



THE AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

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## MEMORANDUM IN SUPPORT OF HB 5361, AN ACT concerning the use of breed of dog as an underwriting factor for homeowners and tenants insurance policies

Founded in 1866 as the nation's first humane organization, the American Society for the Prevention of Cruelty to Animals (ASPCA), on behalf of our over 20,000 Connecticut supporters, respectfully but strongly urges the Insurance and Real Estate Committee to joint favorably report HB 5361 (with an amendment - explained more fully at the end of this memo - to narrow the "additional criteria" beyond breed that insurance companies may still use to limit homeowners' and tenants' policies.)

HB 5361 is critical consumer rights and humane legislation that would finally put an end to the arbitrary, scientifically unfounded practice of refusing homeowners' and renters' insurance based on dog breed.

In 2013, the Connecticut legislature recognized the virtual irrelevance of dog breed in assessing the danger posed by dogs when it enacted the law prohibiting municipalities from regulating dogs based on breed. It is time for the same standard to be applied to the insurance industry, whose arbitrary discriminatory practices fracture families by forcing them to choose between keeping their homes and keeping their beloved canine family members; overburden rescue organizations and shelters; and put so many dogs at risk of destruction.

### **Because dog breed cannot be readily visually identified, dog bite reporting data is poor. Breed is thus a weak identification tool for assessing dangerous dogs.**

There is often a significant discrepancy between visual assessment of breed, and actual genetic determination of the dog's breed – even when the visual assessment is conducted by individuals who have substantial experience working with dogs. A 2009 study comparing animal shelter workers' visual appraisals of breed with actual DNA breed analysis found that the shelter workers' conclusions regarding "predominant dog breed" (*i.e.*, the most represented breed or breeds in a dog) were confirmed by DNA analysis in only one-fourth of the subject dogs. And in 87.5 percent of the dogs, DNA analysis revealed many breeds that were not identified by the shelter workers at all.<sup>2</sup>

As specifically related to dog bites, the U.S. Centers for Disease Control (CDC), in its oft-cited study of fatal dog attacks, the American Veterinary Medical Association (AVMA) Task Force on Canine Aggression and Human-Canine Interactions, and other researchers all note that data collection related to bite by breed is fraught with multiple potential sources of error, including inaccurate visual determinations of breed.<sup>3</sup>

<sup>2</sup> Victoria Voith, *A Comparison of Visual and DNA Identification of Breeds of Dogs* (Proceedings of Annual AVMA Convention, Seattle, July 11-14, 2009), available at <http://nationalcanineresearchcouncil.com/publications/suggested-reading/> (citing Victoria Voith et al., *Comparison of adoption agency identification and DNA breed identification of dogs*, J. APPLIED ANIMAL WELFARE SCI. 253 (2009)).

<sup>3</sup> Jeffrey Sacks et al., *Breeds of dogs involved in fatal human attacks in the United States between 1979 and 1998*, J. AM. VETERINARY MED. ASS'N 836, 838 (2000); American Veterinary Medical Association (AVMA) Task Force on Canine Aggression and Human-Canine Interactions, *A community approach to dog bite prevention*, J. AM. VETERINARY MED. ASS'N 1732, 1733 (2001) ("*Dog Bite Prevention*"); Stephen Collier, *Breed-specific legislation and the Pit Bull Terrier: Are the laws justified?* J. VETERINARY BEHAV. 17, 18 (2006).

The tenuous connection between a dog's appearance and actual breed is supported by the science of genetics. A 2003 study comparing eighty dog breeds, feral dogs, and wolves found that a large number of their physical characteristics – body weight and size, skull shape and size, leg length, ear position, coat type – are determined by a very small number of “large effect” genes. Thus, while a dog may bear a strong resemblance to a particular breed, this breed may actually constitute only a small proportion of the dog's genetic makeup.<sup>4</sup>

Because it is so difficult to visually identify a dog's breed - even for experienced individuals - there is simply no accurate data on the number of aggressive incidents involving a specific breed.

**Many factors other than breed are better indicators of aggressive tendencies.**

Many factors completely unrelated to dog breed (or even their appearance) affect their tendency toward aggression, including early experience, socialization, training, size, sex, and reproductive status. Prior behavior is also more predictive of future behavior than breed or appearance.

