

# TARGETING THE WRONG END OF THE LEASH: WHY BREED-SPECIFIC LEGISLATION IS FUTILE WITHOUT RESPONSIBLE PET OWNERSHIP AND UNBIASED MEDIA

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## INTRODUCTION

One day in February 1989, a seven-year-old girl, Melissa Moreira, exited her mother’s car and walked towards the driveway of her home in West Kendall, Miami-Dade County, Florida.<sup>1</sup> Their neighbor was involved in dogfighting and had kept a number of pit bulls on his unfenced property in a backyard pen.<sup>2</sup> Though this created “a long source of unease” with Moreira’s mother and step-father, they were reluctant to confront someone who engaged in the “savagely, violent culture of dog fighting . . . .”<sup>3</sup> Unfortunately confirming their unease, one of the neighbor’s pit bulls escaped and attacked Moreira, forcing her to undergo eight facial reconstructive surgeries and leaving her with permanent scarring.<sup>4</sup> Melissa Moreira’s attack created a public outcry that would prompt Miami-Dade County to enact an ordinance banning pit bulls in 1989.<sup>5</sup> This ban, a form of breed-specific legislation (“BSL”), has stood for thirty years, overcoming all challenges to repeal it—at

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\*Although published in 2020, this Note was written and submitted in March 2017. Since the time of writing this Note, some laws have been repealed or challenged; footnotes note the laws that have been repealed or challenged.

1. *Wounds Still Fresh for Mom of Pit Bull Attack Victim*, FOUR LEGGED FRIENDS (AND ENEMIES) (Feb. 26, 2012), <http://fourleggedfriendsandenemies.blogspot.com/2012/02/wounds-still-fresh-for-mom-of-pit-bull.html>.

2. *Id.*

3. *Id.*

4. *Id.*

5. DogTime Staff, *Miami Ban on Pit Bulls May Come to an End*, DOGTIME, <http://dogtime.com/trending/16012-miami-ban-on-pit-bulls-may-come-to-an-end> (last visited Sept. 1, 2018).

least to date.<sup>6</sup> The Miami-Dade County pit bull ban, as well as other BSL, will soon face another challenge as pit bull advocates and animal rights groups gain momentum and support in their fight to end BSL.<sup>7</sup>

While banning pit bulls may seem like the solution, this Note will demonstrate how BSL is actually an inadequate attempt to resolve a problem without addressing the underlying issue of poor pet ownership. Part I of this Note will explain what BSL is. Part II will demonstrate the cycles of breed-prejudices, which have brought us to today's BSL primarily targeting pit bulls. Next, Part III will illustrate the ineffectiveness and impracticability of BSL. Lastly, Part IV will discuss how replacing BSL with breed-neutral, human-related measures will more effectively prevent another tragic attack like Melissa Moreira's.

## I. ALL BASES OF BSL

BSL refers to any law banning or restricting the ownership of certain types of dogs.<sup>8</sup> While BSL is generally implemented and enforced at the municipal level, it does not necessarily apply to every and any dog within that area.<sup>9</sup> BSL may target any breed, but the most commonly targeted breeds are the ones that are "perceived as 'dangerous'" because of certain physical characteristics.<sup>10</sup> These physical characteristics do not always conform to a specific breed for some BSL to be enforced. For example, having a similar or "general physical appearance that someone might consider 'targeted breed-like'" is enough.<sup>11</sup> This is due to "substantially similar" clauses within BSL which enables BSL to target not only specific breeds, but also loosely defined classes of dogs like the pit bull.<sup>12</sup> BSL's objective is to prevent severe and fatal dog attacks;<sup>13</sup> however, by focusing solely on the dog's appearance, BSL renders irrelevant

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6. *Breed Specific Legislation*, BSL CENSUS, <http://bslcensus.com/bsl> (last visited Mar. 13, 2017); Douglas Hanks, *Miami-Dade May Repeal Its 1989 Ban on Pit Bulls*, MIAMI HERALD (Oct. 1, 2016, 1:16 PM), <http://www.miamiherald.com/news/local/community/miami-dade/article105263446.html>.

7. *See* Hanks, *supra* note 6.

8. *Breed Specific Legislation*, *supra* note 6.

9. *Id.*

10. *Id.* (listing Wolf Hybrids, the Staffordshire Bull Terrier, Bull Mastiff, Siberian Husky, Belgian Malinois, Doberman Pinscher, Presa Canario, Akita, American Staffordshire Terrier, Dogo Argentino, Alaskan Malamute, Cane Corso, Chow Chow, German Shepherd, Bull Terrier, Rottweiler, American Bulldog, and the Pit Bull among the breeds most commonly targeted by BSL).

11. *What is BSL?*, STOP BSL, <https://stopbsl.org/bsloverview> (last visited Sept. 1, 2018).

12. *Id.*

13. *Breed-Specific Legislation FAQ*, DOGSBITE, <http://www.dogsbite.org/legislating-dangerous-dogs-bsl-faq.php#commontypes> (last visited Sept. 1, 2018).

other significant factors such as the ownership of the dog and that individual dog's actual behavior.<sup>14</sup>

BSL is commonly misunderstood to refer only to breed bans, though it also includes breed restrictions.<sup>15</sup> Both forms of BSL are prevalent across the United States with an estimated 1,089 cities across thirty-three states enforcing either breed bans or restrictions as of December 2017.<sup>16</sup>

#### A. *The Breed Ban*

The most publicized form of BSL is the outright ban.<sup>17</sup> A ban “prohibits the future ownership and reproduction (breeding) of a specific dog breed, chiefly pit bulls.”<sup>18</sup> While “*well-written* bans allow existing pit bulls to remain with their owners,” provided the owners comply with any additional requirements set out in the ban, not-so-well-written bans usually require the immediate removal of the dog.<sup>19</sup> If relocation is not an option once a ban goes into effect, these dogs are usually killed by animal control for no other reason than that their appearance identifies them as a targeted breed.<sup>20</sup>

#### B. *Restrictions*

The restrictions placed on an owner of a targeted breed vary depending on the language of the BSL.<sup>21</sup> Common restrictions, especially for pit bull-type dogs, usually include but are not limited to:

1. muzzling in public;
2. mandatory sterilization (spaying and neutering);
3. using a leash of a certain material or length;
4. purchasing liability insurance of a certain amount;
5. placing “vicious dog” signs outside the home and “vicious dog” tags on the dog's collar;
6. requiring special training certificates;

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14. *Breed Specific Legislation*, *supra* note 6.

15. *Id.*

16. *Estimated U.S. Cities, Counties, States and Military Facilities with Breed-Specific Laws*, DOGSBITE, <https://www.scribd.com/doc/56495216/Estimated-U-S-Cities-Counties-States-and-Military-Facilities-with-Breed-Specific-Pit-Bull-Laws> (last updated Sept. 1, 2018).

17. *Breed-Specific Legislation FAQ*, *supra* note 13.

18. *Id.*

19. *Id.* (emphasis added); *Breed Specific Legislation*, *supra* note 6.

20. *Breed Specific Legislation*, *supra* note 6.

21. *Id.*

7. restricting entry to certain dog parks;
8. automatic labeling as “dangerous” or “potentially dangerous”;
9. requiring microchipping;
10. imposing outdoor fencing requirements; and
11. requiring higher registration fees.<sup>22</sup>

### C. *Loopholes in Certain States’ Bans on BSL*

While some states saw BSL as a “quick fix” to the growing dog bite problem, others began to realize its discriminatory nature and consequently enacted state-level legislation prohibiting BSL.<sup>23</sup> From 2006 through 2016, an additional twenty-one states have enacted such legislation, with Arizona doing so in 2016.<sup>24</sup> Of these states, a handful—namely California, Colorado, Florida, and Illinois—may still allow its municipalities to enforce bans or restrictions if one of the following are included: (1) a grandfather clause,<sup>25</sup> or (2) a home rule exception.<sup>26</sup>

A grandfather clause is a law that allows enforcement of BSL since the municipal level law “existed prior to any state-level legislation.”<sup>27</sup> The state may have failed to make its law prohibiting BSL apply retroactively, or the state-level law explicitly allows municipal laws to remain in effect.<sup>28</sup> Though the state of Florida prohibits BSL, Miami-Dade County’s pit bull ban is still enforceable through a grandfather clause.<sup>29</sup>

With a Home Rule Exception, some states permit applicable municipalities to “self govern outside of state laws.”<sup>30</sup> Therefore, these

22. *Id.*; *What is BSL (Breed Specific Legislation)*, BAN PIT BULLS, <http://www.banpitbulls.org/what-is-bsl> (last visited Sept. 2, 2018); *Breed-Specific Legislation FAQ*, *supra* note 13.

23. Sydney Roffman, *Video: Pit Bulls Unfairly Singled Out in Breed Specific Legislation*, TIMESUNION (Dec. 14, 2016, 9:21 AM), <http://blog.timesunion.com/highschool/video-pit-bulls-unfairly-singled-out-in-breed-specific-legislation/54101>.

