

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

APPELLANTS' OPENING BRIEF

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COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE	Court of Appeal Case Number: <p style="text-align: center; font-weight: bold;">B218003</p>
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APPELLANT/PETITIONER: Concerned Dog Owners of CA (CDOC), Turner et RESPONDENT/REAL PARTY IN INTEREST: City of Los Angeles, LAAS, et al	FOR COURT USE ONLY
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
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.	

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

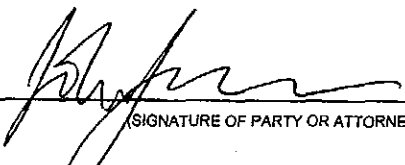
Continued on attachment 2.

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)



 (SIGNATURE OF PARTY OR ATTORNEY)

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Municipal Ordinance

LAMC 53.15.2 *passim*

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 case¹ 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 City² 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

¹ 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.

² 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 2007³. (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).

³ 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*⁴, 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

⁴ 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.⁵

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)

⁵ 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.

12. Improper Grant of Power. Constitutionally invalid, the delegation to the Animal Commission of the power to select registries and association is unfettered, overbroad, and does not reduce "pet overpopulation" or "mass euthanasia" in City Shelters.

13. Exempt Registries and Associations. With respect to the City's qualification of the exempt registries and associations, four (4) organizations (American Kennel Club("AKC"), United Kennel Club ("UKC"), the American Rare Breed Association, and the International Cat Association (TICA)) applied to the City to become accepted registries or associations under the show dog exemption in the First Round (June –August 2008); (4CT824-827) Neither the AKC nor the UKC provided information that they espoused the anti-hunting philosophy, i.e. Neither organization provided information to the City that it does not endorse any activity that is determined to be "intentionally harmful or detrimental to the health or safety of animals or humans".(2 CT 314-317)

14. Unfettered Discretion to Approve. Although none of the three associations or registries satisfied all the terms and conditions that the City required, the Commission exercised its unfettered discretion and allowed the American Kennel Club (AKC), the United Kennel Club (UKC) and the International Cat Association Inc. (TICA) to be certified as "exempt". (2CT314-

317). The Commission denied the application of the American Rare Breed Association.

Each of the approved entities (AKC, UKC, and TICA) charges fee to join or associate. (5CT864-866). Payment of a fee would be required to receive documentation to exempt a dog or cat under LA's MSN, (even though forcing the disclosure of a Citizen's association is generally considered to be unconstitutional.)

Plaintiffs do not wish to be forced to associate with registries or association of the City's choosing or one that holds specific beliefs required by the City. Plaintiffs do not wish to be compelled to associate with the ideas and terms that the City requires that the exempted groups adopt.

15. Exemption in the MSN: Pure Breeds Can Be Exempt. As for the structure of the MSN, the formal exemptions for show dogs, herding dogs, and guide dogs in section a-e of the MSN apply only to pure breed dogs. (1CT52) (5CT872)

There is no causal or other rational relationship to a dog being show, herding, law enforcement or guide dogs and a dog not reproducing or entering city shelters. In violation of Equal Protection, the exemptions treat similarly situated owners unequally. A person who "shows" one puppy from a litter is exempt while another person who does not show the second puppy must have the second puppy sterilized.

16. Exemption Irrational: Mixed Breeds ("Mutts") Must Be Sterilized. There is no exemption that would allow a healthy mixed breed or "mutt" dog to remain intact (without the owner getting a "Breeder's Permit" exemption). (5CT872). There is no exemption available for mixed breed cats (without the owner getting a "Breeder's Permit" exemption (4CT822-823).

No category of exemption is rationally related to reducing the number of pets entering the shelters, returning impounded lost pets, or reduction of euthanasia. A rational exemption would assist a dog or cat to leave the shelter and be returned to its owner. But dogs and cats that are micro chipped or licensed animals are not exempt from mandatory sterilization.

Since only 35 % of dogs are even licensed and no cats are licensed, the City has not even effectively enforced a constitutionally acceptable category of "responsible pet owners" that are equivalent or superior to the categories or exemption in the MSN.

17. Vague Language. The language of the Ordinance is vague. The Head of Los Angeles Animal Service, Ed Boks tried to interpret and explain the meaning and effect of the "exemptions":

Q. Before we get into the specifics of th[ese exemptions], how do these criteria that are identified in this report correlate to reducing the number of unwanted [animals] or overpopulation in the City of Los Angeles?

