

When Fido is Family: How Landlord-Imposed Pet Bans Restrict Access to Housing

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Renters today face widespread landlord-imposed pet restrictions. At the same time, Americans increasingly view their pets as family members, and many do not see giving up their animals as an option when looking for housing. Consequently, pet-owning renters often struggle to find suitable places to live and end up compromising on quality, location, and safety. As homeownership drops and renting becomes more prevalent across the United States, landlord-imposed pet restrictions increasingly constrain choices, effectively reducing access to housing for many Americans. These policies particularly impact low-income families and those with socially-maligned dog breeds.

This Note analyzes how landlord-imposed pet restrictions burden renters with dogs, with a particular focus on renters in the Los Angeles area. Parts II and III explain how legal and cultural attitudes toward pets are evolving, and how public and private restrictions constrain pet ownership. Part IV discusses the impact of landlord-imposed pet restrictions on renters and compares the situation to non-rental contexts in which people have sacrificed their own well-being to protect their pets. Part V asserts that the Fourteenth Amendment Due Process Clause and the penumbral right to privacy can be interpreted to protect pet-owning families from government-imposed pet restrictions. It argues that while these constitutional protections do not apply in the private rental context, they do suggest that landlords unreasonably infringe on renters' privacy interests and that legislators should act to constrain landlord control.

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I. INTRODUCTION

“[M]y car is on the street and it’s been broken into several times and there are a few personal safety issues but they let me have the cat, so . . . [I stay].”¹

— A tenant discussing his pet-friendly apartment

In 1994, Americans spent \$17 billion on pet care products and services;² by 2017, that number had grown to over \$69 billion.³ This drastic increase reflects not only the growing popularity of pet ownership,⁴ but also a fundamental shift in how people view their animals.⁵ There are 183.9 million pet dogs and cats in the United States,⁶ and in 2017, 84.6 million households had at least one pet, constituting 68% of all American households.⁷ This percentage represents a 12% increase since the end of 2011, when 56% of households owned pets.⁸ Americans also increasingly consider their dogs and cats to be family members, rather than “pets.”⁹ As a result, modern-day Americans spend more money

1. Emma Power, *As Pet Owners Suffer Rental Insecurity, Perhaps Landlords Should Think Again*, THE CONVERSATION (Aug. 15, 2016), <https://theconversation.com/as-pet-owners-suffer-rental-insecurity-perhaps-landlords-should-think-again-63275> [<https://perma.cc/SC9M-VQUF>].

2. See *Pet Industry Market Size & Ownership Statistics*, AM. PET PRODUCTS ASSOC., https://www.americanpetproducts.org/press_industrytrends.asp [<https://perma.cc/J5L5-AP2Z>] (last visited Jan. 16, 2019). This figure does not appear to be adjusted for inflation. However, \$17 billion in 1994 dollars equates to less than \$29 billion in 2018 dollars, which still indicates that there has been a huge increase in American spending on pets. See also INFLATION CALCULATOR (2018), <http://www.in2013dollars.com/1994-dollars-in-2018?amount=17000000000> [<https://perma.cc/6BPW-7DZ6>].

3. See *Pet Industry Market Size & Ownership Statistics*, *supra* note 2.

4. See, e.g., *Millennials Now Primary Pet-owning Demographic*, JAVMA NEWS (Apr. 26, 2017), <https://www.avma.org/News/JAVMANews/Pages/170515g.aspx> [<https://perma.cc/9NMB-34GS>] (“According to the [American Pet Products Association], U.S. pet ownership overall increased between 2014 and 2016 . . . 84.6 million U.S. households owned pets in 2016, up 6.1 percent from 2014.”).

5. The author takes no position here on the “guardian” vs. “owner” debate but uses “owner” for the sake of consistency and accessibility to readers unfamiliar with the concept of “pet guardianship.” See *supra* II.A for further explanation of the debate.

6. See *Pets by the Numbers*, ANIMAL SHELTERING ONLINE, <https://www.animalsheltering.org/page/pets-by-the-numbers> [<https://perma.cc/SX7D-6EL3>] (last visited Jan. 27, 2019).

7. *Id.* Of these pet-owning households, nearly 43.3 million had at least one dog and 36.1 million had at least one cat.