24. *2016 U.S. Animal Protection Laws Rankings*, ANIMAL LEGAL DEF. FUND 5 (Jan. 2017), <http://aldf.org/wp-content/uploads/2017/01/Rankings-Report-2016-ALDF.pdf>.

25. PetPlace Staff, *Banned Breeds: A State by State Guide*, PETPLACE (June 28, 2017), <https://www.petplace.com/article/dogs/pet-care/banned-breeds-a-state-by-state-guide/> (defining a grandfather clause as “[a] law that allows municipal level laws to continue to be honored and enforced even after legislation that has been passed to ban BSL because the original municipal level law existed prior to any state-level legislation.”).

26. *FAQ*, BSL CENSUS, <http://bslcensus.com/faq> (last visited Mar. 13, 2017) (stating that, “a Homerule Exception is where a municipality is allowed to pass and enforce laws whether there is a state level law or not.”).

27. Pet Place Staff, *supra* note 25.

28. *Id.*

29. DogTime Staff, *supra* note 5.

30. *FAQ*, *supra* note 26.

municipalities “may pass and enforce a law that bans or restricts ownership of any breed of their choosing,” despite the contradicting state legislation.<sup>31</sup> The city of Denver used a Home Rule Exception to reinstate its pit bull ban after Colorado outlawed BSL in 2004.<sup>32</sup>

## II. THE SPITZ<sup>33</sup> TO THE PITS

### A. *The Pit Bull’s Predecessors: An Overview*

BSL, as we know it today, first emerged in the early 1980s after a number of dog attacks across the country created an “anti-pit bull dog hysteria . . . .”<sup>34</sup> However, breed prejudices did not originate with the pit bull dog, nor did these prejudices only begin in the 1980s.<sup>35</sup> It seems that every decade or so the public finds a new breed on which to pass blame because numerous dog breeds of all physical characteristics have been targeted throughout the years. Every outcry over any given breed has “reflected the media-driven hysterias of the age.”<sup>36</sup> Among the first dogs “vilified . . . as ‘dangerous’” were the Spitz and the Bloodhound in the nineteenth century.<sup>37</sup> The focus then shifted toward the Newfoundland, the Mastiff, and the Great Dane.<sup>38</sup> By the twentieth century, the Saint Bernard, German Shepherd, Doberman Pinscher, Rottweiler, and even the Collie had all taken a turn in the spotlight as a dangerous or vicious breed.<sup>39</sup>

In the late nineteenth century, the media targeted the spitz, “a small, mixed-breed dog related to the Pomeranian and the Samoyed,” blaming it for

31. *Id.*

32. Dana M. Campbell, *Pit Bull Bans: The State of Breed-Specific Legislation*, AM. BAR GPSOLO (July/Aug. 2009), [http://www.americanbar.org/newsletter/publications/gp\\_solo\\_magazine\\_home/gp\\_solo\\_magazine\\_index/pitbull.html](http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/pitbull.html) (last visited Sept. 2, 2018).

33. *Spitz*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Spitz> (last visited Mar. 13, 2017) (listing the Akita, Labrador Husky, Alaskan Husky, Alaskan Malamute, American Eskimo Dog, Pembroke Welsh Corgi, Pomeranian, Shiba Inu, Samoyed, and more as spitz dogs).

34. Lynn Marmer, *The New Breed of Municipal Dog Control Laws: Are They Constitutional?*, 53 U. CIN. L. REV. 1067, 1067 (1984).

35. See Ann L. Schiavone, *Barking Up the Wrong Tree: Regulating Fear, Not Risk*, 22 ANIMAL L. 9, 15–21 (2015).

36. Bronwen Dickey, *We’re Safer Without Pit Bull Bans*, LA TIMES (Oct. 11, 2016, 4:00 AM), <http://www.latimes.com/opinion/op-ed/la-oe-dickey-pitbull-ban-20161011-snap-story.html>.

37. Schiavone, *supra* note 35, at 17.

38. *Id.* at 20; Dickey, *supra* note 36.

39. Schiavone, *supra* note 35, at 20.

the rabies infection in New York City.<sup>40</sup> The media referred to spitz dogs as “venomous beasts,” “tireless and shameless thie[ves],” and “thoroughly and irredeemably corrupt[ ]” animals.<sup>41</sup> Refusing to accept that the spitz could even be related to the seemingly harmless Pomeranian, one article argued that it is more probable that this alleged relationship was “assumed in order to support [the spitz’s] claim to respectability.”<sup>42</sup>

The belief, though incorrect, that spitz dogs were “uniquely susceptible to rabies” created a hysteria within the public, leading newspaper articles to further sensationalize events involving these victimized dogs.<sup>43</sup> The New York Times published an article in 1885 describing a “wild-eyed” spitz running through the neighborhood until shot by a police officer.<sup>44</sup> The dog had not attacked or pursued anyone, yet the apparent “wild look of the animal and the headlong manner in which it rushed along warned people who observed the dog’s behavior that there was danger at hand . . . .”<sup>45</sup> We can see similarly with current BSL that the mere look of a pit bull—one that has not caused any harm—can create such an alarm in the public as to justify to BSL proponents a ban of that entire breed.<sup>46</sup>

Moving on to a new breed to target, the newspapers publicized over thirty attacks by Bloodhounds through the early 1900s.<sup>47</sup> The media painted these dogs, which were used to track down escaped slaves, as “bloodthirsty . . . man-trackers who hunt their prey relentlessly.”<sup>48</sup> Similar to identification issues with pit bulls today, it was nearly or actually “impossible to determine what types of ‘bloodhounds’ were involved in these incidents, or if they were even actually bloodhounds at all.”<sup>49</sup>

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40. *Id.* at 16.

41. *A Venomous Beast*, N.Y. TIMES (Nov. 17, 1876), <http://query.nytimes.com/mem/archive-free/pdf?res=9D05EFD6123AE63BBC4F52DFB767838D669FDE>; *A Whited Canine Sepulchre*, N.Y. TIMES (May 24, 1876), <http://query.nytimes.com/mem/archive-free/pdf?res=9F04E0DE1F3FE73BBC4C51DFB366838D669FDE>.

42. *A Whited Canine Sepulchre*, *supra* note 41; *but see* Jamey Medlin, *Pit Bull Bans and the Human Factors Affecting Canine Behavior*, 56 DEPAUL L. REV. 1285, 1309–10 (2007) (noting that “[e]ven the Pomeranian . . . has been responsible for a fatal attack on a child.”).

43. Schiavone, *supra* note 35, at 16; Dickey, *supra* note 36.

44. *A Fright in Madison-Square: A Spitz Dog’s Mad Career Stopped by a Policeman’s Bullet*, N.Y. TIMES (May 4, 1885), <http://query.nytimes.com/mem/archive-free/pdf?res=9907EED6163AEF33A25757C0A9639C94649FD7CF>.

45. *Id.*

46. Dickey, *supra* note 36.

47. Schiavone, *supra* note 35, at 19.

48. *Id.* at 18.

49. *Id.* at 19.

During that time period, it was not uncommon for a slaveholder to first force a slave to “tie up the dog and beat it unmercifully.”<sup>50</sup> Then, the slaveholder would send the slave away, untie the dog, and send the dog upon the slave’s track until discovered.<sup>51</sup> If the slaveholder was not there to call off the dog once the slave was found, the dog would sometimes rip the slave to pieces because that is what it was trained to do.<sup>52</sup> This example resembles the pit bull problem today. As slaveholders encouraged and “bred for aggressiveness in their bloodhounds,” pit bulls have also been bred to exhibit aggressiveness for the sport of dogfighting, but it is not an innate characteristic or behavioral trait of pit bulls.<sup>53</sup>

In the 1900s, the German Shepherd became popular and the dog attacks caused by other large guard dog breeds—the Newfoundland, Mastiff, and Bulldog—dramatically, but not surprisingly, decreased.<sup>54</sup> The “increased popularity [of a particular breed] is sometimes followed by increases in bite reports” of that breed, and decreases in bite reports of other breeds.<sup>55</sup> Although these guard dog breeds once had the “worst reputations” at the height of their popularity, it was now the German Shepherd’s turn to become widely known as “treacherous, deceitful and vicious . . . .”<sup>56</sup>

German Shepherds’ reputation was salvaged by the media and noted as heroic only after they became the first seeing-eye dogs in the United States, after being utilized by the police, and after starring in movies.<sup>57</sup> The shift was so dramatic that when a chained German Shepherd killed a little boy in July 1934, the media did not revert back to the once vicious reputation of the breed. Instead, it reported the dog attacked because it was “‘tied out’ and ‘crazed by the heat.’”<sup>58</sup> As an alternative to blaming this German Shepherd’s aggressiveness and behavior on the supposed true nature of its breed—as the media would do today with a similarly circumstanced story involving a pit

50. *Id.*

51. *Id.* at 19–20.

52. *Id.* at 20.

