Civil Action No. 10cv00416

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

QUINTON RICHARDSON,	)
	)
PETITIONER–APPELLANT,	)
	)
vs.	)
	)
	)
	)
CITY OF WINTHROP,	)
	)
RESPONDENT–APPELLEE.	)
	)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BRIEF OF APPELLEE

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QUESTIONS PRESENTED

1. Did the district court err when it ruled that Winthrop Municipal Code section 6.04.090, designating all "'pit bull' variety of terrier" as *per se* vicious and thus banning them, is not unconstitutionally vague on its face or as applied to the Plaintiff under the Fourteenth Amendment to the U.S. Constitution and does not violate the overbreadth doctrine?

2. Did the district court err when it ruled that Winthrop Municipal Code section 6.04.090, designating all "'pit bull' variety of terrier" as *per se* vicious and thus banning them, does not violate substantive due process under the Fourteenth Amendment to the U.S. Constitution?

STATEMENT OF THE CASE

The City of Winthrop enacted Municipal Code § 6.04.090 in 1988. M.O. 5. The Ordinance regulates dogs that are a nuisance or are vicious or potentially vicious. M.O. 3. Vicious dogs within the Ordinance are "any breeds commonly referred to the 'pit bull' variety" Muni. Code § 6.04.090.B.1(c), including purebreds and mixes. M.O. 3. Specifically, the ordinance lists the "American Staffordshire Terrier, American Pit Bull, and Pit Bull Terrier." Muni. Code § 6.04.090.B.1(c); M.O.3. The Ordinance mandates that within city limits, no person "shall own, keep or have the custody, care or control of any of the breeds identified…." Muni. Code § 6.04.090.B.2; M.O.3.

Seventeen years after the Ordinance came into effect, Quinton Richardson acquired two puppies from a rescue organization. M.O. 4. Richardon's dogs, Zoe and Starla, were classified as mixed breed by the rescue group they were adopted from and later a veterinarian. M.O. 4. The dogs were believed to have come from the same litter because of their age and appearance. M.O. 4. Under Richardson's care, the dogs did not act aggressively toward people. M.O.3.

In 2009, while Starla was at the veterinarian, Zoe was taken from Richardson's home by animal control after a meter reader notified the agency of the dog's presence. M.O. 5. The City Manager held a hearing in compliance with the Ordinance to determine whether Zoe was a

vicious dog within § 6.04.090. M.O. 5. Based upon Zoe's appearance, the animal control officer testified that Zoe was a pit bull. M.O. 5. Richardson submitted that Zoe was a mixed breed without the support of a DNA test, but based on an affidavit from his veterinarian. M.O. 5.

Following the hearing, the City Manager determined that Zoe was a "pit bull terrier type dog" coming within the Ordinance's vicious dog classification. M.O. 5. The state trial court affirmed the decision after Richardson appealed the order for Zoe's removal from Winthrop. M.O. 5. Subsequently, Richardson did not comply with the order in a timely manner which resulted in the dog being euthanized. M.O. 5. Richardson maintains control and ownership of Starla in Winthrop and has filed a preliminary injunction preventing her seizure pending the determination of this case. M.O. 6.

Richardson filed a complaint with the District Court of Massachusetts alleging the Ordinance violates the Fourteenth Amendment of the United States Constitution because (1) it is unconstitutionally vague, both facially and as applied, and (2) it violates substantive due process. M.O. 6. Richardson sought injunctive relief preventing the enforcement of the ban and damages under 42 U.S.C. § 1983. M.O. 2. The City was granted their motion for summary judgment based on the Court's finding of no constitutional violations. M.O. 2.

The Court held the facial challenge was meritless because owners of registered American Pit Bulls or American Stafford Terriers must know their animals are banned from the City. M.O. 10. The as applied challenge was also rejected by the Court because Richardson's own submissions showed his dogs fit the profile of a pit bull as they were muscular with large heads and short coats. M.O. 10. The District Court determined "at a glance" there was enough evidence to uphold the classification of Zoe as a pit bull variety of terrier and to confirm Richardson had notice that his dogs came under the Ordinance. M.O. 10-11.

Additionally, the Court held there was no violation of substantive due process. M.O. 14. Adopting the "rational relation" test, the Court concluded there was a sufficient relationship between the City's interest and the Ordinance. M.O. 11-12, 14. The Court stated that Winthrop has a legitimate interest in the safety of citizens, and thus the ban of the " 'pit bull' variety of terrier," a breed known to be aggressive, is constitutional. M.O. 13-14. Richardson has now filled this third appeal with the United States Court of Appeal for the First Circuit.

STANDARD OF REVIEW

The standard of review for the grant of a summary judgment motion is de novo. *Collins v. Nuzzo*, 244 F.3d 246, 250 (1st Cir. 2001). De novo is applied when there is a question of law. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

''Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law based on the pleadings, depositions, answers to interrogatories, admissions on file, and any affidavits.'' *Thompson v. Coca–Cola Co.*,522 F.3d 168, 175 (1st Cir. 2008) (citing Fed. R.Civ.P. 56(c)). All presumptions of fact must be made in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Vineberg v. Bissonnette*, 548 F.3d 50, 56 (1st Cir. 2008).

The moving party has the burden to prove there is not a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A genuine issue of fact exists when a reasonable jury could find in favor of the non-moving party. *Anderson*, 477 U.S. at 248. A material issue of fact is when a fact would affect the result of the case under the applicable law. *Anderson*, 477 U.S. at 248.

After the moving party has appropriately supported the motion, then the burden shifts to the non-moving party to demonstrate there is a genuine issue of material fact. *Anderson*, 477

U.S. at 248; *See Iverson v. City of Boston*, 452 F.3d 94, 98 (1st Cir. 2006). Therefore, a motion for summary judgment may be granted, when the non-moving party's case is dependent on "conclusory allegations, improbable inferences, and unsupported speculation.'' *Forestier Fradera v. Municipality of Mayaguez*, 440 F.3d 17, 21 (1st Cir. 2006) (citing *Benoit v. Technical Mfg. Corp.*, 331 F.3d 166, 173 (1st Cir. 2003). Last, the court may not weigh evidence, nor make decisions about the credibility of evidence because those functions are reserved for a jury. *Anderson*, 477 U.S. at 249, 255.