For example, male dogs who are not sterilized constitute 80 percent of all dogs presented to veterinary behaviorists for “dominance aggression” (*i.e.*, a dog's assertion of dominance over other people or dogs), are involved in roughly three-quarters of reported dog bite incidents, and are 2.6 times more likely to bite than neutered dogs. Unsterilized female dogs contribute to aggressive situations because they “attract free-roaming males, which increases bite risk to people through increased exposure to unfamiliar dogs,” and “contribute to the population of unwanted” and potentially aggressive dogs.<sup>5</sup> Dogs who are regularly kept isolated on a chain or tether are at greater risk of biting people.<sup>6</sup> Dog aggression has also been correlated with a dog's size, but the counterintuitive finding has been that *smaller* dogs are more likely to attack people than larger dogs.<sup>7</sup> Other factors implicated in dog aggression are the selective breeding and raising of dogs for such behaviors, whether for protection, dog fighting, social status or financial gain<sup>8</sup>; abuse and neglect<sup>9</sup>; and inadequate obedience training and supervision.<sup>10</sup>

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<sup>4</sup> JANICE BRADLEY, THE RELEVANCE OF BREED IN SELECTING A COMPANION DOG 6 (2011) (citing Adam R.

Boyko, et al., *A Simple Genetic Architecture Underlies Morphological Variation in Dogs*, PLOS BIOLOGY 1, 8 (2010)).

<sup>5</sup> Kenneth Gershman, *Which dogs bite: A case control study of risk factors*, PEDIATRICS 913, 916(1994); Sacks et al., *supra* note 3, at 839 (citing *id.*); *Dog Bite Prevention*, *supra* note 3, at 1733.

<sup>6</sup> Gershman, *supra* note 7, at 916; Sacks et al., *supra* note 3, at 839.

<sup>7</sup> Angela Gonzalez Martinez, et al., *Risk factors associated with behavioral problems in dogs*, J. VETERINARY BEHAV. 225, 228 (2011).

<sup>8</sup> JANICE BRADLEY, DOG BITES: PROBLEMS AND SOLUTIONS 10 (2006).

<sup>9</sup> Karen Delise, *Research and Investigation Methodology 3*, available at [http://nationalcanin.eresearchcouncil.com/uploaded\\_files/tinymce/Delise%20Research%20&%20Investigation%20Methodology.pdf](http://nationalcanin.eresearchcouncil.com/uploaded_files/tinymce/Delise%20Research%20&%20Investigation%20Methodology.pdf).

<sup>10</sup> Carrie M. Shuler, et al., 2008. *Canine and human factors related to dog bite injuries*, J. AM. VETERINARY MED. ASS'N 542, 545 (2008).

The ASPCA's Dr. Randy Lockwood, an internationally-known expert on dog bite issues, has emphasized the multiplicity of factors that can contribute to the worst cases:

A fatal dog attack is not just a dog bite by a big or aggressive dog... It is usually a perfect storm of bad human-canine interactions – the wrong dog, the wrong background, the wrong history in the hands of the wrong person in the wrong environmental situation. I've been involved in many legal cases involving fatal dog attacks, and, certainly, it's my impression that these are generally cases where everyone is to blame. You've got the unsupervised three year-old child wandering in the neighborhood killed by a starved, abused dog owned by the dogfighting boyfriend of some woman who doesn't know where her child is. It's not old Shep sleeping by the fire who suddenly goes bonkers. Usually there are all kinds of other warning signs.<sup>11</sup>

The experts also agree that the best predictor of a dog's behavior comes from an evaluation of individual adult dogs (not least by looking at their prior behavior) – not selection based on breed. The “practice of searching for a promising working dog [for such things as police protection and search and rescue work] among adult dogs, rather than relying on breeding programs, is becoming more and more common today” given the comparative expense and unpredictability of breeding programs.<sup>12</sup> The complexity and difficulty of ensuring specific behaviors through breeding “explains how so many of the so-called game-bred dogs from fight busts (like the ones rescued from Michael Vick's fighting operation) have gone on to live companionably with other dogs as relative couch potatoes in normal homes.”<sup>13</sup>

