

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION ONE

CONCERNED DOG OWNERS  
OF CALIFORNIA (CDOC),  
CATHIE TURNER, DANA  
BLEIFER, DVM, VARDUI  
KHORIKYAN, *et al*

Plaintiffs and Appellants,

v.

CITY OF LOS ANGELES, LOS  
ANGELES ANIMAL SERVICES,  
ED BOKS, *et al*,

Defendants and Respondents

Court of Appeal No. B218003

(Super. Ct. No. BS 114453)

Appeal From a Judgment and Order  
Of the Superior Court, County of Los Angeles  
Hon. David Yaffe, Judge

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**APPELLANTS' OPENING BRIEF**

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TO BE FILED IN THE COURT OF APPEAL

APP-008

<p><b>COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE</b></p>	<p>Court of Appeal Case Number: <b>B218003</b></p>
<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>John Michael Jensen State Bar No. 176813</b>                  Law Offices of John Michael Jensen                  11500 West Olympic Blvd Suite 550                  Los Angeles CA 90064                  TELEPHONE NO.: <b>310-312-1100</b> FAX NO. (Optional):                  E-MAIL ADDRESS (Optional): <b>johnjensen@johnmjensen.com</b>                  ATTORNEY FOR (Name): <b>Concerned Dog Owners of CA (CDOC), Turner et al</b></p>	<p>Superior Court Case Number: <b>BS114453</b></p>
<p>APPELLANT/PETITIONER: <b>Concerned Dog Owners of CA (CDOC), Turner et</b>                   RESPONDENT/REAL PARTY IN INTEREST: <b>City of Los Angeles, LAAS, et al</b></p>	<p><i>FOR COURT USE ONLY</i></p>
<p><b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b></p> <p>(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE    <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE</p>	
<p><b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b></p>	

1. This form is being submitted on behalf of the following party (name): Concerned Dog Owners of CA (CDOC), Turner et

2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.  
 b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person

Nature of interest (Explain):

- |                                |  |
|--------------------------------|--|
| (1) Cathie Turner              | party, financial and other interest in animals |
| (2) Dana Bleifer, DVM          | party, financial and other interest in animals |
| (3) Vardui "Rose" Khorikyan    | party, financial and other interest in animals |
| (4) Concerned Dog Owners of CA | party, entity                                  |
| (5)                            |  |

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: April 28, 2010

John Michael Jensen  
(TYPE OR PRINT NAME)

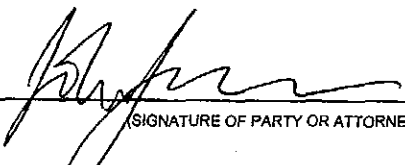
  
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## I. INTRODUCTION

1. Owners of non-sterilized dogs and cats in Los Angeles are forced by the City of Los Angeles to engage in political speech, to suffer forced association, and to promote the Los Angeles Animal Commission's political beliefs.

a. The City of Los Angeles' new Mandatory Spay and Neuter (MSN) Ordinance (2CT346- 355) unconstitutionally

- i. forces owners of healthy, non-sterilized dogs and cats to join an "exempt" group or association of the City's choice (which are required by the City to espouse an anti-hunting or similar philosophy) (2CT347 and 4CT824-827); or
- ii. forces owners of non-sterilized animals to obtain a stigmatizing (1CT61-63 and 5CT903) "Breeder's Permit" (4CT822-823) or a "Breeding Permit" (2CT350) without regard to whether they intend to "breed" or produce offspring (5CT875-877) from the animal (2CT348); or
- iii. violates Equal Protection by creating irrational exemptions for "show", "herding", "service", and police dogs where similarly situated owners must sterilize their dog (2 CT 347); or

iv. irrationally compels owners of all other non-sterilized dogs and cats (that do not contribute to any problem) to irreversibly spay or neuter their dog or cat if the animal resides within the City of Los Angeles.

- b. To make the First Amendment violations worse, “most of the animals dying in [Los Angeles City] shelters are irremediably suffering due to sickness or injury, demonstrate aggressive behavior, or are feral or neonatal cats or pit bulls”. (4CT750) As such, the MSN violates the Tenth Amendment. The underlying “problem” is that aggressive, sick dogs and feral neonatal cats are impounded in city shelters because (i) no place else will accept them or (ii) they wander or die in the street. The sick and aggressive animals must be compassionately euthanized so that they do not suffer more.
- c. Falsely characterized by politicians as “mass euthanasia”, “pet population” or “tens of thousands of unwanted and abandoned dogs and cats are euthanized each year”(1CT51), the facts are that only 580 dogs (mostly pit bulls) and cats (mostly feral cats) are euthanized annually in city shelters for lack of space or time. (2CT261-262 and 6CT789-790).

