

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Civ. No. 10cv00416

QUINTON RICHARDSON,
Plaintiff/Appellant

v.

CITY OF WINTHROP, MASSACHUSETTS,
Defendant/Appellee.

On Appeal from
The United States District Court
for the District of Massachusetts

BRIEF FOR APPELLANT

Team No. 20

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QUESTIONS PRESENTED FOR REVIEW

- I. Whether this Court under the Vagueness and Overbreadth Doctrine of the Fourteenth Amendment of the U.S. Constitution should reverse the District Court's granting of summary judgment finding the Winthrop Municipal Code § 6.04.090, designating all " 'pit bull' variety of terrier" as *per se* vicious is constitutional when the Ordinance classifies Mr. Richardson's "mixed breed" dogs as *per se* vicious using subjective and arbitrary standards, and failing to provide ordinary persons adequate notice of the conduct it prohibits when applying to other breeds impermissibly.

- II. Whether this Court under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution should reverse the District Court's granting of summary judgment finding the Winthrop Municipal Code § 6.04.090, a breed specific legislation, designating all " 'pit bull' variety or terrier" as *per se* vicious and banning them, is constitutional when Mr. Richardson's mixed breed pet dog was killed after being arbitrarily identified as a "Pit Bull" even though the dog never displayed any vicious propensities.

STATEMENT OF THE CASE

In 1988, the City of Winthrop (“City”) enacted an ordinance, Winthrop Municipal Code section 6.04.090 (“Ordinance”) banning “all pit bull variety of terrier” from the city. R. 5. On August 1, 2009, a meter reader saw Zoe through a window in Quinton Richardson’s (“Mr. Richardson”) home. *Id.* He notified animal control, who subsequently captured Zoe the next day. *Id.* Although a meter reader usually has no experience or expert training in identifying dog breeds, he determined Zoe was a “Pit Bull” based solely on her physical appearance. *Id.* Luckily, Mr. Richardson’s other dog Starla was not home at that time. She was recovering from surgery at the animal hospital. *Id.*

A hearing was held after Zoe’s seizure where Mr. Richardson presented two important pieces of evidence. *Id.* First, an affidavit from a licensed Veterinarian declaring Zoe as a “mixed breed” dog. *Id.* Second, he testified that neither Zoe, nor Starla, had ever displayed any signs of aggression towards anyone in the past. R. 4. There is no evidence to date that the dogs have ever bitten a person or other animal, or compromised the City’s safety or peace. *Id.* He explained that he thought the puppies were cute and loved their affection towards each other and humans. *Id.* He decided to adopt the puppies for his companionship. *Id.* The puppies were especially friendly with his young nieces and nephews. *Id.*

Despite this evidence, the City Manager conclusively determined that Zoe was in fact a “Pit Bull” and therefore “vicious”. R. 5. At no point did the City present any DNA evidence definitively proving that Zoe was a “Pit Bull”. *Id.* The City Manager ordered that Zoe be removed from the City within ten days. *Id.* Unfortunately, Mr. Richardson was unable to find a home for Zoe within that time. *Id.* He appealed to the state trial court, which affirmed the City’s finding without opinion. *Id.* Zoe was thereafter killed by lethal injection. *Id.*

Mr. Richardson has lived in Winthrop his entire life. R. 4. He rescued Zoe and Starla from a rescue organization that found them stranded under a park bench. *Id.* Starla continues to live with Mr. Richardson but he lives in fear that the City may kill the only companion he has left. R. 6. Since Zoe's death, Mr. Richardson has not allowed Starla to leave his home. *Id.* He keeps his curtains drawn over his windows to hide her indefinitely. *Id.* Mr. Richardson leaves only for work and refuses to go on vacation because he fears that will be the perfect time for the City to seize her. *Id.* Mr. Richardson has procured a preliminary injunction preventing the City from seizing Starla and damages under 42 U.S.C. § 1983. R. 2. The City moved for summary judgment which was granted. *Id.*

Plaintiff/appellant, Mr. Richardson, is seeking review of an order of the United States District Court for the District of Massachusetts granting a 56(c) motion for summary judgment for the defendant/appellees, City of Winthrop, because there are genuine issues of material fact as to the constitutionality of the Winthrop Municipal Code § 6.04.090. Mr. Richardson claims that the Ordinance violates his rights under the Fourteenth Amendment. U.S. CONST. amend. XIV, § 1.

SUMMMARY OF THE ARGUMENT

This Court should reverse the District Court's grant of summary judgment for the appellee, City of Winthrop, as to the violation of Mr. Richardson's constitutional rights under the Fourteenth Amendment of the U.S. Constitution because there are genuine issues of material fact in that the City's Ordinance is impermissibly vague, both facially and as applied to Mr. Richardson and overly broad. Further, this Court should reverse the District Court's grant of summary judgment for the appellee, City of Winthrop, as to the violation of Mr. Richardson's constitutional rights under the Fourteenth Amendment of the U.S. Constitution because there are genuine issues of material fact illustrating that the City's Ordinance impairs Mr. Richardson's substantive due process rights.

A law is unconstitutionally vague if it fails to define the activity proscribed with sufficient clarity that an ordinary person, like Mr. Richardson, can understand what conduct is prohibited. Additionally, a statute is unconstitutionally overbroad if the law regulates more conduct than it needs to accomplish its purpose. In this case, the City failed to demonstrate that the Ordinance is constitutional, because the Ordinance does not clearly define the target dogs it prohibits. Moreover, the effect of the Ordinance reaches a broader group of people than necessary to achieve its public safety objective by banning all " 'pit bull' variety of terrier", including mixed breeds like Mr. Richardson's dogs.

Even if the City could establish that the Ordinance is not vague or overbroad, the record supports Mr. Richardson's claim that the Ordinance violates his substantive due process rights because it is arbitrary and irrationally related to a legitimate government interest, since the Ordinance relies on inaccurate and outdated information to classify a targeted type of dog as vicious *per se* based solely on its appearance.

ARGUMENT

This Court should reverse the United States District Court for the District of Massachusetts' grant of the City of Winthrop's, ("City"), motion for summary judgment due to the constitutionality of the Winthrop Ordinance § 6.04.090, ("Ordinance"). The City violated Quinton Richardson's, ("Mr. Richardson"), Fourteenth Amendment rights by enacting a legislation that is impermissibly vague, both facially and as applied to him, and over-inclusive. Furthermore, the legislation violates Mr. Richardson's substantive due process rights under the Fourteenth Amendment because it lacks a rational relationship to the City's purpose. In the present case, there are genuine issues of material fact consistent with Mr. Richardson's claims.