Spanish researchers evaluating dogs to identify risk factors associated with aggression and other behavior problems in connection with Spain's breed-specific law, arrived at the same conclusions. Their studies specifically found that a dog's presumed or actual breed was *not* a risk factor, and that the dog breeds “classified as dangerous [by the Spanish Dangerous Animals Act] do not seem to be more aggressive than the rest.”<sup>14</sup> A large study in Germany concurred, resulting in the repeal of a breed-specific law after its authors found no significant difference in the behavior evaluations of dogs affected by the legislation (which included pit bulls) and a control group of golden retrievers.<sup>15</sup> The German study suggested that “fear was the main cause of the behavior,” not breed. They found that bite prevention efforts should consider the “emotions of the dog and effect of eliciting stimuli rather than affiliation with particular breeds.”<sup>16</sup>

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<sup>11</sup> Malcolm Gladwell, *Troublemakers*, THE NEW YORKER, [http://www.newyorker.com/archive/2006/02/06/060206fa\\_fact](http://www.newyorker.com/archive/2006/02/06/060206fa_fact) (last visited Sept. 19, 2011).

<sup>12</sup> BRADLEY, *supra* note 5, at 27.

<sup>13</sup> Janice Bradley, *Breeds and Behavior: They're Not Like Other Dogs – or Are They?* BARK (2011), available at <http://www.thebark.com/content/aprmay-2011-issue-64>.

<sup>14</sup> Martinez et al., *supra* note 9, at 228.

<sup>15</sup> Stefanie A. Ott, et al., *Is there a difference? Comparison of golden retrievers and dogs affected by breed-specific legislation regarding aggressive behavior*, J. VETERINARY BEHAV. 134, 139 (2007).

<sup>16</sup> *Id.*

**Breed-specific rules have not been effective in reducing dog aggression and succeed primarily in harming dogs both within and outside of the targeted dog breeds, causing immense suffering for these dogs and the families for whom they are beloved companion animals.**

A restrictive policy that does not serve its purpose is unwarranted, and that is the case with breed-specific approaches to aggression. The pit bull ban in Prince George's County, Maryland is a good example. The head of the agency charged with administering the ban characterizes it as a law that compels the annual seizure of over 400 "nice, family dogs."<sup>17</sup> In 2003, a county task force studied the ban and recommended its repeal, concluding that it was too costly and its benefits too minimal. The task force was not even sure the ban provided *any* benefits, because the marginal decrease in dog bites seen after the ban could not be attributed to its enactment.<sup>18</sup>

Studies looking at Britain's and Spain's breed discriminatory laws found that there was no significant correlation between a dog's breed and the likelihood of a biting incident. This finding was confirmed and emphasized by the fact that, after the bans were put in place, the number of biting incidents did not drop.<sup>19</sup>

In addition to being ineffective, breed bans negatively impact dogs outside the targeted breeds. The Prince George's County pit bull ban places significant pressure on the county shelter, which has limited space and yet must hold dogs identified as pit bulls during the pendency of lengthy legal proceedings. As a result, the shelter has had to euthanize hundreds of otherwise adoptable dogs of many different breeds for lack of space, and has suffered decreased adoption rates because there are so few dogs available.<sup>20</sup> Thus, these rules do not serve their purpose, and cause further damage to innocent collateral victims.

Breed-specific rules – so arbitrary as established above – also cause immense suffering for the individuals who live with thousands of these dogs in peaceful harmony with their neighbors and community, forcing them to choose between their homes and their properly supervised, friendly, well-socialized and beloved canine companions.

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<sup>17</sup> E-mail from Rodney Taylor, Chief, Prince George's County Animal Management Div. to author (Oct. 20, 2009, 1:12 EST) (on file with author).

<sup>18</sup> PRINCE GEORGE'S COUNTY VICIOUS ANIMAL LEGIS. TASK FORCE, <http://www.understand-a-bull.com/BSL/Research/PGCMD/PGCMTOC1.htm> (last visited Sept. 18, 2011).

<sup>19</sup> B. Klaassen, et al., Does the Dangerous Dogs Act protect against animal attacks: a prospective study of mammalian bites in the Accident and Emergency department, *INJURY* 89, 89-90 (1996); Belen Rosado, et al., Spanish Dangerous Animals Act: Effect on the epidemiology of dog bites, *J. VETERINARY BEHAV.* 166, 169 (2007).