53. *Id.*; Francesca Ortiz, *Making the Dogman Heel: Recommendations for Improving the Effectiveness of Dogfighting Laws*, 3 STAN. J. ANIMAL L. & POL’Y, 1, 13 (2010).

54. Karen Delise, *The Pit Bull Placebo: The Media, Myths and Politics of Canine Aggression*, ANUBIS PUBLISHING, 72 (2007).

55. *The Role of Breed in Dog Bite Risk and Prevention*, AM. VETERINARY MED. ASS’N. 1 (May 15, 2014), [https://www.avma.org/KB/Resources/LiteratureReviews/Documents/dog\\_bite\\_risk\\_and\\_prevention\\_bgnd.pdf](https://www.avma.org/KB/Resources/LiteratureReviews/Documents/dog_bite_risk_and_prevention_bgnd.pdf).

56. Schiavone, *supra* note 35, at 20; Delise, *supra* note 54, at 74.

57. Delise, *supra* note 54, at 76.

58. *Id.*

bull—the media implied that this attack was caused by “provocation or extenuating circumstances.”<sup>59</sup>

B. *Every Dog Has Its Day: The Pit Bull’s Turn*

Florida, Ohio, and New Mexico were a few of the first states with cities that enacted BSL and did so in response to public panic over pit bull attacks.<sup>60</sup> In 1980, the City Commission of Hollywood, Florida, passed an ordinance—which was later struck down—requiring owners of pit bull-type dogs to complete special registration forms and prove they held \$25,000 of public liability insurance.<sup>61</sup> In 1983, the Cincinnati, Ohio, city council passed an ordinance—later repealed—heavily restricting pit bull ownership. In the following year, the Villages of Walbridge, Ohio, and Tijeras, New Mexico, banned pit bulls.<sup>62</sup> The Tijeras ban “allowed county animal control officers to confiscate and destroy the dogs.”<sup>63</sup> Though these were the first attempts at BSL, they have not been the last.

As mentioned earlier, Miami-Dade County passed its pit bull ban in 1989 after Melissa Moreira’s attack.<sup>64</sup> The ordinance states in part that no pit bull may be “kept, maintained, or otherwise harbored” within the county, and any violation results in a \$500 fine and removal of the animal from county limits.<sup>65</sup> Removal may include the “[h]umane destruction of the pit bull” by court order.<sup>66</sup> Despite being in place for decades, some Miami-Dade County Commissioners have been fighting to end the ban.<sup>67</sup> Commissioner Sally Heyman, who led the 2012 repeal effort, called the ban “an emotional response to a travesty” rather than “an intelligent decision” while Commissioner Bruno Barreiro, who is leading the current repeal effort, adds that all large breeds are “very dangerous animals if they’re raised incorrectly.”<sup>68</sup>

On November 15, 2016, the Miami-Dade County Commission was scheduled to vote on whether to repeal the twenty-eight-year-old ban;

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59. *Id.*

60. Marmer, *supra* note 34, at 1068–69.

61. Beth Palmer, *Breed Specific Legislation, Not the Answer*, FLA. LUPINE ASS’N, <http://www.floralupine.org/index-2d.html> (last visited Sept. 8, 2018); Marmer, *supra* note 34, at 1068.

62. CINCINNATI, OHIO, MUN. CODE § 701-25 (1983); Marmer, *supra* note 34, at 1068–69.

63. Marmer, *supra* note 34, at 1068–69.

64. DogTime Staff, *supra* note 5.

65. MIAMI-DADE CTY., FLA. CODE § 5-17.6(b).

66. *Id.* at § 5-17.6(b)(2).

67. *See* Hanks, *supra* note 6.

68. DogTime Staff, *supra* note 5; Hanks, *supra* note 6.



however, Commissioner Barreiro withdrew the proposal to reintroduce it at a later date.<sup>69</sup>

Denver, Colorado, also enacted a pit bull ban in 1989, making it unlawful to “own, possess, keep, exercise control over, maintain, harbor, transport, or sell within the city any pit bull.”<sup>70</sup> This ban followed a pit bull attack on a minister who sustained numerous bites and two broken legs.<sup>71</sup> Any pit bull found in Denver would be “immediately impound[ed],” and the local shelter could either “house or dispose” of the dog.<sup>72</sup> If a dog owner challenges the classification of his dog as a pit bull and “the dog is found to be a pit bull, it shall be destroyed” unless the owner provides sufficient evidence that he is financially providing for the pit bull’s removal from city limits.<sup>73</sup>

While Denver, Colorado, has one of the strictest pit bull bans and was listed as a “model ordinance” by a pro-BSL source, Montreal, Canada, has one of the newest, with the ban going into effect on October 3, 2016.<sup>74</sup> This ban makes it illegal to acquire a new pit bull dog after a certain date, and previously owned pit bulls may be euthanized if their owners do not obtain a special \$150

69. Government Relations Department, *Miami-Dade County (FL): Support End to Pit Bull Ban, First Vote Rescheduled to 11/15/16*, AMERICAN KENNEL CLUB (Nov. 3, 2016), [http://www.akc.org/government-relations/legislative-alerts/repeal\\_Miami\\_pit\\_bull\\_ban-1](http://www.akc.org/government-relations/legislative-alerts/repeal_Miami_pit_bull_ban-1); see Deirdre Franklin, *Stop BSL*, FACEBOOK (Nov. 14, 2016, 9:28 PM) [https://www.facebook.com/permalink.php?story\\_fbid=10154004702087967&id=54038162966](https://www.facebook.com/permalink.php?story_fbid=10154004702087967&id=54038162966).

70. DENVER, COLO. REV. CODE § 8-55(a) (1985). After this Note was drafted, in February 2020, Denver City Council voted 7-4 to pass a bill that would repeal Denver’s pit bull ban and instead replace the outright ban with specific restrictions for pit bull owners. The bill was led by City Councilman Chris Herndon; however, Mayor Michael Hancock vetoed the bill. Interestingly, as reasoning for vetoing the bill, Mayor Hancock stated in part that “[i]rresponsible pet owners continue to be a problem, and it is the irresponsible owners and their dogs I must consider in evaluating the overall impact of this ordinance.” Denver City Council subsequently voted whether or not to override Mayor Hancock’s veto. The vote was 8-5; council needed nine votes to successfully override the veto. Not to be deterred, Councilman Chris Herndon plans to place a similar measure on the city’s November 2020 ballot. Phil Helsel, *Denver’s Pit Bull Ban Stays on Books After Override Falls Short*, NBC NEWS (Feb. 25, 2020), <https://www.nbcnews.com/news/us-news/Denver-s-pit-bull-ban-stays-books-after-veto-override-n1142291>.

71. Dean Schabner, *Is Breed to Blame in Fatal Dog Attack?*, ABCNEWS (June 7, 2005), <http://abcnews.go.com/US/story?id=823394&page=1>.

72. DENVER, COLO. REV. CODE § 8-55(e) (1985).

73. *Id.* at § 8-55(e)-(f).

74. *Colorado Breed-Specific Laws*, DOGSBITE, <http://www.dogsbite.org/legislating-dangerous-dogs-colorado.php> (last visited Aug. 26, 2017); *Montreal SPCA to End Dog Control Services in Protest of Pit Bull Bylaw*, CBCNEWS (Dec. 22, 2016, 8:40 PM), <http://www.cbc.ca/news/canada/montreal/montreal-spcapit-bull-1.3909201>. After this Note was drafted, the law was dropped by the new mayor, Valérie Plante. “The provisions of the bylaw targeting pit bulls were dropped [in December of 2017].” Jacey Fortin, *Pit Bull Restrictions Lifted in Montreal as New Mayor Makes Good on Pledge*, N.Y. TIMES, Dec. 23, 2017, <https://www.nytimes.com/2017/12/23/world/americas/pit-bull-ban-montreal.html>.

permit to keep them.<sup>75</sup> Among other restrictions and requirements, owners must prove their pit bull is vaccinated, microchipped, and sterilized, as well as adhere to specific muzzling and leash requirements whenever outside the home.<sup>76</sup>

Montreal “hastily created” this controversial pit bull ban following a fatal attack by a dog, which at the time of the attack was said to be a pit bull, but was registered as a boxer.<sup>77</sup> Furthermore, though this incident happened in early June 2016, and it takes approximately three weeks to get results from a dog’s DNA test, DNA results indicating this dog’s true breed have either not been released or are still pending.<sup>78</sup>

Shortly after the city council members voted 37 to 23 in favor of the ban, Montreal, Quebec Superior Court Justice Louis Gouin indefinitely suspended the ban.<sup>79</sup> Justice Gouin ruled that clauses of the ban “raised more questions than they answered,” and he advised city officials to “go back to the drawing board.”<sup>80</sup> Despite these comments, the suspension was overturned in December 2016, reinstating the pit bull ban in Montreal.<sup>81</sup> Nevertheless, with the support of organizations such as the Animal Legal Defense Fund, the Montreal Society for the Prevention of Cruelty to Animals continues to fight this ban.<sup>82</sup>

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75. René Bruemmer, *Frequently Asked Questions on Montreal’s New Pit Bull Ban*, MONTREAL GAZETTE (Sept. 28, 2016, 8:44 PM), <http://montrealgazette.com/news/local-news/frequently-asked-questions-on-montreals-new-pit-bull-ban>.