I. THIS COURT SHOULD REVERSE THE DISTRICT COURT'S GRANTING OF SUMMARY JUDGMENT TO THE CITY BECAUSE THE WINTHROP MUNICIPAL CODE SECTION 6.04.090, DESIGNATING ALL " 'PIT BULL' VARIETY OF TERRIER" AS *PER SE* VICIOUS AND BANNING THEM FROM CITY LIMITS, IS UNCONSTITUTIONALLY VAGUE, BOTH ON ITS FACE AND AS APPLIED TO MR. RICHARDSON AND THEREFORE VOID.

Summary judgment should be granted in favor of a party "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). This Court should review all facts applying *de novo* standard. *Hyatt v. Kappos*, 625 F.3d 1320 (Fed. Cir. 2010). In the present case, there are genuine issues of material fact as to whether the Ordinance is unconstitutional. Therefore, Mr. Richardson's Fourteenth Amendment rights claim should survive summary judgment.

The Ordinance is vague, both on its face and as applied to Mr. Richardson, because it fails to give any person sufficient notice of the conduct that it prohibits. Any statute capable of application must always pass the muster of the Vagueness Doctrine. The Vagueness Doctrine is triggered when one of two elements is lacking: either adequate notice of the conduct prohibited,

or procedural guidelines to prevent arbitrary enforcement. In either case, the law will be too vague to be applicable to anyone, and therefore void. *City of Seattle v. Huff*, 111 Wn.2d 923, 767 P.2d 572 (1989). Furthermore, when an ordinance does not invoke constitutional guarantees, the opponent must prove that the law is “impermissibly vague in all of its applications”. *Hearn v. City of Overland Park*, 244 Kan. 638, 772 P. 2d 758 (1989) (citing *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 (1982)). “The principle applies alike to statutes and municipal ordinances.” *American Dog Owners Ass’n, Inc. v. City of Lynn*, 404 Mass. 73, 533 N.E. 2d 642 (1989) (citing *Carpenter v. Commonwealth*, 287 Ky. 819, 155 S.W. 2d 240 (1941)).

The ordinance need not be painstakingly detailed; it must

“define the activity proscribed with sufficient definiteness [so] that ordinary people can understand what conduct is prohibited. Otherwise, the ordinance, too, will violate the vagueness doctrine under the Fourteenth Amendment of the U.S. Constitution”. *Lynn* at 646 (citing *Commonwealth v. Williams*, 387 Mass. 864, 479 N.E. 2d 687 (1985)).

Mr. Richardson challenges the Ordinance as vague because it does not indicate with sufficient definiteness what conduct it prohibits, both on its face and as applied to him, simply because Mr. Richardson owns two “mixed breed” dogs, and not “Pit Bulls”.

- A. The Ordinance is vague on its face and therefore void because it does not provide guidelines that city officials should use and adhere to when determining the breed of a dog, creating discretionary and arbitrary enforcement.

The Ordinance is vague because it includes no prescribed methods to utilize when determining whether a dog is in fact a “Pit Bull”. Officers are forced to use conflicting, subjective standards because there are no affordable scientific means¹, by blood, enzyme, or otherwise, that they can employ at the time of identification to determine if a dog is of a particular breed. The use of subjective standards creates a fundamentally arbitrary decision-

¹ DNA testing is available; however, they are costly and time consuming.

making system, violating the Vagueness Doctrine and Mr. Richardson's Fourteenth Amendment rights.

The Supreme Judicial Court of Massachusetts, the leading authority in our jurisdiction, stated "vague laws violate due process because they do not limit the exercise of discretion by officials and create the possibility of arbitrary and discriminatory enforcement". *Lynn* at 646 (citing *Caswell v. Licensing Com'n for Brockton*, 387 Mass. 864, 444 N.E. 2d 922 (1983)). In *Lynn*, the plaintiffs were challenging a series of consecutive ordinances restricting ownership of certain dogs within the city limits. The constitutional challenge was brought under the Vagueness Doctrine. *Id* at 643. The court explained that the guidelines are necessary because the "Pit Bull" type of dog is not clearly defined as a particular breed, but as a variety of phenotypes, and may be cross bred with other types of dogs yet still retaining its peculiar physical characteristics. Therefore, in order for the ordinance to be constitutional, "it must be drafted with special care to alert dog owners and persons charged with its enforcement to the precise identification of the kind of dog meant to be controlled". *Id* at 646. Therefore, because the *Lynn* ban failed to include any guiding points other than common breeds associated with the "Pit Bull" breed, the court emphasized that enforcement depended on the subjective understanding of city officers as to the appearances of an "ill-defined breed". *Id* at 647. This clearly forces the City to depend on unofficial and incorrect assumptions on what a "Pit Bull" physically looks like. Such a law gives unleashed discretion to officers charged with its enforcement, making the *Lynn* ban unconstitutionally vague on its face and as applied to the plaintiff. *Id* at 647.

Like *Lynn*, the Ordinance contains no definitional section explaining what a "Pit Bull" is and how to identify the breed as one of the breeds listed within the Ordinance. The

Massachusetts Supreme Court has already indicated that such a ban is unconstitutionally vague, and therefore, the Ordinance should be considered void as well, following precedent. *Id* at 646.

The City may claim that the listing of breed types within the Ordinance is detailed enough to survive a constitutional challenge. In *Dias v. City and County of Denver*, 567 F. 3d 1169 (10th Cir. 2009), the plaintiffs claimed that the city ordinance was unconstitutionally vague on all its applications. In *Dias*, the ordinance incorporated the American Kennel Club (“AKC”) and United Kennel Club’s (“UKC”) descriptions explaining specific characteristics common to the breed, allowing the owner of a purebred dog clear guidance with a great level of certainty. *Id* at 1180. Therefore, the Denver ordinance was not vague in *all* applications, only unclear to owners of mixed breed dogs. However, the Denver ordinance should be distinguished from the Ordinance here, because there are no guiding standards included. An owner of either a pure bred or mixed breed dog will be left guessing as to what kind of dog the Ordinance allegedly bans. Merely listing a few breeds that are commonly associated with the target species, without any further detail, is vague.

