

IN THE SUPREME COURT OF OHIO

City of Toledo,

Appellant,

v.

Paul Tellings,

Appellee.

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Supreme Court Case No. 06-0690

On Appeal from the Lucas County
Court of Appeals,
Sixth Appellate District

**AMICUS CURIAE AMERICAN SOCIETY FOR THE PREVENTION
OF CRUELTY TO ANIMALS MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION BY APPELLEE PAUL TELLINGS**

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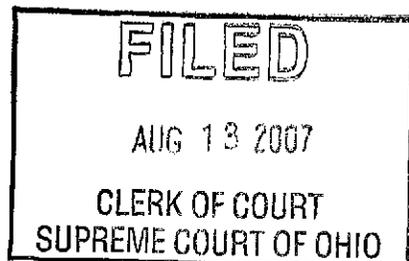


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INTRODUCTION

“My name is Anna Hamilton. I am a resident of Newark, Ohio in Licking County. I and a friend rescued an approximately three year old dog named Baby on or about the first week of June 2006. She was given to us by neighbors whose landlord would not allow them to keep her and who themselves had taken Baby from an abusive home in which she had received multiple cigarette burns. Despite this intentionally cruel treatment and her subsequent neglectful treatment by the neighbors from whom my friend and I obtained her, Baby has a wonderful temperament. She is loving, playful, easygoing, accepting of other dogs (in fact, she plays regularly with several other dogs, both smaller and larger than she), and gentle with children, including my friend’s children and my five year old daughter.

“Unaware of Ohio’s insurance and confinement requirements for dogs deemed to be pit bulls by the dog warden, my friend and I were faced with the devastating experience of having the dog warden confiscate Baby and threaten us with her destruction if we failed to obtain liability insurance for Baby. My friend, who had decided to adopt Baby, was also threatened with a criminal charge if she failed to comply. Because we could not afford the liability insurance (approximately \$600 for six months, payable in a single installment only), and my friend was scared of criminal liability, she, with great anguish, signed Baby over to the dog warden. This outcome upset both of us terribly, as Baby is an extremely sweet dog who, notwithstanding the miserable treatment she had known for most of her life, was still capable of great love and was proving to be an extraordinary companion to us and our respective families....

“When the dog warden confiscated Baby, he did so on the basis of a visual appraisal that lasted no more than a few seconds, whereupon he seized her and put her in his truck. He also commented to me and my friend that Baby appeared to have recently given birth...

“....the dog warden determined that the remaining puppy was not a pit bull – and thus not inherently vicious or subject to Ohio’s pit bull law – despite the fact that he had deemed Baby, the puppy’s mother, to be a pit bull.”

– Affidavit of Anna Hamilton, Licking County, OH resident regarding her rescued canine companion Baby, an abused dog deemed to be a pit bull and threatened with destruction by the Licking County dog warden.

The American Society for the Prevention of Cruelty to Animals (ASPCA) enjoys the support of over 18,900 Ohio residents who endorse its mission to provide effective means for the prevention of cruelty to animals throughout the United States. In tandem with this mission, the ASPCA opposes laws – such as the Ohio and Toledo pit bull laws – that discriminate against

specific dog breeds or breed mixes without regard to the temperament and behavior of individual dogs.

A breed-specific law need not be a *de jure* ban on a particular breed to have a deleterious impact on human and animal welfare. The Ohio pit bull law – which imposes criminal liability on owners who have not obtained costly liability insurance and subjects uninsured dogs to death – is ostensibly only regulatory but in actuality imposes a harmful *de facto* ban, as does Toledo’s criminal ordinance banning ownership of multiple adult dogs deemed to be pit bulls.

By classifying pit bulls as vicious, the Ohio and Toledo laws encourage the insurance industry to deny homeowners’ coverage to people whose dogs have been deemed pit bulls. Even State Farm, which will underwrite homeowners’ policies for owners of dog identified as pit bulls elsewhere in the country, will not do so in Ohio because of the *per se* vicious classification, compelling homeowners to choose between beloved canine companions and insuring their home. The threat of no homeowner’s coverage also virtually guarantees destruction of adoptable pit bull-type dogs in shelters.

The story recounted by Licking County resident Anna Hamilton, whose affidavit is excerpted above (and attached), embodies the potentially destructive impact of the Ohio law’s costly liability insurance requirement. Ms. Hamilton almost saw her rescue dog Baby killed by the county dog pound because she could not afford the required liability policy; only a delay due to shelter construction and a third party’s last minute purchase of liability coverage saved Baby.

And of course, in the present case, Toledo resident Paul Tellings was forced give one of his three dogs away and see another killed.

The number of dogs deemed to be pit bulls dying in Ohio’s pounds is, indeed, staggering. Specifically, in 1996, 101 Ohio agencies reported handling 2,141 dogs deemed to be pit bulls. In

2004, 68 agencies reported handling 8,834 such dogs, of whom only 1,425, i.e., 16%, were reclaimed by their original owner or adopted by a new owner and 7,409, i.e., 84%, were killed.¹ In the animal-sheltering world, an 85% kill-rate is considered the worst-possible scenario – the “bottom of the ladder.”²

The situation wrought by the Ohio and Toledo pit bull laws is dire. More dogs are suffering – increasingly fodder for dog fighters, other animal abusers, and the dog pounds that are compelled to kill them. And yet, more people live with the threat of canine aggression and the specter of dog fighting – the Ohio and Toledo pit bull laws have not curtailed these phenomena, and indeed, may well have fueled them by diverting resources from the enforcement of effective dangerous dog laws. For these reasons and those set out below, the ASPCA respectfully urges the Court to reconsider and vacate its judgment of August 1, 2007 and uphold the decisions of the Sixth District Court of Appeals vacating appellee’s convictions and declaring the Ohio and Toledo pit bull laws to be unconstitutional.

ARGUMENT

Amicus Curiae ASPCA’s Proposition of Law No. 1:

The Court fails to provide a rational basis for the Ohio and Toledo pit bull laws, compelling a determination that the laws violated appellee’s substantive due process and equal protection rights and are, therefore, unconstitutional.

- A. The Court both misstates the testimony of the Lucas County chief dog warden regarding the bite history of dogs deemed to be pit bulls and also inappropriately credits the warden’s testimony concerning the participation of such dogs in fatal attacks.**

¹ Lord L., DVM, MS; Wittum, T.E., PhD; Ferketich, A.K., PhD; Funk, J.A., DVM, PhD; Rajala-Schultz, P., DVM, PhD; Kauffman, R.M., BS. Demographic trends for animal care and control agencies in Ohio from 1996 to 2004. *JAVMA* 2006; 229: 51.

² <http://www.aspcanet.org/advocacy/advocacy.cfm?id=100> (“Criteria for Selecting Your Animal Charity”).

In support of the proposition that there is “substantial evidence” that “pit bulls, compared to other breeds, cause a disproportionate amount of danger to people,” the Court appears to rely largely on four statements attributed to Lucas County’s chief dog warden:

(1) when pit bulls attack, they are more likely to inflict severe damage to their victim than other breeds of dogs; (2) pit bulls have killed more Ohioans than any other breed of dog; (3) Toledo police officers fire their weapons in the line of duty at pit bulls more often than they fire weapons at people and all other breeds of dogs combined; (4) pit bulls are frequently shot during drug raids because pit bulls are encountered more frequently in drug raids than any other dog breed.

(The Court also noted the trial court’s observation that pit bulls are “ ‘found largely in urban settings where there are crowded living conditions and a large number of children present,’ which increases the risk of injury caused by pit bulls.”)

The Court, however, misstates the testimony of the Lucas County chief dog warden, as well as inappropriately credits his testimony. In fact, upon questioning by the trial court, the warden asserted that bites by chows – not pit bulls – tend to be the most serious in the county, requiring “more sutures than any other dog.” *See Skeldon Transcript at 101.*

Further, the Court gives undue weight to the dog warden’s testimony that “pit bulls have killed more Ohioans than any other breed of dog.” The Lucas County chief dog warden is a fierce proponent of the Ohio and Toledo pit bull laws, making a point of seizing dogs he and/or his staff deem to be pit bulls and advertising the “record number of seizures” on the county’s website.³ By contrast, Dr. Peter Borchelt – another witness for appellant but one without a vested interest in the perpetuation of the Ohio and Toledo pit bull laws – is clearly more credible on the subject of the involvement of pit bulls in fatal attacks. Dr. Borchelt’s testimony echoed that of other experts, most of whom noted, according to the Sixth District Court of Appeals, that

³ <http://www.co.lucas.oh.us/DogWarden/2002statsrelease.asp> (“Lucas County Dog Warden Sets Record for Pit Bull Seizures”).

the Centers for Disease Control (CDC) data on human fatalities due to dog bites “were simply bare statistics, without reference to the total numbers of dogs in each breed population” and therefore “had no real relevance or meaning.” *Toledo v. Tellings*, 2006-Ohio-975 at ¶ 28. Dr. Borchelt stated that “numbers of deaths can be thought of as a numerator of a fraction. The real question is what’s the denominator so you know what the ratio is here.” *See* Borchelt Transcript at 59. That is, the 15 fatalities caused by 9 different dog breeds in Ohio over the 36 year period of 1965-2001 (and although no death should be minimized, it may be helpful to note by comparison that the National Weather Service estimates 62 deaths to be caused by lightning, and 80 deaths to be caused by tornadoes, *each year*) have no statistical bearing on the breed issue unless considered in connection with the total number of dogs of a given, implicated breed.⁴

However, as Dr. Borchelt – again, a witness for appellant – further stated:

....I don’t know any way to ever get a denominator. In order to get a denominator of how many individuals in the country, what’s the population of any one breed, you have to do a census the same way we do the decadal census for people. You’d have to go to homes and count because you can’t do registries because now you’re talking about registered democrats versus registered republicans in a community is [*sic*] not going to tell you the outcome after election because a lot of people don’t register. I don’t know of any way to ever get the denominator.