8. *Id.*

9. *Id.*

caring for their animals' health and well-being than previous generations.¹⁰

Attitudes toward housing are also changing. From the 1990s through the housing boom of the mid-2000s, the American homeownership rate rose to nearly 70%.¹¹ Since the 2008 financial crisis and subsequent recession, however, this rate has dropped to 63.7%, while millennial homeownership has also fallen to a record low.¹² In response to rising housing costs,¹³ soaring student debt,¹⁴ stagnant incomes,¹⁵ urbanization,¹⁶ and

10. Americans spend an average of \$126.19 per month on pets, though dog owners spend more. Matthew Michaels, *Pets Are Like Children to Many Americans — Here's How Much Owners Spend on Average Each Month*, BUSINESS INSIDER (May 13, 2018), <http://uk.businessinsider.com/how-much-it-costs-to-own-dog-cat-other-pets-2018-4/#fish-6253-per-month-1> [https://perma.cc/3VPB-7MF9]; Neil Howe, *How Generational Change Boosts the Roaring Pet Care Market*, FORBES (June 20, 2017), <https://www.forbes.com/sites/neilhowe/2017/06/20/how-generational-change-boosts-the-roaring-pet-care-market/#5ae8eed06ab1> [https://perma.cc/DZ6V-5M2R] (“U.S. personal consumption expenditures for pets, pet products, and related services hit \$99.0 billion in 2015 — up 35% from 2009”). See also *infra* Part II.B.

11. See Diana Olick, *Millennials Cause Homeownership Rate to Drop to Lowest Level Since 1965*, CNBC (July 28, 2016, 1:17 PM), <https://www.cnbc.com/2016/07/28/millennials-cause-homeownership-rate-to-drop-to-lowest-level-since-1965.html> [https://perma.cc/6BA-A-SLL4].

12. *Id.* For the purposes of this Note, a “millennial” is a member of the generation constituting Americans born between 1982 and 2004. See also Jennifer Calfas, *Millennials Want Jobs and Education, Not Marriage and Kids*, TIME MAGAZINE (Apr. 20, 2017), <http://time.com/4748357/millennials-values-census-report/> [https://perma.cc/GPS9-X3TB].

13. See Hari Kishan & Rahul Karunakar, *U.S. House Prices to Rise at Twice the Speed of Inflation and Pay: Reuter's Poll*, REUTERS (June 6, 2018) <https://uk.reuters.com/article/us-usa-property-poll/u-s-house-prices-to-rise-at-twice-the-speed-of-inflation-and-pay-reuters-poll-idUKKCN1J20G3> [https://perma.cc/U5DC-SKND]. Home prices in the United States have increased from \$128,882 in 1967, adjusted for inflation, to \$318,700 in 2017. See *Median and Average Sales Price of New Homes Sold in United States*, U.S. CENSUS BUREAU (2018), <https://www.census.gov/construction/nrs/pdf/uspricemon.pdf> [https://perma.cc/A5ER-AFUG]. The increase is even sharper in Los Angeles, where home prices have risen to an average of \$679,200. *Los Angeles Home Prices and Values*, ZILLOW, <https://www.zillow.com/los-angeles-ca/home-values/> [https://perma.cc/T4TS-8VRP] (last visited Jan. 16, 2019).

14. See e.g., Zachary Bleemer et al., Fed. Reserve bank of N.Y., Staff Report No. 820: Echoes of Rising Tuition in Students' Borrowing, Educational Attainment, and Homeownership in Post-Recession America (July 2017), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr820.pdf [https://perma.cc/YM2Z-8NV6]. As of early 2018, Americans held \$1.5 trillion in student loan debt, and a recent study estimates that this debt delays millennial homeownership by approximately seven years. Michele Lerner, *Report: Student Loan Debt Delays Homeownership by Seven Years*, Wash. Post (Oct. 19, 2017), https://www.washingtonpost.com/news/where-we-live/wp/2017/10/19/report-student-loan-debt-delays-homeownership-by-seven-years/?utm_term=.026ac8f4978c [https://perma.cc/E4AD-R3YV].

