit bull breed that started in the mid 1980s); Rebecca O'Connor, *The Truth About Pit Bulls*, NAT'L GEOGRAPHIC: NAT GEO TV BLOGS (Mar. 19, 2013), <http://tvblogs.nationalgeographic.com/2013/03/19/the-truth-about-pit-bulls/> (discussing the misconceptions about pit bulls that led to demonizing the breed).

5. See *A Dose of Reality*, REAL PIT BULL, <http://www.realpitbull.com/perspective.html> (last visited Nov. 18, 2016) (showing statistics indicating pit bulls' violent reputation has been exaggerated).

6. See, e.g., Dangerous Dogs Act 1991, c. 65, §§ 1–2 (Eng.), http://www.legislation.gov.uk/ukpga/1991/65/pdfs/ukpga_19910065_en.pdf (applying to various types of dogs, including "the pit bull terrier"); Dog Control Amendment Act 2003, pt 4 (N.Z.), <http://www.legislation.govt.nz/act/public/2003/0119/latest/DLM229323.html> (applying to particular dogs deemed to be dangerous and menacing); Ley 50/1999 sobre el Regimen Juridico de la Tenencia de Animales Potencialmente Peligrosos (B.O.E. 1999, 307) (Spain), <https://www.boe.es/buscar/pdf/1999/BOE-A-1999-24419-consolidado.pdf> (applying to animals potentially dangerous and penalizing potentially dangerous dog owners if the potentially dangerous dog is not properly licensed).

7. See *A Dose of Reality*, *supra* note 5.

8. MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, § 5-17 to -17.7 (2016); see also MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, § 5-17.6(b) (2016) ("No pit bull dogs may be sold, purchased, obtained, brought into Miami-Dade County, or otherwise acquired by residents of Miami-Dade County . . .").

9. See discussion *infra* Part I, Section C, Subsection 1 and notes 58–82.

“see-saw” reputation¹⁰ that pit bulls have endured. Part II of this Article describes unsuccessful constitutional challenges to breed specific legislation. Part III of this Article discusses the problems with Miami-Dade County’s breed-specific legislation and proposals for changes that do not include unconstitutionally targeting a particular breed.

I. PIT BULLS AND THE EVOLUTION OF BREED-SPECIFIC LEGISLATION

A. WHAT IS BREED-SPECIFIC LEGISLATION?

Breed-specific legislation constitutes any restrictive statute, ordinance, or other law that regulates or bans the ownership of a particular breed of dog.¹¹ Over seven hundred (700) cities in the United States have enacted breed-specific legislation of some form.¹² Breed-specific legislation can range anywhere from spay or neuter requirements; requirements on confinement or muzzling, licensing, registration, or insurance regulations; notice requirements via signage on property; to complete bans of a particular breed.¹³ Pit bulls have been the focus of breed specific legislation “based on the belief that dogs such as pit bulls possess inherent traits, like strength and aggression, which make all members of the group dangerous.”¹⁴

10. *Seesaw*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/see%20saw> (last visited Nov. 23, 2016) (defining seesaw as “a situation in which something keeps changing from one state to another and back again”); *see, e.g.*, Bastian, *supra* note 4; O’Connor, *supra* note 4. The seesaw reputation of the pit bull breed refers to how pit bulls were once thought of as gentle animals, then were labeled dangerous, and now the trend is to show that they are not as dangerous as once thought to be. *See* Bastian, *supra* note 4; O’Connor, *supra* note 4.

11. *See* Safia Gray Hussain, Note, *Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won’t Solve the Dangerous-Dog Dilemma*, 74 *FORDHAM L. REV.* 2847, 2859 (2006) (discussing ownership of a particular breed may constitute prima facie evidence of ownership of a violent dog).

12. *Breed-Specific Laws State-by-State*, DOGSBITE.ORG, <http://www.dogsbite.org/legislating-dangerous-dogs-state-by-state.php> (last visited Nov. 23, 2016). *See generally* *Breed-Specific Laws State-by-State*, *supra* (providing a listing of all the states and cities that have enacted breed-specific legislation).

13. *See Breed-Specific Legislation FAQ*, NAT’L CANINE RES. COUNCIL, <http://www.nationalcanineresearchcouncil.com/public-policy/breed-specific-legislation-faq> (last visited Nov. 23, 2016) (discussing different forms of breed-specific legislation).

14. Devin Burstein, *Breed Specific Legislation: Unfair Prejudice & Ineffective Policy*, 10 *ANIMAL L.* 313, 317 (2004).

In April of 1989, Miami-Dade County, Florida (Miami-Dade County or County), enacted an ordinance,¹⁵ which currently prohibits the acquisition or sale of any pit bull dog within the County (Miami-Dade County Ordinance or Ordinance).¹⁶ As to pit bull dogs that were *previously acquired before* the enactment date of the Ordinance, the Ordinance restricted ownership of the pit bull dogs by requiring the owners to secure the animals “at all times . . . indoors, or . . . in a securely and totally enclosed and locked pen, with either a top or with all four (4) sides at least six (6) feet high, and with a conspicuous sign displaying the words ‘Dangerous Dog.’”¹⁷ Under circumstances where the dog was not confined, the Ordinance required the owner to have it leashed and “muzzled in such a manner as to prevent it from biting or injuring any person or animal.”¹⁸ The Ordinance also mandated detailed registration by every pit bull owner through the Miami-Dade Animal Services Department.¹⁹ As pit bulls that were alive in 1989 are no longer living, the aforementioned restrictions are no longer relevant; the only relevant section of the Ordinance is the complete ban of any pit bull dogs within the County that were *newly acquired after* the enforcement date of the Ordinance. The County considers each day that a pit bull is present in the County as a separate violation; and while owners receive only civil citations for these violations, the innocent dogs are destroyed.²⁰

The State of Florida’s “dangerous dog law” prohibits restrictive legislation enacted by its municipalities based on breed.²¹ However, the Miami-Dade County Ordinance avoids invalidation under section 767.14, Florida Statutes, because the statute exempts any ordinance that was adopted *before* October 1, 1990.²² When state law to the contrary does not exist, the judicial branch has decided that municipalities may regulate

15. MIAMI-DADE COUNTY, FLA., ORDINANCE 89-22, §§ 2–8 (Apr. 4, 1989), <http://www.miamidade.gov/animals/library/pit-bull-ordinance-89-22.pdf> (amending chapter 5 of the Miami-Dade County Code of Ordinances and codified as MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, §§ 5-17 to -17.6 (2016)).

16. MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, § 5-17.6(a)–(b) (2016).

17. MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, § 5-17.2(a) (2016).

18. MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, § 5-17.2(b) (2016).

19. MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, § 5-17.4 (2016). See *generally About Us*, MIAMIDADE.GOV, <http://www.miamidade.gov/animals/about-us.asp> (last visited Dec. 6, 2016) (providing an overview of the various services and goals of the Miami Dade Animal Services Department).

20. MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, §§ 5-17.6(b) to -17.6(b)(2) (2016).

21. FLA. STAT. § 767.14 (2016).

22. *Id.*

specific dogs by their breed.²³ As the adoption of the Miami-Dade County Ordinance just falls within the time frame to be free from prohibition, and attempts to amend the provision allowing such prohibition in section 767.14, Florida Statutes, have been unsuccessful,²⁴ the Ordinance has remained in effect for the past two and a half decades.

B. HISTORY OF THE “PIT BULL”

1. Bullbaiting in England

The canine breed, now commonly known as the “pit bull,” was originally bred for bullbaiting in England.²⁵ The participants in this spectator sport bred English bulldogs and terriers to create a smaller, agile dog ideal for fighting bulls and bears.²⁶ These bull terriers were bred for “quickness, stamina, and dog- . . . targeted aggression.”²⁷ The breed was unusually strong for its size, with unwavering determination despite enduring extreme pain during the fights.²⁸ When bullbaiting was outlawed, the participants continued their breeding practices and instead began staging fights between the dogs.²⁹ Dog fighting became the new spectator sport.³⁰

Owners of these bull terriers, who bred them solely for the purpose of fighting, abused the animals in order to make them vicious in the arena.³¹ These animals were not only physically abused, but also neglected by way of food and water deprivation.³² The owners of these animals saw them as business investments; not as sentient beings.³³ Dog fighting was, and still is, a highly organized and violent spectator sport, and the matches can last

23. Karyn Grey, Note, *Breed-Specific Legislation Revisited: Canine Racism or the Answer to Florida's Dog Control Problems?*, 27 NOVA L. REV. 415, 417 (2003).

24. *Id.* at 418.

25. Hussain, *supra* note 11, at 2852 (describing bull baiting as a spectator sport in which dogs were pitted against a bull).

26. See Kristen E. Swann, Note, *Irrationality Unleashed: The Pitfalls of Breed-Specific Legislation*, 78 UMKC L. REV. 839, 841 (2010).

27. *Id.*

28. See Hussain, *supra* note 11, at 2853.

29. *Id.* at 2852.

30. *Id.*

31. Jamey Medlin, Comment, *Pit Bull Bans and the Human Factors Affecting Canine Behavior*, 56 DEPAUL L. REV. 1285, 1299–00 (2007).

32. *Id.* at 1300.

33. See *id.*

hours until one (or both) of the animals finally succumbs to injuries.³⁴ Although the dogs tore each other apart, they were bred to direct their viciousness only toward their opponent and not toward the humans who handled them.³⁵

2. Early Twentieth Century America

When immigrants from England came to America in the early twentieth century, they brought their bull terriers with them.³⁶ As the immigrants moved west across America, however, the dogs were not used for entertainment, but instead for work on the farms.³⁷ The dogs protected both the livestock and the families that owned them.³⁸ Pit bull terriers were popular family companions and became known as the “all-American dog.”³⁹ Their determination and loyalty toward their owners attracted the attention of the military and law enforcement, and pit bull terriers were used to promote and participate in World War I.⁴⁰ “Sergeant Stubby,” an American pit bull terrier, received both a purple heart and the Gold Medal of Valor for his heroism in World War I.⁴¹ Stubby not only assisted in seeking out wounded soldiers on the field of battle, but, because of his heightened senses, he was able to notify his regime of incoming artillery shells and poisonous gas attacks.⁴² Stubby’s heroism during World War I saved many American lives, assisted in the capture of a German spy, and gained the respect of many United States Presidents.⁴³

Pit bulls eventually entered the entertainment industry in the United States, but this time in a positive way. Buster Brown Shoe Company began as a comic strip featuring the talking pit bull “Tige” and his owners.⁴⁴ “Pete the Pup” from the Little Rascals was also a pit bull terrier, and was the first to be registered by the American Kennel Club as an American Staffordshire terrier.⁴⁵ Life magazine put pit bulls on its cover three times;

34. *Id.*

35. See Burstein, *supra* note 14, at 325; Hussain, *supra* note 11, at 2852–53.

36. See Medlin, *supra* note 31, at 1288.

37. *See id.*

38. *See id.*

39. See Hussain, *supra* note 11, at 2853.

40. See *Proud Pit Bull History*, PIT BULL AWARENESS COALITION, <http://www.whatapittie.org/proud-pit-bull-history> (last visited Dec. 2, 2016).

41. Medlin, *supra* note 31, at 1289.

42. *Proud Pit Bull History*, *supra* note 40.