Similarly in *Hearn*, the plaintiff claimed that the law was vague due to the inherent difficulty in identifying a “Pit Bull”, however, the court found the instructions included within that ordinance sufficiently detailed. The ordinance listed three breeds that purportedly shared “Pit Bull” characteristics, but unlike Winthrop, it included dogs that appeared as if they “predominantly belonged to the ‘Pit Bull’ family”. The ordinance clarified “predominantly” to mean an animal that “exhibited the physical characteristics of a pit bull more than that of any other breed of dog” and that if an officer was unsure of the dog’s breed, the dog would not be subject to the ordinance. *Id* at 643. The Ordinance lists three breeds that falls under the City’s definition of a “ ‘pit bull’ variety of terrier”, but provides no clear directives or standards which

officers should follow, allowing for arbitrary and subjective enforcement. Therefore, the Ordinance violates the Vagueness Doctrine.

- B. The Ordinance is vague on its face and therefore void because it incorrectly identifies a “Pit Bull” as a specific breed of dog which does not exist according to field experts and generally accepted specialty organizations.

The City contends that a “Pit Bull” is identifiable by physical characteristics typical of the breed. They claim there are reliable common characteristics to facilitate correct identification, thereby eliminating the need to define or provide such detail in the Ordinance. This argument cannot be sustained because the City has included “Pit Bulls” and “mixtures” that are not nationally recognized by experts in the field. Furthermore, the City relies on traits they claim are genetically innate among all “Pit Bulls”. However, the City refuses to acknowledge other breeds that share the same physical characteristics as the alleged “Pit Bull”, thereby failing to give an owner adequate notice of the dogs that are included in the Ordinance.

The American Kennel Club, (“AKC”), and the United Kennel Club, (“UKC”), are the two largest registries in the United States today. The AKC recognizes the American Staffordshire terrier, but not the “American Pit Bull terrier” or “Pit Bull terrier”, as listed in the Ordinance. AKC Terrier Breed Groups, http://www.akc.org/breeds/terrier_group.cfm. The UKC recognizes the American Pit Bull terrier, but not the “American Staffordshire terrier” or “Pit Bull terrier”. UKC Breeds by Group, <http://www.ukcdogs.com/WebSite.nsf/WebPages/LrnBreedInfoByGroup>. The Official UKC Breed Standard includes some of the characteristics that are common to the American Pit Bull terrier and states that they are eager to please, enthusiastic, excellent family companions, and love children. Aggression is not a common characteristic of the breed and it is highly undesirable. The UKC generally criticized the breed as being too friendly with strangers to function as a guard dogs. “Viciousness” is deemed a disqualifying trait. The range of

behavioral *and* physical characteristics can vary among the individual breeds. It is, therefore, impossible to definitively proclaim that the breeds listed in the Ordinance are genetically predisposed to certain traits and behaviors.

The City may claim that the characteristics of a “Pit Bull” are well known. However, this argument is unsupported because the City relies on only a certain set of negative traits that terriers *may* display; there are other characteristics that are common of the breed that are completely unknown to the general public and law enforcement. These traits are often the product of strategic breeding combined with behavioral training, resulting in the learned condition of aggressiveness. Jamey Medlin, *Pit Bull Bans and The Human Factors affecting Canine Behavior*, 56 DEPAUL L. REV. 1285 (2007). The City has incorrectly identified a specific breed as inherently vicious instead of focusing on people who teach the dogs to be aggressive. Stephen Collier, *Breed-Specific Legislation and the Pit Bull Terrier: Are the Laws Justified?*, 1 JOURNAL OF VETERINARY BEHAVIOR 17, 20 (2006).

Finally, even if certain mixed breeds are categorized as a “Pit Bull”, the Ordinance needs to clarify what physical traits they subjectively deem as typical of this grouping of multiple breeds. In *Lynn*, the ordinance defined a “Pit Bull” to include three types of dogs, American Staffordshire, Staffordshire Pit Bull terrier or Bull terrier, or any mixture thereof, which the court decided was too vague to survive constitutional scrutiny. *Id* at 643. A later version of the ordinance depended on the common definition of a “Pit Bull” as “generally known by ordinary persons”. The court again found for the plaintiff, clarifying that if an ordinance does not reference any particular breed, nor defines what a “Pit Bull” is, like Winthrop, and relies on a less clear “common understanding” standard, the ordinance is not sufficiently definite to meet due process requirements because dog owners will not be given fair notice. *Lynn* at 644.

The Supreme Court of Iowa has also indicated that the “common understanding” approach is unconstitutionally vague. In *American Dog Owners Ass’n, Inc. v. City of Des Moines*, 1991 Iowa Supp. LEXIS 192, 469 N.W. 2d 416 (1991), the plaintiffs alleged that the reference to “mixed breeds or breeds commonly known as pit bulls” (other than the specific breeds listed) created an unrecognized breed classification. *Id* at 418. The court agreed that the language called for the use of subjective standards by unknown persons to create this classification, and left a reader of ordinary intelligence confused about the breadth of the ordinance’s coverage. *Id* at 418.

Accordingly, the Ordinance also refers to a “ ‘pit bull’ variety of terrier” and its mixtures as an existing breed of dog. The Ordinance is vague because it creates a classification that does not exist and fails to give notice to owners of mixed breed dogs, like Mr. Richardson.

- C. The Ordinance is vague as applied to Mr. Richardson and therefore void because it lacks specific characteristics common to “Pit Bulls” which are necessary to determine his own dog’s breed.

The Ordinance fails to list common characteristics meant to aid in determining a dog’s breed. Mr. Richardson received both Starla and Zoe from the rescue organization with the understanding that they were “mixed breed” dogs. His Veterinarian also came to the same conclusion. Therefore, Mr. Richardson had no means of knowing that the Ordinance applied to him. The Ohio Court of Appeals noted

“The key to the vagueness standard is not whether the subject matter of the ordinance is not understandable to the ordinary lay person, but rather whether it is understandable to the person of ordinary intelligence who is actually subject to the legislation’s penalties”. *City of Lima v. McFadden*, No. 1-85-22, 1986 Ohio App. LEXIS 7442 (Ohio Ct. App., Allen County June 30, 1986).

If a plaintiff dog owner, had registered his dog as an “American Pit Bull terrier” or any other breed classification listed under the ordinance, [he] arguably waived his ability to claim the

ordinance was vague in *all* applications, since the owner has engaged in some conduct that is clearly proscribed and is duly aware of the fact. *Vanater v. Village of South Point*, 717 F. Supp. 1236 (1989).

Unlike *Vanater*, Mr. Richardson was never faced with any evidence indicating that his two puppies were “Pit Bulls”. *Id* at 1239. He was never told verbally or constructively that the dogs were in fact any of the breeds listed in the Ordinance. Moreover, Mr. Richardson has never registered the dogs, further establishing that he had no knowledge of Starla and Zoe’s heritage. The Ordinance should provide guidelines for the identification of mixed breed dogs, particularly when a rescue organization, a Veterinarian, and Mr. Richardson could not conclusively identify the breed of the dogs. Without this information, the ordinance is too vague to be applied to Mr. Richardson, and therefore void.