76. *Id.*

77. *Id.*; accord Graciana Cox, *Pitbulls Get Reprieve in Montreal, But Are Unfairly Targeted as Dangerous*, TIMESUNION (Oct. 7, 2016, 10:49 PM), <http://blog.timesunion.com/highschool/pitbulls-get-reprieve-in-montreal-but-are-unfairly-targeted-as-dangerous/53421>; Roffman, *supra* note 23.

78. Christopher Curtis, *Pit Bull Attack Was ‘Horrible’, Neighbour Says After Victim Found Dead*, MONTREAL GAZETTE (June 9, 2016, 8:55 PM), <http://montrealgazette.com/news/local-news/montreal-woman-55-killed-in-apparent-dog-attack>; *FAQs*, WISDOM PANEL, [http://www.wisdompanel.com/why\\_test\\_your\\_dog/faqs](http://www.wisdompanel.com/why_test_your_dog/faqs) (last visited Sept. 1, 2018); Bruemmer, *supra* note 75; *Montreal Passes Controversial Pit Bull Ban*, CBCNEWS (Sept. 27, 2016, 11:49 PM), <http://www.cbc.ca/news/canada/montreal/montreal-pit-bull-dangerous-dogs-animal-control-by-law-1.3780335>.

79. Cox, *supra* note 77.

80. *Id.*

81. *Deadline to Register Montreal Pit Bulls Will Be Extended, City Says*, CBCNEWS (Dec. 15, 2016, 7:50 AM), <http://www.cbc.ca/news/canada/montreal/montreal-pit-bull-registration-deadline-extension-1.3897562>.

82. *Animal Legal Defense Fund Voices Support for Montreal SPCA’s Effort to Overturn Breed-Discrimination Law*, ANIMAL LEGAL DEF. FUND (Dec. 20, 2016), [http://aldf.org/press-room/press-releases/animal-legal-defense-fund-voices-support-for-montreal-spcas-effort-to-overturn-breed-discrimination-law/?utm\\_content=buffer8b4e9&utm\\_medium=social&utm\\_source=facebook.Com&utm\\_campaign=buffer](http://aldf.org/press-room/press-releases/animal-legal-defense-fund-voices-support-for-montreal-spcas-effort-to-overturn-breed-discrimination-law/?utm_content=buffer8b4e9&utm_medium=social&utm_source=facebook.Com&utm_campaign=buffer).

In 1985, at least thirty communities within the United States considered enacting some form of BSL, but today, BSL exists in over 1,000 U.S. cities, as well as numerous countries across the world.<sup>83</sup>

### III. DON'T BLAME THE "BREED"—HOW BSL IS INEFFECTIVE

#### A. Identification

Before BSL can be enforced against pit bulls, it must be decided which dogs to target. Similar to the Spitz, a type of dog identified by certain characteristics rather than existing as a single, strictly-defined breed, the pit bull is a type of dog covering a number of different breeds.<sup>84</sup> Under its legal definition, the term "pit bull" includes the following breeds: American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, and "any other pure bred or mixed breed dog that is a combination of these dogs."<sup>85</sup> In some jurisdictions, the American Bulldog is included as well.<sup>86</sup>

Additionally, the term "pit bull" is used "loosely to describe dogs with similar physical characteristics," including a "square shaped head or bulky body type."<sup>87</sup> Therefore, because most BSL includes a "substantially similar" clause, any other dog that does not fit into one of the enumerated breeds above, but substantially conforms to the physical characteristics of those breeds, may still be considered a pit bull under that BSL.<sup>88</sup>

It is difficult to say what determines substantial conformity and what distinguishing characteristics are necessary to look for. Virtually any large, short-haired breed could be targeted as a pit bull.<sup>89</sup> Because of this, BSL

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83. *Debate Widens on Plans to Restrict Pit Bull Dogs*, N.Y. TIMES (Dec. 30, 1985), <http://www.nytimes.com/1985/12/30/us/debate-widens-on-plans-to-restrict-pit-bull-dogs.html>; *Estimated U.S. Cities, Counties, States and Military Facilities with Breed-Specific Laws*, *supra* note 16; *Where Are Pit Bulls Banned Internationally*, BAN PIT BULLS, <http://www.banpitbulls.org/where/where-are-pit-bulls-banned-internationally> (last visited Sept. 2, 2018).

84. *See Spitz*, *supra* note 33; *Pit Bull*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Pit\\_bull](https://en.wikipedia.org/wiki/Pit_bull) (last visited Sept. 2, 2018).

85. *Pit Bull FAQ*, DOGSBITE, <http://www.dogsbite.org/dangerous-dogs-pit-bull-faq.php#definition> (last visited Sept. 2, 2018).

86. *Pit Bull*, WIKIPEDIA, *supra* note 84.

87. *Id.*

88. *What is BSL?*, *supra* note 11.

89. *Pit Bull Bias in the Media*, ASPCA, <https://web.archive.org/web/20130316074517/http://www.aspc.org/fight-animal-cruelty/advocacy-center/animal-laws-about-the-issues/pit-bull-bias-in-the-media.aspx> (last visited Sept. 1, 2018).

opponents argue that these ordinances are unconstitutionally vague.<sup>90</sup> The void-for-vagueness doctrine “requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.”<sup>91</sup> Though the court in *Ohio v. Robinson* upheld the ordinance’s constitutionality—because the appellant had previously identified his dogs as American Pit Bulls—it significantly conceded that “[t]he definition of ‘pit bull’ may indeed be somewhat elusive.”<sup>92</sup>

Additionally, physical variations among the breeds that fall under “pit bull” make visual identification difficult, even for experts.<sup>93</sup> Several studies and various publications have found that visual identification of breeds “is fraught with error.”<sup>94</sup> In 2013, the “most groundbreaking scientific study on the topic of visual identification of canine breeds . . . found that the accuracy of visual breed identification is extremely low even by persons who work in canine-related fields.”<sup>95</sup> Lending support, a later study confirmed that those who work in canine-related fields “frequently disagree with each other on whether dogs fall into the pit bull-type category, and their assessments of whether a dog was a pit bull-type only moderately agree with DNA breed profiles.”<sup>96</sup>

Therefore, it is unreasonable to expect police officers, who do not generally work with animals on a daily basis, to correctly identify pit bull-type dogs at first glance when responding to a dog attack call. The dog that sparked the Montreal pit bull ban was identified by the responding police officer as a pit bull, yet was registered as a boxer.<sup>97</sup> Without DNA results, it is still unclear

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90. See *Dias v. City & Cty of Denver*, 567 F.3d 1169, 1178 (10th Cir. 2009); *Florida v. Peters*, 534 So. 2d 760, 762 (Fla. 3d Dist. Ct. App. 1988); *Hearn v. City of Overland Park*, 772 P.2d 758, 761 (Kan. 1989); *State v. Anderson*, 566 N.E.2d 1224, 1226 (Ohio 1991); *Am. Dog Owners Ass’n v. Yakima*, 777 P.2d 1046, 1047 (Wash. 1989).

91. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

92. *State v. Robinson*, 541 N.E.2d 1092, 1096 (Ohio Ct. App. 1989).

93. *Pit Bull*, *supra* note 84.

94. K.R. Olson et al., *Inconsistent Identification of Pit Bull-Type Dogs by Shelter Staff*, 206 VETERINARY J., 197, 201 (2015), <http://ac.els-cdn.com/S109002331500310X/1-s2.0-S109002331500310X-main.pdf>; see Katie Barnett, *The Post-Conviction Remedy for Pit Bulls: What Today’s Science Tells Us About Breed-Specific Legislation*, 67 SYRACUSE L. REV. 241, 285–92 (2017) (demonstrating several studies support the argument that visual breed identification is inherently unreliable); Victoria L. Voith et al., *Comparison of Visual and DNA Breed Identification of Dogs and Inter-Observer Reliability*, 3 AM. J. SOC. RES. 17, 24 (2013), <http://article.sapub.org/10.5923.j.sociology.20130302.02.html#Sec>.

95. Schiavone, *supra* note 35, at 52 (discussing Voith, *Comparison of Visual and DNA Breed Identification*, *supra* note 94).