A. It speaks to the responsibility or the accountability of the breeder.

Q. Now is this, are these exemptions limited to breeders, or are these exemptions limited to dogs' owners?

A. These are the requirements of registries who want to be recognized in the City of Los Angeles.

Q. So how does-- these standards-- So let me take a step back and ask you a question about that. So do you think that responsible pet owners-- that the responsibility of the pet owners correlates positively with that person not contributing to the pet overpopulation issue?

A. Yes

Q. So are there other ways of showing that a person is a responsible pet owner?

A. Other ways than these?

Q. Other ways than joining--

A. There are many ways.

..

Q. And that leads me to the question: How does the show -dog exemption relate to pet overpopulation issues?

A. Well, it's not the show dog issue. It's the breeding of show dogs that don't make it that far.

Q. But the exemption doesn't-- it's not the breeder's permit. The exemption is the show dog exemption, a person who is putting their dog in a registering and putting them in a show. How does that correlate with pet overpopulation?

A. Again it speaks to the accountability and the seriousness of the breeder to be participating in a bona fide legitimate organization.

. (5CT883-888).

The other "options" in the MSN espouse political identities and beliefs.

18. Breeder's Permit. For example, the LA City Council deleted the prior, content-neutral "intact dog license" in the municipal code. In the MSN, the City Council revised the "Breeder's Permit" from a commercial license to whelp

offspring and changed it so that *every* owner of a non-sterilized dog or cat was a “Breeder”. (4CT822-823)

Prior to the City drafting the MSN, the word “Breeder” had already become a hotly politicized political “slogan” (1CT61-63) used by animal rights activists to stigmatize people who wanted to keep their dogs and cats intact . (5CT903)

19. "Breeder" as a Vituperative Political Slogan. Characterizing the term “Breeder” as part of a political “slogan” by *People for the Ethical Treatment of Animals* (PeTA) (1CT61-63), Los Angeles expert Ed Boks was aware of the PETA campaign against "Breeders" (i.e. owners of non-sterilized dogs or cats) before the MSN. From memory, Boks recited the slogan as “*Breeders kill shelter animals’ chances*” I think was the slogan.” (5CT871, line 17-18).

Before the MSN was enacted by the City, the term “Breeder” had become vituperative political speech across the country, but particularly in the "animal rights" community and in the community of people who care about dogs and cats. A delegate to the American Kennel Club, David Powers describes that activists appear at dog shows and other events, including dressed as members of Klu Klux Klan, to stigmatize “Breeders”, people that breed dogs and people with intact dogs. (5CT 900-903) Powers describes activists threatening individuals based on the label as a “breeder”.(5CT903)

The MSN Ordinance exemption for Owners that obtain a "Breeders' Permit"

reads:

(c) **Breeding Permit:** (1) No person shall cause or allow any dog or cat owned, harbored or kept within the City of Los Angeles to breed without first obtaining a breeding permit, as described below. The term **breeding permit** means a written authorization, issued annually by the General Manager, giving its lawful holder permission to breed a dog or a cat. LAMC 53.15.2 (c)(4CT822-823)

Specifically the City of Los Angeles Breeder's Permit is a permit to allow the whelping of a puppy or kitten. (4CT822-823) It is not an independent "intact dog license".

Due to its vagueness, the MSN creates an intractable conflict between the "Breeding Permit" required in the MSN exemption and the language and concept of LAMC 53.15.2 (c) and the City's actual "Breeder's Permit"; (4CT822-823). Even the Head of Animal Services, charged with educating his staff and Animal Control Officers with interpreting, applying, and enforcing the MSN Ordinance, had difficulty determining whether an owner of an intact dog that did not want to breed the animal had to secure a Breeder's Permit:

Q. So the term "breeder"- what does the term "breeder" mean to you?

A. Breeder is an individual who breeds animals and has a breeding permit to do so.

Q. And is every person with an intact dog a breeder?

A. No.

Q. *So there are- the intent under the regulations as adopted, is that there would be people that would like to keep their dog intact, but not breed it, is that correct?*

A. That's correct.

..
Q. *I would like you to explain to me how the owner of a mixed-breed dog could keep their dog intact without getting a breeder's permit, in particularly if they have no intent to breed the dog?*

A. In the City of Los Angeles, they would have to fall into one of the categories, one of the exceptions to do that. And they would have to get an intact license and a breeder's permit to do so.

