

# BREED SPECIFIC LEGISLATION: THE GAP IN EMERGENCY PREPAREDNESS PROVISIONS FOR HOUSEHOLD PETS

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[B]anning a specific breed from a community is . . . tantamount to racial profiling. It means that only one factor is considered in presuming whether a dog is dangerous . . . resulting in innocent, friendly dogs losing their lives.<sup>1</sup>

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## I. INTRODUCTION

For most of us, our pets are family members. They share our homes with us, our lives with us, sometimes even our beds with us.<sup>2</sup>

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<sup>1</sup> Cathy M. Rosenthal, *Breed-Bans Equivalent to Racial Profiling*, SAN ANTONIO EXPRESS-NEWS, Feb. 5, 2006, at 14J.

<sup>2</sup> Cats and dogs are most frequently household pets and service animals. According to the Americans with Disabilities Act (ADA), a service animal is one which is specifically trained to assist a person with a disability. U.S. DEP'T OF JUSTICE & NAT'L ASS'N OF ATT'YS GEN., SERVICE ANIMAL INFORMATION (July 1996),

Pets, however, are *sentient* animals, capable of being happy and sad. During major catastrophes in this country, many pets have been abandoned, lost, and killed.<sup>3</sup> This has happened because these pets were not included with the “family” that they were supposed to be a part of when it was time to seek shelter elsewhere. As a result, people have gone so far as to risk their own lives by refusing to leave their animals behind, choosing instead to brave the disaster at home with their beloved pets.

Legislatures recently have taken notice of this issue, and there has been a move toward passing legislation on the state and federal levels to end this problem. The Pets Evacuation and Transportation Standards (PETS) Act, a law that requires inclusion of household pets and service animals in emergency preparedness plans, recently became a federal law.<sup>4</sup> Many states have followed suit and have passed, or are in the process of passing, similar laws. Although these acts bring about much-needed change in the area of animals rights law, the change is insufficient.

A large gap exists within these recent disaster laws<sup>5</sup> involving animals where breed-specific legislation is concerned. The current disaster laws fail to address the fact that many states have implemented breed-specific legislation, which makes it illegal to own certain types of dogs, such as pit bulls, Rottweilers, and Doberman Pinschers. How these states intend to manage their emergency preparedness plans in light of their breed bans is an issue that has not yet been dealt with. Dealing with the issue prospectively, however, would prepare enforcement officials for when a crisis does strike, and would assist in saving many more animals.

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<http://www.ada.gov/animal.htm> (last visited Dec. 6, 2008); *see generally* 42 U.S.C. § 12101 (2000).

<sup>3</sup> *See infra* notes 61–71.

<sup>4</sup> “In order to qualify for Federal Emergency Management Agency funding, a city or state is required to submit a plan detailing its disaster preparedness program. The PETS Act simply requires that the State and local emergency preparedness authorities include how they will accommodate households with pets or service animals when presenting these plans to the FEMA.” Press Release, Rep. Christopher Shays, Pets Evacuation and Transportation Standards Act (PETS Act), (Sept. 2005), *available at* <http://www.house.gov/shays/news/2005/september/PETS.pdf>.

<sup>5</sup> The PETS Act and subsequent state legislation.

This article will examine the gap in the legislation and explore how this dilemma has come to pass. First it will explore what breed-specific legislation actually is, and how it has developed in modern society.<sup>6</sup> Next, it will analyze how animals have been treated in previous disasters and emergency situations in this country, focusing on the recent Hurricanes Katrina and Rita.<sup>7</sup>

Next, this article will address the scope of current emergency preparedness statutes.<sup>8</sup> It will also examine the role of different federal agencies in disaster preparedness and prevention, such as FEMA and the Department of Homeland Security.<sup>9</sup> The article will then go on to analyze how the recent amendments (which include animals in preparedness statutes) have come about, both on a federal and state level.<sup>10</sup>

Finally, this article will attempt to address the issues that are bound to arise in the future.<sup>11</sup> These issues are guaranteed to come up because of the gap in the current laws that fails to address how breed-specific legislation will be handled.<sup>12</sup> This article will propose that the legislatures add a non-discriminatory clause to the statutes to ensure safety for all dog breeds at times of disaster and emergency.<sup>13</sup>

This article will conclude that without such a modification, animals' lives remain at risk during a moment of disaster.<sup>14</sup> In addition, the lives of owners who refuse to leave their pets behind also remain in peril. Laws such as the PETS Act and similar state legislation mean well and are long overdue. In terms of the protection of this country's household and service pets, however, the Act's efforts will be fruitless if they fail to address an important but discriminatory practice among jurisdictions. This practice, while perhaps beginning to subside, does not show indications of

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<sup>6</sup> See *infra* Section II.

<sup>7</sup> See *infra* Section III.

<sup>8</sup> See *infra* Section IV.

<sup>9</sup> *Id.*

<sup>10</sup> See *infra* Section V.

<sup>11</sup> See *infra* Section VI.

<sup>12</sup> *Id.*

<sup>13</sup> See *infra* Section VII.

<sup>14</sup> See *infra* Section VIII.

a complete disappearance. This problem is breed-specific legislation.

## II. BREED-SPECIFIC LEGISLATION

Simply, breed-specific legislation (BSL) is a law that negatively targets a particular breed or breeds of dogs.<sup>15</sup> These types of laws have been directed toward dogs that society has dubbed as “inherently vicious,” or “those that have demonstrated particular propensities for aggression and violent behavior.”<sup>16</sup> This country has been confronted with the issues presented by BSL for over twenty-five years.<sup>17</sup> Currently, over thirty states have some type of breed-specific ban or restriction enacted.<sup>18</sup>

Some examples of these laws include the restrictions on pit bulls in North Little Rock, Arkansas,<sup>19</sup> and in Akron, Ohio.<sup>20</sup> Denver, Colorado has an outright ban on pit bulls.<sup>21</sup> Denver’s ordinance defines a pit bull as any American Pit Bull Terrier,

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<sup>15</sup> Linda S. Weiss, *Breed-Specific Legislation in the United States* (2001), <http://www.animallaw.info/articles/arulweiss2001.htm>.

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

<sup>17</sup> *Id.* (noting the “potential for arbitrary or improper enforcement, inaccurate breed identification by officials, difficulty enforcing breed bans against mixed-breed dogs, animal control, and court system overload, and the potential for not identifying a genuinely ‘dangerous dog’ as such as such because it doesn’t fall into the specified breed categories.”).

<sup>18</sup> Safia Gray Hussain, *Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won’t Solve the Dangerous-Dog Dilemma*, 74 *FORDHAM L. REV.* 2847, 2854 (2006); see generally *Breed-Specific Legislation* (2007), <http://www.rott-n-chatter.com/rottweilers/laws/breedspecific.html> (contains breakdown of U.S. cities by state that have either adopted BSL or have rejected it).

