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Are Laws Prohibiting Ownership of Pit Bull-Type Dogs Legally Enforceable?

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In recent years there has been a media blitz on the violent and dangerous propensities inherent in certain species of dogs. Although pit bulls, whatever that term really means, were the first breed maligned by the press and police, the tide is shifting to include other breeds as well.

In early 1998, USA Today reported on a University of Pittsburgh, JAMA published study that serious dog bites account for 334,000 visits to hospital emergency rooms each year. This was second only to the 400,000 injuries suffered in baseball and softball games annually. Soon after, The State Farm Times announced that the insurance industry paid out more than \$1 billion in dog-bite claims in 1996, \$80 million of them for State Farm insured parties. This amounted to 30% of all bodily injury and medical claim payments by the company that year.

Because of the economic losses suffered by State Farm, the company teamed up with the AVMA, SAVMA, the Nevada Department of Agriculture, and Auburn University to develop a National Dog Bite Prevention Week, a brochure, a poster about dog bites, and an activity coloring book for elementary school children.

As insurance carriers have experienced serious losses caused by dog bites, they have begun to discriminate against owners of specific breeds of dogs. While numbers of dogs went up only 2% between 1986 and 1996, the number of dog bite necessitating medical care rose 37%. With pit bulls, Rottweilers, German shepherds, huskies, Alaskan malamutes, Doberman pinschers, chow chows, Great Danes, Saint Bernards, and Akitas listed by the CDC and Humane Society of the United States as the breeds most commonly involved in fatal attacks on humans, the insurance companies have begun to deny coverage for people who own these breeds of potentially aggressive dogs. The vice president of one prominent casualty company is quoted as saying that his company prefers not to write homeowners policies for people who own dog breeds with a track records of attacks. He was quoted, however, as saying that the company is reasonable about its policy. It can be enticed to cover dogs that are not inherently aggressive, if letters from veterinarians are received to help assure that a dog's behavior is safe.

The Pit Bull As Villain

The breed most vilified by this media attack is the Staffordshire Terrier commonly referred to as the pit bull. The public attitude that has been shaped by these portrayals is best summed up by a recent article in the American Law Reports Fourth:

For millennia the dog has been the companion, friend, and faithful servant of humanity. But in recent years, evidence has been mounting that humanity in its perverse ingenuity, has perhaps created, in the "Pit Bull," the paradox of a breed of dog which is a natural enemy of humanity, as well as of every other living thing, including its own kind. It has been said that dogs of this type, being bred for fighting to the death, have extraordinary strength and agility, possess jaw strength up to twice that of an ordinary dog, are extremely tolerant of pain, attack without warning, never voluntarily give up an attack once begun, are in many instances inherently dangerous, and are never completely predictable. [4]

Even though many veterinarians know it is not true, this hyperbolic description paints pit bulls as the

devil dogs that guard the gates to hell. However, it does accurately describe the animosity that some members of the public feel toward these animals. In response to this public fear of pit bulls, many state and municipal legislatures have passed draconian breed specific anti-dog laws. These laws span the legal gamut. Some force owners of pit bulls to carry excessively high insurance coverage, others mandate that owners keep their dogs chained and fenced in at all times, and a few completely ban the ownership of pit bulls in the municipality. [5]

The Legal Challenge

The passage of pit-bull related ordinances has been met with a series of constitutional challenges. These laws have been challenged on grounds that they were: 1) not rationally related to valid legislative aims; 2) too vague to put dog owners on notice; 3) an illegal taking of private property by the government; 4) unconstitutionally oppressive in their levying of fees; 5) lacking the requirements of procedural due process; 6) violating citizens' first amendment rights; or 7) beyond the scope of local government because they impeded interstate commerce. [6]

As extensive as the challenges to these breed specific animal control laws have been, almost all have failed. In almost every case the courts have held that it is well within the state's legitimate police powers to regulate and control dogs. [Vanater v. South Point, 717 F.Supp. 1236; Holt v. Maumelle, 817 SW2d 208.] In these cases the courts have reasoned that pet ownership is equivalent to ownership of any type of property.

The courts have reasoned that the state may legally interfere with this right to ownership of property as long as there is a rational relationship between the interference and a legitimate state end. Most courts have held that citizens' property interests in their pets are strictly limited by public safety concerns. The law in this area is aptly summarized in the American Law Reports 4th which states ". . .[A]n owner's property interest in dogs is imperfect or qualified in nature at best, and has long been recognized as subject to peculiar and drastic police regulations by the state or its subdivisions without depriving owners of any federal constitutional rights. To justify the state's assertion of its authority on behalf of the public . . . it must appear that the interest of the public requires such interference; that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals; [and] with debatable questions as to [determinations of] reasonableness being not for courts [to make] but for legislatures". [7]

Decisions Striking Down Breed Specific Laws

Although courts have generally been deferential to legislatures that have passed breed specific anti-dog laws, there have been instances where these statutes have been struck down as unconstitutional. The most notable instance of such a statute being held unconstitutional is that of the Massachusetts case of American Dog Owners Association, Inc., et al. v. City of Lynn.[8] In this case the city of Lynn passed four ordinances regulating the ownership of pit bulls. The statutes in question required owners of pit bulls within the city of Lynn to keep their pit bulls fenced in at all times on the property of the person to whom they were registered.