43. *Id.*

44. *Id.*

45. Jane Berkey, *Dog Breed Specific Legislation: The Cost to People, Pets and*

more than any other breed of dog.⁴⁶ These portrayals of a loving, loyal animal are not the portrayals given to pit bull dogs now, nor in the past several decades.

3. War on Drugs

In the late 1970s, crack cocaine was introduced to America's streets and abuse of the substance was quick to spread, causing President Ronald Reagan to declare a war on drugs.⁴⁷ This crack down on the illegal activity led criminals to turn to pit bulls as the "drug-dealing accessory."⁴⁸ Criminals used pit bulls as guards to ward off law enforcement and uninvited persons from coming into their homes where drugs were being held or sold.⁴⁹ As a result, pit bulls became synonymous with gangs and the drug trade, so much so that a district court in Michigan permitted testimony about a criminal defendant's ownership of pit bull dogs to be used as evidence of the defendant's drug involvement.⁵⁰ A United States Court of Appeals in Massachusetts even held that the presence of a pit bull dog along with knowledge of drug involvement was enough to justify a "no-knock" warrant.⁵¹

C. DOG BITE STATISTICS

Concurrent with the 1970's and 1980's war on drugs was a highly publicized dog bite epidemic.⁵² A series of dog attacks around the nation prompted local governments to enact breed-specific legislation restricting or banning pit bull dogs.⁵³ The extensive media coverage of these attacks

Veterinarians, and the Damage to the Human-Animal Bond, in Breed Specific Legislation, ANIMAL FARM FOUND., INC., <http://www.animalfarmfoundation.org/files/BSL-Ebook-8-28-15.pdf> (last visited Dec. 2, 2016).

46. See *Fun Facts About Famous Pit Bulls*, CESAR'S WAY, <https://www.cesarsway.com/about-dogs/pit-bulls/pit-facts> (last visited Dec. 2, 2016).

47. Swann, *supra* note 26, at 844.

48. See *id.*

49. See *id.*

50. See *United States v. Wheeler*, 67 F. App'x 296, 300-01 (6th Cir. 2003) (affirming the district court's decision allowing testimony regarding the defendant's ownership of pit bulls to be used as evidence that the defendant possessed "'tools' of the drug trade."); Swann, *supra* note 26, at 844-45 (citing *Wheeler*, 67 F. App'x at 301).

51. See *United States v. Jewell*, 60 F.3d 20, 23-24 (1st Cir. 1995) (holding that, inter alia, the detective's personal knowledge that the defendant possessed a pit bull at the residence justified the police in making a "no-knock" entry into the residence); Swann, *supra* note 26, at 845 (citing *Jewell*, 60 F.3d at 23).

52. Swann, *supra* note 26, at 847.

53. Grey, *supra* note 23, at 417.

tarnished the reputation of the previously loved breed and casted it as inherently dangerous.⁵⁴ Despite the fact that any breed of dog can, and does, inflict serious and fatal injuries on humans, extensive coverage by the media of pit bull attacks has led to public hysteria and a generalized fear of the breed.⁵⁵

One of the main factors that have led to the banning of pit bulls is the statistics that the media and other sources have advanced as evidence of the dangerous nature of the animal.⁵⁶ Most statistics involving pit bulls, however, have been proven inaccurate by subsequent studies; thereby illustrating that breed-specific legislation is based on inaccurate data. Misidentification of the animals and media-driven hype has created erroneous statistics relating to pit bulls.⁵⁷

1. Inaccurate Numbers

Dog bite statistics regarding pit bulls are inaccurate due in large part to misidentification of the animals.⁵⁸ As the bull terrier itself was bred in England as a mix of two breeds, the label “pit bull” is merely a subgroup of the terrier breed.⁵⁹ There are three breeds recognized by the American Kennel Club (AKC) and the United Kennel Club (UKC) that constitute what have come to be known as the “pit bull.”⁶⁰ The AKC recognizes the American Staffordshire terrier and the Staffordshire bull terrier, while the UKC recognizes the American pit bull terrier.⁶¹ While all three of these breeds have common characteristics, such as “the appearance of great strength, a compact muscular frame, a broad head with pronounced cheek muscles, and short glossy hair,” these characteristics are not found solely in the pit bull type breeds, nor do they encompass the entire picture of the breed.⁶² In fact, there are approximately twenty-five (25) recognized dog breeds that have been mistaken for pit bulls.⁶³ In 2008, Dr. Victoria Voith, a professor of animal behavior at Western University, conducted a study in which she took twenty (20) shelter dogs that were labeled as “mix breed”

54. See Hussain, *supra* note 11, at 2854.

55. *Id.* at 2848, 2854.

56. See Swann, *supra* note 26, at 847, 865.

57. See *id.* at 843–44; discussion *infra* Part I, Section C, Subsection 1 and notes 58–82.

58. See Hussain, *supra* note 11, at 2870.

59. See Swann, *supra* note 26, at 840.

60. *Id.*

61. *Id.* The United Kennel Club, like the American Kennel Club, also recognizes the Staffordshire bull terrier. *Id.*

62. See Hussain, *supra* note 11, at 2852.

63. *Id.* at 2870.

from seventeen (17) different shelters and performed DNA testing on them.⁶⁴ The DNA results showed that the shelters were correct in their identification of only thirty-one (31) percent of the twenty (20) dogs whose DNA had been analyzed.⁶⁵

Aside from misidentification of the animals, another factor that leads to inaccurate dog bite statistics is the lack of recognition given toward the dog population when analyzing dog bite statistics.⁶⁶ One study, which involved data relating to dog bite-related fatalities that the United States Centers for Disease Control and Prevention gathered from the Humane Society of the United States and media accounts, analyzed dog bite-related fatalities over a period of nineteen (19) years.⁶⁷ The analysis showed a total of two hundred and thirty-eight (238) dog bite fatalities, with sixty-six (66) of those attributed to pit bull dogs.⁶⁸ The sixty-six (66) fatal bites by pit bull dogs, however, was out of a population of five million two hundred and fifty-six thousand (5,256,000) dogs, which meant that the percentage of pit bulls who fatally attacked between 1979 and 1998 was only 0.00125%.⁶⁹ By comparison, thirty-nine (39) fatal bites by rottweilers occurred from a population of nine hundred thousand (900,000) dogs, making its percentage 0.00433%; and seventeen (17) German shepherd fatalities were out of a population of seven hundred eighty thousand (780,000) dogs, producing a percentage of 0.00217%.⁷⁰

64. Ted Brewer, *Beyond Breed: New Research on the Visual Identification of Breeds Calls Into Question Breed-Discriminatory Legislation*, in BEST FRIENDS MAG. (2011), reprinted in *Breed Specific Legislation*, ANIMAL FARM FOUND., INC., <http://www.animalfarmfoundation.org/files/BSL-Ebook-8-28-15.pdf> (last visited Dec. 5, 2016).

65. *Id.*

66. Hussain, *supra* note 11, at 2870–71; see Jeffrey 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. 836, 839 (2000), https://www.avma.org/Advocacy/StateAndLocal/Documents/javma_000915_fatalattacks.pdf.

67. See Sacks et al., *supra* note 66, at 836; *Dog Bite Related Fatalities — United States, 1995–1996*, CDC.GOV, <https://www.cdc.gov/mmwr/preview/mmwrhtml/00047723.htm> (last updated May 2, 2001) (analyzing dog bite-related fatalities from 1979 through 1996).

68. Sacks et al., *supra* note 66, at 837 tbl.1.

69. See *Pit Bull Myths and Facts*, 1-800-PETMEDS, <http://www.1800petmeds.com/education/pit-bull-facts-and-myths.htm> (last visited Dec. 6, 2016); see also Sacks et al., *supra* note 66, at 838 (noting that, without considering the relative dog population size when analyzing dog bite-related fatalities, a breed that is responsible for a higher number of fatalities *within a large dog population* would be perceived as a more dangerous breed than a breed that is responsible for a low number of fatalities *within a small dog population*).

70. *Pit Bull Myths and Facts*, *supra* note 69.

In essence, dog bite statistics for a particular breed are going to be higher when there are more dogs of that breed interacting with humans.⁷¹ The population numbers themselves are based on the registrations of purebred dogs from the AKC and the UKC.⁷² Therefore, considering the number of mix breed dogs that exist, coupled with the fact that owners of purebred dogs may choose not to register their animals, the population of pit bulls is even higher than projected.⁷³ Following their study on dog bite fatalities, the Centers for Disease Control and Prevention refused to support the enactment of breed-specific legislation.⁷⁴

The media has also played a large role in tarnishing the pit bull's reputation through extensive coverage of dog attacks with no follow-up verification as to the breed involved or the circumstances surrounding the attack,⁷⁵ which has also contributed to the inaccurate numbers problem. Public hysteria from this media coverage led legislatures to enact varying forms of breed-specific legislation, in an attempt to calm the fear.⁷⁶ A media study conducted by the National Canine Research Council in 2007 compared four media stories in a period of four days covering dog bite cases.⁷⁷ Three of those cases involved non-pit bull type dogs, and each of those cases was only portrayed in the media once or twice.⁷⁸ By contrast, the fourth case involving a pit bull dog was portrayed two hundred thirty (230) times amongst media outlets, even though the injuries sustained in the case with the pit bull were no worse than the other cases in the study.⁷⁹ Not only does the media explode when a pit bull is involved, but also the reporters have the same issues that the public has with misidentification of the pit bull breed.⁸⁰ Pit bulls and mix breed dogs vary greatly in size and appearance, and share similar descriptive characteristics as other breeds of

71. See Swann, *supra* note 26, at 843.

72. *Id.* at 842.

73. *Id.* at 842–43.

74. *Breed-Specific Legislation*, ASPCA.ORG, <https://www.aspc.org/fight-cruelty/dog-fighting/breed-specific-legislation> (last visited Dec. 6, 2016); see also *supra* note 67 and accompanying text.

75. See *Misidentified, Misjudged and Misunderstood*, PIT BULL AWARENESS COALITION, <http://www.whatapittie.org/misidentified-misjudged-and-misunderstood> (last visited Dec. 6, 2016).

76. Hussain, *supra* note 11, at 2847.

77. Dana M. Campbell, *Pit Bull Bans: The State of Breed-Specific Legislation*, GPSOLO MAG., July/Aug. 2009, http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/pitbull.html; *Pit Bull Myths and Facts*, *supra* note 69.

78. Campbell, *supra* note 77; *Pit Bull Myths and Facts*, *supra* note 69.

79. See Campbell, *supra* note 77; *Pit Bull Myths and Facts*, *supra* note 69.

80. See *Misidentified, Misjudged and Misunderstood*, *supra* note 75.

dog.⁸¹ Public fear of the pit bull breeds make it easy for the media to continue assuming dog bite incidents involve pit bulls and that pit bulls are dangerous animals.⁸²

2. Bite Force

Another misconception about the pit bull type breeds that causes fear in the public is that they have an unusually strong bite force and are able to lock their jaws after biting something or someone.⁸³ The assumption that pit bulls can lock their jaws is anatomically impossible.⁸⁴ “No dog, of any breed or mix [of breed], has [the] anatomical structure [of] a locking mechanism in their jaw.”⁸⁵ In 2008, a study was conducted to measure the bite force of healthy dogs of different breeds.⁸⁶ Bite force was measured in Newtons (N) at both the canine teeth and the molar teeth of each dog.⁸⁷ The study showed that the highest canine bite force belonged to the German shepherd mix at nine hundred twenty-six (926) N, and the highest molar bite force belonged to the Labrador retriever mix at three thousand four hundred and seventeen (3,417) N.⁸⁸ In contrast, the study measured the pit bull mix’s bite force to be eight hundred ninety-six (896) N at the canine teeth and one thousand nine hundred and ninety-one (1,991) N at the molars.⁸⁹ Bite force is another example of how media portrayals have led to an unsubstantiated fear of the pit bull.⁹⁰

D. FEAR INDUCED LAW

Breed-specific bans on pit bulls were the legislature’s “quick-fix solution . . . to public outcry and extensive media coverage of pit bull attacks.”⁹¹ Rather than targeting the actual dogs and owners responsible for the attacks, breed-specific legislation presumes that ownership of a

81. Swann, *supra* note 26, at 854.

82. See *Misidentified, Misjudged and Misunderstood*, *supra* note 75.

83. See *Fear vs Fact, in Breed Specific Legislation*, ANIMAL FARM FOUND, INC., <http://www.animalfarmfoundation.org/files/BSL-Ebook-8-28-15.pdf> (last visited Dec. 6, 2016).