SUMMARY OF ARGUMENT

Winthrop Municipal Code Section 6.04.090 is both constitutional and a valid exercise of the City's power. The District Court properly granted summary judgment to the City when the enactment was challenged by Richardson.

The Ordinance is not facially void for vagueness because owners of dogs registered as one of the listed breeds in the enactment must know their animals are banned from Winthrop. Only an ordinance incapable of any valid application is facially vague. Also, the Ordinance is not void for vagueness as applied because Richardson had adequate notice his dogs came under the ban. Richardson's dogs displayed unique characteristics inherent to pit bulls, and regardless of his understanding Richardson could have used other available methods to identify the dogs. Furthermore, the Ordinance does not violate the overbreadth doctrine because the enactment places no constraints on conduct protected by the First Amendment.

Lastly, the ordinance does not violate substantive due process under the Fourteenth Amendment. There is a rational relationship between the Ordinance and the regulation of pit bull breeds. The breeds' are known to be aggressive with humans, and thus the City has an

interest in protecting their citizens. The City has met the low threshold required by the rationality test, and as a result is entitled to summary judgment as a matter of law.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY RULED THAT WINTHROP MUNICIPAL CODE SECTION 6.04.090 IS NOT UNCONSTITUTIONALLY VAGUE UNDER THE FOURTEENTH AMENDMENT.

The District Court correctly held that the Ordinance enacted by the city of Winthrop is not unconstitutionally void for vagueness because a clear standard was provided for determining which dogs were banned from Winthrop. Specifically, the Ordinance banned vicious dogs of "any of the breeds commonly referred to as belonging to the "pit bull" variety of terrier, which consists of the following breeds or breed types and mixtures: American Staffordshire Terrier, American Pit Bull and Pit Bull Terrier." Muni. Code § 6.04.090.B.1.(c).

Under the Fourteenth Amendment, due process of law guarantees against vague laws. *Grayned v. City of Rockford,* 408 U.S. 104, 108-09 (1972). To prevent vagueness laws must convey a sufficiently definite warning to persons of ordinary intelligence so that they will know what actions are prohibited and, to set standards to protect against arbitrary and discretionary enforcement. *Id.* But the Supreme Court has stated that a law must have "a reasonable degree of clarity" *Roberts v. United States Jaycees*, 468 U.S. 609, 629 (1984), exact precision is not required. *Grayned,* 408 U.S. at 110. When a law is attacked on the grounds of vagueness there is in fact a presumption of constitutionality which is not "automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within [its] language." *Parker v. Levy,* 417 U.S. 733, 757 (1974).

In considering whether a law affords fair warning, there is a greater degree of constitutional tolerance for vagueness in enactments with civil rather than criminal penalties.

Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc. (Hoffman Estates), 455 U.S. 489, 498-99 (1982); *Winters v. New York*, 333 U.S. 507, 515 (1948). The Ordinance challenged here is civil in nature. When reviewing the challenge brought by Richardson, the Ordinance must be presumed constitutional. Moreover, the Ordinance should be afforded a higher level of tolerance since violations of the enactment can only result in civil penalties.

A. Winthrop Municipal Code Section 6.04.090 Does Not Violate The Fourteenth Amendment Because It Is Not Unconstitutionally Vague On Its Face.

The District Court correctly held that an ordinance enacted by Winthrop is not unconstitutionally vague on its face because the ordinance is not impermissibly vague in each of its applications. Richardson's claim that the ordinance is facially invalid has no foundation. "Facial challenges are strong medicine," *Ward v. Utah*, 398 F.3d 1239, 1246 (10th Cir. 2005), and for this reason facial challenges are only appropriate where an enactment threatens a fundamental right or the law is incapable of any valid application. *Hoffman Estates,* 455 U.S. 489, 494-95 (1982).

There is not a fundamental right to keep pit bulls. *American Dog Owners Ass'n v. Dade County*, 728 F. Supp. 1533, 1541 (S.D. Fla. 1989). Richardson's vagueness claim can only be considered under the second grouping of facial challenges. A successful challenge, if one can be brought at all, against the Ordinance, must demonstrate that that the regulation of vicious dogs is impermissibly vague in each of its applications. *Hoffman Estates,* 455 U.S. at 495.

In reviewing the Winthrop Ordinance, the District Court concluded the enactment was not impermissibly vague. This ruling was in conformity with other courts throughout the

country which have determined that similar pit bulls regulations are constitutional.[1] The challenges and facts of these cases are substantially similar to the case at hand.

In *Dog Fed'n of Wis.* v. City of S. Milwaukee, 178 Wis. 2d 353, 504 N.W.2d 375 (1993), the Court of Appeals addressed an association's claim that an ordinance was void for facial vagueness on the grounds that an ordinary person would not understand the included definition of pit bull. *Id.* at 360, 504 N.W.2d at 378. The Milwaukee ordinance's definition of pit bull included, "[a]ny pit bull terrier, which shall be defined as any American Pit Bull Terrier or Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog…." *Id.* at 358, 504 N.W.2d at 377. The ordinance further outlined that mixed dogs or dogs identified as being partially belonging to any of the listed breeds would come under the control of the ordinance. *Id.*

In considering the constitutionality of the ordinance, the Wisconsin Court noted that "[t]he ordinance's definition of "pit bull" makes specific reference to breeds that are recognized by both the American Kennel Club and the United Kennel Club." *Id.* at 360, 504 N.W.2d at 378. Between the two organizations, each dog breed listed was prescribed a professional standard that included specific physical and mental characteristics. *Id.* at 361, 504 N.W.2d at 379. The Court concluded the ordinance was not impermissibly vague on its face as "[r]eference to recognized breeds provides sufficient specifics to withstand a vagueness challenge." *Id.*