See Borchelt Transcript at 59-60. Thus, while at first blush, the dog warden’s comment on the involvement of pit bulls in the deaths of Ohioans seems shocking, the testimony of Dr. Borchelt and other experts at trial makes clear that his comment is void of statistical meaning, saying nothing about the actual danger posed by dogs deemed to be pit bulls.

⁴ Karen Delise, *Fatal Dog Attacks: The Stories Behind the Statistics* 94, 97-112 (2002); <http://www.lightningsafety.noaa.gov/overview.htm> (“Lightning: The Underrated Killer”); (“Tornadoes”).

B. The other factors on which the Court relies to justify the reasonableness of the Ohio and Toledo pit bull laws are social or environmental conditions that cannot provide a rational basis for the laws' classification of dogs according to their alleged inherent vicious temperament or nature.

As noted above, the other factors apparently relied on by the Court to substantiate the allegedly disproportionate danger posed by dogs deemed to be pit bulls are social or environmental in nature – that is, they concern what the Court, like the trial court, identifies as the “problem circumstances” with which some dogs have the misfortune of being associated:

....(3) Toledo police officers fire their weapons in the line of duty at pit bulls more often than they fire weapons at people and all other breeds of dogs combined; (4) pit bulls are frequently shot during drug raids because pit bulls are encountered more frequently in drug raids than any other dog breed. The trial court also found that pit bulls are “found largely in urban settings where there are crowded living conditions and a large number of children present,” which increases the risk of injury caused by pit bulls.

One has to wonder whether the fact that Toledo law enforcement fire their weapons so frequently at dogs deemed to be pit bulls in any way reflects deficiencies in their training and/or the seeming “burn” Lucas County has for such dogs.⁵ (In this connection, it’s hard not to think of the questionable 2003 shooting of a family’s boxer-bulldog mix, General Patton, by a Tennessee Highway Patrol officer who believed the dog to be a pit bull. According to the Animal Legal Defense Fund, “the Patton incident is not an isolated one....[There has been] an increase in animal-related police shootings....[M]any animals have lost their lives because police officers used lethal force when less forceful methods might have worked.”⁶) What is inarguable, however, is that such “problem circumstances” say little about the inherent nature of pit bulls –

⁵ <http://www.co.lucas.oh.us/DogWarden/2002statsrelease.asp> (“Lucas County Dog Warden Sets Record for Pit Bull Seizures”).

⁶ <http://www.cbsnews.com/stories/2003/02/12/earlyshow/living/petplanet/main540285.shtml> (“Cops Kill Dog As Cuffed Family Watches”).

indeed, the Court does not challenge the trial court's finding that dogs deemed to be pit bulls are not inherently dangerous – and thus cannot logically provide a rational basis for the Ohio and Toledo laws, which regulate such dogs precisely on the basis of their presumed inherent viciousness.

R.C. 955.11 states:

(A) As used in this section:....(4)(a) 'Vicious dog' means a dog that, without provocation and subject to division (A)(4)(b) of this section, meets any of the following:....(i) Has killed or caused serious injury to any person; (ii) Has caused injury, other than killing or serious injury, to any person, or has killed another dog. (*sic*) (iii) Belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping, or harboring of such a breed of dog shall be prima-facie evidence of the ownership, keeping, or harboring of a vicious dog.

R.C. 955.22 states:

(A) As used in this section, 'dangerous dog' and 'vicious dog' have the same meanings as in section 955.11 of the Revised Code....(E) No owner, keeper or harbinger of a vicious dog shall fail to obtain liability insurance with an insurer authorized to write liability insurance in this state providing coverage in each occurrence, subject to a limit, exclusive of interest and costs of not less than one hundred thousand dollars because of damage or bodily injury to or death of a person caused by the vicious dog.

Toledo Municipal Code 505.14(a) states:

(a) No person...shall own, keep, harbor or provide sustenance for more than one vicious dog, as defined by Ohio R.C. 955.11, or a dog commonly known as a Pit Bull or Pit Bull mixed breed dog, regardless of age, in the City of Toledo, with the exception of puppies...for which the owner has filed an ownership acknowledgement form in person with the Dog Warden of Lucas County, prior to reaching seven (7) days of age. The ownership of these puppies must be transferred according to Ohio R.C. 955.11 before they are three (3) months of age. Additionally, this section requires that all vicious dogs, as described in the Ohio Revised Code, or dogs commonly known as Pit Bull or Pit Bull mixed breed dogs are required, when off the owners' premises, to be securely confined as described in Ohio R.C. 955.22 and muzzled.

The plain meaning of these three provisions comprising the Ohio and Toledo pit bull laws cannot be construed otherwise than to impute an inherently vicious nature to dogs deemed to be pit bulls. However, the “problem circumstance” on which the Court relies – that some dogs deemed to be pit bulls are present in situations wherein they are shot at by police, or that they may live in urban areas – are questions of “nurture” external to the dogs themselves, not questions of “nature,” and cannot provide a rationale for laws that, by their very terms, ascribe a vicious nature to such dogs.

- C. A statute shall be held unconstitutional where the facts upon which it was predicated have ceased to exist. The Court should find the Ohio and Toledo pit bull laws are unconstitutional because (i) dogs deemed to be pit bulls have been shown not to be inherently vicious and yet the laws classify them as such, and moreover, (ii) these laws have been shown not to further the legitimate government goal of protecting public health and safety.**

The Court initiates its analysis of the constitutionality of the Ohio and Toledo pit bull ordinances “with the well-established legal principle that ‘[t]he legislature is the primary judge of the needs of public welfare, and this court will not nullify the decision of the legislature except in the case of a clear violation of a state or federal constitutional provision. *Williams v. Scudder* (1921), 102 Ohio St.305, 131 N.E. 481, paragraphs three and four of the syllabus.’ *Beagle v. Walden* (1997), 78 Ohio St.3d 59, 61, 676 N.E.2d 506, quoting *Savoie v. Grange Mut. Ins. Co.* (1993), 67 Ohio St.3d 500, 515, 620 N.E.2d 809 (Moyer, C.J., dissenting).” *Toledo v. Tellings*, ___ Ohio St.3d ___, 2007-Ohio-3724 at ¶ 22. However, this is not the end of the analysis – even under rational review. In fact, the “constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist.” *United States v. Carolene Products Co.* (1938), 304 U.S. 144, 153

(citing *Chastleton Corporation v. Sinclair* (1924), 264 U.S. 543). As noted by the Sixth District Court of Appeals, "...in exercising the power of judicial review, no amount of deference to a legislative enactment should force a court to concede that something is that which it is not." *Tellings*, 2006-Ohio-975 at ¶ 54 (citing *Marathon Oil Co. v. Bd. of Zoning Adjustment* (1975), 44 Ohio App.2d 402 (finding that a municipal ordinance declaring abandoned service stations a public nuisance was arbitrary and unconstitutional)).

Thus, although "in the past, courts and legislatures considered it to be a 'well-known fact' that 'pit bulls are 'unpredictable,' 'vicious' creatures owned only by 'drug dealers, dog fighters, gang members,' or other undesirable members of society" (*Id.* at ¶ 61, quoting *State v. Anderson* (1991), 57 Ohio St.3d 168), this perspective is not owed absolute fealty if it is now determined to be untrue. And, in fact, as noted above, the current Court does not dispute the trial court's finding that dogs deemed to be pit bulls are not inherently vicious, apparently ceding the point that the inherent nature of such dogs can no longer constitute a rational basis that would justify laws specifically classifying dogs as vicious.