<sup>19</sup> N. LITTLE ROCK, ARK., ORDINANCE #7673 (Nov. 22, 2004), available at <http://northlr.org/city-directory/animal-control/PDFS/PitBull.pdf> (requires that any pit bull-type dog be registered with the municipality, tattooed with a control number, confined to a house or locked fenced-in area, walked by a person 21 years of age or older, and requires the owner to post warning signs on the property).

<sup>20</sup> AKRON, OHIO, CODE, § 92.25 (2003), available at [http://ci.akron.oh.us/Customer\\_Service/Customer\\_Service.html](http://ci.akron.oh.us/Customer_Service/Customer_Service.html) (requires pit bulls, Canary dogs, and American bull dogs to be tattooed with a particular number, to wear a special fluorescent collar, to be confined according to specifications set out by the municipality, requires owners to provide proof of certain types of liability insurance, and requires the dog to be muzzled when outside at all times).

<sup>21</sup> DENVER, COLO., CODE § 8-55, available at <http://www.denvergov.org/Portals/245/documents/855pitbull.PDF> (making it unlawful for any person to “own, possess, keep, exercise control over, maintain, harbor, transport, or sell within the city any pit bull.”).

American Staffordshire Terrier, Staffordshire Bull Terrier, or “any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds.”<sup>22</sup>

The Denver ordinance does, however, enumerate some exceptions to its strict ban on pit bulls. One such exception is a person who licensed his pit bull with the city prior to the enactment of this ordinance.<sup>23</sup> Another such exception is a person traveling through the city to a destination outside the city who has received a permit to have the dog for a period of no more than six hours within the city.<sup>24</sup>

Arguments can be made both for and against this type of law. Proponents of BSL argue that these sorts of laws serve to reduce the threat of dangerous dogs in society.<sup>25</sup> Tragic stories which have received considerable publicity have only served to fuel the fire for advocates of BSL.<sup>26</sup> For example, in January of 2001, two Canary Island Mastiffs, owned by a neighbor, killed Diane Whipple in the hallway of her apartment building;<sup>27</sup> a pit bull severed a three-year-old child’s left arm when he put his hand through the fence separating him and the dogs;<sup>28</sup> in November of 2005, three Pit Bulls attacked ten-year-old Greg Jones while he was in his backyard.<sup>29</sup>

Those who are against BSL, however, argue that breed cannot be the sole determinant of whether a dog will be vicious.<sup>30</sup> The

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<sup>22</sup> *Id.* (emphasis added).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* (enumerating other exceptions, such as allowing a municipal animal shelter to hold the animal in order to enforce the ordinance or destroy the animal, and allowing someone to enter the city with a Pit Bull for the purposes of showing in a dog show).

<sup>25</sup> See Weiss, *supra* note 15.

<sup>26</sup> *Id.*

<sup>27</sup> Evelyn Nieves, *A Bizarre Dog Attack Shakes San Francisco*, N.Y. TIMES, Feb. 1, 2001, at 14.

<sup>28</sup> Arnold Hamilton, *Pit Bulls are the Enemy in Proposed Oklahoma Law: Measure Would Prohibit In-State Sales, Require Fences, Insurance*, DALLAS MORNING NEWS, Jan. 3, 2006.

<sup>29</sup> Chris Barge, *Pit Bull Attack Compels Talk of Tighter Breed Regulations All-Out Ban Vs. Grandfather Clause Divides City Council*, DENVER ROCKY MOUNTAIN NEWS, Nov 9, 2005.

<sup>30</sup> The Humane Society of the United States, [http://www.hsus.org/pets/issues\\_affecting\\_our\\_pets/dangerous\\_dogs.html](http://www.hsus.org/pets/issues_affecting_our_pets/dangerous_dogs.html) (last visited Oct. 21, 2006).

Humane Society of the United States has released an official statement regarding BSL.<sup>31</sup> It states that legislation encouraging reasonable and responsible dog ownership may in fact be more appropriate and effective in protecting society from dangerous canines than legislation aimed at targeting specific breeds only.<sup>32</sup>

There are differences in how courts seem to interpret laws relating to the specific breed of a dog. However, it might be plausible to suggest that breed vagueness was an issue that was actually dividing courts during the late 1980s. The issues our courts have heard over the past couple of decades also demonstrate a trend in the way society has viewed BSL over time. Furthermore, the issues demonstrate how those viewpoints have and are changing. For example, *Lititz Mutual Insurance Company v. Commonwealth*<sup>33</sup> involved a situation where an insurance company cancelled an insured's homeowner's policy after he acquired a German Shepherd.<sup>34</sup> The court there found that allowing an insurance company to cancel an insured's policy merely because he chose to acquire a "large dog" would "jeopardize the coverage of every homeowner who . . . acquires a canine companion."<sup>35</sup>

Ten years later, when BSL began to rapidly catch on throughout the country, the Massachusetts Supreme Court decided *American Dog Owners Ass'n v. City of Lynn*.<sup>36</sup> This case centered on the constitutionality of three laws in the municipality which restricted the ownership of American Pit Bull Terriers and Bull Terriers.<sup>37</sup> The court there discussed the vagueness of these types of ordinances, and addressed the unbridled discretion that enforcers of the ordinances would have in judging different breeds of dogs.<sup>38</sup> In terms of these particular breed boundaries, the court accurately pointed out that there is no definitive,

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Lititz Mut. Ins. Co. v. Commonwealth*, 401 A.2d 606 (Pa. Commw. Ct. 1979).

<sup>34</sup> *Id.* at 607.

<sup>35</sup> *Id.* at 608.

<sup>36</sup> *Am. Dog Owners Ass'n, Inc. v. City of Lynn*, 533 N.E.2d 642 (Mass. 1989).

<sup>37</sup> *Id.* at 643; *see also supra* notes 19–20 (ordinances challenged in this case were similar to ordinances currently in effect in areas such as Arkansas and Ohio).