<sup>20</sup> Phone conversation with Rodney Taylor, Chief, Prince George's County Animal Management Div. (March 10, 2004) (notes on file with author).

There is no shortage of scientific studies demonstrating the well-established strength of the human-animal bond and proving the worth of human-canine companionship.<sup>21</sup> Among the dogs targeted for discrimination, pit bulls, in particular, are an extremely common household pet and have been recognized as ideal family dogs and therapy dogs.<sup>22</sup> It is high time for insurance companies to be compelled to dispense with the arbitrary discrimination against certain types of dogs that is so harmful to dogs and their families.

**The insurance industry cannot offer adequate justification for breed-based discrimination.**

The insurance industry, at least publically, relies not on any proprietary data, but rather on the same data as the rest of us – that is, the Centers for Disease Control (CDC) study of fatal dog attacks cited at this memo's outset in connection with the poor quality of bite-related data (not least due to difficulties in breed identification). The insurance industry uses this highly flawed data to support its contention that certain breeds have a propensity to bite, but even the CDC study's authors state in their article that their data should not be used to justify breed discrimination.<sup>23</sup>

The insurance industry also notes the large amount of money paid out for dog bite claims to support breed discrimination. According to scholar Larry Cunningham: "The Insurance Information Institute ("III"), a trade group of the insurance industry, stated that in 2002, \$345.5 million was paid out in dog bite liability claims (i.e., one quarter of all homeowners' insurance liability claims), up from \$250 million in 1995. The group argues that dog bite lawsuits are on the rise and juries are awarding larger claims. They claim, therefore, the need to curtail their risk." However, as Cunningham also notes, "For every \$100 in premiums, insurers spend \$77 paying claims. Of that \$77, the overwhelming majority (\$72, or 93.5%) is spent on paying property damage claims. Liability claims only amount to \$5, or 6.5%, of total claims. Even then, dog bites only constitute a percentage of that figure. Put into perspective, the money paid out in dog bite claims is negligible when compared to the overall amount of money paid out for other types of claims. Damage due to lightning, fire, and mold all individually account for more claims payouts than all liability claims combined."<sup>24</sup>

**\*\*An important note on the bill text and A PROPOSED AMENDMENT\*\***

Subdivision (2), as currently drafted, would allow insurance companies to get around the breed-specific prohibition as it would allow them to broadly impose any "additional criteria" other than breed. Thus, insurance companies could easily use weight as a proxy for breed, something that landlords currently do all the time (e.g., "no dogs over 25 pounds"), with the same effect of excluding certain targeted breeds. This provision should thus be narrowed – perhaps to enumerate acceptable additional criteria such as those factors that, as noted above, *are* indicia of aggression, such as spay/neuter status or chaining. (I would caution against requiring receipt of the AKC's Canine Good Citizen certificate, as it is possible to fail this test for behaviors other than aggression, such as separation anxiety.)

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<sup>21</sup> See, e.g., Sean Wensley, *Animal welfare and the human-animal bond: Considerations for veterinary faculty, students and practitioners*, J. VETERINARY MED. EDUC. 532-39 (2008); *Dog Bite Prevention*, *supra* note 3, at 1733.

<sup>22</sup> See, e.g., Lynn Ready, *Pit-bull terrier therapy dogs provide great service to their community*, Best Friends Animal Society Pit Bull Terrier Initiatives (April 28, 2011), <http://network.bestfriends.org/initiatives/pitbulls/17100/news.aspx>; *Shelter for the Scarred: Rehabilitation Returned*, THE WASHINGTON POST, <http://www.washingtonpost.com/wp->

<sup>23</sup> *Breeds of dogs involved in fatal human attacks in the United States between 1979 and 1998*, *supra* note 3, at 840.

<sup>24</sup> Larry Cunningham, *The case against dog breed discrimination by homeowners' insurance companies*. 11 CONN. INS. LJ. 1-68, at 15 (2004).

Again, on behalf of the ASPCA's thousands of Connecticut supporters, I respectfully but strongly urge the Insurance and Real Estate Committee to report out HB 5361 with the above proposed amendment to narrow the overbroad "additional criteria" exception to the prohibition on breed-based discrimination.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Bresch", with a stylized flourish at the end.

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