Moreover, as discussed in the prior section, nor can social or environmental conditions associated with some dogs deemed to be pit bulls provide such rational basis – both because there is no logical connection between these external factors and laws that impute a vicious nature to such dogs, and also because it is now clear that such laws cannot rectify these "problem circumstances." That is, in the 20 year period since the enactment of the Ohio and Toledo pit bull laws, it has become evident that these laws have not in any way furthered the legitimate government objective of protecting public health and safety. Particularly relevant in this regard is the doubling of dog fighting complaints by Ohio animal control agencies during the laws' tenure – from 14.6% of animal control agencies making complaints in 1996 to 29% of animal

control agencies making such complaints in 2004 – and the fact that dog bites in Lucas County reached a record high as recently as 2001 (i.e., about 640 bites).⁷

Are the Ohio and Toledo pit bull laws irredeemably flawed, or it is simply the case that no dangerous dog law could reduce dog bites and/or reports of dog fighting? In fact, they are fundamentally flawed. Throughout this country, there are breed-neutral dangerous dog laws having a measurable positive impact on community safety, throwing into relief the particular failure and irrationality of the Ohio and Toledo pit bull laws. For example, while dog fighting and dog bites are on the rise in Ohio, a breed-neutral Lawrence, Kansas ordinance prohibiting most chaining of dogs has significantly reduced the animal cruelty and dog fighting complaints received by animal control.⁸ Similarly, in Multnomah County, Oregon, a breed-neutral ordinance imposing graduated penalties on dogs and owners according to the seriousness of the behavior exhibited by the dogs has reduced repeat injurious bites from 25% to 7%.⁹ And in Calgary, Canada, the use of stiff fines and education intended to hold dog owners accountable for their dogs' behavior resulted in a 56% decline in aggressive dog incidents and a 21% decline in biting incidents.¹⁰

In fact, more than likely, the Ohio and Toledo pit bull laws have inappropriately diverted law enforcement resources from rational targets (i.e., chained dogs, dogs who have actually

⁷ <http://www.vet.ohio-state.edu/animalShelter.htm> (1996 Ohio Survey of Animal Care and Control Agencies and 2004 Ohio Survey of Animal Care and Control Agencies, Ohio State University College of Veterinary Medicine); <http://www.co.lucas.oh.us/DogWarden/2002statsrelease.asp> (“Lucas County Dog Warden Sets Record for Pit Bull Seizures”).

⁸ http://www2.ljworld.com/news/2006/sep/06/dog_fighting_animal_cruelty_cases_decline/ (“Dog fighting, animal cruelty cases on decline”).

⁹ Janice Bradley, *Dog Bites: Problems and Solutions*. Animals and Policy Institute 11 (2006).

¹⁰ 2005-06 numbers. Fines: dog bites person - \$350; bite victim needs medical attention - \$750; dog attack - \$1500; dog on dog attack - \$250; unlicensed dog - \$250

displayed aggressive behavior), thereby unnecessarily exposing the Ohio public to an increased risk of dog bite and the escalating dog fighting phenomenon.

Amicus Curiae ASPCA's Proposition of Law No. 2:

By failing, at minimum, to provide appellee with a mechanism for contesting (i) the identification of his dogs as pit bulls, and (ii) the imputed viciousness of his dogs, the Ohio and Toledo pit bull laws did not provide adequate procedural safeguards to protect appellee's significant property interest in his dogs, placing this interest at grave risk (causing the death of one dog and forcing appellee to give away the other).

The Ohio and Toledo pit bull laws did not provide adequate means for appellee to contest (i) the identification of his dogs as pit bulls and (ii) the imputed viciousness of his dogs, thereby violating his procedural due process rights.

The Court asserts that because criminal charges pursuant to these laws do not hinge on a dog warden's unilateral classification of a dog as vicious – and instead, “clear statutory language alerts all owners of pit bulls that failure to abide by the laws related to vicious dogs and pit bulls is a crime” – the owner of a dog deemed by a warden to be a pit bull need not receive notice and an opportunity to be heard prior to being criminally charged (per *State v. Cowan*, 103 Ohio St.3d 144, 2004-Ohio-4777, 814 N.E.2d 846). *Tellings*, ___ Ohio St.3d ___, 2007-Ohio-3724 at ¶ 32.

However, the Court does not consider the complexities associated with determining whether a dog is a pit bull, a responsibility that falls squarely on a dog warden. While it is the “clear statutory language” that puts dog owners on notice that dogs identified as pit bulls will be classified as vicious, and that the failure to abide by the Ohio and Toledo pit bull laws is a crime, it is, of course, the dog warden who triggers prosecution of a dog owner by unilaterally

determining whether a dog is a pit bull (and thereby a vicious dog subject to the laws' prescriptions).

The Court accepts the proposition stated in *State v. Anderson* that the “ ‘physical and behavioral traits of pit bulls together with the commonly available knowledge of dog breeds typically acquired by potential dog owners or otherwise possessed by veterinarians or breeders are sufficient to inform a dog owner as to whether he owns a dog commonly known as a pit bull dog.’ 57 Ohio St.3d. 168, 173, 566 N.E.2d. 1224.” *Id.* at ¶ 34. And yet, as the Sixth District Court of Appeals noted, even

Dog Warden Skeldon addressed the difficulties in identifying pit bulls and acknowledged that some persons who obtained what they thought were pit bulls as pups, later discovered the dogs were not pit bulls. =

Tellings, 2006-Ohio-975 at ¶ 74. The Sixth District continued:

On the other hand, we suggest that a puppy which does not look much like a pit bull, may exhibit more "pit bull characteristics" after it has become full-grown and a part of the family. Thus, if an owner did not think his dog looked like a pit bull, he or she might believe they could not be charged under the law.

Id. This problem is embodied by the case of Anna Hamilton's dog Baby, a pit bull according to the dog warden whose puppies the warden said were not. Unfortunately, this determination regarding the puppies' breed will be cold comfort to their owners if another dog warden disagrees with this assessment upon maturation and requires them to purchase liability insurance or face criminal liability and the dogs' forfeiture and likely death.

Such inevitably arbitrary, patchwork, and fundamentally unequal enforcement of the pit bull law is wholly antithetical to procedural due process, being neither fair nor rational. Consequently, just as *Cowan* mandates that pre-charging notice and an opportunity to be heard be given to the owner of a dog determined by a warden to have caused injury, the owner of a dog

identified unilaterally by a warden as a pit bull should receive notice and an opportunity to be heard before being criminally charged for failure to abide by the Ohio and Toledo pit bull laws. The possibility that dog owners will “ ‘suffer grievous loss’ at the hands of the government” (Eck and Bovett, “Oregon Dog Control Laws and Due Process” (quoting *Goldberg v. Kelly* (1970), 397 U.S. 254, 263))¹¹ because dog wardens have unilaterally identified their dogs as pit bulls – the owners thereby confronted with the prospect of losing their freedom and also their dogs (the fate of Mr. Tellings, who lost 2 of his 3 dogs as a result of his prosecution) – requires that this little degree of due process, and thus, a sufficient means of challenging the identification prior to a criminal prosecution. be afforded such dog owners.

Further, the Ohio and Toledo pit bull laws fail to provide a mechanism by which dog owners can dispute the imputed viciousness of their dogs, despite the fact that these laws expressly state that “ownership, keeping, or harboring of such a breed of dog shall be *prima-facie evidence* of the ownership, keeping, or harboring of a vicious dog” (emphasis added). That is, far from there being any comparison to be made a Ohio criminal law defining intoxication based on blood alcohol levels – which “does not presume, it defines,” *State v. Wilcox* (1983), 10 Ohio App. 3d 11 (quoting *State v. Franco* (1982), 96 Wash. 2d 816, 821) – the Ohio and Toledo pit bull laws do not define pit bulls as vicious, but rather declare the viciousness imputed to such dogs to be a rebuttable presumption. However, in actuality, dog owners have not been permitted to exercise the right to rebut this presumption, and it is, indeed, not even clear how they would go about doing so.

The Sixth District Court of Appeals framed the problem this way:

The first two subsections of R.C. 955.11(A)(4) require a dog to have caused some

¹¹ C. Eck and R. Bovett, “Oregon Dog Control Laws and Due Process: A Case Study.” *Animal Law* 1998; 4: 95-110.

injury to persons or another dog in order to be classified as "vicious." Under R.C. 955.11(A)(4)(a)(iii), however, a dog may be deemed to be "vicious" solely if the dog belongs to the breed commonly known as a pit bull, even if the dog has not, without provocation, killed or caused injury to any person, or killed another dog. *State v. Ferguson* (1991), 76 Ohio App.3d 747, 751. **R.C. 955.11(A)(4)(a)(iii) purports to allow a defendant dog owner to rebut the state's prima facie showing that his dog is "vicious" even if he admits that the dog in question belongs to the breed commonly known as a pit bull dog....In actual practice, however, where the dog is admitted to be a pit bull, the absence of the elements contained in R.C. 955.11(A)(4)(a)(i) and 955.11(A)(4)(a)(ii) standing alone, "is insufficient as a matter of law to rebut the state's prima facie showing that the dog is a 'vicious dog' as defined by R.C. 955.11(A)(4)(a)(iii)." *Id.* See, also, *State v. Browning* (Dec. 16, 2002), 5th Dist. Nos. 2002CA42, 2002CA43, 2002CA44, 2002CA45, 2002-Ohio-6978 (testimony that pit bull dogs which had done no injury or vicious acts, were not aggressive, were well-behaved, peaceful family pets, and had never attacked anyone, was insufficient evidence to rebut the "prima facie" evidence that the dogs were "vicious") (emphasis added).**

Tellings, 2006-Ohio-975 at ¶ 61. *Id.* Thus, notably absent in the Ohio and Toledo statutory schemes is an authentic opportunity to contest the determination that one's dogs are vicious, in a hearing that places the burden on the government to prove its case. In the guise of due process, the Ohio and Toledo pit bull laws subject defendant dog owners to what is tantamount to a "monkey trial" in which criminal liability has already attached and – contrary to the laws' plain meaning – a primary element of the charges against them (i.e., that their dogs are vicious) is presumed to be true with no opportunity to contest this characterization of their dogs. And this despite the fact that the laws impose no mere regulatory burden on defendant dog owners but rather subject them and their property – their dogs – to the prospect of grave harm: prison, fines, and the forfeit and/or death of their dogs. As noted, it was the prosecution of Mr. Tellings that led directly to his having to give away one dog and submit to the destruction of another.