96. Olson et al., *supra* note 94, at 202.

97. Cox, *supra* note 77.

what breed of dog was involved in this attack since “[v]isual breed assessments have been shown to be erroneous more frequently than not . . . .”<sup>98</sup>

### B. *Cost and Ineffectiveness*

Despite claims of success from BSL proponents, even “[t]hirty-five years after its inception, BSL has proven to be ineffective in remedying the dog bite epidemic.”<sup>99</sup> Several organizations, including but not limited to, animal advocacy organizations, have taken this position against BSL.<sup>100</sup> Even the American Bar Association (“ABA”), the Centers for Disease Control and Prevention (“CDC”), and the Obama Administration opposed BSL.<sup>101</sup> The Obama Administration relied on the CDC’s findings when it asserted that research confirms breed bans are “largely ineffective and often a waste of public resources.”<sup>102</sup>

Though breed bans are rarely examined and reported in the United States, one county in Maryland formed a task force in 2003 to test the effectiveness of its pit bull ban.<sup>103</sup> When results determined that the ban had not improved public safety, the task force recommended the county repeal the ban, but that was only after spending over \$250,000 yearly “to round up and destroy [the] banned dogs.”<sup>104</sup> The costs associated with BSL may even exceed millions of dollars because they cover a range of issues including enforcement, kenneling and veterinary care, euthanasia and disposal, litigation costs, and DNA testing.<sup>105</sup>

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98. Olson et al., *supra* note 94, at 197 (citing Victoria L. Voith et. al., *Comparison of Adoption Agency Breed Identification and DNA Breed Identification of Dogs*, 12 J. APPLIED ANIMAL WELFARE SCI. 253 (2009); Voith, *Comparison of Visual and DNA Breed Identification*, *supra* note 94).

99. Sabrina DeFabritiis, *Fido’s Fallacy*, 9 ALB. GOV’T L. REV. 168, 178 (2016).

100. Rebecca J. Huss, *A Conundrum for Animal Activists: Can or Should the Current Legal Classification of Certain Animals be Utilized to Improve the Lives of All Animals? The Intersection of Federal Disability Laws and Breed-Discriminatory Legislation*, 2015 MICH. ST. L. REV. 1561, 1571–73 (2016).

101. *Id.* at 1572–73.

102. Arin Greenwood, *Obama Comes Out Against Dog Breed-Specific Legislation, Joins the Fight for Pit Bulls*, HUFFINGTON POST (Aug. 20, 2013, 5:55 PM), [http://www.huffingtonpost.com/2013/08/20/obama-breed-specific-legislation\\_n\\_3785911.html](http://www.huffingtonpost.com/2013/08/20/obama-breed-specific-legislation_n_3785911.html).

103. Campbell, *supra* note 32.

104. *Id.*

105. *Breed-Discriminatory Legislation in Miami-Dade Florida*, BEST FRIENDS ANIMAL SOC’Y, <http://bestfriends.guerrillaeconomics.net/report/6f057283-501a-4c68-ad57-8262a33fdf6/download?Name=BDL%20Data%20Tables&IsHandled=True&Format=0> (last visited Mar. 13, 2017).

Another indicator of BSL's ineffectiveness is that people are still residing with their pit bulls in places that have banned them.<sup>106</sup> More than a decade after enacting a pit bull ban, approximately 50,000 pit bulls were still living in Miami-Dade County, Florida.<sup>107</sup> Similarly, sixteen years after enacting a pit bull ban, city officials in Denver, Colorado, estimated that the city was still home to approximately 4,500 pit bulls.<sup>108</sup>

### C. *Human Factors Affecting Canine Behavior*

In a case upholding the constitutionality of a vicious dog statute, which defined pit bulls as presumably vicious, the Ohio Supreme Court began its argument by stating that “as a result of breeding, training, and abuse, there are dogs that pose a grave threat to human health and safety.”<sup>109</sup> While this is true, the court overlooked the fact that breeding, training, and abuse all start with humans.

The following factors, though a non-exhaustive list, help determine a dog's propensity to attack: sex, early experience, socialization, training, medical health, behavioral health, reproductive status, quality of ownership and supervision, victim behavior, and genetics.<sup>110</sup> Because a majority of these factors are human ones, “[h]uman behavior is the core of the dog-bite problem.”<sup>111</sup> Yet, instead of punishing the owner who fails to take proper care of and behave responsibly towards his or her dog, BSL creates a false sense of security by punishing the dog, which is merely the victim.<sup>112</sup>

While early news reports covering pit bull attacks often included “patently false pseudoscience” in an effort to increase public fear surrounding these dogs, these stigmatizing reports also unintentionally attracted “unsuitable owners” to this breed.<sup>113</sup> When pit bulls fall into the hands of criminals and irresponsible or abusive owners, “a number of unsound dogs” result.<sup>114</sup> One example is dogfighting, where pit bulls are an exceptionally popular choice of

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106. See DeFabritiis, *supra* note 99, at 178.

107. *Id.* (citing Medlin, *supra* note 42).

108. Schabner, *supra* note 71.

109. State v. Anderson, 566 N.E.2d 1224, 1226 (Ohio 1991).

110. Medlin, *supra* note 42, at 1297 (citing 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. ASS'N 836, 839 (2000)).

111. *Id.* at 1297, 1310.

112. *Id.* at 1310.

113. Schiavone, *supra* note 35, at 22; Delise, *supra* note 54, at 96.

114. Medlin, *supra* note 42, at 1298.

breed among criminals who engage in this so-called sport.<sup>115</sup> Professional dogfighting is a highly organized, billion-dollar industry where “[d]ogfighters subject their dogs to extraordinary abuse *in order to make them vicious*.”<sup>116</sup> As mentioned earlier, the human factors contributing to a dog’s propensity to attack include the “quality of ownership and supervision, early experience, training, and socialization”—all of which are highlighted in dogfighting.<sup>117</sup> Nonetheless, some local governments, including those in Denver and Miami-Dade County, have used dogfighting as a reason for enacting pit bull bans, ignoring the fact that these bans focus on the dog breed rather than the human factors affecting the dog’s behavior.<sup>118</sup>

BSL will not reduce dogfighting for two reasons. First, dogfighters are already breaking the law since dog fighting is currently a felony in every state.<sup>119</sup> Therefore, it is not sensible to expect someone who has already committed a felony, by participating in dogfighting, to follow a municipal law that bans the mere ownership of pit bulls.<sup>120</sup> Additionally, authorities are usually unaware of or reluctant to pursue this “dangerous underworld” of dogfighting because dogfighting rings are difficult to detect and infiltrate, and “prosecution is so unlikely to yield effective punishment.”<sup>121</sup> Authorities are unlikely to enforce pit bull bans on the same people they are reluctant to approach for other and greater offenses. Dogfighters will continue to own pit bulls, unbothered by the laws, as they continue to conduct illegal dogfighting operations without police intervention.

Second, if pit bulls became unavailable due to these bans, dogfighters “would simply find another breed to abuse and make aggressive.”<sup>122</sup> Humans have bred the “gameness” characteristic into fighting dogs; it is not something that is “merely instinct” for some breeds.<sup>123</sup> Therefore, it would be incredulous “[t]o claim that the dog is dangerous because [humans] seek out, select for and encourage these behaviors” to continue in the breeding line of fighting dogs, especially pit bulls.<sup>124</sup>

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115. *Id.* at 1299.

116. *Id.* at 1299–1300 (emphasis added).

117. *Id.* at 1299.

118. *Id.*; see MIAMI-DADE COUNTY, FL., ORDINANCES, § 89-22 (1989).

119. Medlin, *supra* note 42, at 1303; Ortiz, *supra* note 53, at 24.

120. See Delise, *supra* note 54, at 156.

121. Medlin, *supra* note 42, at 1303.

122. *Id.* at 1304.

123. Ortiz, *supra* note 53, at 13–14.

124. Delise, *supra* note 54, at 130.

Banning pit bulls would either not affect the problems that BSL aims to solve—like dogfighting and dog attacks—or would simply shift the focus to another breed; therefore, other measures must be taken to ensure public safety.<sup>125</sup> What prompted the pit bull ban in Miami was an attack on a little girl by her neighbor's fighting dog, which escaped from the unfenced backyard.<sup>126</sup> The owner did not properly socialize or care for his dog, which is evident from his involvement in dogfighting and the nature of this so-called sport.<sup>127</sup> Additionally, the owner did not properly secure his dog in his backyard.<sup>128</sup> Implementing a ban in reaction to this incident does not address the abusive and irresponsible ownership by this dog owner or others who engage in dogfighting.<sup>129</sup> A more effective approach would be strictly enforcing dogfighting laws and other anti-cruelty laws, as well as encouraging responsible pet ownership.<sup>130</sup>

#### IV. RESPONSIBLE PET OWNERSHIP AND BALANCED MEDIA REPORTS SHOULD REPLACE BSL

##### A. *Responsible Pet Ownership – They Only Know What You Teach Them*

Not every documented pit bull attack has been from a fighting dog. Even well-intentioned owners who do not engage in the egregious crime of dogfighting may be at fault for the behavioral traits their dogs develop and exhibit.<sup>131</sup> Therefore, every human action and inaction—all of which BSL fails to target—must be considered when examining the aggressive canine behavior leading up to an attack.<sup>132</sup>

Owners who chain their dogs outside of the home deprive these social creatures of the “necessary opportunities for exercise, mental stimulation, socialization, and bonding with its owner.”<sup>133</sup> Hardly part of the family, these dogs who merely reside on the same premises as their owner are stripped of

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125. Medlin, *supra* note 42, at 1304.