<sup>38</sup> *Id.* at 646 ("[L]aws that do not limit the exercise of discretion by officials engender the possibility of arbitrary and discriminatory enforcement." (quoting *Caswell v. Licensing Comm'n for Brockton*, 444 N.E.2d 922 (Mass. 1983))).

scientific test with which to determine the exact breed of a dog.<sup>39</sup> As such, enforcement officials here (and presumably in any other situation in which breed standards are involved) were forced to use subjective standards to determine whether a particular dog fell under the scope of the ordinance.<sup>40</sup>

*State v. Peters*, however, was an example of a case that showed the shift in society's attitude toward BSL. This Florida case addressed a challenge to the municipality's pit bull regulations by pit bull owners.<sup>41</sup> The court there found in favor of the municipality, holding that the regulations were not too vague.<sup>42</sup> Pit bulls are defined collectively by the American Kennel Club's definitions of a Staffordshire Terrier and Staffordshire Bull Terrier, and the United Kennel Club's definition for a Pit Bull Terrier.<sup>43</sup> The court in this case held that a dog owner need only compare his dog to the standard held by any *one* definition, and that would suffice.<sup>44</sup>

By the 1990s, the tide began to turn in terms of how courts viewed the enforceability of BSL. *American Dog Owners Ass'n v. City of Yakima* was decided after three of the city's citizens were attacked by pit bulls.<sup>45</sup> As a result, the city decided to ban pit bulls altogether, "as well as dogs 'identifiable' as having *any* pit bull variety as an element to their breeding."<sup>46</sup> In its holding, the Supreme Court of Washington determined that the ordinance was not unconstitutionally vague, since various particular breeds were identified which constitute the generic "pit bull" term.<sup>47</sup> The court noted that the ordinance provided notice of what was banned (namely, pit bulls), and it contained sufficient standards by which to identify the dogs.<sup>48</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *State v. Peters*, 534 So. 2d 760 (Fla. Dist. Ct. App. 1988).

<sup>42</sup> *Id.* at 767 (finding that "'mathematical certainty' . . . is not essential to constitutionality.") (internal citations omitted).

<sup>43</sup> American Kennel Club, <http://www.akc.org> (The Staffordshire Bull Terrier is a smooth-coated dog weighing 24–38 lbs.; the American Staffordshire Terrier is a slightly larger dog, with no weight recommendations listed on the site.).

<sup>44</sup> *Peters*, 534 So.2d at 766.

<sup>45</sup> *Am. Dog Owners Ass'n v. City of Yakima*, 777 P.2d 1046, 1047 (Wash. 1989).

<sup>46</sup> *Id.* (emphasis added).

<sup>47</sup> *Id.* at 1047–49.

<sup>48</sup> *Id.*

Going further toward the solidification of BSL in today's society was *Holt v. City of Maumelle*, which addressed a ban against pit bulls and other breeds within the municipality.<sup>49</sup> The court there found that it was reasonable for the city to adopt and enforce such regulations,<sup>50</sup> stating that "we see no reason why the legislature may not make distinctions between breeds, sizes, and the localities in which they are kept. The object of the statute is protection . . . to prevent injuries to persons and property by dogs. Any distinction . . . is therefore valid."<sup>51</sup>

*Dog Federation of Wisconsin v. City of South Milwaukee* was a similar case in which the constitutionality of laws restricting pit bull ownership in the municipality was challenged.<sup>52</sup> Specifically, the plaintiffs there alleged that an ordinance addressing what type of dog constituted a pit bull was "impermissibly vague" and "overbroad."<sup>53</sup> The court stated that if one has a dog of a particular breed, that is notice enough of what type of breed that dog is.<sup>54</sup> Furthermore, "[p]roblems of ultimate proof do not make the ordinance unduly vague on its face."<sup>55</sup>

In recent years, however, animal activists have started speaking out against BSL. As a result, there has been at least one attempt within the courts to change some of these breed-specific ordinances. Although later reversed, *City of Toledo v. Tellings* is one such case.<sup>56</sup> There, the court noted that a pit bull does not have a stronger bite than any other dog of similar size,<sup>57</sup> and that in fact, extensive evidence was presented showing that "pit bulls which have not been trained to be aggressive are highly obedient, eager-to-please, good family pets."<sup>58</sup> Furthermore, the court labeled the

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<sup>49</sup> *Holt v. City of Maumelle*, 817 S.W.2d 208 (Ark. 1991).

<sup>50</sup> *Id.* at 210–11.

<sup>51</sup> *Id.* at 210, *quoting* *McQueen v. Kittitas County*, 198 P. 394 (Wash. 1921)).

<sup>52</sup> *Dog Fed'n of Wis. v. City of S. Milwaukee*, 504 N.W.2d 375 (Wis. Ct. App. 1993).

<sup>53</sup> *Id.* at 377.

<sup>54</sup> *Id.* at 379.

<sup>55</sup> *Id.*

<sup>56</sup> *City of Toledo v. Tellings*, No. L-04-1224, slip op. at 1 (Ohio Ct. App. Mar. 3, 2006) (holding a municipal ordinance limiting the number of "vicious dogs" an individual can own and requiring the purchase of liability insurance covering those dogs to be unconstitutional), *rev'd*, 871 N.E.2d 1152 (Ohio 2007).

<sup>57</sup> *Id.* at 4.

<sup>58</sup> *Id.*



regulations in question as “limitation[s] on a specific breed for reasons unrelated to that breed, but rather related to human misconduct or negligence in the ownership of the breed.”<sup>59</sup>

Animal rights advocates stress the necessity of a movement away from BSL with a focus instead on stricter enforcement of dog owners per se. Society as a whole, however, may not yet see the futility of BSL. The Humane Society correctly points out that “the ‘problem dog’ at any given time is often the most popular breed among individuals who tend to be irresponsible, if not abusive, in the control and keeping of their pets.”<sup>60</sup>

### III. THE EFFECT OF NATIONAL DISASTERS ON OUR PETS

Hurricane Katrina created much havoc in the lives of many of the Gulf Coast’s canine residents. While the exact numbers are still uncertain, hundreds of thousands of pets were impacted by the effects of Hurricane Katrina, but only 50% of those pets were rescued alive.<sup>61</sup> The reason so many pets were abandoned and left to fend for themselves was largely because they were not allowed at local evacuation shelters.<sup>62</sup> Surely, with as many as 50,000 displaced animals following Hurricane Katrina, some pets were abandoned by their owners; but there is a strong likelihood that the inordinately high number of homeless animals following the hurricane arose out of the ban against pets in the evacuation centers.<sup>63</sup> Pets who were lucky enough to be rescued “were in . . . bad shape . . . they had chemical burns from being in the flood waters. They were emaciated. A lot of them had heart worms.”<sup>64</sup>

The outlook was bleak for the many pets that were left behind. Pet owners were faced with a difficult decision that too

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<sup>59</sup> *Id.* at 11.

<sup>60</sup> Barge, *supra* note 29.

<sup>61</sup> CBS News, *Katrina’s Lost Pets Come Home* (Aug. 31, 2006), <http://www.cbsnews.com/stories/2006/08/31/earlyshow/main1954985.shtml>.

<sup>62</sup> Dan Harris & Mark Reeves, *Katrina Rescuers Saved Thousands of Pets*, ABC NEWS, Aug. 27, 2006, <http://abcnews.go.com/WNT/HurricaneKatrina/story?id=2362416&page=1>.