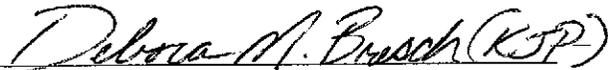
Under the Ohio and Toledo pit bulls, dog owners have insufficient opportunity to contest dog wardens' unilateral identification of their dogs as pit bulls and the viciousness consequently

imputed to them in order to avoid criminal prosecution. The demands of procedural due process require redress.

CONCLUSION

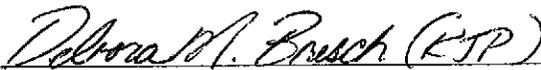
For the foregoing reasons, *Amicus Curiae* ASPCA respectfully urges the Court to reconsider and vacate its judgment of August 1, 2007 and uphold the decision of the Sixth District Court of Appeals.

Respectfully submitted,


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CERTIFICATION

This is to hereby certify that copy of the foregoing Amicus Brief was sent by ordinary U.S. Mail, postage prepaid, this 13th day of August 2007 to **Stephen P. Carney**, State Solicitor, Counsel of Record, 30 East Broad St., 17th Fl., Columbus, Ohio 43215, and **Adam Loukx**, City of Toledo Law Department, Counsel of Record, One Government Center, Suite 1710, Toledo, Ohio 43604.


Debora M. Bresch (*Pro Hac Vice*)

When the dog warden confiscated Baby, he did so on the basis of a visual appraisal that lasted no more than a few seconds, whereupon he seized her and put her in his truck. He also commented to me and my friend that Baby appeared to have recently given birth because of the size of her teats, and he asked for the location of her puppies. In fact, when my friend and I rescued Baby, she had already given birth to approximately eight puppies, one of whom had died.

Although we were concerned that the likely still uninsured puppies would be destroyed if the dog warden found them, my friend and I, as responsible dog owners, advised the dog warden that we believed the puppies to be at the home from which we had rescued Baby. I later spoke with one of the residents of this house who told me that all but one of the puppies had been placed in other homes by the time the dog warden visited approximately two days later. Further, the dog warden determined that the remaining puppy was not a pit bull -- and thus not inherently vicious or subject to Ohio's pit bull law -- despite the fact that he had deemed Baby, the puppy's mother, to be a pit bull.

Anna Hamilton
Anna Hamilton

11-25-06

Patricia Wolfe



PATRICIA A WOLFE
Notary Public
In and for the State of Ohio
My Commission Expires
12/12/08

IN THE SUPREME COURT OF OHIO

City of Toledo,

Appellant,

v.

Paul Tollings,

Appellee.

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Supreme Court Case No. 06-0690

On Appeal from the Lucas
County Court of Appeals,
Sixth Appellate District

AFFIDAVIT

My name is Anna Hamilton. I am a resident of Newark, Ohio in Licking County. I and a friend rescued an approximately three year old dog named Baby on or about the first week of June 2006. She was given to us by neighbors whose landlord would not allow them to keep her and who themselves had taken Baby from an abusive home in which she had received multiple cigarette burns. Despite this intentionally cruel treatment and her subsequent neglectful treatment by the neighbors from whom my friend and I obtained her, Baby has a wonderful temperament. She is loving, playful, easygoing, accepting of other dogs (in fact, she plays regularly with several other dogs, both smaller and larger than she), and gentle with children, including my friend's children and my five year old daughter.

Unaware of Ohio's insurance and confinement requirements for dogs deemed to be pit bulls by the dog warden, my friend and I were faced with the devastating experience of having the dog warden confiscate Baby and threaten us with her destruction if we failed to obtain liability insurance for Baby. My friend, who had decided to adopt Baby, was also threatened with a criminal charge if she failed to comply. Because we could not afford the liability insurance (approximately \$600 for six months, payable in a single installment only), and my friend was scared of criminal liability, she, with great anguish, signed Baby over to the dog warden. This outcome upset both of us terribly, as Baby is an extremely sweet dog who, notwithstanding the miserable treatment she had known for most of her life, was still capable of great love and was proving to be an extraordinary companion to us and our respective families.

Fortunately, Baby evaded destruction by the dog warden. She received a reprieve because, according to the dog warden, repairs were being done to the pound that prevented her being killed, and in the meantime and after much difficulty, we were able to obtain financial assistance from a third party.

Articles Cited in Brief

<http://www.maddiesfund.org/help/charity.html#benchmarks> ("Criteria for Selecting Your Animal Charity").....3

Statistical Benchmarks

Ok, by now you should at least know how many animals were admitted, how many adopted, and how many killed. But what do the numbers mean? Are they good? Bad? Average? Let's look at some best, worst and middle of the road scenarios.

At the bottom of the ladder, there are still shelters in the United States that kill 80-85% of the animals that walk through the front door.

Many shelters are doing better. In a recent survey of eighty of the country's most widely recognized and best funded traditional animal shelters, the average death rate was 55%, with 29% adopted, 7% returned to caregiver (redeemed), 4% killed at owner request and 5% dead on arrival. (At animal control or municipal shelters, the death numbers are generally higher than they are at humane societies or societies for the prevention of cruelty to animals. Average death numbers at animal control often range in the 60-75% range).

The Tompkins County SPCA in Ithaca, New York, has provided a lifesaving guarantee for all healthy feral cats and for healthy and treatable shelter dogs and cats for the past three years. So far, the County's annual live release rate of 92% is the best example of what is possible.

Lucas County Dog Warden Sets Record for Pit Bull Seizures

The Lucas County Dog Warden set a new record in the number of pit bulls seized during 2002, as the agency continued its aggressive effort to protect the community from vicious dogs. 556 pit bulls were taken by dog warden staff during 2002, representing an increase of more than 15% from the previous year. 482 pit bulls were seized in Lucas County in 2001.



Lucas County Dog Warden explains how pit bulls can be linked to suspected crimes during a press conference with the Toledo Police Dept.

"We are engaged in a cooperative and coordinated effort with the Toledo Police Department to curb dog fighting and battle an ongoing pit bull problem in Lucas County," said Dog Warden Tom Skeldon. "That effort had a significant impact on the number of pit bulls that came into our kennel."

One-quarter of the pit bulls seized last year occurred during raids with Toledo Police or resulted from calls from Toledo Police.



Lucas County Commissioner Harry Barlos asks the public to report illegal pit bulls, as a way to actively fight crime.

"We have found that pit bulls are a good indicator of drugs or other illegal activity," said Skeldon. "We urge the citizens of Toledo and Lucas County to report pit bulls and other vicious dogs so that we may protect the innocent and combat the serious crime activity associated these kinds of animals."

While the number of pit bulls set a new record last year, the total number of dogs impounded by the Lucas County Dog Warden decreased slightly. 4,165 dogs were seized or surrendered in 2002, down just under 8% from the previous year.

The total number of dog bite complaints also declined by nearly eight percent in 2002. Dog warden staff investigated and confirmed 592 dog bite cases last year, down fifty cases from 2001, which was a record year. Young children, especially boys, remain the most likely dog bite victims. Citizens who wish to report pit bulls, dog bites, or other complaints may call the Lucas County Dog Warden at (419) 255-6119, 911, or Crimestopper at (419) 255-1111 if they wish to remain anonymous.

Lightning—The Underrated Killer

In the United States, there are an estimated 25 million lightning flashes each year. During the past 30 years, lightning killed an average of 62 people per year. This ties the average of 62 deaths per year caused by tornadoes. Yet because lightning usually claims only one or two victims at a time and does not cause mass destruction of property, it is underrated as a risk. While documented lightning injuries in the United States average about 300 per year, undocumented injuries likely much higher.

- **Watch for Developing Thunderstorms:** Thunderstorms are most likely to develop on spring or summer days but can occur year round. As the sun heats the air, pockets of warmer air start to rise and cumulus clouds form. Continued heating can cause these clouds to grow vertically into towering cumulus clouds, often the first sign of a developing thunderstorm.
- **An Approaching Thunderstorm: When to Seek Safe Shelter:** Lightning can strike as far as 10 miles from area where it is raining. That's about the distance you can hear thunder. **If you can hear thunder, you are within striking distance. Seek safe shelter immediately.**
- **Outdoor Activities: Minimize the Risk of Being Struck:** Most lightning deaths and injuries occur in the summer. Where organized outdoor sports activities take place, coaches, camp counselors and other adults must stop activities at the first roar of thunder to ensure everyone time to get a large building or enclosed vehicle. Leaders of outdoors events should have a written plan that all staff are aware of and enforce.
- **Indoor Activities: Things to Avoid:** Inside building, stay off corded phones, computers and other electrical equipment that put you in direct contact with electricity. Stay away from pools, indoor or outdoor, tubs, showers and other plumbing. Buy surge suppressors for key equipment. Install ground fault protectors on circuits near water or outdoors. When inside, wait 30 minutes after the last strike, before going out again.
- **Helping a Lightning Strike Victim:** If a person is struck by lightning, call 911 and get medical care immediately. Cardiac arrest and irregularities, burns, and nerve damage are common in cases where people are struck by lightning. However, with proper treatment, including CPR if necessary, most victims survive a lightning strike. You are in no danger helping a lightning victim. The charge will not affect you.
- **Summary:** Lightning is dangerous. With common sense, you can greatly increase your safety and the safety of those you are with. At the first clap of thunder, go a large building or fully enclosed vehicle and wait 30 minutes after the last clap of thunder to back outside.