15. See e.g., Drew Desilver, *For Most U.S. Workers, Real Wages Have Barely Budged in Decades*, PEW RES. CTR. (Aug. 7, 2018), <http://www.pewresearch.org/fact-tank/2018/08/>

lifestyle changes,¹⁷ millennials are waiting to buy first homes or forgoing homeownership entirely, instead renting for the long-term.¹⁸ And studies suggest that the population of home renters will continue to increase in the future.¹⁹

Since fewer people have owned their homes in recent years, the increased restrictions that come with renting as opposed to homeownership are particularly impactful. Residential landlords have significant control over the types of animals that tenants may keep in their units. Many landlords restrict tenants to certain species, breeds, or sizes of animals, and most landlords limit the number of animals in each unit.²⁰ Many require pet

07/for-most-us-workers-real-wages-have-barely-budged-for-decades/ [https://perma.cc/HQP8-CXAT].

16. See, e.g., Joe Gose, *New Studies on Urbanization Highlight the Good, the Bad, and the Opportunity*, FORBES (July 24, 2018), <https://www.forbes.com/sites/joegose/2018/07/24/new-studies-on-urbanization-highlight-the-good-the-bad-and-the-opportunity/#4a3ed62e69e4> [https://perma.cc/5FBC-2SU8]. In urban areas, renting is generally more affordable than buying. In 2018, the cities most favorable to renters in comparison to buyers were San Francisco, Honolulu, Oakland, Los Angeles, and New York. See Nick Wallace, *Where to Buy: Price to Rent Ratio in 76 US Cities*, SMART ASSET (Sept. 20, 2018), <https://smartasset.com/mortgage/price-to-rent-ratio-in-us-cities> [https://perma.cc/8B59-CKAS].

17. See, e.g., Rae Ellen Bichell, *Average Age of First-Time Moms Keeps Climbing in the U.S.*, NAT'L PUBLIC RADIO, INC. (Jan. 14, 2016), <https://www.npr.org/sections/health-shots/2016/01/14/462816458/average-age-of-first-time-moms-keeps-climbing-in-the-u-s>. [https://perma.cc/GY8B-8BVG]. Couples are waiting longer to marry, and they generally wait until marriage to buy their first homes, though this trend is starting to reverse. See Haya El Nasser, *More Millennials Get House Before Getting Hitched*, USA TODAY (Apr. 17, 2013, 6:58 PM), <https://www.usatoday.com/story/money/personalfinance/2013/04/17/more-millennials-buy-homes-first-get-married-second/2088695/> [https://perma.cc/3NCA-UBRR].

18. See Olick, *supra* note 11; See also Akin Oyedele, *6 Reasons Why More Millennials Aren't Buying Homes*, BUSINESS INSIDER (June 5, 2017, 12:52 PM), <http://www.businessinsider.com/millennial-homeownership-lower-2017-6/#and-are-more-likely-to-live-with-their-parents-5> [https://perma.cc/X3U8-DL29].

19. See, e.g., LAURIE GOODMAN ET AL., HEAD AND HOMEOWNERSHIP: WHAT DOES THE FUTURE HOLD?, URBAN INSTITUTE 2 (2015), https://www.urban.org/research/publication/headship-and-homeownership-what-does-future-hold/view/full_report [https://perma.cc/2DHB-WST5].

20. See Pamela Carlisle-Frank et al., *Companion Animal Renters and Pet-Friendly Housing in the U.S.*, ANTHROZOOS 7 (Apr. 28, 2015), <https://firepaw.org/files.wordpress.com/2016/07/cars-scientific-study-anthrozoos.pdf> [https://perma.cc/2XB8-SKD8]. Pet restrictions are also valid in the condominium ownership context: in *Nahrstedt v. Lakeside Village Condominium Assoc., Inc.*, the California Supreme Court held that restrictions against keeping dogs, cats, and other animals in private housing developments were not so unreasonable as to be unenforceable. *Nahrstedt v. Lakeside Village Condominium Assoc., Inc.*, 8 Cal. 4th 361, 389 (1994). In dissent, Justice Arabian claimed that these restrictions placed an undue burden on property, in light of the fact that cats and music are the “two means of refuge from the misery of life.” *Id.* at 390 (Arabian, J., dissenting).