<sup>63</sup> ABC News, *More and More Abandoned Pets in New Orleans Rescued* (Sept. 10, 2005), <http://abcnews.go.com/GMA/HurricaneKatrina/story?id=1113609>.

<sup>64</sup> Harris & Reeves, *supra* note 62 (quoting United Animal Nation communications director Alexis Raymond, whose group sent 436 volunteers to help with pet rescue following Hurricanes Katrina and Rita).

many refused to make: either evacuate their homes, or stay and care for their pets.<sup>65</sup> Some attempted to smuggle their pets onto the buses going to the evacuation shelters anyway, despite the fact that the animals would not be allowed into the shelter once they arrived.<sup>66</sup>

Hurricane Katrina is not the only time this has been an issue, however. Hurricane Rita, which also assaulted the Gulf Coast in 2005, created strife for the area's pets.<sup>67</sup> Many dogs were forced to roam the streets. Those that were not as fortunate perished when the flood waters rose in their homes and they had no means of escape.<sup>68</sup> The Humane Society, the American Society for the Prevention of Cruelty to Animals (ASPCA), and the Animal Defense League, among other groups, did their best to rescue as many pets as possible.<sup>69</sup> These groups, however, rely primarily on donations and volunteers to fund their efforts,<sup>70</sup> so the salvation of these animals largely depended on grassroots efforts by these organizations.<sup>71</sup> These organizations put forth a tremendous effort to assist those ailing animals and find places where they could be temporarily housed.<sup>72</sup>

The problem of what is to be done with household pets during emergent disaster evacuations, however, is not limited to recent events. In 1996, a train derailment occurred in Weyauwega, Wisconsin, igniting propane carried by the cars on the train.<sup>73</sup> The residents of Weyauwega were evacuated because of the threat of

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<sup>65</sup> Carl Sullivan, *Pets in Peril*, NEWSWEEK, Sept. 15, 2005, <http://msnbc.msn.com/id/9326408/site/newsweek/>.

<sup>66</sup> *Id.*

<sup>67</sup> *Latest Hurricane Rita Developments*, USA TODAY, Sept. 24, 2005, [http://usatoday.com/news/nation/2005-09-24-rita-blog\\_x.htm](http://usatoday.com/news/nation/2005-09-24-rita-blog_x.htm).

<sup>68</sup> *Id.*

<sup>69</sup> Karina Cardona, *Hurricane Rita Puts More Pets on the Move*, SAN ANTONIO NEWS, Sept. 22, 2005, [http://www.woai.com/news/local/story.aspx?content\\_id=CC76232B-A0B2-40AE-A805-A7876EA64287](http://www.woai.com/news/local/story.aspx?content_id=CC76232B-A0B2-40AE-A805-A7876EA64287).

<sup>70</sup> *Id.*

<sup>71</sup> Stu Hutson, *Katrina's Stranded Pets Spur Massive Aid Effort*, NAT'L GEOGRAPHIC NEWS, Sept. 9, 2005, [http://news.nationalgeographic.com/news/2005/09/0909\\_050909\\_katrina\\_petrescue.html](http://news.nationalgeographic.com/news/2005/09/0909_050909_katrina_petrescue.html).

<sup>72</sup> *Id.*

<sup>73</sup> Pet Owners—The Public and Animal Health Consequences of Pet Ownership in Disasters, <http://www.animaldisasters.com/Pet%20Owners.htm> (last visited Aug. 24, 2008).

an imminent explosion.<sup>74</sup> Many people had to leave behind their household pets: 40% of the town's dogs and 75% of its cats.<sup>75</sup> Many people attempted to return to their homes illegally several days later to rescue the abandoned animals.<sup>76</sup> The National Guard did not initiate an official pet rescue until *four days* after the incident.<sup>77</sup> A year later, in Yuba County, California, residents were evacuated when a levee broke, which resulted in people being out of their homes for two days.<sup>78</sup> Over 16% of household pets were not evacuated in that incident, mostly because their owners did not anticipate being gone from their homes for that long.<sup>79</sup>

In many ways, the tragedy of Hurricane Andrew, which devastated South Florida in 1992, initiated much of the reform we have today in pet-related disaster planning.<sup>80</sup> Because of a lack of preparation when Hurricane Andrew hit, approximately "1000 dogs and cats were euthanized merely for lack of space in which to house them."<sup>81</sup>

Following that type of loss of animal life, the federal government created VMAT (Veterinary Medical Assistance Teams).<sup>82</sup> According to VMAT, they are the "only response teams recognized in the National Response Plan that provide veterinary medical treatment and address animal and public health issues resulting from . . . any . . . type of disaster[]." <sup>83</sup> While VMAT and other private organizations like the Humane Society struggle to save our country's pets in the midst of national disasters, their efforts will continue to be insufficient and animal lives will continue to be lost without additional federal assistance for this cause.

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<sup>74</sup> *Id.*

<sup>75</sup> Leslie Irvine, *Providing for Pets During Disasters: An Exploratory Study* (2004), <http://www.colorado.edu/hazards/research/qr/qr171/qr171.html>.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Pet Owners—The Public and Animal Health Consequences of Pet Ownership in Disasters, *supra* note 73.

<sup>79</sup> *Id.*

<sup>80</sup> William Wan, *A Lesson from Katrina: Pets Matter*, WASH. POST, Jan. 2, 2006, at B01.

<sup>81</sup> Irvine, *supra* note 75.

<sup>82</sup> Wan, *supra* note 80.

<sup>83</sup> Veterinary Medical Assistance Teams (2007), <http://www.vmat.org>.

#### IV. AN EMERGENCY DEFINED

The technical definition of an emergency is “an unforeseen combination of circumstances or the resulting state that calls for immediate action,” and “an urgent need for assistance or relief.”<sup>84</sup> The Department of Homeland Security defines an emergency as “any occasion . . . for which Federal assistance is needed . . . to save lives . . . to protect lives . . . or to lessen . . . the threat of a catastrophe.”<sup>85</sup> When a true emergency strikes, it is not only our country’s human residents that suffer, but our country’s animals as well.

In the case of a disaster or emergency, such as a hurricane or tornado, the local government first assesses the situation.<sup>86</sup> Depending on the circumstances, that government may turn to the state government for assistance.<sup>87</sup> If necessary, the governor will in turn declare the situation a “major disaster,” which will warrant evaluation by the Federal Emergency Management Agency (FEMA) for potential action. Then, the President of the United States reviews and either approves or denies the request for action.<sup>88</sup>

The United States has coordinated many effective efforts in disaster-preparedness, one of them being FEMA. Since its inception in 1979, FEMA has assisted Americans in being “A Nation Prepared.”<sup>89</sup> On November 23, 1988, the Robert T. Stafford Disaster Relief and Emergency Assistance Act became a law. This Act governs FEMA’s federal disaster response activities.<sup>90</sup> Until recently, the Act did not provide for the care of animals during national disasters.<sup>91</sup>

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<sup>84</sup> Merriam-Webster Online, <http://www.m-w.com/cgi-bin/dictionary> (last visited Oct. 25, 2006).