84. See *id.*

85. *Id.*

86. See Swann, *supra* note 26, at 861.

87. *Id.*

88. *Id.*

89. *Id.*

90. See *id.*

91. Hussain, *supra* note 11, at 2848.

particular breed means ownership of a dangerous dog.⁹² Miami-Dade County is only one of hundreds of counties and states that have enacted some form of breed-specific legislation.⁹³ Denver, Colorado, has the harshest form of breed-specific legislation with a complete ban on pit bulls and a requirement that any person visiting Denver have a license to bring his or her pit bull into the city with the understanding that the dog will remain no longer than six hours.⁹⁴ Denver punishes violators of their ordinance through criminal punishment of the owner and destruction of the dog.⁹⁵ Alternatively, California enacted a form of breed-specific legislation as to licensing of breeders of certain dogs,⁹⁶ and attributes the spate of dog bites to irresponsible breeding rather than the inherent nature of any one breed.⁹⁷ While California is on the right track, all forms of “[b]reed-specific legislation . . . create[] a false sense of public security through oversimplification of the problem and under-inclusiveness in the solution” by restricting the breed itself instead of the owners that control them.⁹⁸

II. LEGAL CHALLENGES TO BREED-SPECIFIC LEGISLATION

Courts have generally upheld breed-specific legislation as constitutional.⁹⁹ Constitutional challenges against breed-specific legislation include alleged vagueness or overbreadth of an ordinance, equal protection violations, and substantive due process violations.¹⁰⁰ These challenges have been an uphill battle for opponents of breed-specific legislation, as courts have rejected the challenges under the assumption that this form of legislation is an adequate method of protecting the public.¹⁰¹ Pit bull

92. *See id.* at 2854.

93. *See generally Breed-Specific Laws State-by-State*, *supra* note 12 (providing a listing of all the states and cities that have enacted breed-specific legislation).

94. *See Swann*, *supra* note 26, at 847–48.

95. *Id.*

96. *See Medlin*, *supra* note 31, at 1292.

97. *See id.*

98. Hussain, *supra* note 11, at 2881 (positing that breed-specific legislation is not the best solution because all dogs have the potential to be dangerous and any breed can be trained or bred to be aggressive).

99. *Id.* at 2862 (“Courts have . . . held that minimal scrutiny applies in [breed-specific legislation] cases because . . . pit bull owners . . . do not comprise a suspect class, nor does . . . pit bull ownership implicate a fundamental right. . . . Further . . . courts have held that a rational basis exists for classifying pit bulls alone as dangerous dogs.” (internal footnote and citations omitted)).

100. *See cases cited infra* notes 106, 110, 127, 131, 149. *See generally* Hussain, *supra* note 11, at 2863–67 (discussing three major challenges to breed-specific legislation, including overbreadth, under-inclusiveness, and due process, and the ways they have been pursued).

101. Hussain, *supra* note 11, at 2862 (“[C]ourts agree that [classifying pit bulls alone as

owners have occasionally succeeded on a challenge that a particular form of breed-specific legislation is void for vagueness;¹⁰² however, challenges are almost always ultimately lost under substantive due process claims because courts have accepted as fact the presumption that pit bulls are inherently dangerous.¹⁰³

A. VAGUENESS AND OVERBREADTH

“[Breed-specific] [l]egislation is unconstitutionally vague when one cannot reasonably understand that his [or her] contemplated conduct is within the scope of that proscribed by the legislation.”¹⁰⁴ To test for vagueness, one must look to whether there is “adequate notice to citizens [about what conduct is prohibited] and adequate standards to prevent arbitrary enforcement.”¹⁰⁵ The Miami-Dade County Ordinance is vague in that it prohibits pit bull dogs based on physical descriptions which do not provide adequate notice to dog owners to determine whether their dog is prohibited or not, which allows for arbitrary enforcement against the dogs and their owners.

In 1988, a City of North Miami ordinance regulating the ownership of pit bulls was challenged for vagueness in *State v. Peters*.¹⁰⁶ The court in *Peters* held that reference to the three breeds defined under the AKC and the UKC did not make the ordinance unconstitutionally vague because the owners “need only to look at each of the three standards and determine whether the dog is described by any one of them” in order to have adequate notice of the law.¹⁰⁷ The court further reasoned that the ordinance should survive the vagueness challenge even when there were “technical

dangerous dogs] . . . bears a rational relationship to the legitimate governmental interest in regulating dangerous dogs for the public health and welfare.”).

102. See, e.g., *Am. Dog Owners Ass’n, Inc. v. City of Lynn*, 533 N.E.2d 642, 646 (Mass. 1989) (holding that an ordinance defining pit bulls as any of three described breeds was void for vagueness given that there were no scientific means through which it could be determined that a dog was one of the three breeds).

103. See, e.g., *Am. Canine Found. v. City of Aurora*, 618 F. Supp. 2d 1271, 1278–79 (D. Colo. 2009) (holding that a legitimate interest of public protection existed because of preconceived determinations that pit bulls are stronger and more aggressive than other breeds).

104. *Hearn v. City of Overland Park*, 772 P.2d 758, 761 (Kan. 1989) (citing *United States v. Harriss*, 347 U.S. 612, 617 (1954)).

105. *State v. Maciolek*, 676 P.2d 996, 998 (Wash. 1984) (citing, inter alia, *Kolender v. Lawson*, U.S. 352, 357 (1983)).

106. *State v. Peters*, 534 So. 2d 760, 762 (Fla. Dist. Ct. App. 1988) (challenging the ordinance’s definition of “pit bull,” which relied upon the various characteristics that the American Kennel Club and the United Kennel Club attributed to the breed).

107. See *id.* at 766.

deficiencies” in conforming to the three standards because “[l]aws using phrases similar to ‘technical deficiencies’ and ‘substantially conform’ have withstood challenges on vagueness grounds.”¹⁰⁸ The vagueness claim in *Peters* failed because the court found that the definition of pit bull did not need to be stated with absolute certainty in order to be constitutional, and that the issue of whether an animal fell under a specific breed category was an evidence issue and not a constitutional issue.¹⁰⁹

In 1989, the Miami-Dade County Ordinance was challenged for vagueness in *American Dog Owners Ass’n, Inc. v. Dade County* for defining pit bull dogs by physical characteristics rather than by their genetic bloodlines.¹¹⁰ The court reasoned that, in order for a law to be constitutional, “[a]ll that is required is that the people to whom the statute is addressed will, if they are of common intelligence, be placed on notice as to what the law forbids.”¹¹¹ For a law to pass a test for vagueness, it must provide clear standards for those to whom the law applies in order to prevent arbitrary enforcement.¹¹²

The City of Yakima, Washington, enacted an ordinance similar to the Miami-Dade County Ordinance, which banned dogs that fell under the recognized pit bull breeds and shared the physical characteristics of such breed.¹¹³ The court in *American Dog Owners Ass’n v. City of Yakima* refused to find the ordinance vague merely “because it requires subjective evaluations by an officer.”¹¹⁴ Instead, the court found that since dogs are considered property, “[d]ogs are subject to police power and [therefore] may be destroyed or regulated to protect citizens.”¹¹⁵ More recently, in *Dog Federation of Wisconsin, Inc. v. City of South Milwaukee*, the court

108. *Id.* at 766–67 (citing several cases in which similar standards were held to be acceptable and laws using the terms “substantial” and “technical deficiencies” did not fail for vagueness).

109. *See id.* at 767; Grey, *supra* note 23, at 430–31 (discussing the court’s observation that vague ordinances do not delineate what type of conduct is banned).

110. *Am. Dog Owners Ass’n, Inc. v. Dade County*, 728 F. Supp. 1533, 1535 (S.D. Fla. 1989).

111. *Id.* at 1539 (citing *High Oil’ Times v. Busbee*, 673 F.2d 1225, 1228–29 (11th Cir. 1982)) (requiring only that notice be provided; not that the law be written with mathematical precision).

112. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) (noting that a law is void for vagueness if it is not clearly defined so as to provide a person of ordinary intelligence the opportunity to know what conduct is prohibited by the law); *see also* *Am. Dog Owners Ass’n v. City of Yakima*, 777 P.2d 1046, 1048 (Wash. 1989).

113. *See City of Yakima*, 777 P.2d at 1047 (indicating that the City of Yakima’s ordinance banned pit bulls, specifically the “Bull Terrier, American Pit Bull Terrier, Staffordshire Bull Terrier, and American Staffordshire Terrier,” as well as any other dog that has a trace of pit bull in their breeding).

114. *Id.* at 1048 (citing *State v. Worrell*, 761 P.2d 56, 60 (Wash. 1988) (en banc)).

115. *Id.* (citing *Sentell v. New Orleans & C.R. Co.*, 166 U.S. 698, 704 (1897)).

found that an ordinance defining pit bull dogs under the three breeds of the AKC and UKC was not unconstitutionally vague, even though there was expert opinion that it would be extremely difficult to determine, without reviewing lineage, if a particular dog was a pit bull.¹¹⁶

A rare win came for pit bull owners in *American Dog Owners Association, Inc. v. City of Lynn*, where the court held that an ordinance similarly defining pit bulls was void for vagueness because “[the expert witnesses that testified] could not provide specific objective criteria for identifying dog breeds.”¹¹⁷ The ordinance in *Lynn* was found to be void for vagueness using the same argument that had been, and continues to be, made regarding the application of these ordinances;¹¹⁸ however, *Lynn* remains the exception as it pertains to court rulings on this issue.

Overbreadth challenges to breed-specific legislation involve the argument that the laws are “impermissibly overgeneralized by subjecting . . . both dangerous *and* docile members of the target breed.”¹¹⁹ While Florida courts have not addressed overbreadth challenges for breed-specific legislation,¹²⁰ other state courts have discussed overbreadth questions in conjunction with challenges for vagueness.¹²¹ The court in *City of Yakima* rejected the overbreadth challenge of the city ordinance by reasoning that overbreadth is only an applicable claim “when [the law extends to] ‘a substantial amount of constitutionally protected conduct.’”¹²² The court held that, for the protection of the public, laws that ban pit bulls were constitutional, even when innocent dogs were punished in the

116. *Dog Fed’n of Wis., Inc. v. City of South Milwaukee*, 504 N.W.2d 375, 378 (Wis. Ct. App. 1993) (citing expert testimony by Robert M. Brown, D.M.V., who stated that non-experts would not be able to accurately determine if a particular dog was a pit bull, that it would be difficult to determine if a particular dog had any trace of pit bull in its breeding, and that there is no method through genetic means to determine a dog’s breed).