Q. *So if a mixed breed dog is not a show dog- Are any mixed breed dog show dogs, to your knowledge?*

A. Not that the City recognizes at this time.

..
Q: *So for a mixed breed dog, the owner of a mixed breed dog wants to keep their dog intact but not breed it. What are the options for that individual?*

A. They would get an intact license and a breeding permit.

Q. *So the breeding permit is required, even if they have no intent to breed the animal?*

A. Yes.

(5CT871-874)

When Ed Boks was asked "And the Breeder's Permit is aimed at what?", Boks responded "At reducing the number of unwanted animals being born into a community." *Depo.* lines 19-21 of page 188. After presenting Boks with the actual Breeder's Permit language (4CT822-823), and asked again what the Breeder's Permit was for, Boks responded, "anybody who owns a dog that they intend to breed is required to have a breeder's permit. That doesn't necessarily preclude others being required to have a breeder's permit". *Depo.* lines 18-21 of page 188.

Q. *Well, if you don't have any intent to breed, do you fall into this language [of the actual Breeder's Permit]?*

A. You fall into the language of the city ordinance. There's nothing on this page [Breeder's Permit] that addresses that.

Q. *But looking at this language, it is permit to create more puppies?*

A. Your question was-- is how it would be addressed to somebody who want to breed an animal. This is for that audience. Somebody who specifically wants to breed their animal needs to get a license and a breeder's permit. That is who this is for.

Q. *My question was actually about an owner who wants to keep their dog intact, but doesn't fall into any of the other exemptions.*

A. We refer them to the city ordinance, not to this [the Breeder's Permit].

Q. *But if they don't fall into any other exemption, then they're instructed to get a breeder's permit?*

A. Correct..

Q. *Does this Breeder's permit simply deal with intact animals, or does it deal with breeding?*

A. Both depending-- depending on the intention of the owner.
. (5CT875-877)

Plaintiff Cathie Turner and others wish to keep their dog intact yet they do not intend to breed their animal. (3CT497-502) Plaintiff Turner and others own healthy, non-exempt, intact dogs that are too old to breed, yet the MSN law requires that she either sterilize her dogs (which would be injurious at the dog's age) or get a Breeder's Permit.

The City of Los Angeles requires plaintiffs and owners of animals that do not want to sterilize their animal and do not otherwise qualify for an exemption to

get a Breeder's Permit(4CT822-823), even if they have no intent or desire to breed their animal. (5CT875-877)

Plaintiffs do not wish to be labeled as "Breeder", especially publicly by the City, and compelled to associate as such. Plaintiffs do not wish to be stigmatized under the threat of taking of property and the threat of the criminal prosecution for failing to sterilize the animal.

20. Cost of Spay and Neuter Surgery . For a cat, the average cost of spaying (\$230) or neutering (\$181) is high. For a dog, the average cost of spaying (\$302) or neutering(\$274) is even higher. (5CT893-899)

21. Health Risks of Euthanasia One of the reasons that Plaintiffs wish to keep their dogs or cats intact is that early spaying and neutering caused significant increased health hazards for animals. (5CT 921-923) Scientific research demonstrates that spaying or neutering at an early age contributes to or causes obesity(2CT218- 228) , osteosarcoma (Bone Cancer) (2CT232), urinary incontinence (2 CT 218- 228), urinary tract infections (2CT234), organ issues (including recessed vulva, vaginal dermatitis, vaginitis, and urinary tract infections), hip dysplasia, geriatric cognitive impairment , increased risks of adverse reactions to vaccinations, a quadruple risk of prostate cancer in male dogs, and a triple risk of

hypothyroidism in female dogs.⁶ (2CT218-240) The health issues have been documented in the *Declaration of Dr. Dana Bleifer*. (3CT509-513)

Sterilization reduces the value of the dog or cat, as well as takes the property right of the ability to have future puppies or kittens. *Declaration of Cathie Turner*. (3CT497-502)

22. Low Current Rate of Euthanasia, No "Pet Overpopulation" Problem, No "Mass Euthanasia" Problem, LA Has already Reached and Exceeded No-Kill Rate.

The City by its own accounting has already reached and surpassed the “No Kill” threshold where the vast majority of healthy dogs and cats are adopted or returned . (4CT718-721) Prior to the passing of the MSN, the City of LA had already reduced the euthanasia rate significantly below the accepted “No-Kill” rate of 5 animals killed per 1,000 households. (5CT889-891) In fact, Los Angeles had reduced its euthanasia rate to below 4 per 1,000 residents, or about 15% below the accepted No Kill rate *before* the adoption of the MSN law. Ed Boks has defined “No-Kill”:

“When talking about “no-kill”, it is important to understand how this term is defined. At Los Angeles Animal Services, “no-kill” means using the same criteria that a compassionate veterinarian or loving guardian would use when deciding if euthanasia is appropriate. That is, euthanasia is only appropriate if an animal is terminally ill, terminally injured, or dangerously aggressive. When euthanasia is compassionately available for these animals alone we will have achieved “no-kill”.