2. Plaintiffs-Appellants Concerned Dog Owners of California, Cathie Turner, Dr. Dana Bliefer *et al* (collectively hereafter CDOC) appeal the final judgment (6CT1257-1260) of the Superior Court of Los Angeles County disposing of all issues in their *Complaint for*(1)*Violation of Freedom of Association; (2) Violation of Freedom of Speech; (3) Violation of First Amendment; (4) Violation of California Constitution Individual Liberties; (5) violation of Due Process; (6) Violation of Equal Protection; (7) Violation of Tenth Amendment Police Power; (8) Injunctive Relief; (9) Declaratory Relief; and (10) Writ of Mandate* (1CT5-44) against the City of Los Angeles *et al* associated with the new Mandatory Spay and Neuter Ordinance, LAMC 53.15.2 .

- a. Judge David Yaffe heard the action without a jury and entered judgment in favor of the City of Los Angeles on July 14, 2009. (6CT1239-1247) CDOC timely filed a *Notice of Appeal* on July 31, 2009. (6CT1250-1262)

## **II. STATEMENT OF THE CASE**

Owners of non-sterilized dogs and cats in Los Angeles challenge the Superior Court ruling and challenge the constitutionality of the City's MSN ordinance.

1. Adopting the logic of an unpublished case<sup>1</sup> dealing with a materially different ordinance, the Superior Court also based its ruling on the erroneous foundation that “petitioners do not have a right under the constitution to maintain such [non-sterilized] pets”. P2. However, the Superior Court failed to recognize that the City<sup>2</sup> of Los Angeles’ Mandatory Spay and Neuter Ordinance (“LAMC 53.15.2” or “MSN”)

(i) forces owners of certain pure-bred, non-sterilized dogs to join registries or associations espousing the City’s required anti-hunting and similar ideologies(4CT824-827); or

(ii) stigmatizes (1CT61-63) owners of mixed-bred, non-sterilized dogs with a vituperative (5CT903) slogan “breeder” (as politicized by animal rights activists) (*See Attachments 1-3*) (5CT871, line 17-18); or

(iii) violates equal protection; or

(iv) Requires owners to spay or neuter their dog and cat when there is no rational reason to sterilize all 1.85 million dogs and cats in Los Angeles.

2. Facially Unconstitutional. Importing the Animal Commission’s regulations containing content- based restriction on protected speech, LAMC 53.15.2 violates the First Amendment when it requires owners

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<sup>1</sup> The Superior Court adopted the logic of the unpublished *American Canine Foundation v. Sun*, (3CT439-448) but the reasoning does not apply because the 2 MSN laws are very different. The MSN in *American Canine* allowed a politically neutral “unaltered dog license” and did not require observance of a political scheme. The lower court failed to recognize that LA City’s MSN requires certain orthodoxies in violation of the First Amendment.

<sup>2</sup> The City of Los Angeles entity is also referred to herein as “City”, “Los Angeles”, “LA”, and “City of LA”.

to ascribe to content-based ideologies by requiring them to associate with the "exempt" registries or associations that are required by Animal Commission regulations to " *not allow, endorse or engage in any activity that is determined to be intentionally harmful or detrimental to the health or safety of animals or humans;*" ;(4CT824-7)

3. LAMC 53.15.2 cannot survive strict scrutiny as a content based restriction of First Amendment rights and it lacks a compelling government interest and is neither narrowly tailored nor the least restrictive means to reduce euthanasia in city shelters.
4. Overbroad. LAMC 53.15.2 is unconstitutionally overbroad because it potentially covers a great deal of constitutionally protected activity, and cannot be easily limited by prosecutorial discretion.
5. Exemptions Do Not Save MSN. The exemptions and other exceptions clause in the MSN, as similar to the exception clause in *United States v. Stevens* (559 U.S. \_\_\_\_ (2010)), does not save the MSN from being constitutionally overbroad.
6. Tenth Amendment. LAMC 53.15.2 violates the Tenth Amendment and costs owners about one hundred million dollars (\$100,000,000) (5CT893-899) to sterilize the 500,000 unaltered dogs and cats

(1CT142) when the vast majority of the dogs and cats do not contribute to the City's identified problem;

7. Equal Protection. LAMC 53.15.2 violates Equal Protection;
8. Due Process. LAMC 53.15.2 violates Due Process, is vague, and self contradictory;
9. Unfettered Delegation. LAMC 53.15.2 delegates unfettered discretion and power to the Animal Commission to capriciously certify and approve registries and associations. (2CT314-317)

### **III. STATEMENT OF APPEALABILITY**

This appeal is from the judgment and order of the Los Angeles County Superior Court and is authorized by the Code of Civil Procedure, including section 904.1, subdivision (a)(1).