117. *Am. Dog Owners Ass’n, Inc. v. City of Lynn*, 533 N.E.2d 642, 644, 646 (Mass. 1989).

118. *Compare, e.g., id.* at 646–47 (basing its decision on the fact that “[the expert witnesses that testified] could not provide specific *objective* criteria for identifying dog breeds.” (emphasis added)), *with, e.g., Am. Dog Owners Ass’n, Inc. v. Dade County*, 728 F. Supp. 1533, 1535, 1536–37 (S.D. Fla. 1989) (basing its decision on the fact that experts could provide *subjective* criteria for identifying dog breeds, such as “appearance,” even though it conceded that there was no *objective* criteria for identifying dog breeds, such as “scientific testing procedures”).

119. Hussain, *supra* note 11, at 2863 (emphasis added).

120. Grey, *supra* note 23, at 434 (noting that Florida has not dealt with the issue of overbread or overinclusive breed-specific legislation because section 767.14 of the Florida statutes prohibits any breed-specific ordinance that was enacted after October 1, 1990).

121. *See, e.g., Am. Dog Owners Ass’n v. City of Yakima*, 777 P.2d 1046, 1047–48 (Wash. 1989).

122. *Id.* at 1048 (quoting *City of Seattle v. Huff*, 767 P.2d 572, 573 (Wash. 1989) (quoting *City of Houston v. Hill*, 482 U.S. 451, 458 (1987))).

process.¹²³

B. EQUAL PROTECTION

The Equal Protection Clause of the United States Constitution states that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”¹²⁴ Equal protection arguments in the breed-specific legislation context focus on discrimination by showing that the statute in question is overinclusive or underinclusive.¹²⁵ These equal protection challenges are discrimination claims that regulations targeting pit bulls “unfairly singles out owners of a particular breed of dog.”¹²⁶ In *State v. Peters*, the dog owners claimed that a City of North Miami ordinance banning pit bulls violated their equal protection rights in that it unfairly distinguished between pit bull owners and owners of other dog breeds.¹²⁷ The claim failed because the court reasoned that “[the Constitution] does not guarantee that all dog owners will be treated alike; [just] that all owners of defined pit bulls will be treated alike.”¹²⁸ The court in *Peters* based its decision on findings that pit bull ownership is inherently dangerous.¹²⁹ Other equal protection challenges to breed-specific legislation have also failed.¹³⁰

In *Garcia v. Village of Tijeras*, pit bull owners in New Mexico challenged a local ordinance that banned pit bulls by questioning its constitutionality because it “bann[ed] only one breed of dog rather than all breeds.”¹³¹ The court in *Garcia* held that the ordinance did not violate equal protection rights of the owners because “there [was] substantial evidence of record that American [p]it [b]ull [t]erriers presented a special threat to the safety of the residents of the Village over and above that

123. See *id.* (noting that the City of Yakima ordinance banning pit bulls was constitutional, even though it would not stop all dog bites, because the ordinance was enacted as a “public safety measure”).

124. U.S. CONST. amend. XIV, § 1.

125. Burstein, *supra* note 14, at 319.

126. See Hussain, *supra* note 11, at 2862.

127. *State v. Peters*, 534 So. 2d 760, 763 (Fla. Dist. Ct. App. 1988); see also Grey, *supra* note 23, at 432.

128. *Peters*, 534 So. 2d at 763; see also Grey, *supra* note 23, at 432 (discussing the court’s interpretation of equal protection guarantees to dog owners).

129. See *Peters*, 534 So. 2d at 764.

130. E.g., *Dog Fed’n of Wis., Inc. v. City of South Milwaukee*, 504 N.W.2d 375, 377, 381 (Wis. Ct. App. 1993); see Grey, *supra* note 23, at 417; *infra* notes 131–35 and accompanying text.

131. *Garcia v. Village of Tijeras*, 767 P.2d 355, 360 (N.M. Ct. App. 1988).

presented by other breeds of dog.”¹³² The court therefore held that the ordinance did not present an equal protection violation as long as it complied with substantive due process requirements.¹³³ Similarly, in *City of Toledo v. Tellings*, a pit bull owner challenged an ordinance that restricted pit bull ownership by claiming that it violated dog owners’ equal protection rights.¹³⁴ The court in *Tellings* held that ordinances regulating the ownership of pit bulls do not violate equal protection laws because such ordinances are rationally related to a legitimate government interest of protecting the public.¹³⁵

C. SUBSTANTIVE DUE PROCESS

The Fourteenth Amendment of the United States Constitution states that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law.”¹³⁶ The test for substantive due process under the Fourteenth Amendment is whether the government can justify infringing on individual liberties through legislative acts.¹³⁷ “[T]he touchstone of due process is protection of the individual against arbitrary action of government.”¹³⁸ The “substantive component” of due process safeguards against subjective legislation “by requiring a relationship between a statute and the government interest it seeks to advance.”¹³⁹ If a law “does not implicate a fundamental right, [then] it must . . . bear a rational relationship to a legitimate government interest.”¹⁴⁰ An ordinance

132. *Id.* at 361; *see also id.* at 360. In essence, the court reasoned that, because of the overwhelming evidence presented that purportedly showed the distinct and dangerous characteristics of the pit bull breed, the Village’s ordinance, which discriminated against pit bulls in particular, was “reasonably related to protecting the health and safety of the residents of the Village.” *Id.*

133. *Id.* at 360–61 (“Where the challenged ordinance does not trammel *fundamental rights* or involve a suspect classification, the court presumes the constitutionality of the discriminatory classification.” (citing *Garcia v. Albuquerque Pub. Schs. Bd. of Educ.*, 622 P.2d 699, 701 (N.M. Ct. App. 1980) (emphasis added))). Given that the right to own a pit bull is *not* a “fundamental right,” the court’s substantive due process analysis was limited to whether or not the Village’s ordinance was rationally related to a legitimate government interest. *See id.* at 360. The court’s conclusion following this analysis was that the Village’s ordinance was “reasonably related to protecting the health and safety of the residents of the Village.” *Garcia*, 622 P.2d at 360.

134. *City of Toledo v. Tellings*, 871 N.E.2d 1152, 1154–55 (Ohio 2007).

135. *Id.* at 1158.

136. U.S. CONST. amend. XIV, § 1.

137. *Young v. Broward County*, 570 So. 2d 309, 310 (Fla. Dist. Ct. App. 1990).

138. *Dias v. City & County of Denver*, 567 F.3d 1169, 1181 (10th Cir. 2009) (internal quotation marks omitted) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998)).

139. *Id.*

140. *Id.* at 1182 (citing *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997)).

that regulates the possession of specific breeds of dog within city limits is evaluated under rational-basis scrutiny,¹⁴¹ because “dog ownership is not a fundamental right, and pit bulls are not a suspect class.”¹⁴²

Substantive due process claims against breed-specific legislation allege that the legislation “is not rationally related to a legitimate government interest in the protection and safety of the public,” because pit bulls are not inherently dangerous.¹⁴³ However, given that highly publicized, severe dog attacks typically precipitate the enactment of breed-specific legislation, the courts have generally had no problem upholding rational basis scrutiny.¹⁴⁴ It is very rare for a challenger to prevail under rational basis scrutiny as this test affords substantial deference to the legitimacy of government action.¹⁴⁵ For example, in *Garcia v. Village of Tijeras*, pit bull owners challenged an ordinance banning pit bull dogs on the ground that the ordinance was not rationally related to the government purpose of public safety.¹⁴⁶ The court in *Garcia* rejected this argument, stating that the ban was rationally related to public safety, in part, because of a pit bull attack on a young girl that had occurred four years prior.¹⁴⁷ In support of its holding finding no equal protection or substantive due process violation, the court noted that “there [was] substantial evidence of record that American [p]it [b]ull [t]erriers presented a special threat to the safety of the residents of the Village over and above that presented by other breeds of dog.”¹⁴⁸

Similarly, in *American Canine Foundation v. City of Aurora*, pit bull owners challenged a city ordinance in Colorado that restricted multiple breeds of dog, including pit bulls.¹⁴⁹ The court in *City of Aurora* found that the “ordinance [was] rationally related to [the City of Aurora’s] undisputed legitimate interest in protecting the health and safety of its residents.”¹⁵⁰

141. *Am. Canine Found. v. City of Aurora*, 618 F. Supp. 2d 1271, 1278 (D. Colo. 2009). Under rational-basis scrutiny, the ordinance at issue passes constitutional muster only if it is rationally related to a legitimate interest of the legislature. *Id.*

142. *Burstein*, *supra* note 14, at 318 (internal footnote and citation omitted).

143. *See Hussain*, *supra* note 11, at 2865; *see, e.g., Garcia v. Village of Tijeras*, 767 P.2d 355, 358 (N.M. Ct. App. 1988).

144. *See Swann*, *supra* note 26, at 851; *see, e.g., Garcia*, 767 P.2d at 360.

145. *See, e.g., Nebbia v. New York*, 291 U.S. 502, 537 (1934) (holding that a state may adopt any policy reasonably related to promoting the welfare of the public); *Garcia*, 767 P.2d at 360–61.

146. *Garcia*, 767 P.2d at 358.

147. *Id.* at 358–60.

148. *Id.* at 360–61.

149. *Am. Canine Found. v. City of Aurora*, 618 F. Supp. 2d 1271, 1273 (D. Colo. 2009).

150. *Id.* at 1279.

The court decided that the ordinance survived rational basis scrutiny based on the presentation of “evidence . . . that pit bulls . . . tend to be stronger than other dog breeds, . . . give no warning signals before attacking[,] and are less willing than other dogs to retreat from an attack.”¹⁵¹ In support of the court’s holding, the court noted that any reasonable set of facts to show rational basis would meet substantive due process requirements under the Fourteenth Amendment.¹⁵²

III. EVALUATION OF BREED-SPECIFIC LEGISLATION AND PROPOSED REFORMS

The legislative intent of breed-specific legislation is to protect the health and safety of the public by restricting a breed that is considered inherently dangerous to humans.¹⁵³ Since the enactment of such legislation, however, studies have shown the reality of the pit bull’s inherently nonthreatening nature and how ineffective these blanket restrictions on the breed have been.¹⁵⁴ This form of legislation has been shown to be so ineffective that it has failed to demonstrate any reliable correlation to the protection of the public from dog bites.¹⁵⁵ The Miami-Dade County Ordinance has failed to reduce dog bites within the County,¹⁵⁶ which is consistent with statistics showing that pit bull breeds are good-natured animals and are not dangerous when trained properly.¹⁵⁷ The costs associated with breed-restrictive laws, including the Miami-Dade County Ordinance, are substantial and impact the municipalities that put these laws into place more than the violators of the laws.¹⁵⁸

As illustrated previously, no rational relationship exists between banning pit bulls and preventing dog bites. Therefore, breed-specific legislation is unconstitutional. The Miami-Dade County Ordinance is vague in its application as identification of the breed is difficult to

151. *Id.*

152. *See id.* at 1278 (quoting *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313 (1993)).

153. *See, e.g., id.* at 1279; *see also* Swann, *supra* note 26, at 847.

154. *See Breed-Specific Legislation FAQ*, *supra* note 13.