II. THIS COURT SHOULD REVERSE THE DISTRICT COURT’S GRANTING OF SUMMARY JUDGMENT TO THE CITY BECAUSE THE WINTHROP MUNICIPAL CODE SECTION 6.04.090, DESIGNATING ALL “ ‘PIT BULL’ VARIETY OF TERRIER” AND ITS MIXTURES AS *PER SE* VICIOUS, IS UNCONSTITUTIONALLY OVERBROAD AND THEREFORE VOID.

Summary judgment was erroneously granted because there are genuine issues of material fact that this ordinance is overbroad. This Court should review all facts applying *de novo* standard. *Kappos* at 1320.

Any ordinance drafted must be done with sufficient clarity so that the average person will know with reasonable certainty whether his actions are lawful. *State v. Anderson*, No. 88AP-711, 88AP-712, 1989 WL 11949 (Ohio Oct. 12, 1989). However, when the legislator fails to provide minimal guidelines to govern the conduct prohibited, it may permit a “standardless sweep that allows policemen, prosecutors, and juries to pursue their personal predilections”. *Id* at 2 (citing *Smith v. Goguen*, 415 U.S. 566 (1974)). This becomes dangerous because the legislator can

simply set a net large enough to catch all possible offenders, and leave it to the courts to step in and decide who should be rightfully detained, or who should be set free, substituting the judicial department for the legislative department of government. *United States v. Reese*, 92 U.S. 214 (1875). When this occurs, an over-inclusive law makes constitutionally protected conduct punishable. *Hearn* at 645. The Ordinance applies to non-targeted breeds of dogs when officers use arbitrary enforcement standards to identify “Pit Bulls”. Therefore, it is unconstitutionally overbroad because it covers substantially more conduct than necessary.

A. The Ordinance is over-inclusive because it treats substantially similar dogs as inherently vicious including more dogs than necessary to achieve its purpose.

The Ordinance bans vicious dogs from the City. However it includes non-targeted breeds and mixtures, as strictly vicious. The Ordinance allows City officials to target all dogs that allegedly resemble a “ ‘pit bull’ variety of terrier” but in fact may be of some other breed not intended to be classified as *per se* “vicious” under the Ordinance.

In *Anderson*, Robert High, an AKC Terrier Judge of twenty years, testified that an ordinary person would experience great difficulty determining if his dog [fell] under the ordinance because there are a wide variety of physical characteristics common to the breeds listed. *Id* at 2. Moreover, the prosecutor’s expert witness agreed that in practice, identification is very difficult. When the experts were asked at trial to identify a series of pictures, each came to a different conclusion as to which picture represented a “Pit Bull”. *Id* at 2. It is inevitable that enforcers will ultimately determine some dogs to be a “Pit Bull” only because of their physical characteristics. Due to this discretion, the Ordinance creates a *zone of control* that applies to canines subjectively identified as a “Pit Bull”, including those biochemically composed of some other breed. This type of classification method conclusively determines some dogs to be *per se*

vicious, even when the breed may be genetically predisposed to behave in the opposite manner. This ordinance therefore applies to more dogs than necessarily to achieve its purpose.

Mr. Richardson's dogs were not classified as any of the breeds listed in the Ordinance. The rescue organization and the Veterinarian identified Starla and Zoe as "mixed breed" dogs. Nevertheless, the City deemed the dogs as *per se* vicious, even in the absence of a past history of aggression or viciousness. By listing all " 'pit bull' variety of terrier" and its mixtures, the Ordinance applies to dogs whose heritage is unknown, like Mr. Richardson's dogs; dogs which are not meant to be targeted according to the Ordinance's legislative purpose. Therefore, the Ordinance is over-inclusive in its application and should not survive constitutional scrutiny.

B. The Ordinance is over-inclusive because it applies to dog owners who are unable to determine the actual breed of their dog, including more people than necessary to achieve its purpose.

The Ordinance is over-inclusive because "mixtures" may include other breeds not intended to be banned. Moreover, it applies to responsible dog owners whose dogs have never been vicious in the past. The *Anderson* Court of Appeals stated that owners are the ones who create vicious dogs. They are responsible for the training or abuse that molds a dog's behavior into the personality the owner desires. Some breeds are easier to train than others, but in order to combat the problem, "laws must be directed at the actions of the *owners* and not towards the breed of a dog". *Id* at 4. The ordinance was vague and overbroad because it listed a non-existent breed, impacting more people than necessary. The Ordinance should be drafted to target only dangerous dogs with a history of aggression or irresponsible owners, independent of the dog's breed or heritage.

Furthermore, the American Veterinary Medical Association, ("AVMA"), the leading authority of canine behavior, agrees

“breed-specific ordinances imply that there is an objective method of determining the breed of a particular dog, when in fact, there is none at this time. Owners of mixed-breed dogs or dogs not been registered with a national kennel club have no means of knowing whether their dog is one of the types identified or whether they are required to comply with a breed-specific ordinance... Such laws assume that all dogs of a certain breed are likely to bite, instead of acknowledging that most dogs are not a problem. These laws often fail to take normal dog behavior into account and may not assign appropriate responsibilities to owners.” The American Veterinary Medical Association, *A Community Approach to Dog Bite Prevention*, Task Force on Canine Aggression and Human-Canine Interactions, 218 VET MED TODAY 11 (2001), available at http://www.avama.org/public_health/dogbite/dogbite.pdf.

Accordingly, for owners whose dogs have never displayed any signs of aggression, the practical application of the Ordinance completely evades its purpose, when it holds owners liable for presumptively vicious dogs. A successful challenge to the ordinance can be made if the protected activity (owning a mixed breed dog) is a significant part of the law’s target, (breeds or breed types or mixtures thereof) and “there exists no satisfactory method of severing the law’s constitutional from its unconstitutional applications”. 16A C.J.S. *Constitutional Law* section 663 (2010). Since the City does not utilize DNA testing, it is impossible to target only certain dogs. By including the word “mixtures” in the Ordinance, it reaches an unlimited number of dogs and owners. Therefore, the Ordinance is unconstitutionally overbroad in its practical application.

In the alternative, the ordinance is also under-inclusive because it allows for an owner to keep a dog with the potential to be extremely vicious. For instance, a Rottweiler is not banned under the Ordinance. Likewise, an owner may not keep a pure bred American Staffordshire terrier, even if the dog is docile. The Ordinance’s practical application leaves some dogs and owners untouched even though the dog has the potential to cause great harm.