⁶ *Id.* Pg. 2

(4CT719)

When asked “about the goal associated with this [MSN] ordinance?”

Mr. Boks answered: The goal that I am suggesting to our department – and I’m not at all sure it’s realistic but that’s what goals are for—stretch goals and to get the number of animals, dogs and cats combined , that are euthanized in the City of Los Angeles down to 2.5 for every 1,000 residents.

Q: Currently what is the number at?

Mr. Boks: It’s a little less than 4.

Q: And have there been estimates made on what the baseline no-kill percentage would be?

Mr. Boks: In the movement, the conventional wisdom was it was 5, until cities started to break that barrier. In New York, we got it down to 2.5. There’s other communities that have gotten it down below 5. So nobody really knows where it is. San Francisco are , I believe , it at 2.1. And I’m not sure that they’re maintaining that with the current economic downturn.

But what we’re looking for is sustainability; not achieving that goal, but maintaining it. We’re not there yet.

Q. And can I ask how the City of Los Angeles might be different than your experience in New York, just with respect to that goal of getting it down to 2.5 percent?

A. Even—despite the fact that Los Angeles has a lot of pet-restricted housing, it doesn’t compare to the City of New York. The City of New York, especially in the Manhattan area—well all the boroughs, there’s a huge portion of the housing that is pet-restricted. So there’s not a lot of opportunity for people to own pets. So consequently—and in a city of 8 million people, New York City takes in about as many animals as a Los Angeles community of 4 million people. So New York City is something of an anomaly and shouldn’t really—can’t be held to the same standard, that I think, the rest—most communities can be held to.

Q But perhaps San Francisco is more similar in its housing stock and restriction and its geographic location to Los Angeles—I mean to New York, than it is to Los Angeles.

Ms Chon; Objection , call for speculation.

Mr. Boks. Yeah. I often compare San Francisco to an L.A. neighborhood or a New York neighborhood. You know, it's a small, contained, opulent, well-educated community. Again it's something of an anomaly.
(5CT889-891)

There is no factual basis to support that Los Angeles had an authentic "mass euthanasia" or "pet overpopulation" problem, or that "tens of thousands of unwanted and abandoned dogs and cats are euthanized each year"(1CT51),

23. ASPCA Position. In their *Position Statement on Mandatory Spay and Neuter Laws*, the renowned American Society for the Prevention of Cruelty to Animals (ASPCA) writes:

"The ASPCA is not aware of any credible evidence demonstrating that a statistically significant enhancement in the reduction of shelter intake or euthanasia as the result of the implementation of a mandatory spay/neuter law.

To the knowledge of the ASPCA, the only method of population control that has demonstrated long-term efficacy in significantly reducing the number of animals entering the animal shelters is the voluntary sterilization of owned pets.
(5CT 904-907)

V. LAW

1. THE ORDINANCE.

1. Los Angeles' Municipal Code Section 53.15.2 Section 1, Subsection (b)

was amended to read as follows:

(b) Intact Dogs and Cats:

- i. No person who owns a cat over the age of four months shall cause, permit, or allow the cat to be in a public place unsupervised, unless the cat is spayed or neutered. The term public place shall include, but not be limited to, streets, highways, sidewalks, carnivals, shopping malls, flea markets, boardwalks, and areas in front of commercial establishments. This requirement applies to all unaltered cats, whether or not their owner(s) have obtained breeding permits pursuant to Subsection (c), below.
- ii. No person, within the City of Los Angeles, shall own a dog or cat over the age of four months that has not been spayed or neutered, unless valid written documentation is provided to show proof that the animal is exempt from the requirement to be spayed or neutered by reason of one of the following, and is in compliance with Subdivisions (3) and (4) below:
 1. The dog or cat is a breed approved by and is registered with a registry or association recognized by the Department through its Commission, whose program and practices are consistent with the humane treatment of animals, and the dog or cat is actively used to show or compete and has competed in at least one show or sporting competition hosted by or under the approval of the recognized registry or association within the last two years, or is being trained or groomed to show or compete and is too young to have yet competed.