155. *See* Hussain, *supra* note 11, at 2881–82 (arguing that, since the enactment of breed-specific legislation, there is a chance that the number of dog bites may rise).

156. *See id.* at 2872–73 (explaining that fourteen years after Miami-Dade County enacted its pit bull ban, there were still approximately 50,000 illegal pit bulls in the County).

157. *See* Campbell, *supra* note 77 (explaining that the “most common factors found in fatal dog attacks occurring in 2006” that the National Canine Research Council identified were the following: dogs that were neither spayed nor neutered; dogs that were neglected, abused, or unchained; and dogs that were used for guarding or breeding purposes).

158. *See* Hussain, *supra* note 11, at 2871–72.

determine. The Ordinance is overly broad as it restricts all animals determined to be pit bulls, regardless of past actions, and it violates the equal protection rights of owners by putting restrictions on them merely because they own pit bull dogs. As such, the Miami-Dade County Ordinance needs to be repealed so that Florida's "dangerous dog law" under chapter 767, Florida Statutes, becomes the prevailing restrictive dog law in the County. More liability should be attributed to dog owners in order for this type of law to be effective, as data discussed previously has shown owners are the source of responsibility for dog aggression.

A. MIAMI-DADE COUNTY'S BREED-SPECIFIC LEGISLATION NEEDS TO BE REPEALED

1. The Miami-Dade County Ordinance is Ineffective

Studies of pit bulls conducted over the past several decades have presented evidence of a docile, human-friendly animal that thrives best in structured environments.¹⁵⁹ Studies of temperament, aggression, and environment have revealed that legislation that bans a particular breed on its face is ineffective in protecting the public without any consideration of the humans that raise them.¹⁶⁰ The American Bar Association, American Kennel Club, American Society for the Prevention of Cruelty to Animals, American Veterinary Medical Association, Animal Farm Foundation, Centers for Disease Control and Prevention, National Canine Research Council, United Kennel Club, U.S. Department of Justice, and the White House Administration all refuse to endorse breed-specific legislation.¹⁶¹ With high enforcement costs and low results, breed-specific legislation is ineffective in addressing the problems that lead to the enactment of such legislation and are a misuse of public resources.¹⁶² Statistics show that between January of 2012 and May of 2014, 158 municipalities repealed or

159. See *Meet the American Staffordshire Terrier*, AM. KENNEL CLUB, <http://www.akc.org/dog-breeds/american-staffordshire-terrier/detail> (last visited Dec. 9, 2016); see also Brian Hare and Vanessa Woods, *Pit Bulls are Chiller than Chihuahuas*, THE ATLANTIC (Sept. 19, 2016), <http://www.theatlantic.com/science/archive/2016/09/pit-bulls-are-chiller-than-chihuahuas/500558/>.

160. See Grey, *supra* note 23, at 439–40; see also *Breed-Specific/Dangerous Dog Laws*, AM. KENNEL CLUB, <http://cqrcengage.com/akc/BSL> (last visited Dec. 9, 2016).

161. See *Organizations That Do Not Endorse Breed Specific Legislation (BSL)*, in *Breed Specific Legislation*, ANIMAL FARM FOUND., INC., <http://www.animalfarmfoundation.org/files/BSL-Ebook-8-28-15.pdf> (last visited Dec. 9, 2016).

162. See *id.*; Hussain, *supra* note 11, at 2871–72.

rejected breed-specific legislation, while only 21 municipalities enacted it.¹⁶³ Miami-Dade County, however, ignores the realities of this prejudicial legislation and maintains its enforcement.

a. Breed-Specific Legislation Has Failed In Its Objective

Breed-specific legislation was originally enacted based on statistics gathered from the media hype surrounding pit bull bite incidents from the 1980s.¹⁶⁴ Miami-Dade County enacted its pit bull ban after a series of attacks on citizens in the County in conjunction with the presumption that these animals posed a more serious threat than other breeds of dog.¹⁶⁵ As discussed previously, studies undertaken since then have revealed that this form of legislation regulating pit bulls was based on just that foundation—hype and irrational fear.

Since 1977, the American Temperament Test Society has kept a consistent record of temperament studies undertaken on various breeds of dog.¹⁶⁶ The test conducted on these animals to determine their temperament looks at each dog's reaction to tactile, auditory, and visual stimuli, as well as their interaction with strangers.¹⁶⁷ As of April of 2016, the statistics found using this temperament study shows that all three terrier breeds that make up the pit bull breed passed at above the average rate of 83%.¹⁶⁸ American pit bull terriers passed the temperament test at an average rate of 87.4%,¹⁶⁹ American Staffordshire terriers passed at an average rate of 85.2%,¹⁷⁰ and Staffordshire bull terriers passed at an average rate of

163. *Breed-Specific Legislation Is on the Decline*, NAT'L CANINE RES. COUNCIL 1, <http://www.nationalcanineresearchcouncil.com/sites/default/files/Breed-specific-legislation-is-on-the-decline-2016.pdf> (last visited Jan. 4, 2017); see Arin Greenwood, *Six More States May Outlaw Breed-Specific Legislation, Making Everything Better for Pit Bulls*, HUFFINGTON POST (Feb. 7, 2014, 09:48 AM), http://www.huffingtonpost.com/2014/02/07/breed-specific-legislation_n_4738583.html; see also Campbell, *supra* note 77.

164. See Medlin, *supra* note 31, at 1285–86.

165. See MIAMI-DADE COUNTY, FLA., ORDINANCE 89-22 (Apr. 4, 1989), <http://www.miamidade.gov/animals/library/pit-bull-ordinance-89-22.pdf> (amending chapter 5 of the Miami-Dade County Code of Ordinances and codified as MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, §§ 5-17 to -17.6 (2016)).

166. See *General Information About the American Temperament Test Society, Inc. (ATTS)*, AM. TEMPERAMENT TEST SOCIETY, INC., <http://www.atts.org/about-atts/> (last visited Dec. 9, 2016).

167. See *Description of the Temperament Test*, AM. TEMPERAMENT TEST SOCIETY, INC., <http://www.atts.org/tt-test-description> (last visited Dec. 9, 2016).

168. See *infra* notes 169–71 and accompanying text.

169. *ATTS Breed Statistics*, AM. TEMPERAMENT TEST SOCIETY, INC. 1, <http://atts.org/breed-statistics/statistics-page1/> (last updated Apr. 2016).

170. *Id.*

91.2%.¹⁷¹ In comparison, Pembroke Welsh corgis had a passing rate of 79.2%¹⁷² and Chihuahuas a passing rate of only 69.6%.¹⁷³ In a separate study conducted in 2008, the University of Pennsylvania studied the aggression of thirty-three (33) different dog breeds.¹⁷⁴ The study revealed that while pit bulls, German shepherds, and boxers showed the most *dog-directed aggression*, poodles, Yorkshire terriers, rottweilers, and Doberman pinschers showed the most *stranger-directed aggression*; and Chihuahuas, Jack Russell terriers, and dachshunds showed the most *overall aggression*.¹⁷⁵

The AKC describes American Staffordshire terriers as “people-oriented dog[s] [that] are natural clowns,”¹⁷⁶ and describes Staffordshire bull terriers as “sweet-natured, family-oriented [dogs] so trustworthy that they’ve earned a reputation as a ‘nanny dog.’”¹⁷⁷ The UKC describes American pit bull terriers as “eager to please and brimming over with enthusiasm[,] [making them] excellent family companions.”¹⁷⁸ Pit bull breeds have been used as therapy dogs for veterans coping with post-traumatic stress disorder,¹⁷⁹ and for surviving victims of the 2013 Boston Marathon bombing.¹⁸⁰

Looking at the results of the aforementioned temperament studies, it is not surprising that dog bite statistics have not decreased since the enactment of breed-specific legislation. Banning one breed of dog does not solve the dog bite problem; these bans have only led to a rise in bites from different breeds of dog.¹⁸¹ In the 1990s, pit bull fatalities decreased, yet

171. *ATTS Breed Statistics*, AM. TEMPERAMENT TEST SOCIETY, INC. 8, <http://atts.org/breed-statistics/statistics-page8/> (last updated Apr. 2016).

172. *ATTS Breed Statistics*, AM. TEMPERAMENT TEST SOCIETY, INC. 6, <http://atts.org/breed-statistics/statistics-page6/> (last updated Apr. 2016).

173. *ATTS Breed Statistics*, AM. TEMPERAMENT TEST SOCIETY, INC. 3, <http://atts.org/breed-statistics/statistics-page3/> (last updated Apr. 2016).

174. Swann, *supra* note 26, at 858.

175. *Id.* at 858–59.

176. *Meet the American Staffordshire Terrier*, *supra* note 159.

177. *Meet the Staffordshire Bull Terrier*, AM. KENNEL CLUB, <http://www.akc.org/dog-breeds/staffordshire-bull-terrier/detail> (last visited Dec. 9, 2016).

178. *American Pit Bull Terrier*, UNITED KENNEL CLUB, <http://www.ukcdogs.com/Web.nsf/Breeds/Terrier/AmericanPitBullTerrier> (last visited Dec. 9, 2016).

179. *Operation Sidekick*, AM. PIT BULL FOUND., <http://americanpitbullfoundation.com/os/> (last visited Dec. 9, 2016).

180. Kate Bratskeir, *These 16 Dogs Are Heroes. They Are Also Pit Bulls.*, HUFFINGTON POST (July 29, 2014, 09:34 AM), http://www.huffingtonpost.com/2014/07/29/pit-bulls-heroic-happy-and-good_n_5563496.html.

181. Grey, *supra* note 23, at 442.

rottweiler fatalities increased.¹⁸² Despite Denver's very harsh ban on pit bulls, the rate of dog bites in that county remain higher than the other counties in Colorado except for one, and a disproportionate number of these dog bites have been attributed to German shepherds and chow chows.¹⁸³ The enactment of the Miami-Dade County Ordinance has similarly failed to reduce dog bites in Miami-Dade County.¹⁸⁴ Despite being active for over two and half decades, the Miami-Dade County Ordinance has not produced any evidence of reducing dog bites.¹⁸⁵ As a result of the ineffectiveness of breed-specific legislation in reducing dog bites, localities around the world, including in the Netherlands and Italy, have repealed such regulations against the breed.¹⁸⁶

b. Costs of Breed-Specific Legislation

Not only do statistics show the ineffectiveness of breed-specific legislation, they also show that the costs associated with banning or regulating pit bull animals are extraordinary.¹⁸⁷ Costs associated with breed-specific legislation include salaries for additional animal control staff often necessary to enforce the legislation, kenneling and maintenance costs for holding pit bulls who are awaiting determination by the courts, court costs and attorney fees for the impending litigation challenging the regulations, and even "loss of city revenue [associated with] inhabitants [that] may move outside city limits to protect their dogs."¹⁸⁸ In 2003, a task force was formed in Prince George's County, Maryland, to assess the efficiency of its pit bull ban.¹⁸⁹ The task force, through its research and calculations, found that "[t]he cost of maintaining a single pit bull

182. *Id.* at 440.

183. *Denver's Breed-Specific Legislation: Brutal, Costly, and Ineffective*, in *Breed Specific Legislation*, ANIMAL FARM FOUND., INC., <http://www.animalfarmfoundation.org/files/BSL-Ebook-8-28-15.pdf> (last visited Dec. 9, 2016); *Welfare Implications of the Role of Breed in Dog Bite Risk and Prevention*, in *Breed Specific Legislation*, ANIMAL FARM FOUND., INC., <http://www.animalfarmfoundation.org/files/BSL-Ebook-8-28-15.pdf> (last visited Dec. 9, 2016).