Tornadoes

Tornadoes are one of nature's most violent storms. In an average year, about 1,000 tornadoes are reported across the United States, resulting in 80 deaths and more than 1,500 injuries. A tornado is a violently rotating column of air extending from a thunderstorm to the ground. The most violent tornadoes are capable of tremendous destruction with wind speeds of 250 mph or more. Damage paths can be in excess of one mile wide and 50 miles long.

Tornadoes come in all shapes and sizes and can occur anywhere in the U.S. at any time of the year. In the southern states, peak tornado season is March through May, while peak months in the northern states are during the summer.

Cop Kills Dog As Cuffed Family Watches

Traffic Stop Gone Awry Caught On Videotape

NEW YORK, Feb. 12, 2003



Correspondent Tracy Smith with Smoak family (CBS/The Early Show)

(CBS) Nearly 40 percent of all families own a dog, but when pets come in contact with police, the results are unpredictable and sometimes tragic.

CBS News Correspondent Tracy Smith explains that a shooting of a family dog during a traffic stop, an event that was videotaped, is causing a controversy in Tennessee.

The uproar extends to Saluda, N.C. where the Smoak family lived with their dog, Patton.

"I said, 'Jamie, I can't imagine it being any worse than if it actually was my child that was shot,'" says Pamela Smoak. "We just loved him very much, he had a spirit unlike any dog we've ever had."

The shooting happened New Year's Day when the Smoaks were returning from vacation in Tennessee. They stopped to get gas and Jamie Smoak accidentally left his wallet on the top of the car. When they got back on the road, another motorist reported seeing money flying out of a green station wagon. So the police, thinking that they had robbery suspects on their hands, pulled them over.

"He comes behind me and handcuffs me," says Jamie. "They commenced to do the same thing to my wife and child. And in the process, the passenger door to the car is left open. And while we're cuffed on our knees, we can be heard at least three different

occasions telling them that our pets are in the car. To please shut the door."

But the officers didn't close the door, and it wasn't long before Patton, a boxer-pitbull mix, jumped out. Police officer Eric Hall said he had little time to react.

"I noticed that the dog trained in right on me, I thought the dog is coming right at me," says Hall. "And I yelled at the dog as I was backing up. And I yelled at it to get back."

Soon, Officer Hall fired his 12-gauge shotgun at Patton.

"I stands straight up in the air and they leg sweep me and they tackle me down onto the pavement," says Jamie. "I was traumatized."

Pamela Smoak says Patton wasn't in a threatening position before he was shot.

"He was playful looking," says Pamela. "Not only was his tail wagging, but his entire body is swinging back and forth."

Dr. Kevin Matthews had been Patton's vet since he was a puppy. He says he has never seen Patton act aggressively.

"He'd been in with other people in the lobby - other dogs, children, and he never showed any aggressive tendencies," says Dr. Matthews.

And the Patton incident is not an isolated one. Some animal rights groups believe that police officers should be trained to better deal with pets.

"We have seen an increase in animal-related police shootings," says Animal Legal Defense Fund Bradley Woodall. "We've seen these types of incidents happen throughout all 50 states."

Woodall tracks cruelty cases for the Animal Legal Defense Fund and he says many animals have lost their lives because police officers used lethal force when less forceful methods might have worked.

The Smoaks say that they've received nearly 500 letters of condolence. One person even sent them a puppy with markings similar to Patton's. But they say Patton can't be replaced.

"What was done to us was not fair, and was outrageous," says Jamie Smoak. "The dog has the ability to have unconditional love. And that's the relationship I had with him and if you're not a pet owner you don't understand. It's unconditional love and I can't state how strong it is to be loved like that. But to have it taken from you the way they've done, this is terrible."

The Smoaks say they plan to sue. In Tennessee, where the incident took place, legislators are considering laws that would require that police officers to be trained to better deal with pets.

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http://www.ljworld.com/news/2006/sep/06/dog_fighting_animal_cruelty_cases_decline/

("Dog fighting, animal cruelty cases on decline").....10

LJWorld

Dog fighting, animal cruelty cases on decline

By Mike Belt

September 6, 2006

Complaints about cruelty to animals and dog fighting have dropped significantly during the past year, and Lawrence Humane Society officials credit changes made to city ordinances.

"The anti-tethering law, I think, has been the best thing for Lawrence," said Midge Grinstead, executive director of the Lawrence Humane Society's animal shelter.

In 2005, there were a little more than 800 such complaints, Grinstead said, including about 50 about dog fighting. As of last week, there had been only about 260 similar complaints, with about 25 of them involving possible dog fighting, she said.

"I honestly can't remember the last time we took in a pit bull that was scarred," said Jeanen Hercha, the Lawrence Humane Society's cruelty investigator, referring to the dog breed often associated with dog fighting.

Two years ago, the city adopted an anti-tethering ordinance that prevents dog owners from keeping pets chained outside. Some dangerous dogs are able to break their chains or ropes, so the dogs must be kept inside or in pens.

“The dogs aren’t languishing outside, so our cruelties are down, and we don’t have the dangerous dogs chained up outside like we’d had before,” Grinstead said.

Both Lawrence and Douglas County have vicious dog laws, too. The laws define what a vicious dog is and set steps for impounding the dog — and, if a district court judge orders it, putting it to death. Grinstead and Hercha said they thought the laws also had an effect on dog cases.

Grinstead said she had talked with city representatives in Topeka and Charleston, W.Va., who have called inquiring about the local dog laws.

Special Report

Demographic trends for animal care and control agencies in Ohio from 1996 to 2004

Linda K. Lord, DVM, MS; Thomas E. Wittum, PhD; Amy K. Ferketich, PhD; Julie A. Funk, DVM, PhD;
Paivi Rajala-Schultz, DVM, PhD; Ross M. Kauffman, BS

Objective—To examine changes between 1996 and 2004 in regard to numbers of animals handled, medical care provided, expenses, numbers of employees, and agency policies for animal care and control agencies in Ohio.

Design—Cross-sectional survey.

Sample Population—223 animal care and control agencies.

Procedures—A questionnaire was mailed to animal care and control agencies in Ohio to collect information for 2004; results were compared with published results of a similar survey.

Results—165 of the 223 (74%) agencies responded. Estimated total number of animals handled in 2004 was 315,519, which represented a decrease of 7% compared with 1996. However, although number of dogs taken in decreased 17%, number of cats taken in increased 20%. Between 1996 and 2004, the euthanasia rate decreased from 65.3% to 56.8%, and the adoption rate increased from 24.5% to 33.6%. Number of dogs euthanatized decreased 39%, but number of cats euthanatized increased 14%. The proportion of agencies with a spay-neuter policy increased from 56% to 71%, and the proportion that maintained an association with a veterinarian increased from 39% to 80%. For dogs handled by county dog warden agencies, the odds of euthanasia were higher if the agency did not have a spay-neuter policy (odds ratio, 1.36).

Conclusions—Results suggest that the status of dogs handled by animal care and control agencies in Ohio improved between 1996 and 2004, but that the status of cats deteriorated. (*J Am Vet Med Assoc* 2006;229:48-54)

In the past quarter century, great efforts have been made to address the pet overpopulation problem in the United States. Previous authors¹⁻³ have estimated that between 13.5 and 18.6 million dogs and cats were euthanatized at animal shelters in the United States each year during the 1970s, but a more recent estimate currently places the annual figure as being between 4 and 6 million.⁴ Statistics have been reported in certain states that have also shown a decline in euthanasia of animals at shelters. In particular, in states where publicly funded spay-neuter programs have been in existence, animal statistics from shelters have been collected for more than a decade. In New Jersey, animal intake at shelters decreased by 29% and the euthanasia rate decreased by 10% between 1984 and 1999, despite an 8% increase in the state population.⁵ In New Hampshire, the mean annual euthanasia rate at animal shelters decreased by 77% after a state-funded spay-neuter assistance program was implemented.⁵

Because of a lack of information on animal care and control agencies, a comprehensive survey of animal care and control agencies in Ohio was performed to collect baseline statistics on the number of animals handled by these agencies during 1996 and to characterize agency policies, procedures, and needs.⁶ Less-detailed versions of the survey were performed to obtain information for 1997 through 2000. The purpose of the present study was to repeat the comprehensive survey to obtain information for 2004. The primary objective of the present survey was to examine trends among animal care and control agencies in Ohio since 1996 in regard to numbers of animals handled, medical care provided, expenses, numbers of employees, and policies of the agencies. The secondary objectives were to analyze trends in euthanasia rates and animal intake per capita for dogs and to identify factors associated with those trends. Factors that were considered in particular included whether the agency had a spay-neuter policy and whether the agency routinely used veterinary services.