[1] *See Dias v. City & County of Denver*, 567 F.3d 1169, 1180 (10th Cir. 2009); *American Dog Owners Ass'n v. Dade County*, 728 F. Supp. 1533, 1543 (S.D. Fla. 1989); *Vanater v. Village of South Point*, 717 F. Supp. 1236, 1244 (S.D. Ohio 1989); *State v. Peters*, 534 So.2d 760, 768 (Fla. Dist. Ct. App. 1988); *City of Pagedale v. Murphy*, 142 S.W.3d 775, 779 (Mo. Ct. App. 2004); *Garcia v. Tijeras*, 108 N.M. 116, 119, 767 P.2d 355, 358 (1988); *Hearn v. City of Overland Park*, 244 Kan. 638, 649, 772 P.2d 758, 767 (1989); *State v. Anderson*, 57 Ohio St. 3d 168, 175, 566 N.E.2d 1224, 1230 (1991); *Toledo v. Tellings*, 114 Ohio St. 3d 278, 283, 871 N.E.2d 1152, 1158 (2007); *State v. Robinson*, 44 Ohio App. 3d 128, 133, 541 N.E.2d 1092,1097 (Ohio Ct. App., 1989); *Greenwood v. North Salt Lake*, 817 P.2d 816, 820 (Utah 1991); *Am. Dog Owners Ass'n v. Yakima*, 113 Wn.2d 213, 214, 777 P.2d 1046, 1047 (Wash. 1989); *Dog Fed'n of Wis. v. City of S. Milwaukee*, 178 Wis. 2d 353, 362, 504 N.W.2d 375, 379 (1993).

Similarly in *Dias*, the United States Court of Appeals for the Tenth Circuit concluded that a facial challenge to an ordinance banning dogs known as pit bulls, defined by the professional standards of the American Kennel Club and United Kennel Club, was not impermissibly vague. 567 F.3d 1169, 1180 (10th Cir. 2009). The Court reasoned that since a pure breed dog owner must know that their dog comes under the control of the ordinance, it "is admittedly not "vague in all its applications," and the plaintiff's facial vagueness challenge was properly dismissed for failure to state a claim." 567 F.3d at 1180 (quoting *Hoffman Estates*, 455 U.S. 489, 500-03 (1982)). The same result was reached in *American Dog Owners Ass'n v. Dade County*, when a county ordinance that defined pit bulls by professional standards was challenged as being facially invalid. 728 F. Supp. 1533, 1534 (S.D. Fla. 1989). The Court held that owners of purebred dogs must necessarily know the ordinance applies to them. *Id.* at 1540-1541.

The reasoning of the above decisions should be applied to the Ordinance challenged in this Court. Winthrop Municipal Code Section 6.04.090 defines vicious dogs as "any of the breeds commonly referred to as belonging to the "pit bull" variety of terrier, which consists of the following breeds or breed types and mixtures: American Staffordshire Terrier, American Pit Bull and Pit Bull Terrier." Muni. Code § 6.04.090.B.1(c). Comparable to *Dog Fed'n of Wis*. and *Dade County* where the ordinances listed breeds recognized by the American Kennel Club and United Kennel Club, here too documented breeds are provided as guidance.

The American Staffordshire Terrier is a dog breed recognized by the American Kennel Club and the American Pit Bull is a dog breed recognized by the United Kennel Club. *See* American Kennel Club, Complete Breed List, http://www.akc.org/breeds/complete_breed _list.cfm (last visited January 10, 2011); United Kennel Club, Full List of UKC Breeds, http://www.ukcdogs.com/WebSite.nsf/WebPages/ LrnBreedInfoFullList (last visited January 10,

2011). Both organizations provide professional standards of what characteristics a dog must have to fit the breed classification.

In addition to listing American Staffordshire Terriers and American Pit Bulls, the City's Ordinance also lists the Pit Bull Terrier breed. This breed type is not formally recognized by the United Kennel Club or the American Kennel Club. That said, listing the Pit Bull Terrier breed provides a standard which can be understood by a person of ordinary intelligence. *See Vanater v. Village of South Point*, 717 F. Supp. 1236, 1244 (S.D. Ohio 1989) ("[T]he definition of a Pit Bull Terrier in this ordinance is not unconstitutionally vague. An ordinary person could easily refer to a dictionary, a dog buyer's book for guidance and instruction"); *Greenwood v. North Salt Lake*, 817 P.2d 816, 819 (Utah 1991) (upheld enactment restricting the ownership of bull terriers and pit bulls against a facial challenge because breed types can be determined by physical characteristics).

There are therefore two ways for a dog owner to determine if a dog is categorized as a breed which is banned by the City. Either dog owners can look to an animal's registration statutes or can compare the dog's composition to the provided professional standards for each listed breed. These available methods of identification rebut Richardson's claim that "[u]nless a dog is a registered purebred of one of the three breeds listed or a mixture thereof …there is no reliable means of identifying the heritage of unregistered or mixed-breed dogs." M.O. 8. This same claim has already been used by other persons challenging pit bull regulations.

In *Greenwood v. North Salt Lake*, the court reviewed an argument that a dog restriction was facially invalid because "[a]ccording to plaintiffs, the only way to determine breed is through registration papers or pedigree charts." 817 P.2d 816, 819 (Utah 1991). The *Greenwood* decision concluded that "plaintiffs cannot consistently argue that registration, and

not physical characteristics, determine breed, when registration itself is based upon physical characteristics." 817 P.2d at 819. The reasoning of the *Greenwood* decisions should apply here.

Richardson also cites two cases to support his claim that the City's Ordinance is facially invalid. *See American Dog Owners Ass'n v. City of Des Moines*, 469 N.W.2d 416 (Iowa 1991); *American Dog Owners Ass'n v. City of Lynn*, 404 Mass. 73, 533 N.E.2d 642 (1989). However these cases are distinguishable from the immediate suit and this Court should decline to follow the decisions. In *Lynn*, although the court concluded the legislation was "not sufficiently definite," *Id.* at 79, 533 N.E. 2d at 646, this conclusion was only reached because the vicious dog ordinance reviewed was "devoid of any reference to a particular breed." *Id*. The Winthrop Ordinance identifies three breeds. Also, in the *American Dog Owners Ass'n v. City of Des Moines* decision, the court concluded that a clause in relation to mixed breeds and other breeds was convoluted. But the Court held, as to the portion of the ordinance that identified recognized dog breeds, "[w]e believe the breed classifications listed in subsections vi, vii and viii give the reader as much guidance as the subject matter permits. We believe these subsections permit a reader of ordinary intelligence to determine which dogs are included." 533 N.E.2d at 418. Neither of these decisions provided a basis to alter the District Court's conclusion that the City's Ordinance is not facially vague.