<sup>85</sup> 42 U.S.C. § 5121(1) (2000).

<sup>86</sup> FEMA, *Disaster Process and Disaster Aid Programs*, <http://www.fema.gov/hazard/dproc.shtm> (last visited Oct. 25, 2006).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> FEMA, *FEMA History*, <http://www.fema.gov/about/history.shtm> (last visited Oct. 25, 2006).

<sup>90</sup> FEMA, *About FEMA*, <http://www.fema.gov/about/index.shtm> (last visited Oct. 25, 2006).

<sup>91</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, 42 U.S.C. §§ 5121–5206 (2000). “It is the intent of the Congress, by this Act, to provide

In 2003, FEMA became part of the Department of Homeland Security. The purpose of the Department of Homeland Security is primarily to protect the United States and respond to matters involving terrorism in this country.<sup>92</sup> It has, however, recently become involved in disaster preparedness measures involving pets.<sup>93</sup> In doing so, the Department has joined forces with the American Kennel Club (AKC), the ASPCA, the American Veterinary Medical Association (AVMA), and the Humane Society of the United States (HSUS).<sup>94</sup> Its primary goal is to educate citizens about including their pets in their emergency preparedness plans.<sup>95</sup> Due to recent amendments in federal law, state and local authorities must demonstrate to FEMA that pets are to be accommodated in emergency plans<sup>96</sup> as a requirement to qualify for FEMA funding.<sup>97</sup> FEMA's efforts also included releasing a brochure as part of the Homeland Security's "Ready" campaign directed specifically toward pet owners.<sup>98</sup> Within this brochure, advice is provided as to how to create a plan of escape in the midst of an emergency.<sup>99</sup> Examples include attempting to leave pets with family or friends, or inquiring as to hotels that may accept animals, particularly in an emergency situation.<sup>100</sup>

To qualify for all of the federal assistance available during a national disaster, state and local governments are responsible for having and implementing their own emergency preparedness

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an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters." § 5121(b).

<sup>92</sup> Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135.

<sup>93</sup> U.S. Dept. of Homeland Sec., *Homeland Security and Animal Groups Encourage Americans to Include Their Pets When Preparing for Emergencies*, May 31, 2006, [http://www.dhs.gov/xnews/releases/press\\_release\\_0920.shtm](http://www.dhs.gov/xnews/releases/press_release_0920.shtm).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Pets Evacuation and Transportation Standards Act of 2006, § 2, Pub. L. No. 109-308, 120 Stat. 1725.

<sup>97</sup> *Id.*

<sup>98</sup> U.S. DEP'T OF HOMELAND SEC., PREPARING YOUR PETS FOR AN EMERGENCY MAKES SENSE, *available at* [http://www.ready.gov/america/\\_downloads/pets.pdf](http://www.ready.gov/america/_downloads/pets.pdf).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

plans.<sup>101</sup> Typically, local governments must organize a response to an emergency, and oftentimes can obtain state funding for this.<sup>102</sup> More leeway usually exists on a state-wide level where the Governor gets involved in terms of declaring a state of emergency and waiving usual regulations.<sup>103</sup> FEMA itself has offices in various regions of the country.<sup>104</sup> FEMA employees in each of those regions work closely with the emergency management departments of the respective individual states to coordinate the federal emergency response with the state-initiated one.<sup>105</sup>

## V. THE EVOLUTION OF THE PETS ACT AND OTHER RELATED LEGISLATION

The Pets Evacuation and Transportation Standards (PETS) Act<sup>106</sup> was signed into law on October 6, 2006.<sup>107</sup> The PETS Act developed because of all the animals that have lost their lives and the lives of which have been irrevocably changed by natural disasters because their needs were not properly considered and addressed.

Policy reasons were certainly motivators for passing the PETS Act,<sup>108</sup> including the fact that many pet owners have chosen not to evacuate an area if that means leaving their pets behind.<sup>109</sup> In addition, there are public safety issues that arise from pets being abandoned in these situations.<sup>110</sup>

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<sup>101</sup> See Role of Key Federal, State & Community Partners in Emergency Preparedness Panel Session at Cornell University (Sept. 9, 2003), <http://communityrisks.cornell.edu/Notes/Notes-AkeyByersWright.pdf>.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> E.g. FEMA, Region II, <http://www.fema.gov/about/regions/regionii/index.shtml> (last visited Oct. 25, 2006).

<sup>105</sup> *Id.*

<sup>106</sup> Humane Soc'y of the U.S., *The PETS Act: All in a Year's Work* (Oct. 13, 2006), [http://www.hsus.org/legislation\\_laws/federal\\_legislation/companion\\_animals/pets\\_act\\_signed.html](http://www.hsus.org/legislation_laws/federal_legislation/companion_animals/pets_act_signed.html).

<sup>107</sup> Pets Evacuation and Transportation Standards Act of 2006, § 2, Pub. L. No. 109-308, 120 Stat. 1725.

<sup>108</sup> Humane Soc'y of the U.S., *supra* note 106.

<sup>109</sup> *Id.*

<sup>110</sup> Such issues include "serious health and safety risks to the disaster area." *Id.*

Companion animals such as cats and dogs are important members of people's households,<sup>111</sup> and are considered an indispensable part of the family.<sup>112</sup> Few studies have been done to determine the ways pets are affected during disaster evacuations.<sup>113</sup> In the studies that *have* been done, the overwhelming result has been that owning a pet was the "most significant reason why households without children failed to evacuate."<sup>114</sup> As previously noted, when residents in Weyauwega, Wisconsin were evacuated, many residents returned to their homes illegally to rescue their pets.<sup>115</sup> With only 20% of pets displaced during Hurricane Katrina being returned to their rightful owners and only 50% of the animals affected during that hurricane being rescued alive,<sup>116</sup> it is no wonder that "as many as 20 percent of residents will refuse to evacuate because they will not leave their pets."<sup>117</sup> In a survey conducted after Hurricane Katrina, 61% of pet owner respondents expressed they would not evacuate their homes if they were unable to take their pets.<sup>118</sup>

H.R. 3858 and S.B. 2548 became Public Law 109-308 with the adoption of the PETS Act.<sup>119</sup> The Act amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act to include household pets and service animals in the preparedness plans for a national emergency.<sup>120</sup> The law adds that emergency preparedness measures must be developed including "plans that take into account the needs of individuals with pets and service animals prior to, during, and following a major disaster or

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<sup>111</sup> U.S. DEP'T OF HOMELAND SEC., *supra* note 98.