Materials and Methods

For the present and previous⁶ studies, 3 types of organizations were included in the definition of animal care and control agencies: county dog warden agencies, municipal animal control agencies, and humane societies. Animal control in Ohio differs from that in most states in that state law mandates each county have an agency with an appointed

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Presented in part at the Conference of Research Workers in Animal Diseases, St Louis, December 2005.

The authors thank John Silva and Jerry Conant of the Ohio Dog Wardens Association and Sharon Harvey, Dori Villalon, and Jodi Buckman of the Ohio Federated Humane Societies for assistance with survey development and follow-up.

Address correspondence to Dr. Lord.

chief dog warden (the state law does not refer to cats). Although primarily responsible for control of stray dogs and enforcement of laws regarding stray dogs, wardens may also choose to handle owner-released dogs as well as other species. Municipal animal control agencies are usually located in cities that are part of a larger metropolitan area. These agencies are responsible for animal control in their own municipality and usually deal with numerous species, including wildlife. Humane societies consist of private non-profit organizations that usually were established to assist unwanted animals, typically by providing housing, adoption, and community education. Often in Ohio, the county humane officer in charge of cruelty investigations works for the local humane society. Some humane societies have contracts with local government agencies to perform animal control functions. In the present study, when the county agency to which the appointed dog warden was assigned (ie, the county dog warden agency) and a humane society acted as a single organization, we considered them to be a combined organization.

To allow results of the present survey to be compared with results of a similar previous survey,⁵ breed rescue groups were not included. Such groups are often transient in nature and difficult to identify. In addition, breed rescue groups typically focus on a single breed of dog and do not provide general animal services to the public, such as housing or education.

For the present survey, a comprehensive survey similar to the initial 1996 survey⁶ was used. The survey was reviewed by members of the Ohio Dog Wardens Association, the Ohio Federated Humane Societies, and a municipal officer. A common final survey instrument was used for all types of agencies.⁷ A database of all animal care and control agencies in Ohio was compiled from the internal list used for previous surveys, various Internet sources, and the Humane Society of the United States regional mailing lists. Phone calls were made prior to the survey to validate the existence of and proper addresses for agencies included in the study.

A standardized survey method was used.⁷ A letter of introduction explaining the purpose of the survey was sent to all agencies in February 2005. The survey itself was mailed in April 2005, and a postcard reminder was sent to agencies that had not responded by 3 weeks after the initial mailing. A final packet, similar to the initial one, was sent to those agencies that had not responded within 3 weeks after the initial postcard reminder was mailed. Representatives of The Ohio State University, the Ohio Dog Wardens Association, and the Ohio Federated Humane Societies placed telephone calls to the remaining nonrespondents between June and August 2005 to remind them to complete the survey. Survey responses were accepted through September 2005.

The survey included questions regarding general information about each agency; expenses and revenues; numbers of staff members and volunteers; number of animals handled during 2004 (by intake and disposition category as well as by species); adoption fees; adoption policies; methods for euthanasia and disposal of carcasses; medical care provided, including vaccination protocols, spay-neuter policy, and associations with veterinarians; and agency needs and the most important community animal welfare issue. For the needs assessment, agencies were asked to rank various areas on a scale from 1 (not important) to 5 (very important) and to indicate their 3 most pressing needs, drawn from the previous list or self-identified.

The survey method used for the present survey was the same as that used in a previous survey,⁶ which had requested information for 1996. For 1997 through 2000, similar methods were used to survey animal care and control agencies in Ohio, but a more limited questionnaire was used.

Statistical analysis—Median and range were calculated for responses that consisted of continuous data, and proportions were calculated for responses that consisted of categorical data. Standard software was used.⁸ Some agencies reported the number of animals by species but were unable to report the number of animals by intake category. For these agencies, numbers of animals in each intake category were extrapolated on the basis of mean percentages reported by agencies able to classify animals on the basis of intake categories. Animals received from other agencies and animals transferred to other agencies were not included in analyses to ensure that such animals were not counted twice.

For total expenses, animal intake, and animal disposition, estimates for the state as a whole were calculated. For total expenses, median expenses by agency type were calculated. To estimate total expenses for the state as a whole, the median value by agency type was assigned to each nonrespondent agency and each respondent agency that did not provide information on expenses, and these values were added to total expenses for respondents that provided information on expenses. For animal intake and animal disposition, median numbers of animals were calculated for respondents grouped by agency type (ie, municipal agencies and humane societies). Median numbers were also calculated for each category on the basis of the known percentage of animals in each category. Categories for animal intake included strays, owner surrendered, and cruelty-neglect-other; categories for animal disposition included adopted, reclaimed by owner, euthanized, and other-died-lost. To estimate animal intake and disposition values for the state as a whole, the median value was assigned to each nonrespondent agency and each respondent agency that did not provide information on animal numbers. These values were then added to total numbers for respondent agencies that provided information on animal numbers. Although all dog wardens who were sent a survey responded, 3 dog wardens were not able to report animal numbers. Because these dog wardens reported animal numbers in 2000, values reported for 2000 were used as estimates for animal intake and disposition. Number of animals taken in by all agencies in the state and number of animals euthanized were calculated as a proportion of the human population and as a proportion of the animal population in the state. For these calculations, state and county human population estimates were obtained from the US Census Bureau,⁹ and animal population estimates were obtained from the AVMA.¹⁰

To analyze responses to the 3 most pressing needs, a weighted-mean score was calculated by assigning the need ranked first a value of 3 points, the need ranked second a value of 2 points, and the need ranked third a value of 1 point.

For the county dog warden agencies, adequate data were collected during the 6 years that surveys were performed to allow for longitudinal data analysis to examine trends in dog intake and euthanasia rates. For this analysis, a combined county dog warden agency and humane society that acted as a single organization was treated as a county dog warden agency. County dog warden agencies that transferred all dogs to another agency were not included in this analysis. Covariates that were included in the analysis included total yearly expenses, total numbers of full-time and part-time employees, use of veterinary services (yes vs no), and presence of a spay-neuter policy (yes vs no). Total numbers of employees were calculated for each year by adding the total numbers of full-time and part-time employees, with part-time employees each assigned a weight of 0.5 full-time employee. All yearly expenses were adjusted for inflation to be equivalent to 2004 dollars.¹¹

To model the odds that a dog would be euthanized by a county dog warden agency, a generalized linear mixed-

effects model with a logit link function was used.⁵ The response variable was modeled as a proportion for each dog warden agency by means of events per trials syntax (ie, number of dogs euthanatized per number of dogs handled). A random intercept was included in the model for each dog warden agency to allow for agency-specific effects. The model assumed conditional independence, meaning that all observations for a given dog warden agency were assumed to be independent, given the random intercept. Model building was done by means of a forward selection process. A variable for year was forced into the model because of the hypothesized change in rate over time. Each potential covariate was then tested for entry into the base model. At each stage, the covariate with the lowest Wald *P* value was added to the previous model.¹² This process was continued until the addition of no additional covariate significantly improved the model at an α value of 0.05, as determined by the Wald test. Once all main effects were determined, relevant quadratic and interaction terms were examined, with entry again determined on the basis of an α value of 0.05, as determined by the Wald test. Diagnostic testing was performed to test the assumption of linearity in the logit for continuous variables. A histogram was used to evaluate normality of the random intercepts, and a predicted versus residual value plot was used to examine equality of the variances.

To model the number of dogs handled by county dog warden agencies, a linear mixed-effects model was used.⁶ To account for differences in sizes of the counties served, intake rates were standardized by dividing the number of dogs taken in by the population served, with population served determined on the basis of state and county human population estimates obtained from the US Census Bureau.⁸ The outcome, expressed as dogs per person served, was found to be approximately normally distributed when log transformed.

Therefore, the natural logarithm of the intake rate was modeled as a continuous variable. A random intercept was included in the model to allow for agency-specific effects. The model building was carried out as described for analysis of the odds of euthanasia. With the use of a random intercept, an exchangeable correlation structure was assumed for the residuals. Diagnostic testing was performed to examine normality of the random intercepts and equality of the variances as described.

Results

Surveys were mailed to 223 animal care and control agencies, of which 165 (74%) responded. All 88 (100%) county dog warden agencies responded, along with 23 of 33 (70%) municipal animal control agencies, and 65 of 113 (58%) humane societies (11 county dog warden agencies and humane societies provided combined responses for the survey; each was counted separately for calculation of response rates by agency, but responses were included only once for all other analyses).

Expenses and numbers of employees and volunteers—Median values for annual expenses and number of full-time employees during 2004 were calculated by type of animal care and control agency (Table 1). Estimated total expenses for all animal care and control agencies in Ohio during 2004 were \$57.7 million, which was a 69% increase compared with estimated total expenses during 1996, after adjustment for inflation (\$34.2 million). Estimated total amount of money allocated by county and city governments in Ohio for use by animal care and control agencies during 2004 was \$25.8 million, which was a 39% increase compared with esti-

Table 1—Estimated annual expenses and number of employees during 1996 and 2004 for animal care and control agencies in Ohio.