### **IV. STATEMENT OF FACTS**

1. 1.85 million Dogs or Cats in LA. 1.85 million Los Angeles residents are estimated to own a dog or cat.

Of the estimated 1.85 million dogs and cats, Los Angeles City Controller estimates that 500,000 pets are unaltered (i.e. non-sterilized). (4CT683)

As for sick, lost, feral, or aggressive animals, the City of Los Angeles took in about 47,427 dogs and cats in the 6 City animal shelters in 2007. (2CT241 and 4CT694)

About half the animals that enter the shelters are adopted. (2CT241) About 16% are returned to or reclaimed by their owners. (4CT720)

In the recitals to the adoption of the MSN, the text of the prologue of the MSN states that “tens of thousands of unwanted and abandoned dogs and cats are euthanized each year”. (1CT51).

2. Facts: No “Mass Euthanasia”, No “Pet Overpopulation” Problem.

“Most of the animals dying in [Los Angeles City] shelters are irremediably suffering due to sickness or injury, demonstrate aggressive behavior, or are feral or neonatal cats or pit bulls”. (4CT750) Los Angeles Animal Services Ed Boks described “hitting the wall” where the City has approached or attained the “No – Kill” rate of 3.75 shelter killings per 1,000 residents. (4CT750)

Factually, 6,043 dogs were euthanized in City shelters in calendar year 2007<sup>3</sup>. (2CT261-262 and 6CT789-790). Of those, 801 were dead on arrival, 562 died at a private Veterinarian, 594 were euthanized for a history of behavior aggression, 1,789 were euthanized for observed aggressive behavior, 1076 were euthanized because they were deemed to be irremediably suffering or untreatable, 1,334 were euthanized either because treatment did not work or was unavailable, and 223 neonatal dogs were euthanized. (2CT261-262).

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<sup>3</sup> Facts are latest at time of underlying suit.

Pit bulls account for about 30% of the dog intakes. (4 CT 804) 40% or more of the dogs euthanized are Pits Bulls. (4CT804) In 2008, pit bulls accounted for 77% of the dogs euthanized (3,279 of 4,239). (4CT804)

3. Small Number of Healthy Dogs Euthanized Because Insufficient Time or Space in Shelter To Continue to Keep Them Available for Adoption. Only 465 dogs were euthanized for lack of "TIME/SPACE" in LA city shelters in 2007. (2CT262).

Cats. 8,954 cats were euthanized in City shelters in calendar year 2007. (2CT261) Of those, 341 died at a private Veterinarian, 560 were euthanized for a history of behavior aggression, 1,245 were euthanized for observed aggressive behavior (possibly feral), 1,607 were euthanized because they were deemed to be irremediably suffering or untreatable, 2,168 were euthanized either because treatment did not work or was unavailable, and 2,918 were neonatal cats that were euthanized either because there was no mother or no volunteer to feed them. (2CT261).

40% of the cat intakes, Neonatal cats cannot survive for long with a mother or foster caregiver. (4 CT 799) Neonatals represent half the cat euthanasia. (4CT801)

4. Small Number of Healthy Cats Euthanized Because Insufficient Time or Space in Shelter. Only 115 cats were euthanized for lack of “TIME/SPACE” in City shelters in calendar year 2007. (2CT261)

5. Vast Majority Euthanized Because Aggressive, Sick. Of the 1.85 million dogs and cats in the City, about 15,000 were euthanized in 2007 in total. Of the 15,000, about 80 % of the dogs and 95% of the cats were euthanized *because* of a history of behavior aggression, observed aggressive behavior (possibly feral), were deemed to be irremediably suffering or untreatable, because treatment did not work or was unavailable, or were neonatal kittens. (2CT261-262).

“Tens of thousands” were *not* euthanized because they were abandoned or unwanted; approximately 15,000 were euthanized because euthanasia is a humane way to end the life of a sick or aggressive animal. (1CT51).

The MSN does not improve health, reduce aggression, or make a dog or cat more adoptable. So the MSN does not address the reasons for euthanasia in the shelters. The MSN will have little or no effect on reducing the amount of euthanasia that actually occurs. Since sterilization has harmful secondary effects, the MSN may increase the number of sick dogs and cats in the shelter that must be euthanized.

6. LA's Law Before MSN. Although the City requires owners to get a license for dogs, only about 35% of dogs are licensed. *Deposition of Ed Boks, Los Angeles*

*Animal Services, City of Los Angeles*<sup>4</sup>, page 138, line 23. The City does not require a license to own a cat. *Depo. at* page 138 lines 17- 23.