The City may argue that the physical appearance of Mr. Richardson’s dogs is enough to correctly subject him to the Ordinance. However, Mr. Richardson has never been proved to be a “Pit Bull” owner, nor have his dogs displayed any violent behavior in the past indicating that he

would be subject to the Ordinance. The City may claim that, as being an owner himself, he has working knowledge of what a typical “ ‘pit bull’ variety of terrier” looks like, but Mr. Richardson had no reason to believe that he was the owner of a vicious dog. Therefore, the Ordinance should be invalidated as over-inclusive because it includes owners who should not be presumptively liable. The Ordinance should be drafted to include these considerations, removing the possibility of *catching* more conduct than necessary to protect the citizens of the City.

III. THIS COURT SHOULD REVERSE THE DISTRICT’S COURT GRANTING OF SUMMARY JUDGMENT FOR THE CITY BECAUSE THERE ARE GENUINE ISSUES OF MATERIAL FACT THAT THE WINTHROP MUNICIPAL CODE SECTION 6.04.090, IS UNCONSTITUTIONAL AND VIOLATES MR. RICHARDSON’S SUBSTANTIVE DUE PROCESS RIGHTS FOR IRRATIONALLY LISTING ALL “ ‘PIT BULL’ VARIETY OF TERRIER” AS *PER SE* VICIOUS.

The district court’s granting of summary judgment should be reviewed *de novo* because there are genuine issues of material fact relating to Mr. Richardson’s claim. This Court should review all facts applying *de novo* standard. *Kappos* at 1320.

The U.S. Constitution states that "No State shall . . . deprive any person of life, liberty, or property, without due process of law". U.S. Const. amend. XIV § 1. The Due Process Clause has been interpreted by the U.S. Supreme Court as covering a “substantive sphere, barring certain government actions regardless of the fairness of the procedures used to implement them”. *County of Sacramento v. Lewis*, 523 U.S. 840 (1998) (citing *Daniels v. Williams*, 474 U.S. 327 – 331 (1986)). The Court also stated, that "the touchstone of due process is protection of the individual against arbitrary action of the government". *Id* at 845 (citing *Wolff v. McDonnell*, 418 U.S. 539 (1974)). The government cannot act arbitrarily by enacting a law that prevents a certain group of people from living in a certain way; there must be a relationship between its interests and the enacted legislation.

The level of scrutiny used by the courts to decide if there is a due process violation will

depend on what kind of rights are being affected. If it is a fundamental right, the court will use strict scrutiny. Under this test, a law will be upheld if it is narrowly tailored to advance a compelling government interest. *Washington v. Glucksberg*, 521 U.S. 702 (1997). The court in *Glucksberg* noted

“our established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation's history and tradition’. Second, a ‘careful description’ of the asserted fundamental liberty interest.” *Id* at 720 – 721. However, the court also said, “that many of the rights and liberties protected by the Due Process Clause sound in personal autonomy do not warrant the sweeping conclusion that any and all important, intimate, and personal decisions are so protected”. *Id* at 727.

Not all rights are fundamental rights. Other rights are subject to a less stringent level of scrutiny where the law needs to have a rational relationship to a legitimate government interest. *Glucksberg* at 728. The court in *Reno v. Flores*, 507 U.S. 292 (1993), established that “the impairment of a lesser interest demands no more than a ‘reasonable fit’ between governmental purpose and the means chosen to advance that purpose”. *Id* at 305. A law may be “wise” or “unwise”, but cannot be arbitrary or irrational. *Williamson v. Lee Optical*, 348 U.S. 483 (1955).

The Tenth Circuit in *Dias*, found in favor of the dog owner where the plaintiff/dog owner alleged a substantive due process violation sufficient to survive a motion to dismiss where the complaint plausibly alleged that the ordinance was not rationally related to a legitimate government interest. *Dias* at 1181. Further, the court agreed with the plaintiff that although Denver had a legitimate interest in animal control and the protection of health and safety of the public, the means by which Denver had chosen to pursue that interest was irrational. *Id*. The court held,

“although we agree with the district court that strict scrutiny does not apply, we conclude under a rational basis analysis that the plaintiffs have alleged a substantive due process violation sufficient to survive a motion to dismiss for failure to state a claim”. *Id*.

In *Dias*, Sonya Dias and two others, sued the city of Denver challenging the ordinance banning “Pit Bull” known dogs. They claimed that the ordinance unconstitutionally deprived them of substantive due process because there was a lack of evidence that pit bulls, as a breed, pose a threat to public safety or constitute a public nuisance. Thus, it is irrational for Denver to enact a breed-specific prohibition in the first place. All three plaintiffs had to move out of Denver to avoid having their dogs seized while the case was pending, which caused financial and emotional damages. *Dias* at 1174 - 1176.

Similarly here, Mr. Richardson claims that the Ordinance violates his substantive due process rights because the drafters have based their reasoning on outdated, and inaccurate stereotypes that target these animals as a threat to public safety. Zoe was a friendly and well-socialized mixed breed dog, with no history of displaying vicious propensities; the same qualities apply to Starla. Furthermore, Mr. Richardson contends that the current body of knowledge and science illustrates that the targeted dogs are not predisposed to being vicious; the existing breed-specific ban lacks a rational relation to the alleged legislative protection of the public. Therefore, this Court should reverse the granting of summary judgment in favor of the City because Mr. Richardson’s substantive due process allegations are enough to challenge the ordinance as being irrational.

- A. The Ordinance violates Mr. Richardson’s substantive due process rights and therefore is unconstitutional because there is no rational basis for establishing that a “ ‘pit bull’ variety of terrier” is *per se* a vicious dog.

The Ordinance classifies all “ ‘pit bull’ variety of terrier” as vicious *per se*. The City justifies its ordinance on the misconception that those types of dogs belongs to a particular group of dog breed considered aggressive in nature. The City also argues that it has the police power to regulate property and its destruction. In addition to the fact that Mr. Richardson’s dogs were

friendly and well socialized, they were also identified by their Veterinarian as “mixed breed”.

Although pit bull bans sustained twenty years ago may have been justified by the then-existing body of knowledge, the state of science in 2009 is such that the bans are no longer rational and finds support in the AKC and UKC standards themselves. *Dias* at 1183. The court held “without drawing factual inferences against the plaintiffs, the district court could not conclude at this early stage in the case that the ordinance was rational as a matter of law”. *Id* at 1184.