Dog owners in the city of Winthrop in possession of dogs registered as American Staffordshire Terriers, American Pit Bulls, or Pit Bull Terriers or who own dogs that conform to the professional standards established for these breeds must know their animals fall under the control of the Ordinance. The enactment effectively describes which dogs are banned. The District Court correctly concluded that the Ordinance in some applications passes constitutional muster as the owners of purebred dogs "must know that the Ordinance applies to them and bans

their dogs from the City." M.O. 10. This court is required to uphold the constitutionality of the Ordinance unless the enactment is impermissibly vague in every application. Here, without question, there are owners who know their dogs are banned from the city. These same provisions also provide guidelines for enforcement personnel, limiting their ability to enforce the enactment with discretion. The Ordinance enacted by the City of Winthrop is not unconstitutionally vague on its face because the ordinance is not impermissibly vague in each of its applications.

B. Winthrop Municipal Code Section 6.04.090 Is Not Unconstitutionally Vague As Applied To Richardson Under The Fourteenth Amendment.

The District Court correctly held that the Ordinance enacted by the City of Winthrop is not unconstitutionally vague as it applies because the enactment provided adequate standards to put Richardson on notice that his dogs were subject to the ban. Richardson's claim that the Ordinance is invalid as it applies therefore has no foundation.

i. The pit bull variety of terrier is a breed category identifiable by specific characteristics.

Richardson had adequate notice that his dogs came under the City's Ordinance because his animals were a variety of pit bull terriers. The Ordinance's ban on vicious dogs included animals identifiable as pit bull types of terriers and provided the dog breed names or mixtures thereof that were of this variety. Pit bull terriers, or generally pit bulls, are identifiable by specific characteristics. The Supreme Court of Ohio agreed when it upheld an ordinance against a vagueness challenge, where the dogs were defined as those commonly considered to belong to the pit bull breed. *State v. Anderson*, 57 Ohio St. 3d 168, 169, 566 N.E.2d 1224, 1225 (1991). The Court reasoned that "pit bull dogs are distinctive enough that the ordinary dog owner knows

or can discover with reasonable effort whether he or she owns such a dog." *Id.* at 172, 566 N.E.2d at 1227. The Court supported this conclusion by outlining that pit bulls have specific physical and behavioral attributes. *Id.* at 172-73, 566 N.E.2d at 1227-28. Moreover in *Hearn v. Overland Park,* 244 Kan. 638, 772 P.2d 758 (1989), the physical features of pit bull dogs were described as "includ[ing] a short, squatty body with developed chest, shoulders, and legs; a large, flat head; muscular neck and a protruding jaw. The appearance of these dogs typifies strength and athleticism. They can climb trees, they have extremely strong jaws and biting power." *Id*. at 643, 772 P.2d at 763.

In *State v. Robinson*, 44 Ohio App. 3d 128, 541 N.E.2d 1092 (1989), the court acknowledged that "[t]he definition of "pit bull" may indeed be somewhat elusive," *Id.* at 132, 541 N.E.2d at 1096, but ultimately concluded "it is clear that such dogs have certain physical characteristics in common. They are basically 'bull terriers,' 'a short-haired terrier of a breed originating in England by crossing the bulldog with terriers to develop a dog of speed, hardihood, and powerful bite for use in dog fights . . . . " *Id.* (quoting Webster's Third New International Dictionary (1981) 295). A dog owner of ordinary intelligence should be able to determine whether their dog is a pit bull based on its physical attributes.

The decision of *American Dog Owners Ass'n v. Dade County* thoroughly analyzed the use of physical characteristics to classify dogs as pit bulls, a dog type regulated in Dade County. 728 F. Supp. 1533 (S.D. Fla. 1989). The plaintiff in the case owned two dogs. *Id.* at 1534. One dog was a registered purebred while the other animal was not registered. *Id.* In relation to the unregistered dog the owner claimed to not know its lineage and that he could not therefore determine if the animal was a pit bull. *Id.* The court rightfully disagreed. *Id.* at 1543. The Dade County ordinance lists three dog breeds that together defined the meaning of a pit bull based on

their shared physical characteristics. *Id.* at 1535. Against the plaintiff's argument that dogs known as pit bulls do not exist, the District Court upheld the county court's findings that "[t]he ordinance defines the breed of dog not according to bloodlines, but according to physical characteristics." *Id.* at 1535. The court also noted that "[p]resently, there exists no better method of identifying a pit bull than by its appearance." *Id.* at 1537. The ordinance was found constitutional as it gave "sufficient guidance to dog owners, both in its explicit reference to pit bull dogs, and in its definitional section, to enable pit bull owners to determine whether their dogs fall within the proscriptions of the ordinance." *Id.* at 1543.

Richardson makes the same flawed argument as the plaintiff in *Dade* that since he does not know the lineage of his dogs, he could not determine whether they were banned from the City. As the decisions of *Anderson*, *Hearn*, *Robinson*, and *Dade* each recognize, a dog's lineage is not needed to determine its breed type. Rather the animal's characteristics are determinative. As the decisions have pointed out, it is these determinative characteristics that identify a dog as coming from a particular lineage. Although Richardson was told his dogs were mixed breeds, this does not mean Richardson was permanently hindered from determining the dogs were pit bulls. Richardson himself could have made this determination based upon the dogs' physical attributes. There is also no indication that the veterinarian or the rescue group could not identify the different breeds Zoe and Starla came from. The record only indicates the veterinarian and the rescue group considered Richardson's dogs mixed.

What is known is that based on the physical appearance of Zoe, an animal control officer was able to determine the dog to be a pit bull. The City Manger was also able to conclude that Zoe was a pit bull terrier type dog. In its review of the matter, the District Court stated affirmatively that "[even] at a glance, the evidence Richardson presented shows that Zoe and

Starla are muscular dogs with large heads and short coats." M.O. 10. There are no facts to rebut that Richardson could have determined his dogs were pit bulls based on their telling characteristics. The District Court correctly concluded that Richardson was on notice that his dogs were of the of the pit bull variety of terrier and banned from the city of Winthrop.

ii. There are other methods available to determine whether a dog is of the pit bull variety of terrier in addition to using specific characteristics.