2. The dog has earned, or if under three years old, is actively being trained and in the process of earning, an agility, carting, herding, protection, rally, hunting, working, or other title from a registry or association approved by the Department through its Commission.
3. The dog is being trained or has been appropriately trained and is actively used in a manner that meets the definition of guide, signal or service dog as set forth in Subdivisions (d), (e), and (f) of Section 365.5 of the Penal Code, or the dog is enrolled in a guide, signal or service dog breeding program administered by a person licensed under Chapter 9.5 (commencing with Section 7200) of Division 3 of the California Business and Professions Code.
4. The dog is appropriately trained or is in the process of being trained and is actively used by law enforcement agencies or the military for law enforcement, military or rescue activities.
5. The owner of the dog or cat provides a letter to the Department from a licensed veterinarian certifying that the animal's health would be best served by spaying or neutering after a specified date; or that due to age, poor health, or illness it is unsafe to spay or neuter the animal; or that arrangements have been made to spay or neuter the dog or cat within 60 days after the compliance deadline and the dog or cat is spayed or neutered within that 60-day period. This letter shall include the veterinarian's license number, the date by which the animal may be safely spayed or neutered, and updated periodically as necessary. In addition, if the letter from the licensed veterinarian certifies that arrangements have been made to spay or

neuter the dog within 60 days from the date the dog reaches the age of four months, and the dog is spayed or neutered within that 60-day period, the owner shall qualify for the lower license fee and license tax for an altered dog. It shall be the owner's responsibility to comply with the spay/neuter provisions of this chapter, including paying the license fee and license tax.

6. The dog or cat has a valid breeding permit issued to the owner pursuant to Subsection (c) below.
- iii. An unaltered dog or cat shall be implanted with an animal identification device identifying the owner of the animal.
- iv. In addition to meeting one of the exemptions in this section, the dog license application for an unaltered dog shall contain the information requested by the Department, including the identification number of the implanted animal identification device, the name and address of the owner, and the location at which the dog will be maintained.
- v. A license for an unaltered dog shall not be transferable, and shall not be issued to any person under the age of eighteen years.
- vi. The provisions of this subsection become operative on October 1, 2008. However, an unaltered dog that has a valid dog license from the Department shall not be subject to this subsection until the dog license expires, or October 1, 2009, whichever occurs first.
- vii. Any person owning, possessing, harboring or having custody and control of a cat or dog in violation of this subsection shall be given a notice to comply and information regarding free and subsidized spay and neuter services. If the violation is not corrected within 60 days, it shall be deemed a second violation and in addition to correcting the violation, the person shall pay a civil penalty in the amount of \$100.00 or shall be allowed to perform eight hours of community service. Failure

to pay the civil penalty or perform the community service and/or failure to correct the violation within the 60-day period, or any extension of that period permitted by the Department, shall be deemed a third violation. The Department shall impose a civil penalty in the amount of \$500.00 or allow the person to perform 40 hours of community service, in addition to spaying or neutering the dog or cat. After July 1, 2009, if after 60 days from the date of notification of a third violation, the \$500.00 civil penalty is not paid or the 40 hours of community service is not performed and/or the owner still has not spayed/neutered his/her dog(s) or cat(s) as required under Subsection (b) above, the continuing violation of this subsection may also be deemed a misdemeanor.

LAMC 53.15.2(b).

VI. ARGUMENT

1. STANDARD OF REVIEW

This court should review the law de novo. This court must exercise its independent judgment on the facts.

A. Strict Scrutiny. Under strict scrutiny, the ordinance fails to establish a compelling government interest that is narrowly tailored with the least restrictive means in order to override an owner's fundamental rights of due process, association, speech and other constitutional guarantees.

B. Rational Basis. Under a rational basis test, the ordinance is unreasonable and arbitrary.

2. CONSTITUTIONAL DEFECTS IN THE CITY OF LOS ANGELES' MSN

The MSN is unconstitutional.

- a. Compelled Speech: "No Intentional Injury to Animals", is Political, Anti-Hunting Speech Required by LA City Animal Commission in Guidelines for Associations and Registries

The MSN sets presumptively invalid content-based ideological and political restrictions in requiring the registries and associations to adopt an explicit (and unrelated) anti-hunting ideology (i.e. to be approved, a registry "does not allow, endorse, or engage in any activity that is determined to be intentionally harmful or detrimental to the health and/or safety of animals or humans") in order to be exempt.(4CT 826)

Facially invalid, a substantial number of applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008). The City requires individuals to associate with a group that advocates against legal behavior, including lawful hunting, etc.