Similarly, the Ohio court noted in *City of Toledo v. Tellings*, No. L-04-1224, 2006 Ohio 975, at 63 (6th Cir. Mar. 3, 2006),

“previous cases involving ‘vicious dog’ laws, especially from the late 1980's and early 1990's, relying on what is now outdated information, only perpetuated the stereotypical image of pit bulls. These cases, due in part to unavailable, scientific evidence or expert testimony about the breed, branded all pit bulls as ‘vicious’ on the basis of what was known or believed at that time”.

Mr. Tellings, like Mr. Richardson, had one of his dogs seized and killed by the City.

The AKC does not recognize a “ ‘pit bull’ variety of terrier’ as a dog breed. AKC has as mission upholding the integrity of its Registry, promoting the sport of purebred dogs and breeding for type and function. AKC Mission Statement, <http://www.akc.org/about/mission.cfm>. Like the AKC, the UKC does not recognize a breed known as “Pit Bull”. UKC General Information, <http://www.ukcdogs.com/WebSite.nsf/WebPages/LrnAboutUKC>. These dog registry organizations are the expert in the field and the courts should look to these sources for updated information when deciding cases involving breed specific legislation, like the case in question.

1. *The Ordinance's language is ambiguous because it defines "vicious dogs" based on stereotypes of a non-existing breed.*

Similar to the familiar generic terms "spaniel" and "retriever", [referring to several recognized canine breeds characterized by common phenotype, origin, or traditional use], the term "Pit Bull" is a subgroup of the larger terrier breed group. Even though neither the AKC nor the UKC recognizes a "Pit Bull" as a breed or group, breed-specific legislation treats any dog sharing phenotypical traits common to these several different breeds, as a single breed. Confusion inevitably results since dogs with similar names, such as the Bull Terrier or Bullmastiff, may be wrongly designated a "Pit Bull". On the other hand, several breeds within the "Pit Bull" category may be treated differently because of their more benign names. Kristen E. Swann, *Irrationality Unleashed: The Pitfalls of Breed-Specific Legislation*, 78 UMKC L. REV. 839, 840 (2010).

Here the Ordinance defines "vicious dogs" *per se* as any of the breeds commonly referred to as " 'pit bull' variety of terrier", including American Staffordshire terrier, American Pit Bull and Pit Bull Terrier and its mixtures. This definition is purely based on stereotypes of a specific breed not recognized by two major breed registry organizations.

2. *Traditional views of animals as property has changed over time.*

The City argues that it has a legitimate interest in animal control relying on a 19th century case. In *Sentell v. New Orleans & C. R. Co.*, 166 U.S. 698 (1897), the court established,

"even if it were assumed that dogs are property in the fullest sense of the word, they would still be subject to the police power of the State, and might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens. That a State, in a bona fide exercise of its police power, may interfere with private property, and even order its destruction, is as well settled as any legislative power can be, which has for its objects the welfare and comfort of the citizen". *Id* at 704 – 705.

This case is an ancient law that does not reflect the modern trend.

The law recognizes that deprivation of private property as a legitimate exercise of police power if the law bears a rational relationship to a legitimate legislative purpose. *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117 (1978). However, the notion of dogs as merely property is an old fashioned concept that has changed over time. All states have some kind of anti-animal cruelty law. Some states enforce trusts naming animals as beneficiaries². Legal practitioners that litigate animal cases are working towards pushing courts to recognize the emotional value of a beloved pet, especially in tort cases deciding owners' compensation for emotional damages resulting from the loss of a pet. Anna S. Persky, *Their Day in Court*, ABA JOURNAL, Sept. 2010, at 54. This shows a significant shift in how the law should perceive animals, moving away from the traditional view of dogs as property.

In *Tellings*, the court stated,

“citizens enjoy the property right to own dogs, and the Supreme Court of Ohio has recognized the special relationship that often exists between owners and dogs. To many, a pet dog is as important and as loved as human members of the family. Thus, most dog owners consider their pet to be more than a mere thing, and the ownership of it constitutes a valuable right”. *Id* at 55.

Mr. Richardson adopted Zoe and Starla for his companionship. The dogs were often around Mr. Richardson's young nieces and nephews. There is no evidence that Zoe and Starla ever bit a person or other dog, ever attacked any other animal or otherwise threatened the community peace. Mr. Richardson argues that the City's exercise of its police powers has no rational relation to protect citizens from dog bite incidents by enacting a breed specific legislation. This arbitrary law caused the destruction of his beloved companion. The facts indicate that the City lacks evidence that the “ ‘pit bull’ variety of terrier” and its mixtures pose a threat to public safety. Therefore, the City's ordinance violates Mr. Richardson's substantive due

² (Leona Helmsley made national headlines when she left \$12 million dollars to her pet poodle in her Will). See The Associated Press, *Helmsley Dog Gets \$12 Million in Will*, THE WASHINGTON POST, Aug. 29, 2007, available at <http://www.washingtonpost.com/wpdyn/content/article/2007/08/29/AR2007082900491.html>

process rights because it does not have a rational basis to the government objective of preserving public health, safety and welfare.

- B. The Ordinance violates Mr. Richardson's substantive due process rights and therefore is unconstitutional because there is no rational basis for restriction on dog ownership based on the dog's appearance instead of their behavior.

The Ordinance lacks a rational nexus to the legislative purpose of public safety. The restriction on dog ownership based on the dog's appearance, instead of their behavior, will not solve the problem of fatal and non-fatal dog bites.

The enforcement of breed specific legislation banning "Pit Bulls" is subjectively based on the appearance of an "ill-defined breed", unlike an ordinance prohibiting the keeping of a "vicious dog", which the enforcement involves questions of fact concerning whether the particular dog is vicious or known by its owner to be vicious. *Lynn* at 80. The Ordinance allows subjective enforcement by the city officers, basing their actions on a dog's physical appearance, not on behavior or prior history of aggression.

Mr. Richardson's pet companion, Zoe, was seized and killed. The animal control officer identified Zoe as a "Pit Bull terrier type dog" and *per se* vicious under the City's breed specific legislation, solely based on Zoe's appearance. Zoe never bit anybody or caused any problems.

The City argues that "Pit Bulls", as a breed, are dangerous because of certain traits that they possess: predisposition for fighting, prey drive, stubbornness, powerful jaws and a combination of stamina, strength, agility and "gameness". The source of this information is not clear. Without consulting a Veterinarian or official animal organization, (professionals deemed specialists) the City cannot definitely identify a dog as being of a particular breed and come to such a finding. Mere appearance does not make a dog dangerous; the City is not only classifying

a dog dangerous based on its behavior but also on the physical characteristics of a particular breed and its mixtures thereof.