184. See Karen Delise, *Miami-Dade County: Two Decades of BSL Has Produced No Positive Results*, ANIMAL L. COALITION (July 29, 2009), <https://animallawcoalition.com/miami-dade-county-two-decades-of-bsl-has-produced-no-positive-results/>; Hannah Sentenac, *10 Facts About Breed-Specific Legislation and How You Can Help Stop It*, ONEGREENPLANET.ORG (Aug. 8, 2014), <http://www.onegreenplanet.org/animalsandnature/facts-about-breed-specific-legislation-and-how-you-can-help-stop-it/>.

185. See Delise, *supra* note 184; Sentenac, *supra* note 184.

186. Berkey, *supra* note 45.

187. Hussain, *supra* note 11, at 2871–72.

188. *Id.*

189. *Id.* at 2872.

throughout the entire determination and appeals process was approximately \$68,000.”¹⁹⁰ The Miami-Dade County Ordinance costs the County around \$603,445 each year.¹⁹¹ The research of the task force in Prince George’s County, Maryland, further indicated that the costs of maintaining a single pit bull in the county greatly exceeded the fees required of pit bull owners who did not comply with the county’s law.¹⁹² Breed-specific legislation causes “[c]ities and states [to] spend money enforcing restrictions and bans instead of putting that money to better use by . . . responding proactively to target owners of [dogs] that [actually pose] a risk to the community.”¹⁹³

c. Owner Responsibility

Breed-specific legislation ignores owner responsibility associated with dog attacks.¹⁹⁴ Breed-specific restriction laws are the legislature’s response to pit bull attacks, although the underlying problem lies with irresponsible owners of these animals.¹⁹⁵ Legislation is “a human invention, designed to deal with human shortcomings”; therefore, laws that address dog attacks should address human responsibility for dog aggression.¹⁹⁶ “[D]og owners determine the manner in which their dogs behave,” and abuse can make any dog become aggressive.¹⁹⁷

As evidenced in cases of dog fighting, pit bulls have been subjected to

190. *Id.*

191. See Sentenac, *supra* note 184; see also Laura Allen, *Miami-Dade County Voters Reject Pit Bull Ban — Maybe*, ANIMAL L. COALITION (Aug. 14, 2012), <https://animallawcoalition.com/miami-dade-county-voters-reject-pit-bull-ban-maybe/> (stating that, according to Miami Citizens Against Breed Specific Legislation, there is an estimated \$3,000,000 cost to taxpayers to enforce Miami-Dade County’s pit bull ban); *The Government in Miami-Dade County Florida Should Not Waste Taxpayer Money or Interfere with Property Rights*, BEST FRIENDS ANIMAL SOCIETY, <http://bestfriends.guerrillaeconomics.net/report/3052b90a-6c46-4fe5-bef8-ea5ba4182c79/download?Name=BDL%20Opportunity%20Cost%20Talking%20Points&IsHandled=True&Format=0> (last visited Jan. 4, 2017) (stating that it would cost Miami-Dade County \$3,678,595 to carry out its pit bull ban if the Miami-Dade County Ordinance was ever enacted).

192. Hussain, *supra* note 11, at 2872.

193. *Why Breed-Specific Legislation Is Not the Answer*, AM. VETERINARY MED. ASS’N, <http://www.avma.org/public/Pages/Why-Breed-Specific-Legislation-is-not-the-answer.aspx> (last visited Dec. 9, 2016).

194. Burstein, *supra* note 14, at 323.

195. See Medlin, *supra* note 31, at 1286.

196. See Swann, *supra* note 26, at 854 (internal quotation marks omitted) (quoting Randall Lockwood, *Human Concerns About Dangerous-Dog Laws*, 13 U. DAYTON L. REV. 267, 276 (1987)).

197. Medlin, *supra* note 31, at 1298.

particularly abhorrent treatment and abuse.¹⁹⁸ Although dog fighting is now illegal in all fifty U.S. states, the practice has not stopped and has instead moved underground.¹⁹⁹ The abuse of pit bulls in this spectator sport continues, and it is difficult to stop dogfighting when organizers use police scanners to prevent detection.²⁰⁰ These criminals are not interested in abiding by the felony laws against dog fighting, let alone abiding by breed-specific legislation laws.²⁰¹ Despite the Miami-Dade County pit bull ban being in effect for more than two decades, “an estimated fifty thousand Pit Bull type dogs populate [the] County.”²⁰² Even if criminals were willing to abide by laws banning pit bull breeds, the dog bite problem would not end because their interest is not specifically with the pit bull breed, but in *any* dog that can be trained to be aggressive and agile.²⁰³ Any breed of dog can be trained to be aggressive; therefore, as one breed is banned, criminals can, and will, move on to another breed.²⁰⁴ After all, pit bulls are just one of many breeds of dog that have been deemed “dangerous,” and, in turn, been the target of restrictive laws.²⁰⁵

Animal aggression does not always mean the animal was involved in a criminal enterprise. Owners lacking in education, training, or general responsibility can raise a dog to be aggressive. The Centers for Disease Control and Prevention conducted a study on dog bites and cited multiple factors, other than breed, that affected propensity toward aggression.²⁰⁶ Some of the main problems linked to aggression were: (1) abuse and neglect of the animal; (2) chaining the animal and owning the animal for purposes of guarding or fighting; (3) failing to spay or neuter the animal; and (4) irresponsible ownership and supervision of the animal.²⁰⁷ This study, and others from the past several decades, have shown that a majority of fatal dog attacks have been linked to poor ownership of the animals.²⁰⁸ Breed-specific legislation ignores these studies and unfairly focuses only on breed when restricting or banning these animals from localities. As a

198. *Id.* at 1298–99.

199. Swann, *supra* note 26, at 841.

200. Medlin, *supra* note 31, at 1303.

201. Grey, *supra* note 23, at 438.

202. *The Cost of BSL*, WORDPRESS.COM, <http://stopbsl.files.wordpress.com/2008/08/costofbsl.pdf> (last visited Dec. 9, 2016).

203. Medlin, *supra* note 31, at 1304.

204. Hussain, *supra* note 11, at 2873.

205. See *Breed-Specific Legislation*, *supra* note 74.

206. *Id.*

207. See *id.*

208. See Sacks et al., *supra* note 66, at 837–38.

result, approximately one million (1,000,000) pit bull dogs are killed in shelters every year.²⁰⁹

Even dogs that have been severely abused can be rehabilitated and made loving family companions.²¹⁰ When Michael Vick's dogfighting case in 2007 led to fifty dogs being seized and scheduled for euthanasia, the court instead allowed for temperament evaluations to be performed by a group of behaviorists.²¹¹ After the evaluations were completed, only one of the fifty dogs seized ended up being euthanized; the remaining dogs were saved and sent to rescue groups for rehabilitation and eventual adoption.²¹²

Breed-specific laws themselves recognize the human factor that exists in aggressive behavior of dogs, but continue to blame the breed and not the owners.²¹³ The Miami-Dade County Ordinance cites the intent for the pit bull regulation as seeking "to ensure responsible handling by their owners."²¹⁴ Denver has very strict breed-specific legislation, but even its ordinance recognizes human responsibility, stating, "pit bulls are uniquely dangerous, 'especially where improperly raised or trained.'"²¹⁵ Despite this recognition, Miami-Dade County and other counties continue to enforce this flawed legislation. Ignoring the realities of owner responsibility, high enforcement costs, and lack of results, breed specific legislation has proven completely ineffective in Miami-Dade County and elsewhere. This legislation is ineffective because it does not show a rational relationship to public safety and is therefore unconstitutional and must be invalidated.²¹⁶

2. The Miami-Dade County Ordinance is Unconstitutional

Constitutional challenges to breed-specific legislation began almost immediately after their fear-induced enactments; therefore, continued public fear played a large role in the courts' decisions to uphold such laws.²¹⁷ An examination of the post-enactment statistics shows no substantial correlation between the laws restricting pit bulls and protection

209. See *A Dose of Reality*, *supra* note 5.

210. See *Campbell*, *supra* note 77.

211. *Id.*

212. *Id.*

213. See *Medlin*, *supra* note 31, at 1286.

214. See *MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES* ch. 5, § 5-17 (2016).

215. *Medlin*, *supra* note 31, at 1294 (quoting Denver, Colo., City Council Bill No. 434 (1989)).

216. *Grey*, *supra* note 23, at 442.

217. See *id.* at 429; see also *id.* at 434 (noting how breed-specific bans treat *all* specified dogs as "inherently dangerous").

of the public. Miami-Dade County's Ordinance violates the equal protection rights of responsible dog owners, and is unconstitutionally vague and overbroad in its language to unfairly discriminate against an inordinate amount of dogs. However, despite the flawed language contained in the Ordinance, Miami-Dade County cannot change the wording of its Ordinance to avoid constitutional infirmities. Notwithstanding requests made by the AKC and the UKC to Miami-Dade County to cease using the AKC's and the UKC's breed descriptions in the Ordinance due to copyright infringement concerns,²¹⁸ Miami-Dade County cannot remove the wording without also invalidating the entire Ordinance. Section 767.14, Florida Statutes, only allows the grandfathering of breed-specific legislation that was enacted before October 1, 1990;²¹⁹ therefore, any change to the Ordinance would constitute an amendment that would make the Ordinance unacceptable in the State of Florida. Consequently, Miami-Dade County continues to assert that the controversial Ordinance is constitutional when it is not.

a. Substantive Due Process

The Miami-Dade County Ordinance violates substantive due process because it is so ineffective in reducing dog bites that it bears no rational relationship to protecting the public. In order to meet substantive due process, the law must be reasonably related to the legislative purpose and not arbitrary.²²⁰ Courts in the past have upheld breed-specific legislation by taking judicial notice that pit bulls are inherently dangerous.²²¹ However, as discussed previously, this "inherently dangerous" proposition has been disproved by multiple studies done in the past several decades; therefore, this proposition is unfairly dismissive of substantive due process requirements.

"[T]he constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that

218. Russmead, *A Legal Challenge to Miami-Dade County Pit Bull Ban*, ANIMAL L. COALITION (Sept. 18, 2008), <https://animallawcoalition.com/a-legal-challenge-to-miami-dade-county-pit-bull-ban>.

219. FLA. STAT. § 767.14 (2016) ("This section [prohibiting breed-specific legislation at the local government level] shall not apply to any local ordinance adopted prior to October 1, 1990.").

220. *E.g.*, *Young v. Broward County*, 570 So. 2d 309–10 (Fla. Dist. Ct. App. 1990).