The remedy for a violation of this law was a fifty dollar fine and banishment of the animal from the city. The American Dog Owner's Association challenged this law as being void for vagueness. The Association argued that the statute's definition of pit bull was not specific enough to put owners of pit bulls on notice, allow people of average intelligence to know they were breaking the law, or to prohibit law enforcement officers from making arbitrary enforcement decisions.

There are two separate definitions of pit bull in question. The first definition is "American Staffordshire, Staffordshire Pit Bull Terrier, Bull Terrier or any mixture thereof". The second definition is "pit bulls or dogs known as pit bulls . . . The term [being] employed to the full extent of its common understanding and usage." [Id at 644]

The Massachusetts court held that the definitions set forth in the legislation were indeed too vague to be enforceable. The judge found that "there is no scientific means, by blood type, DNA, enzyme, or otherwise, to determine if a dog is a particular breed or any mixture thereof, that dog officers of the city of Lynn used conflicting, subjective standards for ascertaining what animals are to be identified as pit bulls under all of the ordinances in question; and that the ordinance failed to provide law enforcement officials with ascertainable standards by which to enforce the ordinance." [9]

The Court held that the statute's vagueness violated the constitution on two grounds. First, the statute violated due process by not stipulating specific guidelines to inhibit law enforcement officers from enforcing the law in an arbitrary or discriminatory fashion. The court based its decision on the testimony of the city's dog officers that stated that they were forced to use very subjective standards to identify breeds. The officers indicated that they would target dogs based on appearance, and owners who disputed the classification of their dogs as pit bulls would have to procure certified letters from their veterinarians stating the breed of the dogs in question. However, the city's veterinarian testified that when identifying breeds he relied solely on the owners' identifications of breed and "had no medical basis on which to dispute that identification." [Id at 644]. Second, the statute was not specific enough to put dog owners on notice that they were breaking the law.

The court held that the Lynn ordinance depended solely on a dog officer's understanding of the ambiguous term pit bull, unlike laws which prohibit ownership of vicious dogs, or dogs which have a history of biting or running wild, either of which would require a factual inquiry into each accused dog's past behavior. This type of law "leaves dog owners to guess at what conduct or dog 'look' is prohibited, and requires 'proof' of a dog's 'type', which unless the dog is registered, may be impossible to furnish." [10]

Decisions Upholding Breed Specific Laws

Even though Lynn seemed to be an important decision in favor of pit bull owners, many other courts have declined to follow Lynn's logic. A prime example of a case in which a court upheld a breed specific anti-dog law is *American Dog Owners Association v. City Yakima*. During the winter of 1987, in Yakima, Washington, a rash of pit bull biting incidents occurred. In response to the public outcry against the dogs, the city adopted an ordinance banning pit bulls within city limits. Yakima City Ordinance §3034 banned the ownership of dogs that the owners knew were pit bulls. The ordinance specified four breeds of dogs as pit bulls: bull terriers, American pit bull terriers, Staffordshire bull terriers, and American staffordshire terriers, and any dog that was "identifiable as having any pit bull variety as an element of their breeding." *American Dog Owners Association, et al. v. City of Yakima*, 777 P.2d 1046(1989).

The city had notified the plaintiffs in that case that their dogs may fall under the anti-pit bull ordinance. They moved for summary judgment on grounds that the ordinance was too vague because the average person could not identify mixed breed dogs, and there was no scientific method to determine breed. [Yakima, at 1047.] The city countered with evidence of the standards used by the enforcement officers of Yakima to identify dogs as pit bulls. The City stated that the officers used detailed professional standards and illustrations to identify dogs as pit bulls.

To decide whether or not the Yakima City ordinance was constitutional the court relied on the standards set fourth in *Seattle v. Huff*. That decision held that in order for a statute to be constitutionally void due to vagueness, the plaintiff must prove that one of two things is lacking, "adequate notice to citizens [or] adequate standards to prevent arbitrary enforcement." [*Seattle v. Huff*, 767 P.2d 572 (1989)]. The court defined the first prong, the adequate notice component, as ". . . requir[ing] the law to be sufficiently definite so that a person of ordinary intelligence can reasonably tell what is prohibited." [Yakima, at 1047]. The court, however, also stated that "impossible standards of specificity are not required." Id. Using these definitions the court held that the Yakima City Ordinance was not unconstitutionally vague due to inadequate notice. The professional standards and illustrations used by the city police were stricter than any lay person would have to apply. [Yakima, at 1049.]