<sup>112</sup> Sullivan, *supra* note 65 (noting that "[A]nimals are part of our society. We choose to domesticate them and live with them. They mean everything to some people . . . . It's cruel to let them starve when there are people that can take care of them.").

<sup>113</sup> Irvine, *supra* note 75.

<sup>114</sup> Pet Owners—The Public and Animal Health Consequences of Pet Ownership in Disasters, *supra* note 73.

<sup>115</sup> Irvine, *supra* note 75.

<sup>116</sup> CBS News, *supra* note 61.

<sup>117</sup> Irvine, *supra* note 75 (referring to studies done by S.E. Heath in 2001).

<sup>118</sup> Humane Soc'y of the U.S., *With Hurricane Season Upon Us, Congress Passes Landmark Bill to Leave No Pet Behind* (Aug. 4, 2006), [http://www.hsus.org/press\\_and\\_publications/press\\_releases/with\\_hurricane\\_season\\_upon.html](http://www.hsus.org/press_and_publications/press_releases/with_hurricane_season_upon.html).

<sup>119</sup> Pets Evacuation and Transportation Standards Act of 2006, Pub. L. 109-308, 120 Stat. 1725.

<sup>120</sup> *Id.*

emergency.”<sup>121</sup> In § 611(j) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, under financial contributions, a provision is added in that:

[t]he Director may make financial contributions, on the basis of programs or projects approved by the Director, to the States and local authorities for animal emergency preparedness purposes, including the procurement, construction, leasing, or renovating of emergency shelter facilities and materials that will accommodate people with pets and service animals.<sup>122</sup>

Section 5170a (3) is also amended to include (under what the President may do in a major disaster) the “provision of rescue, care, shelter and essential needs to individuals with household pets and service animals; and to such pets and animals.”<sup>123</sup> In addition, the PETS Act also allows FEMA to help the state and local governments in the development of disaster plans that will include pets.<sup>124</sup> The Act also grants federal funding to states for the organization of emergency shelters that will be pet-friendly, and allows FEMA to directly assist people with animals or the animals themselves following a disaster.<sup>125</sup>

In today’s society,<sup>126</sup> there is great importance placed on companion animals, and there is increased recognition that these are indeed sentient creatures worthy of our consideration and care. Many states, therefore, have begun to pass, or are in the process of attempting to pass, legislation similar to the federal PETS Act.<sup>127</sup>

In New Jersey, the legislature adopted bill A.1929 on August 21, 2006.<sup>128</sup> This new law requires the state, its counties, and local

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<sup>121</sup> § 2, 120 Stat. 1725.

<sup>122</sup> § 3, 120 Stat. 1725–26.

<sup>123</sup> *Id.*

<sup>124</sup> Pub. L. No. 109-308, 120 Stat. 1725 (“An Act To amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to ensure that State and local emergency preparedness operational plans address the needs of individuals with household pets and service animals following a major disaster or emergency.”).

<sup>125</sup> The Humane Society of the United States, *supra* note 118.

<sup>126</sup> *Id.* (“Currently, there are more than 358 million pets in the United States residing in 63 percent of American households.”).

<sup>127</sup> *Id.* (Such states include Maine, New Mexico, Florida, Hawaii, Louisiana, New Hampshire, Vermont, California, Illinois, New Jersey, and New York).

<sup>128</sup> A. 1929, 212th Leg. 1st Sess. (N.J. 2006) (enacted).



municipalities to provide emergency plans for pets.<sup>129</sup> The bill's official statement notes that:

This bill requires the State Office of Emergency Management and the counties and municipalities to include in their respective emergency operations plans provisions to support the needs to individuals with a household pet or service animal in a major disaster or emergency. Currently, emergency operations plans do not include household pets and service animals. . . . [P]roviding for household pets and service animals would both encourage individuals to evacuate when required and would spare residents the heartache of unnecessarily losing a pet or service animal during a crisis.<sup>130</sup>

Similarly, in New York, bill A. 9292 recently became a law.<sup>131</sup> This law provides for the state and its local governments to address the needs of animals during a disaster or emergency, especially with regard to shelter, evacuation and transportation.<sup>132</sup>

In Florida, H.B. 7121 became law, which provides for "comprehensive emergency planning . . . that includes evacuation and sheltering provisions for people with pets and requires that a person with special needs must be allowed to bring his . . . service animal into a special needs shelter."<sup>133</sup> California's bill A.B. 450, also signed into law, requires incorporation of the California Animal Response Emergency System (CARES) into emergency planning.<sup>134</sup>

As these examples demonstrate, the legislation among the states is similarly worded. The statutes all aim toward the inclusion of household animals in emergency plans to avoid a repetition of the tragedies the country's household pets suffered in previous national disasters.

There are many policy reasons why states and the federal government seek to implement these types of laws in addition to

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<sup>129</sup> *Id.*

<sup>130</sup> A. 1929, 212th Leg., 1st Sess. (N.J. 2006) (as introduced Mar. 10, 2006).

<sup>131</sup> A. 9292, 229th Leg. (N.Y. 2006) (enacted).

<sup>132</sup> N.Y. EXEC. LAW § 22 (McKinney 2006 & Supp. 2008).

<sup>133</sup> H.B. 911, 19th Leg., 2d Reg. Sess. (Fla. 2006) (enacted). FLA. STAT. ANN. § 252.385 (West 2003 & Supp. 2008).

<sup>134</sup> A.B. 450, 2005–06 Assemb., Reg. Sess. (Cal. 2006) (enacted). CAL. GOV'T CODE § 8608 (West 2005 & Supp. 2008).

the public policy reasons already discussed.<sup>135</sup> Another important policy consideration is public safety and welfare. Failure to evacuate animals poses a considerable risk not only to those who have chosen to not leave their homes, but also to rescue workers.<sup>136</sup> After Hurricane Katrina, thousands of pets were left stranded.<sup>137</sup> Many companion animals waited for help on roofs of flooded homes, swam in the filthy water, or just stood on the streets.<sup>138</sup> Some dogs have formed packs and start to roam the deserted city where the devastation occurred.<sup>139</sup> As can be expected, this can be intimidating to both citizens and rescuers, not to mention incredibly dangerous.<sup>140</sup>

#### **VI. ISSUES ARISING FROM CONFLICTS BETWEEN BREED-SPECIFIC LEGISLATION AND THE PETS ACT**

Good intentions and much-needed reform are behind the PETS Act and similar state acts being signed into law. Unfortunately, neither the federal nor state systems have addressed the issue of how these laws will be enforced in states where BSL exists.