1. *Many other breeds have physical characteristics similar to the alleged “Pit Bull”, which makes identification based on appearance very unreliable, especially if the dog is some kind of mixture.*

The Ohio appellate court in *Tellings*, found that

“enough evidence was presented that there are approximately 52 million dogs in the United States and that as many as 4.8 million are some form of pit bull...a pit bull's musculature is no different than other strong, well-muscled dogs, such as Saint Bernards, Bullmastiffs, Rottweilers, and Malamutes”. *Id* at 23.

Mr. Richardson's dog Zoe, was a mixed breed dog and had no reason to believe that his dog was a “Pit Bull”. A rescue group found both dogs as young strays in a City park, thus the dogs were of unknown heritage.

Conversely, the City relies on a search warrant case where the court stated that a pit bull is “commonly known to be aggressive”, and upheld the police argument that the “knock and announce” exception applies due to the presence of “pit bull” dog on the premises. *Commonwealth v. Santiago*, 452 Mass. 573, 898 N.E. 2d 622 (Mass. 2008). The *Santiago* court did not use any expert opinion when concluding that a “Pit Bull” is commonly known to be aggressive. *Id*. This case is distinguishable from Mr. Richardson's because the evidence used in drafting legislation like the Ordinance, should not be based on cases dealing with criminal procedure.

On the other hand, an Illinois decision, *People v. Riddle*, 258 Ill. App. 3d 253, 630 N.E. 2d 141 (Ill. App. Ct. 2d Dist. 1994), stated,

“merely applying the label ‘pit bull’ to a dog does little to describe it and provides no basis for determining whether it is dangerous... we cannot malign a breed of dogs on the basis of rumor and hysteria”. *Id*.

Furthermore, the court added,

“vicious dogs shall not be classified in a manner that is specific as to breed. Our legislature chose not to accede to the stereotypes the State urges here. In Illinois, each dog is to be evaluated individually and is not to be classified as “vicious” merely because of its breed or type.” *Riddle* at 260-261.

In this case, the mere presence of dogs on the premise did not indicate that the dogs were vicious, and therefore, not an exception to the “knock and announce” rule. *Id.* Courts are split on the issue of classifying “Pit Bulls” as vicious dogs.

It is common knowledge that certain dog breeds are used for certain purposes such as, guard dogs, lap dogs and hunting dogs. However,

“the stigma attached to pit bulls is not founded in logic, but in a tautology: pit bulls are dangerous because they are preferred by criminals; criminals prefer pit bulls because they are dangerous. If pit bulls are banned, deviant owners will find a new ‘criminal’ breed to take their place”. *Supra*, 78 UMKC L. REV. 839, 845.

The fact that criminals own dogs and train them to be vicious does not justify the marginalization of a particular breed. A criminal can always find another breed that would serve [his] purpose.

2. Dangerous dogs laws should target past behavior and irresponsible ownership, not a specific breed.

The City argues that “Pit Bulls” possess certain traits easily identifiable. In *Vanater* the court noted

“the evidence indicates that Pit Bulls possess the inherent characteristics of exceptional aggression, athleticism, strength, viciousness and unpredictability which are unique to the breed; they possess an extraordinary fighting temperament and have been shown to be the most tenacious dog of any breed; they have a history of unpredictably and instantaneously attacking in a berserk and frenzied rage and have the ability to inflict significant damage upon their victims”. *Id* at 1243.

However, in the same decision the court admits, “while this description is not true of every Pit Bull, the Court must defer to the legislature's consideration of the conflicting positions.” *Id* at 1243. In *Vanater*, the Mayor decided to propose a “Pit Bull” ban law based on media reports. The facts indicate that no scientific or expert testimony of what a “Pit Bull” is or

whether a “Pit Bull” is inherently more vicious than any other dog was presented during the hearings. *Vanater* at 1240.

Here Mr. Richardson contends that expert animal organizations, including the AVMA and the Humane Society of the United States, are opposed to Breed Specific Legislation. Specifically because such laws are ineffective and won’t reduce the likelihood of human injury by dog attacks. AVMA: Policy on Dangerous Animal Legislation, http://www.avma.org/issues/policy/dangerous_animal_legislation.asp; The Humane Society of the United States, Dangerous Dogs and Breed Specific Legislation, http://www.humanesociety.org/animals/dogs/facts/statement_dangerous_dogs_breed_specific_legislation.html.

The AVMA opposes breed specific legislation for being inappropriate and ineffective in the control and prevention of dog bites. In a special report about fatal human attacks by dogs between 1979 and 1998, the AVMA concluded:

“ban(s) on a specific breed might cause people who want a dangerous dog to simply turn to another breed for the same qualities they sought in the original dog (egg, large size, aggression easily fostered). Breed-specific legislation does not address the fact that a dog, of any breed, can become dangerous when bred or trained to be aggressive. From a scientific point of view, we are unaware of any formal evaluation of the effectiveness of breed-specific legislation in preventing fatal or nonfatal dog bites”. Jeffrey J. Sacks, MD, MPH et al., *Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 – 1998*, 217 VET MED TODAY 6 (2000), available at <http://www.cdc.gov/homeandrecreationalsafety/images/dogbreeds-a.pdf>.

Accordingly, the Center for Disease Control, (“CDC”), recognizes that dogs provide many health and social benefits for its humans companions and that most of the millions of dogs in the U.S. never bite or kill humans. Center for Disease and Control, Dog Bites Related Fatalities, Editorial Note, <http://wonder.cdc.gov/wonderprevguid/m0047723/m0047723.asp>. The best ways to prevent dog bites are through laws that target chronically irresponsible owners and

not a specific dog breed.³ CDC, *Nonfatal Dog Bite--Related Injuries Treated in Hospital Emergency Departments*, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5226a1.htm>.

The AKC supports reasonable, enforceable, non-discriminatory laws to govern the ownership of dogs and also believes that dog owners should act responsibly. The AKC strongly opposes any legislation that determines a dog to be "dangerous" based on specific breeds or phenotypic classes of dogs⁴. AKC Supports Ohio Bill supporting BSL, http://www.akc.org/news/index.cfm?article_id=3778.

Behavior should be the only determinant of the dangerousness of a dog. The City public safety concerns should be focused on the dogs past history of aggression. It is irrational to label a dog as vicious just because of the way it looks. There is no scientific data for classifying a "Pit Bull" as vicious type of dog breed.