Decisional law has held that when a dog owner does not know his animals breed type, there are other methods to determine with sufficient certainty whether a dog is of the pit bull variety of terrier. The decision in *Vanater v. Village of South Point*, 717 F. Supp. 1236 (S.D. Ohio 1989), concluded that the definition of a Pit Bull Terrier was not void for vagueness. *Id.* at 1244. The court reached this conclusion by reasoning that "[a]n ordinary person could easily refer to a dictionary, a dog buyer's guide or any dog book for guidance and instruction.... " *Id.* Similarly in *State v. Anderson*, 57 Ohio St. 3d 168, 566 N.E.2d 1224 (1991), the Ohio Supreme Court recognized that although most dog owners seek a specific breed for purchase "a few individuals may unwittingly purchase a pit bull dog." *Id.* at 173, 566 N.E.2d at 1228.

Even if an owner comes to possess a dog without knowing what type it is, the court stated "any reasonable owner should be able to obtain this information with a small amount of effort." *Id.* This point was also echoed in *American Dog Owners Ass'n v. Dade County*, 728 F. Supp. 1533 (S.D. Fla. 1989), where the court noted "[i]f, after consulting the ordinance, an owner remains in a quandary as to whether the ordinance applies to him, the owner could seek guidance from a dictionary [or] a guidebook to dog[s]…." *Id.* at 1541. As these courts have indicated, an owner unaware of their dog's breed type has ample ways to obtain this information. Although

Richardson did not specifically seek to own pit bulls, he could have made use of numerous tools to discover his dogs' breed type after their adoption.

Richardson had adequate notice that his dogs came under the Ordinance. Moreover, the standards that gave Richardson notice that his dogs were banned from Winthrop, will also restrain any discretionary enforcement of the Ordinance. The District Court correctly held that the Ordinance enacted by the City of Winthrop is not unconstitutionally vague as it applies because the enactment provided reliable standard to put Richardson on notice that his dogs were subject to the vicious dog ban.

II. THE DISTRICT COURT CORRECLY RULED THAT WINTHROP MUNICIPAL CODE SECTION 6.04.090 DOES NOT VIOLATE THE OVERBREADTH DOCTRINE.

The due process challenge that the Ordinance violated the overbreadth doctrine was properly dismissed by the District Court because the Ordinance does not limit conduct protected by the First Amendment. The Supreme Court of the United States has held that outside the context of the First Amendment, the "overbreadth" doctrine has no application. *United States v. Salerno*, 481 U.S. 739, 745 (1987); *Schall v. Martin*, 467 U.S. 253, 268 n.18 (1984); *See also* Richard H. Fallon, Jr., *Making Sense of Overbreadth*, 100 Yale L.J. 853, 858-859 (1991). The Right to own a pit bull variety of terrier is not guaranteed by the First Amendment. *Hearn v. Overland Park*, 244 Kan. 638, 645, 772 P.2d 758, 764 (1989) ("[T]he plaintiffs' right to own pit bull dogs is not guaranteed by the First Amendment.").

The *Hearn* decision reviewed the application of the overbreadth doctrine to a pit bull ordinance in detail. The court first recounted a case that distinguished the overbreadth and vagueness doctrines, stating " '[a]n overbroad statute makes conduct punishable which under some circumstances is constitutionally protected from criminal sanctions. A vague statute leaves

persons of common intelligence to guess at its meaning and whether particular conduct is a crime.' " *Id.* at 645, 772 P.2d at 764, (quoting *State v. Huffman*, 228 Kan. 186, 189, 612 P.2d 630, 634 (1980)). The court noted that the overbreadth doctrine is limited to cases involving the freedom of speech because restrictions over this form of constitutionally protected conduct could have a chilling effect. *Id.* at 645, 772 P.2d at 764. Applying these premises to the pit bull ordinance, the court concluded "[b]ecause the plaintiffs' activities do not fall within the scope of rights guaranteed by the First Amendment, the city ordinance may not be attacked as constitutionally overbroad." *Id.* at 645, 772 P.2d at 764. Similar results have been reached in other courts across the country considering the application of the overbreadth doctrine to pit bull ordinances. *See Dog Fed'n of Wis. v. City of S. Milwaukee*, 178 Wis. 2d 353, 365, 504 N.W.2d 375, 380 (1993) (The plaintiffs "argue that the ordinance impermissibly treats "all pit bulls as if they are inherently dangerous, and more prone to cause harm than other dogs as a matter of law." The "overbreadth" doctrine, however, has no application outside the First Amendment context."); *Am. Dog Owners Ass'n v. Yakima*, 113 Wn.2d 213, 217, 777 P.2d 1046, 1048 (1989) (the court rejected the use of the overbreadth doctrine when the ordinance did not constrain constitutionally protected conduct); *State v. Robinson*, 44 Ohio App. 3d 128, 133, 541 N.E.2d 1092, 1097 *(Ohio Ct. App., 1989)* ("the case at bar does not involve First Amendment Rights. Accordingly, we reject appellant's overbreadth challenge to the statute.").

The Winthrop Ordinance is not distinct from the cases above, and the reasoning of the decisions can and should be applied to the challenged Ordinance. Richardson's argument merely states that the Ordinance is overly broad "because it inadequately describes which dogs it bans." M.O. 7. Just as the plaintiff in *Dog Fed'n of Wis.*, Richardson fails to include any facts that would make the overbreadth doctrine appropriately apply.

Even in the absence of First Amendment implications, the merits of Richardson's overly broad claim fail. The void for vagueness analysis demonstrated that the Ordinance gives adequate notice of which dogs are banned from the city. There are no additional facts pleaded by Richardson that would make this finding an inapplicable conclusion for the overbreadth issue. In *Vanater v. Village of South Point* after determining that the challenged ordinance was not void for vagueness, the plaintiff also attempted to argue the same ordinance was overbroad. 717 F. Supp. 1236, 1246 (S.D. Ohio 1989). The court was not tempted by the plaintiff's second claim noting "[f]or the reasons stated in the section of this Order concerning vagueness…the Court concludes that the Ordinance is not overbroad as drawn." *Id.* The court rationalized that "there are other methods to determine with sufficient certainty whether a dog is a Pit Bull within the meaning of the Ordinance to survive the overbreadth challenge." *Id.*

The Ordinance in question does not involve the freedom of expression or other unique constitutional problems. As in *Vanater*, any misplaced argument that the Winthrop Ordinance lacks adequate standards has already been dismissed in the review of vagueness. The due process challenge by Richardson that the Ordinance violated the overbreadth doctrine was properly dismissed by the District Court.