221. *See Grey*, *supra* note 23, at 434–35 (explaining that regulations treating specific breeds as being inherently dangerous are upheld by courts, despite being overinclusive, because dog ownership is not protected by the first amendment, which renders the overbreadth doctrine inapplicable).

those facts have ceased to exist.”²²² For example, in *Dias v. City and County of Denver*, dog owners challenging the Denver ordinance on due process grounds argued, “there is a lack of evidence that pit bulls as a breed pose a threat to public safety . . . and thus . . . it is irrational for Denver to enact a breed-specific prohibition.”²²³ The court in *Dias* agreed that this conflict in the facts made for a valid due process claim, and denied the defense motion to dismiss.²²⁴ As discussed previously, there is overwhelming evidence that the Miami-Dade County Ordinance is ineffective in protecting the safety of the public; therefore, the Ordinance cannot pass rational-basis scrutiny.

b. Overbreadth

The Miami-Dade County Ordinance restricting and banning pit bulls is overly broad in that it regulates all dogs determined to be a part of a particular breed without regard to their behavior or conduct.²²⁵ The Ordinance claims there is a need to protect the community, but it reaches too far by regulating both pit bulls that are actually dangerous to humans and pit bulls that are not.²²⁶ Studies have already shown that breed is only one of many factors that determines propensity for aggression toward humans;²²⁷ therefore, the Ordinance is unconstitutionally overbroad in that it ignores these studies and restricts dogs based solely on breed. Our

222. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 153 (1938) (citing *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547–48 (1924)).

223. *Dias v. City and County of Denver*, 567 F.3d 1169, 1183 (10th Cir. 2009).

224. *Id.* at 1184.

225. See MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, § 5-17.1 (2016); see also MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, § 5-17.7 (2016) (requiring signage in various establishments stating that both full breed and mixed breed pit bulls are “dangerous”); Hussain, *supra* note 11, at 2863 (defining an “overbreadth challenge” to breed-specific ordinances as one contending the legislature overgeneralized in such a manner to make it impermissible because it subjects all members of a breed to its guidelines, regardless of a specific dog’s prior behavior).

226. See MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, §§ 5-17.2(a), 5-17.6 (2016) (characterizing all pit bulls as dangerous and banning all pit bulls within Miami-Dade County, regardless of a particular pit bull’s prior history). But see *supra* notes 176–80 and accompanying text (noting that pit bulls have been described as “people-oriented,” “family-oriented,” and “companions,” and have been used for purposes beneficial to the public). See generally Hussain, *supra* note 11, at 2863–64 (discussing a case in which a city ordinance was challenged as overinclusive, but held constitutional, even though it governed all pit bulls “despite substantial evidence that viciousness is not a specific breed characteristic” (internal quotation marks omitted) (quoting *Greenwood v. City of North Salt Lake*, 817 P.2d 816, 821 (Utah 1991))).

227. Hussain, *supra* note 11, at 2869 (explaining that a dog’s breed is only a single factor to be used in evaluating its tendency to bite, and that numerous studies do not consider a dog’s breed as relevant to determining a particular dog’s propensity to bite).

society has evolved from restricting the rights of a particular ethnic group based on some perceived stereotype; similarly, dogs are sentient beings that should not be judged solely on their breed.²²⁸ “If legislation aims to successfully protect society without unnecessarily punishing innocent dogs and dog owners, it must deal with the reality that every dog is an individual.”²²⁹

The Miami-Dade County Ordinance is also overly broad by subjecting “any dog which exhibits those distinguishing characteristics [of the three pit bull type breeds that are recognized by the AKC and the UKC]” to the law’s restrictions.²³⁰ This Ordinance designates certain physical characteristics to pit bulls, causing other breeds to be lumped into the same category.²³¹ The Ordinance sets out the incorrect presumption that the physical characteristics of a dog express its “genetic constitution.”²³² This overly broad form of regulation causes mixed breeds and non-pit bull breeds of similar physiques to be unfairly restricted. The Ordinance all but guarantees that non-pit bull type dogs will be restricted by allowing restrictions even when there are “[t]echnical deficiencies in the dogs’ conformance to the [AKC and UKC] standards.”²³³ Legislation that results in restrictions on dozens of breeds that fall outside of the intended “dangerous” breed does not rationally relate to a purpose of promoting public safety.

c. Vagueness

The Miami-Dade County Ordinance is unconstitutionally vague in that it fails to give owners adequate notice of what is regulated and gives way to arbitrary enforcement. “[A]n enactment is void for vagueness

228. Burstein, *supra* note 14, at 323 (describing breed-specific legislation as “a product of the same type of short-sighted thinking that forms the basis of many negative stereotypes and prejudices,” which should be equally unacceptable when applied to dogs that are “sentient, intelligent individuals, capable of learning.”).

229. *Id.* at 326.

230. MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, § 5-17.1(a) (2016).

231. See MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, § 5-17.1(a)–(c) (2016) (noting that a pit bull is a dog whose characteristics substantially conform to the standards set by the AKC and UKC for the three pit bull type breeds, and that “[t]echnical deficiencies in the dogs’ conformance [to the AKC and UKC standards]” does not mean that the dog is not a pit bull); Swann, *supra* note 26, at 840.

232. See § 5-17.1(a)–(c); Swann, *supra* note 26, at 853 (describing breed-specific laws as dependent on the unsubstantiated theory that a dog’s genes are indicative of its behavior, and that a dog’s physical characteristics reflect its genotype (i.e., its “genetic constitution”).

233. § 5-17.1(c).

[under due process] if its prohibitions are not clearly defined.”²³⁴ Although the provision defining “pit bull” in the Ordinance refers to the descriptions used by the AKC and the UKC,²³⁵ these descriptions vary greatly and contain characteristics that are innate in breeds other than the pit bull breeds. As discussed below, these varying descriptions do not give adequate notice to owners of mixed-bred and non-registered purebred dogs that their dog(s) fall or do not fall within the scope of the Ordinance, and unfairly allows for arbitrary animal control and law enforcement through speculative estimations of breed based on a dog’s physical characteristics.

The Miami-Dade County Ordinance is unconstitutionally vague because its description of what constitutes a pit bull does not provide adequate notice to dog owners whether the Ordinance applies to them. Section 5-17.1 of the Miami Dade County Ordinance provides that “any dog which exhibits those distinguishing characteristics [of the AKC’s American Staffordshire terrier and Staffordshire bull terrier, and the UKC’s American pit bull terrier]” will be subject to restrictions under the Ordinance, as well as dogs that are determined to be pit bulls, even though they may not conform exactly to the AKC and UKC standards.²³⁶ This definition is not only overly broad but also causes confusion as to which dogs qualify under these breed descriptions, given that these AKC and UKC descriptions differ and do not take into account mixed breeds of dog. The AKC describes the American Staffordshire terrier as having a “stocky body and strong, powerful head [with a] short coat [that] can be any color.”²³⁷ The AKC describes the Staffordshire bull terrier as “weighing anywhere between 24 and 38 pounds[,] rock-solid [and] muscular[,] [with a broad head,] pronounced cheek muscles, and [a] tight-fitting coat.”²³⁸ The UKC describes the American pit bull terrier as follows:

[The American pit bull terrier has a] head . . . of medium length, with a broad, flat skull, and a wide, deep muzzle[;] [e]ars [that] are small to medium in size, high set, and may be natural or cropped[;] comes in all colors and color patterns[;] [and] combines strength and athleticism with grace and agility and should never appear bulky or muscle-bound or fine-boned and rangy.²³⁹

These descriptions vary amongst the various dog breeds and cause great

234. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

235. MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, § 5-17.1(a)(1)–(2) (2016).

236. § 5-17.1(a)–(c).

237. *Meet the American Staffordshire Terrier*, *supra* note 159.

238. *Meet the Staffordshire Bull Terrier*, *supra* note 177.

239. *American Pit Bull Terrier*, *supra* note 178.

confusion to dog owners within Miami-Dade County.

Not only do these AKC and UKC descriptions vary amongst the three pit bull breeds, but they also set out characteristics that are present in many other breeds. The AKC describes the cane corso, dogo argentino, and boerboel breeds all as having a muscular frame and short coat, which are characteristics of all three of the pit bull type breeds.²⁴⁰ All three pit bull type breeds are capable of having multiple colors and patterns of coats, which are characteristics present in other breeds.²⁴¹ All three pit bull type breeds only stand at about a foot and a half in height, which is another characteristic present in other breeds.²⁴² Additionally, the AKC and UKC descriptions are based solely on pure breeds;²⁴³ therefore, it is even more difficult for owners of mixed breed dogs to determine whether their animal falls within the scope of the Ordinance. A law must provide adequate notice to those to which it applies, and must “be sufficiently definite so that a person of ordinary intelligence can reasonably tell what is prohibited.”²⁴⁴ However, the AKC and UKC descriptions upon which the Miami-Dade

240. Compare *Meet the Cane Corso*, AM. KENNEL CLUB, <http://www.akc.org/dog-breeds/cane-corso/detail> (last visited Dec. 13, 2016), and *Meet the Dogo Argentino*, AM. KENNEL CLUB, <http://www.akc.org/dog-breeds/dogo-argentino/detail> (last visited Dec. 13, 2016), and *Meet the Boerboel*, AM. KENNEL CLUB, <http://www.akc.org/dog-breeds/boerboel/detail> (last visited Dec. 13, 2016), with *Meet the American Staffordshire Terrier*, *supra* note 159, and *Meet the Staffordshire Bull Terrier*, *supra* note 177, and *American Pit Bull Terrier*, *supra* note 178.

241. Compare *Meet the American Staffordshire Terrier*, *supra* note 159, and *Meet the Staffordshire Bull Terrier*, *supra* note 177, and *American Pit Bull Terrier*, *supra* note 178, with *Meet the Boerboel*, *supra* note 240.

242. Compare *Official Standard of the American Staffordshire Terrier*, AM. KENNEL CLUB, http://images.akc.org/pdf/breeds/standards/AmericanStaffordshireTerrier.pdf?_ga=1.121718091.1909186028.1481294894 (last visited Dec. 13, 2016), and *Meet the Staffordshire Bull Terrier*, *supra* note 177, and *American Pit Bull Terrier*, *supra* note 178, with *Meet the Entlebucher Mountain Dog*, AM. KENNEL CLUB, <http://akc.org/dog-breeds/entlebucher-mountain-dog/detail/> (last visited Jan. 8, 2017), and *Meet the Brittany*, AM. KENNEL CLUB, <http://akc.org/dog-breeds/brittany/detail/> (last visited Jan. 8, 2017).

243. See Swann, *supra* note 26, at 842 (noting that the AKC and UKC register pure breeds). But cf. Staff Writers, *AKC Announces New Program for Mixed Breeds*, AM. KENNEL CLUB (Apr. 14, 2009), <http://www.akc.org/press-center/press-releases/akc-announces-new-program-for-mixed-breeds/> (noting that the AKC would be implementing a *mixed breed program* for dogs that would otherwise not be able to register as pure breeds with the AKC); *United Kennel Club . . . Who We Are . . .*, UNITED KENNEL CLUB 1, <http://www.ukcdogs.com/Web.nsf/WebPages/AboutUKC> (last visited Jan. 8, 2017) (noting that the UKC has the “Performance Listing program,” a *mixed breed program* available for dogs that would otherwise not be able to compete as pure breeds with the UKC).

244. *Am. Dog Owners Ass’n v. City of Yakima*, 777 P.2d 1046, 1047 (Wash. 1989); see also *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

County Ordinance relies are not definitive in providing notice to a dog owner that their shorthaired, muscular dog is in fact a pit bull.