126. *Wounds Still Fresh for Mom of Pit Bull Attack Victim*, *supra* note 1.

127. *Id.*; see Medlin, *supra* note 42, at 1298–1300.

128. See *Wounds Still Fresh for Mom of Pit Bull Attack Victim*, *supra* note 1.

129. See Medlin, *supra* note 42, at 1304.

130. See *id.*

131. *Id.* at 1298.

132. Delise, *supra* note 54, at 154.

133. Medlin, *supra* note 42, at 1307.



the proper socialization and human contact required to produce behaviorally sound dogs.<sup>134</sup>

The initial danger with chained dogs comes from this lack of interaction between the owner and the dog; if an owner does not spend time with their dog, the owner is unaware of the dog's temperament and how it will react to certain situations.<sup>135</sup> Potential danger increases with the "loneliness, frustration, and pain that chained dogs endure."<sup>136</sup>

Chained dogs often exhibit "heightened territorial issues" and become "frustrated with [their] lack of mobility" as they are restrained to a well-defined space.<sup>137</sup> Frustration and energy build up in the dog until it begins pacing, possibly entangling itself, or begins straining at its chain, which could become painfully embedded.<sup>138</sup> Some dogs have even hanged themselves trying to escape confinement when the slack of the chain gives out while jumping over a nearby fence.<sup>139</sup>

Chained dogs, being completely vulnerable to other neighborhood animals and people, are often attacked by loose roaming dogs or even "set on fire, shot, stabbed, tortured, or poisoned" by neighbors annoyed by the barking.<sup>140</sup> These dogs also live in terrible conditions.<sup>141</sup> Confined to such a small space, chained dogs are forced to relieve themselves in the same dirt they sleep in, and are usually without "adequate food, water, [veterinary care," and shelter.<sup>142</sup> Without adequate shelter, chained dogs are exposed to extreme weather conditions and a countless number have either frozen to death or died of heatstroke.<sup>143</sup>

With these effects and living conditions, it is not surprising that chained dogs are more likely to attack than unchained dogs.<sup>144</sup> "Dogs are 'fight-or-flight' animals."<sup>145</sup> Removing the option of flight, as is the case with chained

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134. Delise, *supra* note 54, at 162–63; Medlin, *supra* note 42, at 1307.

135. Medlin, *supra* note 42, at 1307.

136. *Id.* at 1308.

137. *Id.* at 1307; Delise, *supra* note 54, at 162.

138. Delise, *supra* note 54, at 162; Medlin, *supra* note 42, at 1308.

139. Medlin, *supra* note 42, at 1307.

140. *Chaining Dogs*, PETA, <http://www.peta.org/issues/companion-animal-issues/cruel-practices/chaining-dogs> (last visited Sept. 2, 2018).

141. *Id.*

142. *Id.*; *Why Chaining is Cruel*, UNCHAIN YOUR DOG, <http://www.unchainyourdog.org/Facts.htm> (last visited Sept. 2, 2018).

143. *Chaining Dogs*, *supra* note 140.

144. Medlin, *supra* note 42, at 1308.

145. *Why Chained Dogs Attack*, PETA, <http://www.peta.org/issues/companion-animal-issues/cruel-practices/chaining-dogs/chained-dogs-attack> (last visited Sept. 2, 2018).

dogs, increases the probability of the dog reacting to a perceived threat by biting or attacking.<sup>146</sup> Chained dogs are responsible for twenty-five percent of all fatal attacks, and more than 450 Americans have been injured or killed by chained dogs since 2003, with at least twenty of these incidents occurring in 2016 alone.<sup>147</sup>

Pit bull bans do not address human behavior and cannot prevent an irresponsible owner from creating a behaviorally unsound dog as a result of chaining and neglect in any other breed of dog.<sup>148</sup> Restricting dog ownership through a more efficient screening process would “properly emphasize responsible ownership of all breeds.”<sup>149</sup>

Other human actions leading to dog attacks that would not be resolved by a breed ban include: letting a dog freely roam the neighborhood, especially if it has attacked before or has aggressive tendencies; starving a dog to the point of emaciation and malnutrition; and failing to supervise children around dogs.<sup>150</sup>

Even the name the owner gives their dog may be an indicator of that dog’s future behavior.<sup>151</sup> Several dogs involved in fatal attacks have had names that suggest their owners “wished their dogs to appear—or worse, act—menacing.”<sup>152</sup> These names have included Crusher, Rage, Psycho, Mayhem, and Lucifer, which is the name of the dog that prompted the 2016 pit bull ban in Montreal, Canada.<sup>153</sup> Lucifer was also unsterilized, and unaltered dogs are “much more likely to bite than are altered dogs.”<sup>154</sup>

For example, of the 131 fatal dog attacks that occurred in the United States between 2000-2005, ninety-two percent of those fatal attacks were inflicted by reproductively intact dogs.<sup>155</sup> In fact, “[u]naltered male dogs are 2.6 times more likely to bite than neutered dogs.”<sup>156</sup> Education programs and laws that

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146. *Id.*; Delise, *supra* note 54, at 162.

147. Delise, *supra* note 54, at 162; *Chained-Dog Attack Summaries*, PETA, <http://www.peta.org/issues/companion-animal-issues/cruel-practices/chaining-dogs/chained-dog-attack-summaries> (last visited Sept. 2, 2018).

148. Medlin, *supra* note 42, at 1308.

149. *Id.* at 1317.

150. Delise, *supra* note 54, at 154–55, 163–64; *see* Medlin, *supra* note 42, at 1309–10.

151. Delise, *supra* note 54, at 161.

152. *Id.*

153. *Id.*; Douglas Anthony Cooper, *Montreal Is About to Kill a Lot of Dogs, Based on Quack Science*, HUFFINGTON POST (Sept. 7, 2016, 12:02 PM), [http://www.huffingtonpost.com/douglas-anthony-cooper/montreal-is-about-to-kill-a-lot-of-dogs\\_b\\_11888296.html](http://www.huffingtonpost.com/douglas-anthony-cooper/montreal-is-about-to-kill-a-lot-of-dogs_b_11888296.html).

154. Medlin, *supra* note 42, at 1308; Cooper, *supra* note 153.

155. Delise, *supra* note 54, at 164.

156. Medlin, *supra* note 42, at 1308.

regulate and encourage the neutering of all breeds would help reduce the number of dog attacks driven by hormonal urges.<sup>157</sup> However, we must be mindful of and allow legitimate and responsible breeding to continue because there are countries that enforce mandatory neutering of all pit bulls as a way to eradicate the breed over time.<sup>158</sup>

Laws that require breeder licenses would help restrict dog breeding to responsible owners who breed with the best interests of the dogs and community in mind.<sup>159</sup> Additionally, “[s]ome communities charge higher licensing fees for unaltered dogs and provide low cost spay and neuter programs, making sterilization both socially responsible and financially attractive.”<sup>160</sup> These are more effective alternatives to banning, and possibly eliminating, an entire breed since the problem truly rests within dog ownership.

## B. *Balanced Media Reports*

### 1. *Publicizing Positive Pitties*

As mentioned earlier, the media often labels pit bulls as an aggressive and innately vicious breed. Typing “pit bull” into the search bar of any news outlet will likely yield an immense number of articles focusing on recent dog attacks and successful BSL movements, while maybe only a handful of articles would portray a positive image of pit bulls. Despite minimal acknowledgement and praise, pit bulls have made significant, positive contributions to society.

Just as German Shepherds, whose once damaging reputation was salvaged in part by their contributions in the police force, pit bulls are also emerging as police dogs.<sup>161</sup> In the 1980s, ironically at the start of BSL, the Los Angeles Police Department first began using a dog for narcotics detection.<sup>162</sup> This dog was a pit bull named Frog, and in his eight years of service, Frog was “credited with locating drug shipments worth more than \$160 million.”<sup>163</sup>

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157. *Id.* at 1308, 1316.

158. *Id.*; *What is BSL (Breed Specific Legislation)*, *supra* note 22.

159. Medlin, *supra* note 42, at 1317.

160. *Id.* at 1316.

161. Delise, *supra* note 54, at 78; see Jennifer Earl, *Meet the First Official “Pit Bull” Police Dog in the State of New York*, CBS NEWS (Nov. 15, 2016, 2:56 PM), <http://www.cbsnews.com/news/meet-the-first-official-pit-bull-police-dog-in-the-state-of-new-york/>.