While LA City requires owners to keep and hold dogs in an enclosed area, about 65% of the animals impounded by the City result from LA animal control picking up wandering animals or other law enforcement. (4CT802) The other 35% of animals received in the City Shelter are “relinquished” by their owners. (4CT802)

7. Pit bulls and Neonatal Cats Contribute Most to Euthanasia in Shelter. 2 clear sub-categories of animals dominate the statistics of animals entering the City shelters: (1) Neonatal kittens (4CT799) and (2) pit bull dogs. (4CT803) .

Pit bulls account for about 25% of all dogs impounded (4CT803) and 43.6% of the dogs euthanized (4CT804).

8. LA's Unsupported Argument: Sterilization leads to less Euthanasia. The City argues that if dogs and cats were sterile, they could not breed, then as a result there would be no "pet overpopulation" or "mass euthanasia" in city shelters. They fail to recognize that sterilized dogs and cats are also euthanized in City shelters.

The City fails to record the sterilization status of the animals that enter the shelter. (1CT150) There is no evidence to support that only non-sterilized animals

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<sup>4</sup> The transcripts of the *Deposition of Ed Boks, Los Angeles Animal Services, City of Los Angeles* was lodged with the Superior Court for inclusion in the record on Appeal. It was also separately submitted to the Clerk of the Appellate Division. While the Clerk’s Transcript contains excerpts, the Transcript should be at the Appeals Court.

were euthanized. The City simply does not know how or whether sterilization will reduce the number of animals in the shelters.

While clearly the parents of every existing dog and cat were not sterilized, there is no causal connection between the reproductive status of an animal and its likelihood to be impounded, and later euthanized.<sup>5</sup>

9. No Causal Connection. Without a causal connection, it is irrational to legislate sterilization for every animal. The MSN penalizes law abiding owners who do not contribute to the problem for acts to which they do not contribute.

The actual solution is far different. The City's expert, Ed Boks, the Head of Los Angeles Animal Services, formally recommended a narrow, targeted ordinance to "allow the Department of Animal Services to spay or neuter any animal taken in or subject to enforcement". (4 CT 809-812).

The City Council ignored him. Instead the council wrote the MSN that overbroadly affects all owners and their dogs and cats.

In legislating the MSN's framework of exemptions, the City Council provided the Animal Commission with unfettered discretion to set the guidelines for approving exempt registries and associations. (2 CT 314 – 317)

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<sup>5</sup> On the other hand, there are strong facts and correlations recognized by the City that show that pit bulls and feral cats are more often impounded, more often euthanized, and/or have offspring that are more often euthanized.

10. Viewpoint Discrimination. Pursuant to the grant of power, the Animal Commission enacted guidelines to approve "exempt" associations and registries call for 11 requirements including (1) requiring background information; (2) Explanation of certification process; (3) Requirement that the registry or association is established for three or more years; (4) maintains and enforces a code of ethics for breeding; (5) Requires knowledge of the breed standard, genetics, pedigrees of stud and matron; (6) restricts breeding of animals that are not physically or temperamentally sound or have health problems that common threaten breed: (7) Requirement that animals are examined by veterinarian to determine that they are suitable and healthy; (8) denying, suspending, or revoking membership of any breeder in violation or code of ethics or who is proven or convicted of a crime against an animal; (9) *does not allow, endorse or engage in any activity that is determined to be intentionally harmful or detrimental to the health or safety of animals or humans*; (10) participates in sponsors or organizes competitions or shows; (11) explains process an criteria in issuing a certification. (4CT 824-7)

11. Content-Based Compelled Speech and Association. The guidelines explicitly espouse content-based political beliefs that are controversial in the "animal rights v. pet owners" political debate, including requiring the registries and

associations to espouse a philosophy to not *be intentionally harmful or detrimental to the health or safety of animals.* (4CT 824-7)

While the City can lawfully and correctly adopt anti-cruelty laws, the MSN's requirements are ideological and require an individual to join an independent group and associate with a political ideology, doctrine, philosophy, or principle. The required political philosophy is facially content-based and conflicts with an individual's right to pursue lawful conduct such as hunting, eating meat, or other principles. As the Supreme Court found in *United States v. Stevens* (559 U.S. \_\_\_\_ (2010)), there is not a new category of unprotected speech for “intentional” animal acts.

The exceptions clause in the MSN, as similar to the exception clause in *Stevens*, does not save the MSN from being constitutionally overbroad. Because the exemptions are defective (in violation of Equal Protection, etc.), the exceptions cannot be used to legitimately narrow the ordinance to constitutional applications.

Oddly, since compassionate euthanasia requires the intentional killing to alleviate suffering, the required speech is diametrically opposite the " humane treatment of animals." LAMC 53.15.2 (b)(2)(A).

Further, the requirement to join an association or registry does not correlate or advance the reduction of pet overpopulation and mass euthanasia in City Shelters.