Courts will entertain constitutional challenges on vagueness grounds if a law “invites an inordinate amount of police discretion, to the point of allowing police to selectively enforce the [law] at their ‘whim.’”²⁴⁵ It is difficult for anyone to say with certainty that a certain dog is a pit bull, as “[e]ven scientists who study canine genetics note . . . very little difference genetically between breeds.”²⁴⁶ DNA studies conducted on dogs show that the genes related to the physical characteristics of each dog makes up only 0.25% of their genes.²⁴⁷ The studies also confirmed that the phenotype genes are different than genes related to brain development.²⁴⁸ Similar to humans, even purebred dogs within the same breed will have different DNA; therefore, even scientific evidence cannot definitively identify a dog’s breed.²⁴⁹ Additionally, mixed breeds are genetically recognized as their own breed, making all pit bull mixes a completely different breed of dog.²⁵⁰ The University of Florida conducted a study involving four different animal shelters in Florida, and had groups of staff members at the shelters visually identify a total of one hundred twenty (120) dogs.²⁵¹ The staff members in the study identified fifty-five (55) of the one hundred twenty (120) dogs as being pit bull type dogs, while only twenty-five (25) of them were “true” pit bulls by DNA testing, and did not identify five (5) dogs as pit bulls that were found to be “true” pit bulls by DNA.²⁵²

Visual identification to determine whether a dog is a pit bull has been rendered completely unreliable when even educated persons, such as veterinary professionals and scientists, have trouble identifying the pit bull breeds. In *American Dog Owners Ass’n, Inc. v. City of Lynn*, a breed-specific ordinance restricting pit bulls “‘defined’ a ‘[p]it [b]ull’ as ‘American Staffordshire, Staffordshire [p]it [b]ull [t]errier, [b]ull [t]errier

245. *State v. Worrell*, 761 P.2d 56, 61 (Wash. 1988) (en banc) (Utter, J., concurring) (citing *Kolender v. Lawson*, 461 U.S. 352, 358 (1983)).

246. Grey, *supra* note 23, at 439–40.

247. *Infographic: All Dogs Are Individuals*, ANIMAL FARM FOUND., INC., <http://www.animalfarmfoundation.org/pages/Multimedia-Infographics> (last visited Dec. 13, 2016).

248. *Id.*

249. *Id.*

250. *Id.*

251. *Incorrect Breed Identification Costs Dogs Their Lives*, MADDIE’S FUND (Feb. 2012), <http://www.maddiesfund.org/incorrect-breed-identification>.

252. *Id.* (noting that the animal shelter staff failed to identify twenty percent (20%) of the twenty-five (25) dogs that had been deemed pit bulls based on DNA analysis).

or any mixture thereof.”²⁵³ The court in *Lynn* held that the ordinance was void for vagueness because “the dog officers . . . used conflicting, subjective standards for ascertaining what animals are to be defined as ‘[p]it [b]ulls’ under [the ordinance].”²⁵⁴ Regulatory laws that require persons of ordinary intelligence to guess at their meaning and differ in their application violate due process of law.²⁵⁵ The Miami-Dade County Ordinance relies on visual identification of pit bulls to determine breed; leaving too much discretion in the local police powers to regulate the animals based on their physical characteristics, which thereby makes the Ordinance unconstitutionally vague.

d. Equal Protection

The Miami-Dade County Ordinance violates the equal protection rights of dog owners because the distinction that the Ordinance draws between owners of pit bulls and owners of other dogs is not reasonably related to protecting the citizens of Miami-Dade County.²⁵⁶ Equal protection challenges in breed-specific legislation cases have historically been upheld on the accepted theory that pit bull ownership is inherently dangerous.²⁵⁷ For example, the court in *City of Toledo v. Tellings* held that the breed-specific ordinance in that case did not violate equal protection rights because regulating the ownership of dangerous animals promoted the safety of the public.²⁵⁸ However, as discussed previously, data has since proven that this theory is incorrect; therefore, this reasoning is flawed and there is no longer a rational basis for denying pit bulls owners the same rights that other dog owners enjoy.

Responsible pit bull owners are unjustly burdened merely for their choice in companion. They are prevented from living in certain areas if they wish to keep their beloved pet, and are often denied the opportunity to

253. *Am. Dog Owners Ass’n, Inc. v. City of Lynn*, 533 N.E.2d 642, 644 (Mass. 1989).

254. *Id.* at 646.

255. *Dog Fed’n of Wis., Inc. v. City of South Milwaukee*, 504 N.W.2d 375, 378 (Wis. Ct. App. 1993) (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)).

256. *See supra* notes 166–86 and accompanying text. *But see* MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 5, §§ 5-17, 5-17.6(b) (2016); *State v. Peters*, 534 So. 2d 760, 763 (Fla. Dist. Ct. App. 1988) (rejecting the defendants’ equal protection arguments for invalidating an ordinance banning pit bulls and noting that there is no constitutional guarantee that all dog owners will be treated similarly). *See generally* Burstein, *supra* note 14, at 319–20 (providing an overview of equal protection challenges and arguments against breed-specific legislation).

257. *See, e.g., Peters*, 534 So. 2d at 764.

258. *City of Toledo v. Tellings*, 871 N.E.2d 1152, 1158–59 (Ohio 2007).

own a house because they are unable to get homeowners insurance.²⁵⁹ Breed-specific legislation like the Miami-Dade County Ordinance has led many insurance companies to deny policies for owners of pit bulls because pit bulls have been labeled as a “dangerous breed[.]”²⁶⁰ In 2013, Miami-Dade County even removed a man’s service dog and fined the man over \$10,000.00 pursuant to the Miami-Dade County Ordinance because the dog was a pit bull.²⁶¹ All responsible dog owners, including those within Miami-Dade County, should be granted equal rights in the ownership of their animals.

B. PROPOSALS FOR REFORM

Enacting breed-specific laws like the Miami-Dade County Ordinance have proven to be a completely ineffective way of dealing with dog attacks. Legislation needs to take a different route in order to address the real issues behind this problem. Rather than discriminate against dogs on the basis of their breed, legislation needs to focus on punishing the human behavior that leads to dog aggression. It should balance public safety against dogs that are actually dangerous while still “respecting the rights of responsible owners.”²⁶² Instead, “dangerous dog laws” and harsher criminal penalties for irresponsible dog ownership allow innocent dogs and their owners to enjoy a companion relationship without unfair and unsupported restrictions.

1. Dangerous Dog Laws

“[D]angerous-dog laws [including Florida’s dangerous dog law] more effectively . . . address the [dog bite] problem by objectively examining a dog’s prior conduct rather than making subjective evaluations of viciousness based solely on breed.”²⁶³ These laws place regulations on owners of dogs that have been deemed dangerous because of *prior*

259. See Hussain, *supra* note 11, at 2850.

260. *Id.*

261. Barbara A. Besteni, *Pit bull Owner Challenges Miami-Dade County’s Ban*, LOCAL10.COM (Nov. 13, 2013, 5:11 PM), <http://www.local10.com/news/pit-bull-owner-challenges-miami-dade-countys-ban>.

262. Hussain, *supra* note 11, at 2883.

263. *Id.* at 2848; see FLA. STAT. §§ 767.10–.16 (2016); see also FLA. STAT. §§ 767.13–.136 (2016) (applying to a dog owner whose dog attacks a person after being classified as “dangerous,” as well as a dog owner whose dog attacks a person resulting in serious bodily injury or death, regardless of the dog’s prior classification as “dangerous”). See generally Hussain, *supra* note 11, at 2854–56 (discussing the history, enforcement, and application of “dangerous dog laws”).

instances of unprovoked attacks.²⁶⁴ While some believe these laws are ineffective because they do not go into effect until *after* the dog attacks and causes *serious* bodily injury, the laws can be fashioned in a way to put restrictions on the animals *before* any serious injury is caused. For example, if a dog acts in an unprovoked, aggressive manner, which results in *minor* bodily injury, then the regulations should require that the dog be kept on a leash at all times while outside, rather than provide for the immediate destruction of the animal after the dog causes *serious* bodily injury.²⁶⁵ Dangerous dog laws also allow the owner an opportunity to contest the determination that their dog is dangerous.²⁶⁶ Given that Florida currently has a dangerous dog law in place,²⁶⁷ the main change that needs to be made to Florida's dangerous dog law is to remove the exception that grandfathers in previously adopted breed-specific ordinances.²⁶⁸ Just as people are not arrested before they commit a crime, dogs should not be punished before they have done anything wrong.

2. Owner Liability

While dog fighting has become illegal in all fifty states, harsher penalties need to be imposed on humans for irresponsible ownership of their dogs. For example, section 767.13 of the Florida Statutes makes it a third-degree felony to continue ownership of a previously determined dangerous dog that attacks a person and causes serious bodily injury or death,²⁶⁹ and attributes in part the problem of unprovoked dog attacks to the owners of these animals.²⁷⁰ Florida is on the right track in placing criminal liability on the owners for subjecting their animals to abuse, neglect, and poor ownership. Michigan takes dangerous dog liability even further by charging a dog owner with involuntary manslaughter if the dog was

264. See Hussain, *supra* note 11, at 2854.

265. See, e.g., §§ 767.13–.136. Pursuant to sections 767.13 through 767.136 of the Florida Statutes, no penalties are imposed on dog owners whose dog attacks a person, which results in *minor* bodily injury, unless the dog owner had knowledge of the dog's dangerous propensities or the dog had previously been classified as "dangerous." *Id.* Sections 767.13 through 767.136 of the Florida Statutes also provide for the destruction of a dog previously classified as "dangerous" that attacks a person, *regardless of the resulting injury*, and a dog *not* previously classified as "dangerous" that attacks a person, *which results in death*. *Id.*

266. Hussain, *supra* note 11, at 2855–56; see also FLA. STAT. § 767.12(3) (2016) (providing a subject dog owner with the opportunity to contest his or her dogs' "dangerous" classification).

267. §§ 767.10–.16.

268. See FLA. STAT. § 767.14 (2016).

269. FLA. STAT. § 767.13(2) (2016).

270. FLA. STAT. § 767.10 (2016).

previously determined to be dangerous and fatally attacks a person.²⁷¹ These laws focus on owner responsibility and are a much better deterrent to irresponsible owners than just punishing the animal.

Education is also important for owners who do not maliciously lack responsibility in their ownership, but who lack the training to understand how to properly raise their animal. Well-behaved animals, just like well-behaved children, are a product of their upbringing. Education and training would be an effective requirement for first-time offenses, which would help owners identify the issues that can lead to their dogs' aggressive behavior, and reduce the chance of repeat offenses. Responsible dog ownership through education can alleviate a substantial amount of the issues that have led to the enactment of breed specific legislation.

CONCLUSION

The Miami-Dade County Ordinance banning pit bulls should be invalidated. Breed-specific legislation is a completely ineffective way to combat dog related attacks, and its laws lack the requisite clarity and definitiveness to survive Fourteenth Amendment scrutiny. Pit bull breeds are not inherently dangerous animals, and placing restrictions on them based on that assumption is unfair and unconstitutional. The focus needs to instead be placed at the other end of the leash. Placing responsibility on the owners of these animals is a much more effective way to combat the dog bite problem. Dangerous dog laws more accurately address dogs that need to be restricted in order to keep the public safe, and put the necessary amount of responsibility on the dog owners to raise and train their dogs correctly. Ownership of a domestic companion is a right that all humans should have the equal opportunity to enjoy, and restricting animals based on their physical features associated with a bad stereotype is taking that right away from innocent, responsible owners. Dogs are sentient beings, and it is unconstitutional to subject such beings to confinement and death for the way that they look. Many municipalities have recognized that breed-specific laws are ineffective, and have rejected and repealed this form of legislation. It is essential to thousands of pit bull lives that Miami-Dade County joins this realization and repeals its pit bull ban.

271. Hussain, *supra* note 11, at 2877–78.