162. Dickey, *supra* note 36.

163. *Id.*

In 2016, New York state had its first, official pit bull police dog.<sup>164</sup> Kiah was an abused pit bull, having suffered a skull injury from being hit in the head with a hammer.<sup>165</sup> Despite her tragic past which understandably could cause some fright and hostility towards humans, “[Kiah] didn’t seem to hold a grudge.”<sup>166</sup> After being adopted by Brad Croft (operations director for Universal K9) and becoming a star in K9 training, Kiah worked alongside Officer Justin Bruzgul of the City of Poughkeepsie Police Department as a narcotics and missing persons detection dog.<sup>167</sup> Additionally, “[f]or her service to the city and for shattering stereotypes,” Kiah received the 2016 American Society for the Prevention of Cruelty to Animals (“ASPCA”) Public Service Award.<sup>168</sup>

Since rescuing Kiah, Croft has partnered with the Animal Farm Foundation, and together they have helped place twenty pit bulls in police departments across the country.<sup>169</sup> According to Croft, “breed isn’t important.”<sup>170</sup> Instead, “[i]t’s what’s inside of the dog that’s important.”<sup>171</sup> Some of the other police departments training and using pit bulls include Washougal in Washington, Chattahoochee Hills in Georgia, and Montgomery County in Texas.<sup>172</sup>

Before Libby the pit bull got her chance with the police force in Montgomery County, Texas, she spent several years in foster care and a local animal shelter.<sup>173</sup> Her “high energy” paired with her breed made it difficult for her to find a home, but Debra Guajardo saw Libby’s potential as a police

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164. Earl, *supra* note 161.

165. *Id.*

166. *Id.*

167. *Id.*

168. ASPCA Announces 2016 Humane Award Winners, ASPCA (Oct. 18, 2016), <http://www.asPCA.org/about-us/press-releases/asPCA-announces-2016-humane-award-winners>.

169. Earl, *supra* note 161.

170. Ben Axelson, *New York’s First Police Pit Bull Paves Way for Breed to Join Law Enforcement*, NYUP (Oct. 24, 2016, 8:06 AM), [http://www.newyorkupstate.com/hudson-valley/2016/10/new\\_yorks\\_first\\_police\\_pit\\_bull\\_paves\\_way\\_for\\_breed\\_to\\_join\\_law\\_enforcement\\_1.htm](http://www.newyorkupstate.com/hudson-valley/2016/10/new_yorks_first_police_pit_bull_paves_way_for_breed_to_join_law_enforcement_1.htm).

171. *Id.*

172. Rachael Revesz, *US Police Departments Are Training and Adopting Pit Bulls Instead of Pure Breed Dogs to Save Money*, INDEPENDENT (Oct. 18, 2016), <http://www.independent.co.uk/news/world/americas/police-departments-adopting-pit-bull-dogs-save-money-euthanised-training-a7367821.html>; Matthew Paulson, *Shelter Dog Granted New Lease on Life as Montgomery County Texas Police Dog*, UNIVERSAL K9 (Apr. 24, 2015), [adventuresindevelopment.com/2015/04/24/shelter-dog-granted-new-lease-on-life-as-montgomery-county-texas-police-dog/](http://adventuresindevelopment.com/2015/04/24/shelter-dog-granted-new-lease-on-life-as-montgomery-county-texas-police-dog/).

173. Arin Greenwood, *Libby the Pit Bull Survived Death Row and Is Becoming a Police Dog*, HUFFINGTON POST (May 1, 2015, 4:46 PM), [http://www.huffingtonpost.com/2015/05/01/libby-pit-bull\\_n\\_7180470.html](http://www.huffingtonpost.com/2015/05/01/libby-pit-bull_n_7180470.html).

dog.<sup>174</sup> With Croft's help, Guajardo relocated Libby to Universal K9 to begin training.<sup>175</sup> Debra Guajardo is a pit bull advocate who also owns a pit bull therapy dog named Lily.<sup>176</sup>

Lily, known as the "Pit Bull Ambassador and Therapy Dog," travels to several facilities in her area including the library, nursing homes, pediatric therapy centers, and retirement communities.<sup>177</sup> Lily assists her handler in teaching dog bite prevention to children and "promoting empathy toward all living things" when she visits the nearby juvenile detention center.<sup>178</sup> Through her versatile and meaningful work, Lily and her handler aim to improve the public's perception of pit bulls, which her community deems "one of America's most misunderstood, misjudged, and mistreated dogs."<sup>179</sup>

Another pit bull ambassador and therapy dog is Elle.<sup>180</sup> Like Kiah, who was awarded the 2016 ASPCA Public Service Award for her work as a police dog, Elle was the 2013 recipient of the American Humane Association Hero Dog Award for her work within her community, where she is now considered a "Hometown Hero."<sup>181</sup>

In addition to Lily and Elle, several other pit bulls have proven to be successful therapy dogs, even when they have suffered themselves.<sup>182</sup> As a three-week-old puppy, Hudson was abandoned and found nailed to the railroad tracks with his two siblings, resulting in the loss of one of Hudson's paws.<sup>183</sup>

174. *Id.*

175. *Id.*

176. *Id.*

177. Lily, Pit Bull Ambassador & Therapy Dog (@Lily.PitBullAmbassador), *About*, FACEBOOK, [https://www.facebook.com/pg/Lily.PitBullAmbassador/about/?ref=page\\_internal](https://www.facebook.com/pg/Lily.PitBullAmbassador/about/?ref=page_internal) (last visited Sept. 2, 2018).

178. *Id.*; Lily, Pit Bull Ambassador & Therapy Dog, *Teaches Dog Bite Prevention*, WOODLANDS ONLINE (June 2, 2014), <http://www.woodlandsonline.com/npps/story.cfm?nppage=53020>.

179. Jennifer Johns, *Lily Is Changing Lives One Lick at a Time*, WOODLANDS ONLINE (June 20, 2013), <http://www.woodlandsonline.com/npps/story.cfm?nppage=50447>.

180. *About*, ELLE THE PIT BULL, <http://www.ellethepitbull.com/about-us.html> (last visited Mar. 7, 2017).

181. *Elle – Therapy*, AMERICAN HUMANE HERO DOG AWARDS, <http://herodogawards.org/dog/elle> (last visited Sept. 2, 2018).

182. Schiavone, *supra* note 35, at 14 (acknowledging that two of the dogs seized from former NFL star quarterback Michael Vick's dogfighting operation, Jonny and Leo, were now involved in community service programs and therapy work); *What Happened to Michael Vick's Dogs . . .*, SPORTS ILLUSTRATED, <http://www.si.com/more-sports/2008/12/23/vick-dogs> (last visited Sept. 2, 2018) (stating that in addition to Jonny and Leo, two more of Michael Vick's dogs are now therapy dogs, and another two were in training to become therapy dogs).

183. Deborah Hastings, *Maimed and Nailed to a Railroad Track, Abandoned Puppy Becomes Star Therapy Dog: 'Everybody Loves Him'*, INSIDE EDITION (Oct. 12, 2016, 7:46 PM), <http://www.>

Despite this terrible abuse, which at first left Hudson whimpering with nightmares and shaking fits, he still “just loved everybody he met . . . .”<sup>184</sup> Similar to Kiah, Hudson would not let his abusive past dictate his personality and future.<sup>185</sup> With the help of his prosthetic leg and new owner, youth counselor Richard Nash, Hudson now travels to hospitals, nursing homes, assisted living centers, and schools for all ages.<sup>186</sup> “For all of his mental and physical scars, this little gray pit bull could have been as mean as a junk yard dog,” but instead, Hudson became a star therapy dog.<sup>187</sup>

Even pit bulls previously forced into one of the most publicized dogfighting operations have become certified therapy dogs once rescued.<sup>188</sup> When former National Football League star Michael Vick was convicted on federal and state charges relating to illegal dogfighting, over fifty pit bulls were seized and evaluated by a “team of certified animal behavior experts” assembled by the ASPCA.<sup>189</sup> Notably, this team recommended that only one of those pit bulls “be euthanized due to her intense aggression toward humans.”<sup>190</sup> Out of the remaining pit bulls, at least six have been recognized as certified therapy dogs or therapy dogs in training; and significantly, “[t]here has never been a single issue” in the years since these former fighting pit bulls have been placed into loving homes with responsible owners.<sup>191</sup>

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insideedition.com/headlines/19223-maimed-and-nailed-to-a-railroad-track-abandoned-puppy-becomes-star-therapy-dog-everybody-loves.

184. *Id.*

185. *See id.*

186. *Id.*

187. *Id.*

188. *See What Happened to Michael Vick's Dogs . . .*, *supra* note 182; Schiavone, *supra* note 35, at 14.

189. Rebecca J. Huss, *Lessons Learned: Acting as Guardian/Special Master in the Bad Newz Kennels Case*, 15 ANIMAL L. 69, 74–75 (2008); *see* Juliet Macur, *Given Reprieve, N.F.L. Star's Dogs Find Kindness*, N.Y. TIMES (Feb. 2, 2008), [http://www.nytimes.com/2008/02/02/sports/football/02vickdogs.html?\\_r=3&scp=1&sq=Given%20Reprieve,%20N.F.L.%20Star%E2%80%99s%20Dogs%20Find%20Kindness%20&st=cse](http://www.nytimes.com/2008/02/02/sports/football/02vickdogs.html?_r=3&scp=1&sq=Given%20Reprieve,%20N.F.L.%20Star%E2%80%99s%20Dogs%20Find%20Kindness%20&st=cse) (stating that pit bulls seized from illegal fighting operations are usually euthanized after becoming government property, but the government set a precedent here when it agreed to give these dogs a second chance by allowing the pit bulls to undergo behavioral evaluations); *Animal Fighting Case Study: Michael Vick*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/laws-cases/animal-fighting-case-study-michael-vick> (last visited Mar. 13, 2017).