III. THIS COURT SHOULD UPHOLD THE DISTRICT COURT'S RULING THAT THE ORDINANCE DOES NOT VIOLATE SUBSTANTIVE DUE PROCESS BECAUSE UNDER THE RATIONAL BASIS TEST THERE IS A SUFFICIENT RELATIONSHIP BETWEEN THE STATE'S INTEREST IN PUBLIC SAFETY, HEALTH, AND WELFARE AND THE REGULATION OF THE PIT BULL TERRIER VARIETY.

The District Court properly held that Richardson's Substantive Due Process claim is without merit. The Due Process Clause reads, "no state shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Due process

contains a procedural and substantive component. *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). "The touchstone of due process is protection of the individual against arbitrary action of government." *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)). While procedural due process protects "arbitrary takings" of life, liberty, or property, substantive due process protects from arbitrary government power. *Lewis*, 523 U.S. at 846.

To determine what is arbitrary, the use of government power must first be classified as legislative or executive. *Lewis*, 523 U.S. at 846; *Espinoza v. Sabol*, 558 F.3d 83, 87 n.2 (1st Cir. 2009). A legislative act is one taken by the legislature, and an executive act is one taken by a government officer. *Lewis*, 523 U.S. at 846. Richardson claims that his substantive due process rights were violated by the passing of the Ordinance, which is a legislative act. Richardson does not premise his claim on the act of a government officer. The arbitrary government power that Richardson challenges is legislative.

Not all government exercises of power require the same threshold. *Lewis*, 523 U.S. at 846; *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965); *See, e.g., Rochin v. California*, 342 U.S. 165 (1952). The threshold for a legislative act is a "reasonable fit" *Reno v. Flores*, 507 U.S. 292, 305 (1993), and the threshold for an executive act is that it "shocks the conscience." *Lewis*, 523 U.S. at 846-847. A legislative act must have "a rational connection to a legitimate public purpose." *South County Sand & Gravel, Co., Inc., v. Town of South Kingston*, 160 F.3d 834, 836 (1st Cir. 1998). Since Richardson is challenging a legislative act, the applicable test is mere rationality. But there is an exception to the rationality test in some circumstances. If the constitutional claim involves a fundamental right, the due process clause provides for heightened protection. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); *See Cook v. M. Gates*, 528

F.3d 42, 49 n.3 (1st Cir. 2008). Instead of rationality, a fundamental right requires the legislation be narrowly tailored "to serve a compelling state interest." *Glucksberg*, 521 U.S. at 721.

A. The District Court Properly Reasoned That The Right To Own A Dog, And In Particular A Pit Bull Variety Terrier, Is a Non-Fundamental Right Under The United States Constitution, And Thus The Right Does Not Receive Heightened Protection Under Substantive Due Process.

Richardson does not have a fundamental right to own a dog. Fundamental rights are those that are "deeply rooted in this Nation's history and tradition." *Glucksberg*, 521 U.S. at 720-721. The various fundamental rights recognized by the U.S. Supreme Court have included: the right to get married, have children, use contraception, and have an abortion. *Glucksberg*, 521 U.S. at 720; *See Cook*, 528 F.3d at 49. These rights have been said to be "so rooted in the . . . conscience of our people as to be ranked as fundamental." *Glucksberg*, 521 U.S. at 721. Without these fundamental rights justice would be "sacrificed" under due process. *Id*. The rights that Americans consider fundamental have been debated, argued, and discussed in length. The right to own a dog is not in that category.

"In determining what is due process of law we are bound to consider the nature of the property." *Sentell v. New Orleans and Carrollton Railroad Company*, 166 U.S. 698, 702, 705 (1897). In *Sentell v. New Orleans and Carrollton Railroad Company*, 166 U.S. 698 (1897), the plaintiff brought suit to recover the value of his dog, which was killed by a train. *Id.* at 700. The *Sentell* Court stated that a dog is between a domesticated animal and wild animal. *Sentell*, 166 U.S. at 701. The rights in a domesticated animal are perfect, and the rights in a wild animal are absent until there is a capture. *Id.* As a result, the Court held that "property in dogs is of an imperfect or qualified nature." *Sentell*, 166 U.S. at 701, 706; *See Nicchia v. People of the State of New York*, 254 U.S. 228, 230 (1920).

Since the right to own a dog is not absolute, the Court explained that dog control was within the state's power. *Sentell*, 166 U.S. at 701-702, 704. Thus, the state could destroy the "worthless" dogs, and protect the "valuable." *Id.* at 701-702. A worthless dog is a threat to public safety because of their "serious infirmities of temper." *Id.* Richardson's ownership in his dogs is imperfect, like the plaintiff's in *Sentell*. There is no intrinsic, fundamental right to own a dog. *See Sentell*, 166 U.S. at 701. Here the applicable threshold in evaluating Richardson's claim is rationality. *See Reno*, 507 U.S. at 305; *See South County*, 160 F.3d at 836.

B. The District Court Properly Held That The Ordinance Does Not Violate Substantive Due Process Because There Is A Rational Relationship Between The Health, Safety, And Welfare Of Winthrop's Citizens Or Visitors And The Powerful And Aggressive Behavior Of The Pit Bull Terrier Variety.

A legislative act that regulates a non-fundamental right merely requires that the infringement "bear a rational relation to a legitimate government interest." *Glucksberg*, 521 U.S. at 721; *See Goldblatt v. Town of Hempstead*, 369 U.S. 590, 594-595 (1962). "Those attacking the rationality of the legislative classification have the burden to negate *every conceivable* basis which might support it." *F.C.C. v. Beach Communications, Inc*., 508 U.S. 307, 315 (1993) (emphasis added); *See Goldblatt* 369 U.S. at 596.

Under *Goldblatt v. Town of Hempstead*, 369 U.S. 590 (1962), Richardson's substantive due process claim would fail. In *Goldblatt*, the Town passed an ordinance that prohibited land excavation below a certain water level. *Id.* at 591-592. The Town sought an injunction to prevent the defendants from further excavating a lake. *Id*. Similar to the Winthrop Ordinance, the ordinance in *Goldblatt* was passed on the grounds of public safety. *Id*. at 595; *See* M.O. 14. The *Goldblatt* Court noted that "if any state of facts either known or which could be reasonably assumed affords support for it," the legislation must be upheld. *Goldblatt* 369 U.S. at 596.