"Legislation designed to protect the public from dangerous dogs should attempt a balance between protecting the public from dangerous dogs and respecting the rights of responsible owners. The law should acknowledge that ownership is a significant factor determining a dog's biting propensity and overall aggressiveness, and balance the need to regulate or prevent irresponsible ownership for public safety purposes with the rights of responsible dog owners. Breed-specific laws regulate or destroy dogs regardless of prior conduct and may require even responsible owners to sacrifice their rights to private property and, as is often the case with dogs, members of their families". Safia Gray Hussain, *Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won't Solve the Dangerous-Dog Dilemma*, 74 *FORDHAM L. REV.* 2847, 2883 (2006).

Mr. Richardson's substantive due process claim suffices because the Ordinance is not rationally related to the government interest due to the arbitrary way in which his dog was identified and killed, and the lack of evidence that his dog was vicious. There is no logic in enacting a legislation to protect citizens against dangerous dogs when City officials subjectively target friendly dogs merely based on its physical appearance.

³ In 2001, it was estimated that there were approximately 68 million pet dogs in the U.S.

⁴ In 2009, the AKC supported Ohio Representative Barbara Sears of Lucas County who introduced House bill 79 removing "Pit Bull" from Ohio's statutory definition of "dangerous dogs". See *City of Toledo v. Tellings*, No. L-04-1224, 2006 Ohio 975 (2006).

CONCLUSION

For the foregoing reasons, Mr. Richardson respectfully requests this Court to reverse the District Court's granting of summary judgment for the City due to the existence of genuine issues of material fact as to the constitutionality of the Ordinance.

APPENDICES

Constitutional Provision

Constitution of the United States, Amendment XIV, Section 1.

Provides in pertinent part:

No State shall...deprive any person of life, liberty, or property, without due process of law;...

Ordinance Provision

Winthrop Municipal Code section 6.04.090

The Ordinance at issue provides, in relevant part:

6.04.090 Nuisance dogs—Vicious dogs—Potentially vicious dogs.

...

B. Vicious Dogs.

1. For the purposes of this Section, “vicious dogs” are defined as

(a) dogs who unprovoked have attacked or bitten a human being or animal or have a known propensity, tendency or disposition to attack unprovoked, to cause injury or to endanger the safety of human beings or animals;

(b) dogs who are trained or kept for dogfighting; or

(c) 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.

2. No person shall own, keep or have the custody, care or control of any of the breed identified in subsection B.1(c) of this Section or mixtures thereof within the Winthrop city limits.

3. No dog shall be declared vicious if injury or damage is sustained by a person who was willfully trespassing or committing or attempting to commit a crime or tort upon the premises occupied by the owner or keeper of the dog. Also exempted are dogs who were teased, tormented, abused or assaulted by the injured person or animal prior to attacking or biting. No dog shall be declared vicious if the dog was protecting or defending a human being in its immediate vicinity from attack or assault.

Miscellaneous

Dog breed registry information

AKC Breeds by Group

Terrier Group

People familiar with this Group invariably comment on the distinctive terrier personality. These are feisty, energetic dogs whose sizes range from fairly small, as in the Norfolk, Cairn or West Highland White Terrier, to the grand Airedale Terrier. Terriers typically have little tolerance for other animals, including other dogs. Their ancestors were bred to hunt and kill vermin. Many continue to project the attitude that they're always eager for a spirited argument. Most terriers have wiry coats that require special grooming known as stripping in order to maintain a characteristic appearance. In general, they make engaging pets, but require owners with the determination to match their dogs' lively characters.

Breeds: Airedale Terrier, American Staffordshire Terrier, Australian Terrier, Bedlington Terrier, Border Terrier, Bull Terrier, Cairn Terrier, Dandie Dinmont Terrier, Glen of Imaal Terrier, Irish Terrier, Kerry Blue Terrier, Lakeland Terrier, Manchester Terrier, Miniature Bull Terrier, Miniature Schnauzer, Norfolk Terrier, Norwich Terrier, Parson Russell Terrier, Scottish Terrier, Sealyham Terrier, Skye Terrier, Smooth Fox Terrier, Soft Coated, Wheaten Terrier, Staffordshire Bull Terrier, Welsh Terrier, West Highland White Terrier, Wire Fox Terrier.

AKC MEET THE BREEDS®: American Staffordshire Terrier

Courageous and strong, the American Staffordshire Terrier (Am Staff)'s athletic build and intelligence make him ideally suited to many dog sports such as obedience, agility, tracking and conformation. He is often identified by his stocky body and strong, powerful head. The breed's short coat can be any color, and either solid colored, parti-colored or patched.

The Am Staff is a people-oriented dog that thrives when he is made part of the family and given a job to do. Although friendly, this breed is loyal to his family and will protect them from any threat. His short coat is low-maintenance, but regular exercise and training is necessary.

Terrier Group; AKC recognized in 1936.

Ranging in size from 17 to 19 inches tall at the shoulder.

General purpose dog.

UKC - AMERICAN PIT BULL TERRIER (REVISED NOVEMBER 1, 2008) Terrier Group

GENERAL APPEARANCE

The American Pit Bull Terrier is a medium-sized, solidly built, short-coated dog with smooth,

well-defined musculature. This breed is both powerful and athletic. The body is just slightly longer than tall, but bitches may be somewhat longer in body than dogs. The length of the front leg (measured from point of elbow to the ground) is approximately equal to one-half of the dog's height at the withers. The head is of medium length, with a broad, flat skull, and a wide, deep muzzle. Ears are small to medium in size, high set, and may be natural or cropped. The relatively short tail is set low, thick at the base and tapers to a point. The American Pit Bull Terrier comes in all colors and color patterns except merle. This breed combines strength and athleticism with grace and agility and should never appear bulky or muscle-bound or fine-boned and rangy. Above all else, the APBT must have the functional capability to be a catch dog that can hold, wrestle (push and pull) and breathe easily while doing its job. Balance and harmony of all parts are critical components of breed type.

CHARACTERISTICS

The essential characteristics of the American Pit Bull Terrier are strength, confidence, and zest for life. This breed is eager to please and brimming over with enthusiasm. APBTs make excellent family companions and have always been noted for their love of children. Because most APBTs exhibit some level of dog aggression and because of its powerful physique, the APBT requires an owner who will carefully socialize and obedience train the dog. The breed's natural agility makes it one of the most capable canine climbers so good fencing is a must for this breed. The APBT is not the best choice for a guard dog since they are extremely friendly, even with strangers. Aggressive behavior toward humans is uncharacteristic of the breed and highly undesirable. This breed does very well in performance events because of its high level of intelligence and its willingness to work.