The PETS Act requires that state and local governments take the needs of citizens with pets and service animals into consideration while making their emergency preparedness plans. It provides federal funding to the state and local governments for the implementation of these plans, especially for the provision of emergency shelters. As previously noted, many of the states which have similar laws also include comparable provisions. The problem, however, is that these statutes do not provide for non-discrimination of animals. A non-discrimination provision would

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<sup>135</sup> See *supra* notes 108–110. Providing a place for pets to evacuate along with their owners would, according to studies, increase the number of people who choose to evacuate their homes. This is because many people will refuse to leave their pets behind in a time of emergency.

<sup>136</sup> Irvine, *supra* note 75.

<sup>137</sup> CBS News, *supra* note 61.

<sup>138</sup> *Id.*

<sup>139</sup> See generally Leslie Irvine, *Animals in Disasters: Issues for Animal Liberation Activism and Policy*, ANIMAL LIBERATION PHIL. & POL'Y J. (2006) (examining the problems brought about by dogs traveling in packs when displaced by a disaster); available at [http://www.cala-online.org/Journal\\_Articles\\_download/Issue\\_5/irvine.pdf](http://www.cala-online.org/Journal_Articles_download/Issue_5/irvine.pdf).

<sup>140</sup> Latest Hurricane Rita Developments, *supra* note 67.

allow a household pet or service animal (in particular where dogs are concerned), of any breed to be provided for during an emergency, despite the fact that the breed may be illegal or restricted in a particular state. A failure to address BSL in emergency preparedness provisions for animals creates an inevitable gap in the enforcement of the laws. Such a gap will most likely be addressed only at the most unfortunate time: during a disaster.

In terms of a federal emergency, this issue would most likely not be problematic, as there are no federal laws which prohibit any breed of animal. BSL is typically a state-specific ordinance.<sup>141</sup> In a federal emergency which would necessitate the applicability of the PETS Act, most likely there would not be an issue of different dog breeds being excluded from emergency planning. In a state-wide emergency, however, or even a local emergency, where that particular state or municipality restricts certain breeds of dogs, the solution might not be as simple.

As previously noted, Denver, Colorado is one city that enforces a complete ban on pit bulls.<sup>142</sup> At this time, Denver does not have any legislation that would include pets in its emergency preparedness plans.<sup>143</sup> If in the future such a provision were to come into existence, it may create a conflict in terms of the city's pit bull ban. Dade County, Florida,<sup>144</sup> is one such area where a local ordinance banning pit bulls may come into conflict with the state's hurricane preparedness provisions.<sup>145</sup> Without some sort of non-discriminatory clause in emergency preparedness statutes that takes animals' needs into consideration, there is bound to be chaos at the point of an emergency.

Ordinances banning dogs may attempt to create a municipality that is completely devoid of a type of dog. However,

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<sup>141</sup> Weiss, *supra* note 15.

<sup>142</sup> DENVER, COLO., CODE § 8-55 (1996).

<sup>143</sup> Denver Ordinances, <http://www.denvergov.org/AnimalControl/Ordinances/tabid/377819/Default.aspx> (last visited Mar. 17, 2007).

<sup>144</sup> Encompasses the city of Miami.

<sup>145</sup> MIAMI-DADE COUNTY, FLA., ORDINANCE 98-22, § 5-17.6(b); Sallie James, *Dog Lovers Give Springs Officials Pause on Breed Ban*, S. FLA. SUN-SENTINEL, Oct. 4, 2006 (fleshing out the ban against pit bulls in Miami-Dade county, where "owners caught with a pit bull are issued \$510 citations and given 48 hours to get rid of it . . . [i]f the owner fails to get rid of the dog, the county issues a court order to remove it.").

it is probable that some people will violate such ordinances.<sup>146</sup> Further, people who have just recently moved to an area where a breed ban is in effect may not be aware their pet is illegal in their new residence.<sup>147</sup> The fact that breed bans will not prevent people from owning illegal dogs in any given state or municipality will become a problem when a natural disaster strikes, and these residents are forced to evacuate with their illegal animals.

How will emergency shelters, newly equipped to accommodate animals, deal with dogs that are locally banned but nevertheless show up with evacuees? This is a question that no state has yet been forced to address. Will an owner of a banned dog be turned away? Will the individual be forced to turn his dog loose to brave the disaster on his own and possibly be killed? And how will a shelter screen for specific breeds under disaster conditions?

In *American Dog Owners Ass'n v. City of Lynn*, the court held, in finding for the dog owners' association, that a specific breed-ban ordinance:

depends for enforcement . . . the subjective understanding of dog officers of the appearance of an ill-defined 'breed,' leaves dog owners to guess at what conduct or dog 'look' is prohibited, and requires 'proof' of a dog's 'type' which . . . may be impossible to furnish. Such a law gives unleashed discretion to the dog officers charged with its enforcement, and clearly relies on their *subjective speculation* whether a dog's physical characteristics make it what is 'commonly understood' to be a 'Pit Bull.'<sup>148</sup>

The holding of that case resonates in the potentially real situation of an emergency where disaster officials would be forced to decide ad hoc what type of breed a particular dog is. That is a decision

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<sup>146</sup> John Keilman, *Denver Ban Curbs Pit Bulls, Sends Them Underground*, CHICAGO TRIB., Oct. 8, 2006, (noting that although Denver bans pit bulls, "officials estimate that thousands of dogs continue to live in the city, sheltered by residents ignorant or contemptuous of the law.").

<sup>147</sup> Barbara Whitaker, *Pit Bull Owners Put Laws to the Test*, N.Y. TIMES, Sept. 10, 2006, at 14WC (relates anecdote of a New Jersey woman, Natalie Wells, who was unaware of her town's ban on pit bulls when she purchased a house in Englewood and moved there with her American pit bull terrier. Wells challenged the ordinance in court and managed to get the law repealed.).

<sup>148</sup> *Am. Dog Owners Ass'n, Inc. v. City of Lynn*, 533 N.E.2d 642, 647 (Mass. 1989) (emphasis added).

that could possibly impact not only the animal's life, but perhaps its owner's life as well, if the owner will not evacuate his home without his dog.

Determining a dog's specific breed is also not an easy task. The Denver ordinance banning pit bulls establishes that a pit bull can be any dog that possesses most of the traits of an American Pit Bull Terrier, an American Staffordshire Terrier, or a Staffordshire Bull Terrier.<sup>149</sup> It further goes on to note that a list of these characteristics is available at the clerk's office.<sup>150</sup> Is a disaster enforcement official, delegated to maintain order at an evacuation shelter, expected to stand guard with this list of characteristics, prepared to evaluate and designate each dog that enters the shelter as "not a pit bull?" Surely this cannot be an appropriate solution to the problem. It remains, however, a distinct possibility as long as the vagueness of breeds remains in contention as far as this issue is concerned.