Richardson's only contention is that there is a "lack of evidence" to support the ordinance, and not that there is no evidence. M.O. 12. The minimum requirement under *Goldblatt* is that there is *a fact* in support of the legislation. A single fact that supports the Ordinance is that pit bull varieties are inherently aggressive. Thus, the pit bull breed is a danger to the public. Richardson does not prove otherwise and his claim, as a result, fails.

The American Humane Society (AHS), an authority cited by Richardson, states that "pit bulls can be reactive . . . ranging from flat-out aggression to simple overexcitement." *Is a Pit Bull Right for You?*, http://www. americanhumane.org/protecting-animals/adoption-pet-care/adoption-process/is-a-dog-right-for-you/is-a-pit-bull-right-for-you.html (last visited on January 17, 2011). The AHS description supports the rationale that pit bull types are a threat to the public. The AHS does not condition the statement with the term provoked aggression, but that pit bull types are plainly aggressive. This is further supported by AHS's statement, "look for a dog that shows no aggression toward any human" when adopting the breeds. *Id.*

Additionally, the American Veterinary Medical Association (AVMA) confirmed that pit bull types can be a threat to the public. *See* Jeffrey J. Sacks, M.D. et al., *Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 and 1998*, 217 No. 6 Journal of the American Veterinary Medical Association, 836, 839 (2000). The AVMA has stated that the fatality data for pit bull types is "concerning." *Id.* The AVMA data implies that pit bull bites are more serious, because death results more often. A higher likelihood that a dog bite results in death is a rational reason, if not compelling, for Winthrop to pass the Ordinance.

Other evidence shows that the characteristics of the pit bull variety give reason to believe they are dangerous. The American Kennel Club (AKC) describes the American Staffordshire Terrier as having an "underjaw to be strong and have biting power." American Kennel Club,

Breed Description of American Staffordshire Terrier, http://www.akc.org/breeds/american _staffordshire_terrier /index.cfm (last visited on January 17, 2011). The AKC further states that the American Staffordshire Terrier breed "will protect [his family] from *any* threat." *Id*. (emphasis added). What if there is not a threat, but the American Staffordshire Terrier perceives a threat? The AKC description implies that, regardless, the American Staffordshire Terrier would attack a person to protect his family. With a powerful jaw and bite, the American Staffordshire Terrier could be lethal to a Winthrop citizen. Likewise, the Staffordshire Bull Terrier with a similar description could pose the same danger. A Staffordshire Bull Terrier is described as having a "powerful jaw. American Kennel Club, *Breed Description of Staffordshire Bull Terrier*, http://www.akc.org/breeds/staffordshire _bull_terrier/index.cfm (last visited on January 17, 2011). Also, the Bull Terrier is depicted as tenacious with "indomitable courage." *Id*. A formidable dog that has a strong bite is a threat to anyone in Winthrop.

In reviewing the AKC descriptions, there is a conceivable argument that the American Staffordshire Terrier and the Staffordshire Bull Terrier might be a danger. Both breeds have a powerful jaw, thus the injuries could be more severe. This is further supported by the data from the AVMA that states the fatalities from these breeds is a concern. The mere possibility of these circumstances, demonstrates that Richardson has not proven that there is a *complete* lack of evidence supporting the Ordinance. *See Beach*, 508 U.S. at 315. Richardson's argument about a lack of evidence is therefore unpersuasive.

Richardson's second claim, that the "state of science" does not create a rational relationship for the constitutionality of the ordinance, is without authority. M.O. 12. A pit bull type is recognized as aggressive now, and was recognized as aggressive twenty years ago. The courts have upheld legislation against the pit bull breed types, for at least the past twenty years,

simply because pit bull breed types are aggressive. *See American Canine Foundation v. City of Aurora, Colorado*, 618 F. Supp. 2d 1271 (D. Colo. 2009); *See Bess v. Bracken County Fiscal Court*, 210 S.W.3d 177 (Ky. Ct. App. 2006); *See Commonwealth v. Santiago,* 452 Mass. 573, 578, 896 N.E.2d 622, 626-627, (2008) (pit bull breed as "commonly known to be aggressive"); *See Garcia v. The Village of Tijeras*, 108 N.M. 116, 767 P.2d 355 (N.M. Ct. App. 1988); *See Toledo v. Tellings*, 114 Ohio St. 3d 278, 871 N.E.2d 1152 (Ohio 2007).

In 2009, the District Court for Colorado stated that pit bulls "are stronger . . . give no warning signals before attacking and are less willing than other dogs to retreat from an attack . . . and attacks are of greater severity." *American Canine*, 618 F. Supp. 2d 1271, 1279 (D. Colo. 2009). The testimony for the basis of the Court's decision was from two persons, an animal control manager and officer. *Id*. at 1276-1277, 1279. Included in the testimony was the damage incurred at animal control by the pit bulls, which was that "these breeds were known to take out the concrete cinder block walls." *Id*. at 1275. Each witness agreed that pit bulls were "more aggressive than other dogs." *Id*. The Court held that the aggressiveness demonstrated a reasonable basis for passing the ordinance. *Id*. at 1279.

Twenty-one years later, in 1988, the same findings were discussed by the Court of Appeals for New Mexico. *See Garcia v. The Village of Tijeras,* 108 N.M. 116, 767 P.2d 355 (N.M. Ct. App. 1988). In *Garcia v. The Village of Tijeras,* 108 N.M. 116, 767 P.2d 355 (N.M. Ct. App. 1988) the Court held that the "aggression, strength, and unpredictability" of the breed was a reasonable basis to regulate the dogs. *Id*. at 121, 360. The court explained that the Village's evidence on pit bull behavior was from credible sources, and sufficient to overcome the plaintiff's evidence that the dogs are gentle. *Id*. Some of the testimony the court relied on was that American Pit Bull Terriers have been known "to sit on your lap and lick your face and at the

next moment to attack in a frenzied rage." *Id*. at 120, 359. The breed is also known to "bite and hold," which causes more serious injuries than other breeds. *Id*. The dogs were also known to "continue their attack until . . . their victim is destroyed." *Id*. A representative of the Animal Humane Society stated that the organization, among others, does "not adopt pit bulls because of their potential for attacks on animals and people." *Id*. at 120-121, 359-360.