190. Huss, *supra* note 189, at 75.

191. *What Happened to Michael Vick's Dogs . . .*, *supra* note 182; Jacqueline Johnson, *Giving Michael Vick's Former Dogs a 'Fighting' Chance Changed the Face of Animal Welfare*, HUFFINGTON POST (Apr. 8, 2015, 1:19 PM), [http://www.huffingtonpost.com/jacqueline-johnson/giving-michael-vicks-former-dogs-a-fighting-chance-changed-the-face-of-animal-welfare\\_b\\_7020362.html](http://www.huffingtonpost.com/jacqueline-johnson/giving-michael-vicks-former-dogs-a-fighting-chance-changed-the-face-of-animal-welfare_b_7020362.html).

Besides their police and therapy work, pit bulls were also once known as “the perfect ‘nanny dog’” because of their temperament with children and by proving their loyalty to their families numerous times.<sup>192</sup>

One pit bull in Massachusetts sacrificed her leg to an oncoming train while dragging her owner out of harm’s way when the owner fell unconscious onto the tracks.<sup>193</sup> Another pit bull charged at a man who unsuccessfully attempted to abduct a nine-year-old boy in Fort Collins, Colorado.<sup>194</sup> Further, another pit bull, along with the basset hound the family also owned, saved a little girl from a fox attack in Leicester, Massachusetts.<sup>195</sup> Additionally, a four-year-old pit bull saved her owner from a violent home invasion in Canada, while another pit bull died protecting its Fort Myers, Florida, family.<sup>196</sup>

## 2. *Exposing Media Biases*

Despite countless similar stories, these positive sides of the pit bull are hardly given the same exposure by the media as are the over-reported—and sometimes falsely-reported—negative sides.<sup>197</sup> In fact, “[a]nimal control officers across the country have told the ASPCA that when they alert the media to a dog attack, news outlets respond that they have no interest in reporting on the incident unless it involved a pit bull.”<sup>198</sup>

Further, the National Canine Research Council conducted a study which analyzed the media coverage of dog bites over a four-day period.<sup>199</sup> On day one, a Labrador mix attacked an elderly man, which left him in the hospital in

192. Medlin, *supra* note 42, at 1288; Joshua Holland, *Pitbulls Used to Be Considered the Perfect “Nanny Dogs” for Children — Until the Media Turned Them Into Monsters*, ALTERNET (Jan. 30, 2013, 4:00 PM), <http://www.alternet.org/civil-liberties/pitbulls-used-be-considered-perfect-nanny-dogs-children-until-media-turned-them>.

193. Sydney Lupkin, *Pit Bull Rescues Unconscious Owner from Oncoming Train*, ABC NEWS (May 9, 2012), <http://abcnews.go.com/US/pit-bull-rescues-unconscious-owner-oncoming-train/story?id=16311409>.

194. Kate Bratskeir, *These 16 Dogs Are Heroes. They Are Also Pit Bulls.*, HUFFINGTON POST (July 29, 2014, 9:34 AM), [http://www.huffingtonpost.com/2014/07/29/pit-bulls-heroic-happy-and-good\\_n\\_5563496.html](http://www.huffingtonpost.com/2014/07/29/pit-bulls-heroic-happy-and-good_n_5563496.html).

195. Kim Ring, *Dogs Guard Girl When Fox Attacks*, TELEGRAM (Nov. 25, 2010, 6:00 AM), <http://www.telegram.com/article/20101125/NEWS/11250814/0/FRONTPAGE>.

196. *Pit Bull Hailed As Hero After Protecting Owner from Home Invasion*, CTV NEWS (Nov. 13, 2013, 9:16 PM), <http://www.ctvnews.ca/canada/pit-bull-hailed-as-hero-after-protecting-owner-from-home-invasion-1.1542502>; *Fort Myers Pit Bull Dies Protecting Her Family*, WINK NEWS (Dec. 20, 2015, 7:46 PM), <http://www.winknews.com/2015/12/20/pitbull-dies-protecting-her-family-in-fort-myers>.

197. *Pit Bull Bias in the Media*, *supra* note 89.

198. *Id.*

199. *Id.*

critical condition.<sup>200</sup> This incident was reported once in the local paper.<sup>201</sup> On day two, a mixed-breed dog fatally attacked a six-month old child.<sup>202</sup> The local paper reported on this incident twice.<sup>203</sup> On the third day, a medium-sized, mixed-breed dog attacked a six-year-old boy, whose injuries included a severe bite to the head and a torn-off ear.<sup>204</sup> The local paper reported on this once.<sup>205</sup> On the fourth and last day, two pit bulls attacked a fifty-nine-year-old woman, leaving her with severe, though not fatal, injuries.<sup>206</sup> This incident was not just reported once or twice in the local paper as the other incidents.<sup>207</sup> This attack was reported in over 230 articles in national and international newspapers, as well as major television news networks including CNN, MSNBC, and FOX.<sup>208</sup>

Additionally, just a few days before the fatal dog attack that prompted Montreal's pit bull ban, a four-year-old was killed by a "husky-mix" in Nunavut, Canada.<sup>209</sup> In fact, only two of the sixty dog bite deaths in Canada since 1964 were caused by pit bulls, but over twenty-five of those deaths were caused by husky-type dogs.<sup>210</sup> The popularity and prevalence of any given breed in a certain location usually dictates the number of dog attacks by that breed.<sup>211</sup> Therefore, it makes sense that more husky bites would occur in Canada where husky-type dogs are more popular, just as it makes sense that more pit bull bites would occur in the United States where pit bulls are more popular. What does not make sense, however, is that "[n]o one in Canada clamored for a ban" on husky-type dogs after these attacks.<sup>212</sup> This illuminates the media bias towards pit bulls all over the world—even if pit bulls are not the dogs causing the majority of bites or fatal attacks.

Even when media bias is unintentional, it still forms an impression on the public.<sup>213</sup> With "function influenc[ing] public perception," the positive contributions and good character that pit bulls bring to society need to be

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200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *See id.*

208. *Id.*

209. Dickey, *supra* note 36.

210. *Id.*

211. *The Role of Breed in Dog Bite Risk and Prevention*, *supra* note 55.

212. Dickey, *supra* note 36.

213. *Pit Bull Bias in the Media*, *supra* note 89.



publicized more often.<sup>214</sup> One of the clearest examples of how a breed's function influences public perception is the Bulldog:

During the 19th century, Bulldogs, more than any other breed, were used in the most extreme of negative functions (dog fighting, guard/attack dogs) and in the most positive functions (police dogs and in heroic deeds on farms). The media presented balanced reporting of both the devastation Bulldogs inflicted in attacks and of the contributions they made by saving lives and defending the public as police dogs and personal guardians. Additionally, the media often printed accounts of Bulldogs interacting with their owners and others in the more mundane or everyday activities. Due to this balanced reporting, and the use of Bulldogs in many functions, both positive and negative, the Bulldog never received widespread public condemnation, even during periods of increased popularity when many owners allowed them to roam loose and behave aggressively.<sup>215</sup>

The type of media shift and balanced reporting that these other breeds were given is long overdue for pit bulls. Pit bulls have already made, and continue to make, significant and positive contributions to society in ways strikingly similar to that of Bulldogs and German Shepherds, whose reputations have never been as damaging as the pit bulls'.<sup>216</sup> Rather than continually and disproportionately stigmatizing this "breed" or type of dog, the media must equally show the positive image of pit bulls.

## CONCLUSION

Attempting to resolve the dog bite problem with BSL is like putting a bandage over a broken bone. Without targeting the underlying issue of inadequate care and criminal use of dogs, any breed is at risk of becoming the media's next "most dangerous and vicious breed." Instead of banning pit bulls for behaviors that humans have enabled in them, directly or indirectly, communities should push for the strict enforcement and enactment of anti-cruelty laws that target and criminalize these human behaviors. As animal behaviorist Randall Lockwood said, "[t]his is a social issue, it's a law enforcement issue, but it's not a dog breed issue."<sup>217</sup>

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214. Delise, *supra* note 54, at 69.

215. *Id.* at 69–70.

216. Delise, *supra* note 54, at 69–70, 89.

217. Steve Dale, *One Expert Stands Alone Against Pit Bulls*, STEVE DALE CABG (Nov. 1, 2004), <http://stevedalepetworld.com/one-expert-stands-alone-pit-bulls>; *see also* Medlin, *supra* note 42, at 1318–19.