Agency type	No. of agencies responding		Expenses (\$)		No. of full-time employees	
	1996	2004	1996	2004	1996	2004
County dog warden agency	66	77	106,000 (16,900–1,500,000)	135,000 (14,500–3,500,000)	2 (0–38)	2 (0–53)
Humane society	67	65	90,000 (1,500–1,700,000)	151,000 (4,200–4,300,000)	1 (0–28)	1 (0–40)
Municipal animal control agency	47	23	41,000 (3,600–275,000)	52,000 (900–800,000)	1 (0–15)	1 (0–12)

Values represent median (range). Values for 1996 have been reported previously,⁶ but were now adjusted for inflation to be equivalent to 2004 dollars.

Table 2—Estimated total numbers of animals handled by animal care and control agencies in Ohio during 1996 and 2004.

Category	Dogs		Cats		Other animals		Total	
	1996	2004	1996	2004	1996	2004	1996	2004
Animal intake								
Stray	141,791 (66.2)	118,153 (66.2)	57,186 (49.8)	95,208 (73.8)	8,960 (88.0)	6,720 (84.5)	207,937 (61.3)	220,081 (69.8)
Owner surrendered	68,983 (32.2)	56,386 (31.6)	56,196 (48.9)	31,483 (24.4)	383 (3.7)	1,095 (13.8)	125,562 (37.0)	88,964 (28.1)
Cruelty-neglect-other	3,369 (1.6)	4,054 (2.2)	1,495 (1.3)	2,286 (1.8)	844 (8.3)	134 (1.7)	5,708 (1.7)	6,474 (2.1)
Total	214,143 (100)	178,593 (100)	114,877 (100)	128,977 (100)	10,187 (100)	7,949 (100)	339,207 (100)	315,519 (100)
Animal disposition								
Adopted	51,662 (24.4)	63,783 (37.5)	29,477 (26.3)	39,828 (29.7)	329 (3.5)	948 (12.3)	81,468 (24.5)	104,559 (33.6)
Reclaimed	29,302 (13.9)	26,919 (15.9)	1,004 (0.9)	1,240 (0.9)	58 (0.6)	20 (0.3)	30,364 (9.1)	28,179 (9.0)
Euthanatized	128,637 (60.9)	78,470 (46.2)	80,922 (72.2)	92,168 (68.8)	7,872 (82.9)	6,458 (84.1)	217,431 (65.3)	177,096 (56.8)
Other-died-lost	1,745 (0.8)	691 (0.4)	627 (0.6)	846 (0.6)	1,237 (13.0)	251 (3.3)	3,609 (1.1)	1,788 (0.6)
Total	211,346 (100)	169,863 (100)	112,030 (100)	134,082 (100)	9,496 (100)	7,677 (100)	332,872 (100)	311,622 (100)

Values are given as number of animals (%).

mated total amount allocated during 1996, after adjustment for inflation (\$18.6 million). In estimating total expenses for all animal care and control agencies in Ohio during 2004, extrapolations were used for 89 (40%) of the agencies.

Overall, 32 of the 164 (20%) animal care and control agencies that responded reported that they did not have any full-time employees during 2004, and 22 (13%) reported that they did not have any full- or part-time employees. Seventy-eight of 158 (49%) agencies indicated that they spent money on employee training during 2004. Eighty-three of 164 (51%) agencies employed volunteers during 2004, compared with 70 of 175 (40%) agencies that employed volunteers during 1996.

Median age of buildings used by animal care and control agencies during 2004 was 20 years (range, 0.25 to 150 years). Thirty-six of 115 (31%) agencies reported having built a new facility, or completed a substantial addition, since 1996.

Number of animals handled—Of the 165 agencies that responded, 153 (93%) were able to provide information on the number of animals handled during 2004 (Table 2). Information on disposition was available for 3,897 fewer animals than the number of animals taken in during 2004; this difference was assumed to represent animals still residing at the agencies at the end of the year. Agencies did not classify 29,514 (9%) animals in regard to intake categories, and these animals were assigned to intake categories on the basis of mean percentages of animals in each category. In estimating total numbers of animals handled during 2004, extrapolations were used for 63 (28%) agencies. Total numbers of animals taken in and euthanatized were calculated as a proportion of the human and animal population in the state (Table 3).

Adoption fees and policy—Of the 165 agencies that responded, 131 (79%) provided adoption services, compared with 82% that did during 1996. The remaining agencies transferred animals to other agencies that were responsible for adoption. Adoption fees for a dog or puppy ranged from \$5 to \$150 (median, \$55), and adoption fees for a cat or kitten ranged from \$0 to \$80 (median, \$55). By contrast, median adoption fees during 1996, after adjustment for inflation, were \$25 for a dog or puppy and \$41 for a cat or kitten. Of the 121 agencies that listed the adoption services they provided,

82 (68%) included the cost of spaying or neutering in the adoption fees, compared with 46% of agencies that did during 1996. Only 16 (13%) agencies did not include any services in their adoption fees, compared with 21% that did not include any services in their adoption fees in 1996.

Methods of euthanasia and carcass disposal—Of the 155 agencies that provided information on methods used to euthanize animals during 2004, 108 (70%) used pentobarbital sodium, 34 (22%) used carbon monoxide, and 29 (19%) transferred animals to another agency or veterinarian for euthanasia (some agencies used > 1 method). Of the 155 agencies that provided information on methods of carcass disposal, 30 (19%) used incineration, 93 (60%) used a landfill, 19 (12%) used common burial, and 13 (8%) used other methods (eg, transferred the carcass to another agency). Except for the use of rendering, which was no longer legal in Ohio in 2004, these percentages were similar to percentages reported for 1996.

Medical care—Of the 101 agencies that had a spay-neuter policy (Table 4), 42 (42%) indicated that all animals were spayed or neutered before they were discharged from the facility, 30 (30%) indicated that animals were spayed or neutered before or after adoption, 41 (41%) provided a certificate that could be redeemed with local veterinarians for spaying or neutering of the animal, and 5 (5%) used another policy (agencies could select > 1 policy).

Other policies—Of the 165 agencies that responded, 37 (22%) indicated that they did not house animals during 2004. These agencies used foster homes or transferred all animals to other agencies. Overall, 77 of 156 (49%) agencies had a foster program, and 23 of the 65 (35%) humane societies had a trap-neuter-return program for feral cats. Only 1 animal control agency reported having a trap-neuter-return program for feral cats. Of 156 agencies that responded, 93 (60%) indicated that they scanned animals for a microchip when they received the animals, and 13 (8%) reported that they implanted microchips in animals that were adopted. By contrast, in 1996, 48% of agencies scanned animals for a microchip, and 4% implanted microchips in animals that were adopted.

Pit bull-type dogs—Of the 144 agencies that reported they had a policy related to the handling of pit bull-type dogs, 23 (16%) indicated that they do not accept such dogs, 87 (60%) indicated that they accepted such dogs but do not allow them to be adopted, and 34 (24%) indicated that they accepted such dogs and put them up for adoption. In total, 68 agencies reported handling 8,834 pit bull-type dogs during 2004, compared with 2,141 pit bull-type dogs handled by 101 agencies during 1996. Of the 8,834 pit bull-type dogs handled during 2004, 1,425 (16%) were reclaimed by their original owner or adopted by a new owner and 7,409 (84%) were euthanatized. This represented 9% of the dogs euthanatized during 2004.

Needs assessment and welfare issues—The top 5 needs reported by responding agencies, as determined

Table 3—Estimated total numbers of animals taken in and euthanatized by animal care and control agencies in Ohio during 1996 and 2004 as a proportion of state human and animal population.

Variable	Dogs		Cats		Total	
	1996	2004	1996	2004	1996	2004
Animal Intake						
Per 1,000 people	19.14	15.59	10.27	11.26	29.41	26.84
As percentage of animals in Ohio	9.50	7.17	4.44	4.55	6.80	5.78
Animals euthanatized						
Per 1,000 people	11.50	6.85	7.23	8.04	18.73	14.89
As percentage of animals in Ohio	5.71	3.15	3.13	3.25	4.33	3.21

Table 4—Medical services provided by animal care and control agencies in Ohio during 1996 and 2004.