Although this Court has not received a pit bull case, the precedent binding on this Court demands Richardson to prove the Ordinance is irrational. *See F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307 (1993); *See Washington v. Glucksberg*, 521 U.S. 702 (1993); *See Goldblatt v. Town of Hempstead*, 369 U.S. 590 (1962); *See South County Sand & Gravel, Co., Inc., v. Town of South Kingston*, 160 F.3d 834 (1st Cir. 1998). This Court has acknowledged that the rationality basis is a "low hurdle" to prove constitutionality. *South County*, 160 F.3d at 836 (the ordinance, which prohibited excavating a percentage of the land, was reasonably related to the Town's need to "control . . . earth removal"). Thus, to be unconstitutional, the legislation must have "no foundation in reason." *Id.*

Based on this Court's decision in *South County Sand & Gravel, Co., Inc., v. Town of South Kingston*, 160 F.3d 834 (1st Cir. 1998), the rationale of the Ordinance is sufficient to pass constitutional muster. The Ordinance has a foundation in reason: protect the residents of Winthrop from an aggressive breed, and thus reduce the possibility of a death or injury. The facts are plain. Pit bull types are powerful and aggressive. *See Is a Pit Bull Right for You?*, http://www.americanhumane.org/ protecting-animals/adoption-pet-care/adoption-process/is-a-dog-right-for-you/is-a-pit-bull-right-for-you.html (last visited on January 17, 2011). The bite of a pit bull is forceful, and results in an increased number of fatalities. *See* Jeffrey J. Sacks, M.D. et al., *Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 and*

1998, 217 No. 6 Journal of the American Veterinary Medical Association, 836, 839 (2000). At the minimum, these are conceivable facts in showing that the pit bull breeds are dangerous. These findings show that Richardson does not prove the Ordinance is irrational. Richardson's broad claims against the Ordinance are thus unsupported.

Since the legislature has the power to "interfere" with the property rights in a dog for public safety reasons *Sentell*, 166 U.S. at 704, Richardson's claim fails. The District Court's grant of summary judgment against Richardson was proper, and should be affirmed.

i. Legislation has the presumption of rationality, and evidence used in support of passing the legislation is not required.

The State maintains a presumption of rationality. *Beach*, 508 U.S. at 314-315; *Goldblatt*, 369 U.S. at 596. The legislation does not need to be supported by "evidence or empirical data," but merely a rational basis. *Beach*, 508 U.S. at 315. In fact, the reasons behind the legislation must only be "arguable" to meet the rational basis threshold. *Id.* at 320. The burden to prove there is no plausible argument for the legislation is on the challenger. *Id.* at 315.

If the rationale of the Winthrop Ordinance is doubtful, the presumption of constitutionality is with the state. *See Goldblatt*, 369 U.S. at 595 ("Debatable questions as to reasonableness are not for the courts but for the Legislature."). "A legislative choice is not subject to courtroom fact finding and may be based on rational speculation." *Beach*, 508 U.S. at 315. The due process clause does not allow the judiciary to be a "super legislature." *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 124 (1978).

This Court has recognized the deference given to the Legislature. *See South County*, 160 F.3d at 839 ("Whether or not a particular piece of legislation is bad policy, it will survive an abstract due process . . . challenge."). Thus, the evidence used to enact the Ordinance is

immaterial to Richardson's substantive due process claim. Richardson may not prevail, regardless if the evidence is "indecisive on the reasonableness" as that determination is for the legislature. *Goldblatt*, 369 U.S. at 595-596.

C. Richardson Failed To Properly Assert His Underinclusiveness Claim Under the Equal Protection Clause, Nonetheless, His Claim Would Fail On The Same Basis As His Substantive Due Process Claim.

Richardson must assert his claim for a constitutional violation under "that particular constitutional rubric . . . [not] the more generalized notion of substantive due process." *South County*, 160 F.3d at 835. Richardson's claim that breeds are treated differently under the Ordinance is an underinclusive argument that must be asserted under the Equal Protection Clause. *See Vanater v. Village of South Point*, 717 F. Supp. 1236, 1243 (S.D. Ohio 1989). Richardson incorrectly contends underinclusiveness is a violation of Substantive Due Process, and thus should not be considered by this Court.

However, if this court finds that Richardson can assert an equal protection claim, Richardson is still unable to prevail. Simply decause, Richardson misinterprets the protections of the Equal Protection Clause. The essence of equal protection is a simple guarantee that all persons in similar situations are treated the same. There is "no requirement of equal protection that all evils of the same genus be eradicated or none at all." *Railway Express Agency v. People of State of New York*, 336 U.S. 106, 110 (1949). Hence, equal protection does not ensure that all dog owners are treated the same, but rather that all pit bull owners are treated the same. *See Vanater*, 717 F. Supp. at 1243; *See State v. Peters*, 534 So.2d 760, 763 (Fla. Dist. Ct. App. 1988). Richardson is only guaranteed the same protection as other pit bull owners. Not all dog owners.

"In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." *Dandridge v. Williams*, 397 U.S. 471, 485 (1970); *See McGowan v. Maryland*, 366 U.S. 420 (1961). "State legislatures are presumed to have acted within their constitutional power." *McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961). Legislation is constitutional if there is some reasonable basis for the law, despite the result of the law having "some inequality." *Dandridge*, 397 U.S. at 485 (quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911)). As demonstrated through the rationality test under substantive due process, Richardson has failed to show there is not any rational basis for the Ordinance. Therefore, Richardson's equal protection claim fails on the same grounds as his substantive due process claim.

CONCLUSION

The Ordinance is not unconstitutionally vague either on its face or as applied. The facial challenge was meritless because owners of registered dogs listed in the Ordinance must have known their animals were banned from the City. The enactment was not vague as applied to Richardson because the mere appearance of his dogs provided him with notice that they were of the pit bulls variety banned by the enactment. Moreover, Richardson proved to no grounds to claim the overbreadth doctrine was violated. Lastly, substantive due process was not violated because there is a reasonable basis for the Ordinance. The rationale of the Ordinance is to protect citizens from an aggressive, unpredictable, and powerful breed of dogs, which is sufficient under the rationality test. For the foregoing reasons, we respectfully request that this Court affirm the District Court's order granting summary judgment in favor of the City of Winthrop.