The first step in overbreadth analysis is to construe the statute to determine what it covers. *United States v. Williams* 553 U.S. 285, 293 (2008). The breadth of the prospection reaches the intentional killing of birds by hunting dogs, flushing of birds by dogs, the killing of rats by cats, and other activities which are a tradition

in California. Since historically hunting dogs and bird dogs have been used to facilitate the hunting and killing of water fowl, birds, and other animals, the City's requirements explicitly adopt a political ideology, political doctrine, philosophy, body of beliefs or principle that is unrelated to pets yet circumscribes the right to pursue conduct that is lawful under state law.

The exemptions do not allow the authorities to narrow the ordinance so as to save its constitutionality. There is simply no adequate readings of the exceptions clause that results in the statutes banning only the depictions the Government would like to ban. *United States v. Stevens* 559 U.S. ___ (2010). The requirement to join an association or registry does not advance the purpose of the Ordinance and does not correlate or advance the reduction of pet overpopulation and mass euthanasia in City Shelters.

b. Content-based Restriction Strictly Scrutinized

Strict scrutiny applies to content-based restrictions on protected speech. *Parris v. Superior Court*, 135 Cal. Rptr. 2d 90 (Cal. App. 2. Dist. 2003); *Varian Medical Systems, Inc. v. Delfino*, 6 Cal. Rptr. 3d 325 (Cal. App. 6. Dist. 2003). Content based restrictions must be narrowly tailored to meet a compelling government interest; however, this test does not require that there be no conceivable alternative, only that the regulation not burden substantially more speech than is necessary to further the government's legitimate interests. *Keenan v.*

Superior Court of Los Angeles County, 27 Cal. 4th 413, 117 Cal. Rptr. 2d 1, 40 P.3d 718 (2002), cert. denied, 537 U.S. 818, 123 S. Ct. 94, 154 L. Ed. 2d 25 (2002). When the government regulation of speech targets not the subject matter but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant; content-based restrictions on speech are presumptively invalid. *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002), cert. denied, 124 S. Ct. 387, 157 L. Ed. 2d 276 (U.S. 2003).

Here the city is clearly regulating speech and association based on the content of the anti-hunting message (4CT824-827), and endorsing the “Breeder” stigmatized message(1CT61-63), even for those to whom it does not apply. (5CT903)

A “Breeder” designation must be viewed within the context of the political sloganism and vilification (5CT903) that attaches to the terms “Breeder” and “Breeding”. (5CT 871, line 17-18).

3. FIRST AMENDMENT RIGHT TO FREE SPEECH AND FREE ASSOCIATION

Any government action which chills constitutionally protected speech or expression contravenes the First Amendment. *Wolford v. Lasater*, 78 F.3d 484 (10th Cir. 1996). "Government" or "state" action includes a municipal ordinance

adopted under state authority. *Times Film Corp. v. City of Chicago*, 365 U.S. 43, 81 S. Ct. 391, 5 L. Ed. 2d 403, 15 Ohio Op. 2d 254 (1961).⁷

The First Amendment assures the broadest colorable exercise of free speech and free press for religious, political, economic, scientific, news, or informational ends. *Douglas v. City of Jeannette (Pennsylvania)*, 319 U.S. 157, 63 S. Ct. 877, 87 L. Ed. 1324 (1943), for concurring opinion, see, 319 U.S. 157, 63 S. Ct. 882, 87 L. Ed. 1324 (1943) and reh'g denied, 319 U.S. 782, 63 S. Ct. 1170, 87 L. Ed. 1726 (1943). The Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas which are conventional or shared by a majority. *Kingsley Intern. Pictures Corp. v. Regents of University of State of N.Y.* 360 U.S. 684, 79 S. Ct. 1362, 3 L. Ed. 2d 1512 (1959).

Governmental action may be subject to constitutional challenge even though it has only an indirect effect on the exercise of First Amendment rights. *Laird v. Tatum*, 408 U.S. 1, 92 S. Ct. 2318, 33 L. Ed. 2d 154 (1972), reh'g denied, 409 U.S. 901, 93 S. Ct. 94, 34 L. Ed. 2d 165 (1972) and leave to file for reh'g denied, 479 U.S. 911, 107 S. Ct. 309, 93 L. Ed. 2d 284 (1986).

4. COMPELLED SPEECH