Breed labeling is indeed subjective: "any short-haired, floppy-eared dog is labeled a Lab-mix; any prick-eared dog with black and tan markings is a shepard [sic] mix; and any muscular short-haired dog is a pit bull mix."<sup>151</sup> Currently, there is no objective way to determine the exact breed of a dog.<sup>152</sup> Furthermore, "law enforcement personnel typically have no scientific means for determining a dog's breed that can withstand the rigors of legal challenge, nor do they have a foolproof method for deciding whether owners are in compliance . . . of [breed ban] laws."<sup>153</sup> In an emergency situation, if officials are in a position where they must determine breed before allowing an animal into an evacuation shelter, or to provide transportation to an animal in need of assistance, there is no bright line rule which they can use. That lack of a bright line rule will inevitably lead to dogs being wrongly accused of being a breed that they are not, of illegal

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<sup>149</sup> Denver ordinance, *supra* note 21.

<sup>150</sup> *Id.*

<sup>151</sup> Shari King, *Dog Fight Over Pit Bulls—Pit Bull Ban Would Punish Good Owners*, PANTAGRAPH, Feb. 5, 2006.

<sup>152</sup> Bonnie V. Beaver, et al., *A Community Approach to Dog Bite Prevention*, JAVMA, June 1, 2001, at 1733, available at [http://www.avma.org/public\\_health/dogbite/dogbite.pdf](http://www.avma.org/public_health/dogbite/dogbite.pdf).

<sup>153</sup> *Id.*

breeds not being discovered, and other similar injustices.<sup>154</sup> The unfortunate truth is that in situations such as these, only the innocent animal really suffers. Being a member of a “banned breed” does not per se make a dog inherently dangerous or predisposed to injure people. A situation such as this would arise only in times of true emergency. Offering a solution to the issue now, however, would prevent countless animal lives being lost in the midst of chaos and disorder.

## VII. PROPOSALS FOR A SOLUTION

One solution to the problems outlined above would be to amend the current federal PETS Act and any similar state laws. The amendments should be in the form of a clause banning breed discrimination in the course of emergency plans involving animals.

State and local governments have the power to implement laws necessary to ensure the safety of their residents and the public as a whole. Therefore, a complete obliteration of breed bans imposed on states is not feasible. Instead, a temporary exemption from the sanctions and requirements that may accompany a breed ban for the time necessary to overcome disaster or emergency is more plausible. With a non-discrimination clause in place, animals, regardless of breed, would be guaranteed a spot at emergency evacuation shelters. They would be guaranteed transportation during times of emergency with their owners. The civil penalties could be dealt with later, once normalcy returned; but for the time being, in the midst of the emergency, a non-discrimination clause would assist in reducing the possibility of increased havoc. It would ensure that most of the animals would be saved, therefore reducing the number of people that would refuse to leave their homes without their pets, reducing the number of animals roaming the streets homeless, and reducing the danger to rescue workers and citizens waiting for assistance alike. Such a provision would ensure that the

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<sup>154</sup> Weiss, *supra* note 15 (noting that “bans carry with them too much potential for improper and arbitrary enforcement: inaccurate breed identification by officials, difficulty enforcing breed bans against mixed-breed dogs . . . and the potential for not identifying a genuinely ‘dangerous dog’ as such because it doesn’t fall into the specified breed categories.”).

original purpose for the PETS Act, which is to preserve public health and safety, and increase compliance with mass evacuations, would be carried out. Regardless of breed, all dogs are threatened by a disaster, and should be protected from harm.

A provision calling for a suspension of breed-specific legislation in the course of a natural disaster or emergency would most likely upset advocates of BSL. One potential argument is that if breeds banned were allowed to enter shelters where people are housed, then the likelihood of injury to people because of these dogs could increase. While this is a valid concern, there is a reasonable answer to this concern that would not involve breed labeling or breed specific legislation.

Among those familiar with dogs, it is common knowledge that a dangerous dog can be one of any type of breed.<sup>155</sup> Furthermore, even small dogs, which oftentimes bite more often than big dogs, can cause substantial harm.<sup>156</sup> Dogs are not inherently vicious, but it is their upbringing and training (or lack of), which can lead to an aggressive animal.<sup>157</sup> The likelihood of a dog biting depends on five “interacting factors: heredity, early experience, later socialization and training, health, and victim behavior.”<sup>158</sup> Nevertheless, there are approximately 4.7 million people bitten by dogs in this country every year, presenting a legitimate concern.<sup>159</sup>

The focus on dangerous dogs, however, should not be on which particular breed constitutes the animal’s genetic make up. Instead, the focus should be on the dangerous behavior itself. In order to prevent situations where dangerous dogs are allowed to be members of our society and eventually find themselves in a situation where they must be part of a public evacuation, municipalities and states must have stricter enforcement of their

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<sup>155</sup> Beaver, *supra* note 152; *Cf.* *Braun v. York Properties, Inc.*, 583 N.W.2d 503 (Mich. Ct. App. 1998) (where a 12-year-old was bitten and seriously injured by a neighbor’s Labrador).

<sup>156</sup> Beaver, *supra* note 152.

<sup>157</sup> Rosenthal, *supra* note 1 (noting that “the dangerous dog of the time is directly related to the number of irresponsible individuals who insist on having them. Ban one breed and these people will go on to find another breed they can exploit.”).

<sup>158</sup> Beaver, *supra* note 152.

<sup>159</sup> Centers for Disease Control and Prevention, National Dog Bite Prevention Week, <http://www.cdc.gov/ncipc/duip/biteprevention.htm> (last visited Mar. 15, 2007).

existing *dangerous dog* regulations. Those laws need to be firmly enforced. This way, people who are irresponsible with their animals are appropriately punished—because those dangerous animals are the animals that become a public safety hazard in the midst of an emergency.

### VIII. CONCLUSION

People have made dogs part of their communities for over 12,000 years.<sup>160</sup> As such, household pets, and more recently service pets, have come to be not just animals that share our home, but members of our families. As members of the family, household pets need to be protected at times during which people cannot take care of themselves, much less their animals. The recently approved federal PETS Act is a landmark achievement for those who understand just how important our pets' safety is to us. However, the law remains incomplete. As they are currently written, the PETS Act and similar state laws cannot be fully effective against the tragedies that ensue when animals are left behind during natural disasters and emergencies. These statutes need a clause that disallows the application of breed-specific legislation in emergency situations. Without this type of non-discrimination clause, the sad situations encountered during Hurricane Katrina, Hurricane Rita, and countless other such situations will only continue to be repeated. As members of our family, our pets deserve better than that.

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<sup>160</sup> *Id.*