Medical service	County dog warden agency	Humane society	Municipal animal control agency	Total
Spay-neuter policy				
1996	17/56 (30)	60/65 (92)	10/34 (29)	87/155 (56)
2004	32/67 (48)	63/64 (98)	6/12 (50)	101/143 (71)
Associated with veterinarian				
1996	12/65 (18)	49/66 (74)	8/47 (17)	69/178 (39)
2004	41/68 (60)	64/64 (100)	10/12 (83)	115/144 (80)
Vaccinated animals				
1996	11/56 (20)	48/61 (61)	5/33 (15)	64/150 (43)
2004	30/66 (45)	62/63 (98)	6/11 (55)	98/140 (70)
Tested dogs for heartworm				
1996	1/56 (2)	30/61 (49)	2/33 (6)	33/150 (22)
2004	6/66 (9)	47/59 (80)	3/11 (27)	56/136 (41)
Dewormed animals				
1996	7/56 (13)	57/63 (90)	5/33 (15)	69/152 (45)
2004	22/66 (33)	62/64 (97)	6/11 (55)	90/141 (64)
Tested cats for FeLV infection				
1996	ND	ND	ND	ND
2004	1/8 (13)	50/60 (83)	4/10 (40)	55/78 (71)

Values are given as number of agencies that provided that service/number of agencies that responded (%).
ND = Not determined.

on the basis of weighted-mean scores, were capital-facility improvement, increased funding, additional paid staff, veterinary services, and improved legislation. Similarly, during 1996, the top 5 needs were capital-facility improvement, increased funding, improved legislation, improved education, and veterinary services. Of the 134 agencies that provided information on the most important animal welfare issue in their community, 40 (30%) listed feral and stray cats, 21 (16%) listed overpopulation (not species specific), 18 (13%) listed cruelty and neglect, 18 (13%) listed abandoned and stray dogs, 13 (10%) listed lack of spay-neuter services, and 24 (18%) listed other miscellaneous issues.

Dog intake and euthanasia rates—Between 1996 and 2004, mean dog intake rate for county dog warden agencies decreased from 23.1 to 17.2 dogs/1,000 individuals served. Linear mixed-effects modeling indicated that year was the only variable significantly associated with intake rate, with intake rate during 1998, 1999, 2000, and 2004 significantly lower than intake rate during 1996.

Similarly, between 1996 and 2004, mean dog euthanasia rate for county dog warden agencies decreased from 68% to 48%. Linear mixed-effects modeling indicated that year, spay-neuter policy, and county population were significantly associated with the dog euthanasia rate (Table 5). Examination of the odds ratios indicated that a dog handled by a county dog warden agency during 2004 was half as likely to be euthanized as was a dog handled during 1996 ($P < 0.001$). In addition, a dog handled by a county dog warden agency without a spay-neuter policy was 1.36 times as likely to be euthanized as a dog handled by an agency with such a policy ($P = 0.022$), and the odds that a dog handled by a county dog warden agency would be euthanized increased as county population increased ($P = 0.046$). Yearly expenses, total number of employees, and use of veterinary services were not found to be significantly associated with euthanasia rate. No significant higher order or interaction terms were found.

Table 5—Results of generalized linear mixed-effects modeling of factors associated with euthanasia of dogs by county dog warden agencies in Ohio between 1996 and 2004.

Variable	OR (95% CI)	P value
Year		
1996	Reference	NA
1997	0.89 (0.80–1.00)	0.048
1998	0.88 (0.79–0.99)	0.027
1999	0.89 (0.80–1.00)	0.043
2000	0.87 (0.77–0.97)	0.013
2004	0.50 (0.41–0.62)	< 0.001
Spay-neuter policy		
Yes	Reference	NA
No	1.36 (1.05–1.77)	0.022
County population	1.01 (1.00–1.02)	0.046

OR = Odds ratio. CI = Confidence interval. NA = Not applicable.

Discussion

When combined with results of our previous study,⁶ results of the present study reveal that animal care and control agencies in Ohio saw a large reduction in the annual number of dogs handled between 1996 and 2004. Specifically, total intake of dogs decreased by 16.6%, which represented a decrease from 19.14 to 15.59 dogs/1,000 people. In addition, not only were fewer dogs taken in by animal care and control agencies during 2004, but far fewer were euthanized. The number of dogs euthanized decreased by 39.0%, which represented a decrease from 11.50 to 6.85/1,000 people.

Our analyses of data for county dog warden agencies indicated that there was an association between having a spay-neuter policy and a lower euthanasia rate. This suggests that county dog wardens may be taking responsibility to improve the disposition of dogs that they handle. In particular, it is possible that county dog warden agencies that have implemented spay-neuter policies have greater motivation to have dogs adopted into new homes. We found that there was a substantial increase in the proportion of county dog warden agencies that provided medical care, such as vaccination and intestinal deworming, to the animals

they handled, and it seems likely that providing these services resulted in healthier dogs and improved the public perception of dogs available for adoption from county dog warden agencies, which may have contributed to the decrease in euthanasia rate. Importantly, although having a spay-neuter policy was associated with a decrease in euthanasia rate, this should not be taken as proof of a cause-and-effect relationship. Rather, it is possible that having a spay-neuter policy is an indicator of other management practices that may reduce the euthanasia rate.

We did not observe a similar association between having a spay-neuter policy and a decrease in dog intake rates for county dog warden agencies. Although county dog warden agencies handled most dogs in the state, the present study did not take into account the effects of other spay-neuter programs, such as those offered by humane societies and other groups.¹³ We also believe there is a lag effect before the effects of a spay-neuter program can be measured in a community. Thus, the increase in the proportion of animal care and control agencies with a spay-neuter policy between 1996 and 2004 would not necessarily have been reflected in dog intake numbers.

Other factors that we did not measure may also have been responsible, in part, for the decrease in dog euthanasia and intake rates. Foster care programs that have been developed by various animal care and control agencies provide an outlet for treatment of animals with medical or behavioral problems and may provide for temporary housing of excess animals during busy periods. This may have led to higher adoption rates and a subsequent decrease in the euthanasia rate. Similarly, rescue groups have flourished in the past decade in Ohio, and an increasing number of dogs may be initially taken in by one of these groups instead of the traditional animal care and control agencies. Rescue groups traditionally only handle animals they believe are adoptable and only euthanize dogs under extreme circumstances. Because of the difficulty in surveying these groups, we do not have an accurate picture of the number of dogs that are filtered through these groups either directly from owners or as strays and the subsequent impact on intake and disposition rates for traditional animal care and control agencies. An additional factor that may have had a large impact on the intake rate is the potential change in owner attitudes toward their pets since 1996, when the survey was first conducted. With increasing attention on both the human-animal bond and the overpopulation problem, pet owners may have become more responsible, with the result that fewer dogs were taken in by animal care and control agencies.

Unfortunately, results of the present study suggest that the disposition of cats handled by animal care and control agencies in Ohio has not improved since 1996. Total number of cats taken in by these agencies increased by 19.7%, representing an increase from 10.27 to 11.26 cats/1,000 people. The number of cats euthanatized increased by 13.9%, which represented an increase from 7.23 to 8.04 cats/1,000 people. The growing cat problem in Ohio was recognized by animal care and control agencies, as 30% listed feral and stray

cats as the most important animal welfare problem in their communities.

Cats have become the most commonly owned pet in the United States, with an estimated 72.5 million cats owned in the United States in 2004.^{9,14} In addition, there are an unknown number of feral cats in the country. With the growing popularity of cats as pets has come an increase in the magnitude and complexity of problems associated with the management of unwanted cats, engendering substantial debate as to the most appropriate solutions. Only 1 state, Rhode Island, requires cats to be licensed and to wear identification; in all other states, cat control is left to the local authorities.¹⁵ Many states, such as California, have mandatory spay-neuter policies for animals that leave shelter facilities, and the AVMA supports state and local ordinances mandating spaying or neutering of such animals, licensing of cats, and keeping cats indoors.¹⁶ Many animal welfare groups and veterinarians support the use of trap-neuter-return programs for feral cats,¹⁷ and 23 of 65 (35%) humane societies in the present study reported that they have instituted such programs. However, the effectiveness of various cat control laws and trap-neuter-return programs is not clear, and additional research is needed to measure their impact.

The present study revealed a substantial increase in the number of pit bull-type dogs euthanatized in Ohio since 1996. Approximately three fourths of the 7,409 pit bull-type dogs that were euthanatized by animal care and control agencies during 2004 were located in counties with large metropolitan areas. In Ohio, any dog of a breed commonly known as a pit bull is automatically considered vicious, and there is a growing debate nationally about the best way to deal with dangerous dogs. Although the effectiveness of breed-specific bans is not clear, an estimated 200 municipalities nationwide have enacted some type of breed-specific ban, despite opposition from various national groups, including the AVMA and Humane Society of the United States.¹⁸⁻²⁰

Despite increases in the proportion of animal care and control agencies that provide medical care to the animals they handle and the proportion that have an association with a veterinarian, animal care and control agencies still identified veterinary services as one of their top 5 most important needs during 2004. Veterinarians play a critical role in helping these agencies care for the animals under their control, and shelter medicine has become an important field.

As with any study that focuses on a particular geographic area, care should be taken in extrapolating results of the present study to the situation in other states. We do believe, however, that our methods for examining trends over time are useful to other states attempting to characterize their animal care and control agencies. We also believe that the broad trends we saw in regard to proportion of agencies providing medical care, proportion of agencies that have an association with a veterinarian, and dog intake and euthanasia rates are likely to be reflected in other areas of the country. Given the critical role that veterinarians play in animal welfare and overpopulation, it is important for veterinarians to be aware of these broad trends.

- a. Copies of the survey are available from the corresponding author on request.
- b. Stata, version 9.1, StataCorp, College Station, Tex.
- c. PROC GLIMMIX, version 9.1, SAS Institute Inc, Cary, NC.
- d. PROC MIXED, version 9.1, SAS Institute Inc, Cary, NC.

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