The court defined the second prong, the arbitrary enforcement element, as forbidding ". . . statutes that contain no standards and allow police officers, judge, and jury to subjectively decide what conduct the statute proscribes . . . in any given case." [Yakima, at 1049 citations omitted.] The court then stated that the real test was whether a statute "invites an inordinate amount of police discretion" [Id.] Using these standards the court held that the Yakima ordinance was not unconstitutional. They further decided that the use of professional breed identification standards and illustrations were sufficient to make the decision of the city's law enforcement officers non-subjective and, therefore, constitutional.

At the end of the opinion the court seems to reassure itself that its decision was correct by stating that citizens' property interests in animals are imperfect, and that dogs already are bound by so much

regulation that any laws affecting them which are rationally related to a public interest are valid. Although the court spent some time justifying the Yakima ordinance based on standards outlined in Seattle's case law, it seems its real rationale was that the law required owners to know that their animals were pit bulls.

An affidavit from the Yakima Assistant City Attorney, stated that the City was required to prove that the dog is ". . . known by the owner to be either a purebred or mixed breed of the four listed breeds and identifiable as one of those breeds." [Yakima, at 1048(emphasis added).] In the city of Yakima, in order to convict someone of harboring a pit bull, the prosecution must prove that the owner knew the dog was either a pure breed of one of the four outlawed breeds or a mix of them. This is a very difficult element to prove. In fact, the only way to prove that an owner knows that his dog is a bit bull is if the dog is registered as a pit bull. In reality what the Yakima ordinance outlaws is not the ownership of pit bulls, but the official registration of dogs as pit bulls. The ordinance was enacted to attempt to outlaw the ownership of dangerous dogs. In practice, the ordinance only succeeded in hampering legitimate breeders and dealers from owning the pit bulls in Yakima, while not doing anything to reduce the ownership of truly dangerous dogs.

The Need For Veterinary Oversight

The problem with the dog law of Yakima, and other breed specific anti-dog laws, is that they ban entire breeds of dogs based solely on reputation or bad public image, ignoring the fact that the majority of dogs within the breed are upstanding citizens. These statutes do not ban dogs that have exhibited any identifiable dangerous or vicious behavior. As with any ordinance that outlaws status or class instead of behavior, these laws are inherently flawed. When legislation is enacted with broad unthinking strokes instead of specifically targeting the problem, it persecutes innocent actors in order to placate the fears of a hysterical public. From an animal behavior perspective this is misguided legislation. Because of this, veterinarians need to become more involved to assure that dangerous animal laws are not based on breed or species, but on whether or not individual animals have and display vicious or dangerous propensities.

In recent years many local and state legislatures have begun to enact breed specific anti-dog laws. To be fair, in some instances the legislatures have approached veterinarians in their communities for advice on the type of legislation that would work best. When contacted by state or local lawmakers who are considering enacting vicious dog legislation, veterinarians should ensure that the laws affect the ownership of individual animals, not just dogs, that have exhibited dangerous, vicious or violent behavior. With this approach, dangerous cats, horses, bulls or even birds also would be included in a non-discriminatory manner.

Laws that are enacted to protect the public should be based on behavior, not breed or species. Veterinarians must ensure that law makers understand that unlike the past when animals were, perhaps, correctly deemed mere property, today they are more accurately described as members of the family. Because of this changing societal norm, dogs in general, and animals in particular, deserve a higher level of legal protection than traditional property law provides. In addition, lawmakers must be informed that breed identification is an inexact science, and that outlawing entire breeds or species of animals cuts an exceptionally broad swath through animal ownership and is more difficult than it first appears.

Conclusion

Whenever lawmakers attempt to short cut their drafting of effective laws by prohibiting ownership of breeds rather than defining unacceptable animal behavior, they unnecessarily indict many innocent individuals. The United States Constitution does not allow for the criminalization of status or class among human beings. Although the courts do not value animal life to the same extent they do human life, they should not allow entire breeds of animals to be criminalized. Instead, lawmakers must understand that these laws can ruin countless human lives as well as needlessly cause the destruction of many kind and innocent animals.

It is now the responsibility of veterinarians in this country to recognize the plight many of their clients currently are experience or about to suffer as a result of these misguided efforts. Once that plight is understood, the profession must become politically activated to prevent lawmakers and insurance companies from indiscriminately declaring war on specific breeds of animals and the unwittingly

vulnerable clients who own them.

References

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 2. American Dog Owners Association Inc., et al. v. City of Yakima, 113 Wash.2d 213, 777 P.2d 1946
 3. Holt v. Maumelle, 817 SW2d 208
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 5. Vanater v. South Point, 717 F Supp. 1236
 6. Donaldson, Russell Validity and Construction of Statute, Ordinance, or Regulation Applying to Specific Dog Breeds, Such as "Pit bulls" or "Bull Terriers", 80 A.L.R. 4th 70 at 71 (1991).
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