interviews before admitting animals into their buildings,²¹ while others permit only federally-protected service animals.²² These restrictions are founded on concerns for public safety and cleanliness, as the presence of animals increases the likelihood of animal bites and waste on the property.²³ Landlords often also worry that pets will cause damage, annoy neighbors, or cause noise violations under municipal ordinances.²⁴

In addition to restrictions imposed by private landlords, renters face state and local government restrictions regarding pet ownership.²⁵ Many of these restrictions are common sense regulations, prohibiting people from hoarding domestic animals or bringing wild animals into residential spaces.²⁶ Other pet bans are more controversial, however. In particular, many local governments have implemented dog breed-specific legislation, prohibiting residents from owning particular dog breeds or dogs who resemble those breeds.²⁷ Justified as public safety measures by supporters, these breed bans have faced widespread criticism

21. Pet interviews have no standard format. Generally, landlords meet the pet and personally evaluate whether the animal seems to meet the landlord's criteria for size, breed, and behavior. See Penny Clark, *How To Do A Pet Interview And Why All Landlords Should*, BIGGER POCKETS (2017), <https://www.biggerpockets.com/blogs/7928/49776-how-to-do-a-five-minute-pet-interview-and-why-its-important> [https://perma.cc/HQ6B-4NKG].

22. See Donna Jackel, *Toward a Kinder, Gentler Union Between Landlords and Pets*, CITYLAB (Mar. 25, 2016), <https://www.citylab.com/life/2016/03/toward-a-kinder-gentler-union-between-landlords-and-pets/475368/> [https://perma.cc/ZLR3-9WF9]. The Americans with Disabilities Act defines a service animal as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." Americans with Disabilities Act, 28 C.F.R. § 36.104 (2019). Under the Fair Housing Act, the Department of Housing and Urban Development (HUD) requires housing providers to make "reasonable accommodations" for tenants who have either service animals and assistance animals, which include emotional support animals. For more information, see U.S. DEPT OF HUS. AND URBAN DEV., FHEO NOTICE: FHEO-2013-01 (Apr. 25, 2013), https://www.hud.gov/sites/documents/SERVANIMALS_NTFCFHEO2013-01.PDF [https://perma.cc/AKA3-2425].

23. See Carlisle-Frank et al., *supra* note 20 at 10.

24. *Id.* For example, Los Angeles' Nuisance Barking law prohibits owners from permitting their dogs to "emit any excessive noise." LA ANIMAL SERVICES (Aug. 6, 2017), <http://www.laanimalservices.com/laws-policies/nuisance-barking/> [https://perma.cc/X4ER-JMRB].

25. See generally Rebecca F. Wisch, *Overview of Pet Number Restrictions in Municipal Ordinances*, ANIMAL LEGAL & HIST. CTR. VII, IX (2004), <https://www.animallaw.info/article/overview-pet-number-restrictions-municipal-ordinances> [https://perma.cc/ZW9M-DGQK]. See, e.g., Los Angeles County, California, Municipal Code § 10.28.060 (requiring a permit to keep a wild animal in Los Angeles).

26. See, e.g., Los Angeles County, California, Municipal Code § 10.28.060.

27. See *infra* Part III.C. See also BREED SPECIFIC LEGISLATION, ASPCA, <https://www.aspca.org/animal-cruelty/dog-fighting/what-breed-specific-legislation> [https://perma.cc/28GN-B9ED] (last visited Jan. 16, 2019).

as being arbitrary, cruel, and counterproductive to public safety.²⁸ As a result, the bans are losing popularity among municipal governments and are being implemented less frequently.²⁹ By contrast, landlord-imposed pet restrictions are as popular as ever.³⁰

Most scholarship has focused on how government breed bans impact personal liberty and animal welfare.³¹ Landlord restrictions have received less attention, perhaps because scholars assume private restrictions are less burdensome on residents than public restrictions. Whereas residents of towns with breed bans would have to move away entirely to keep their pets, renters with animals theoretically should be able to find pet-friendly rentals in their preferred neighborhoods.

However, as attitudes toward animals and housing demographics shift, these landlord restrictions increasingly constrain Americans' choices. Those who regard their animals as family often do not view giving up those animals as a viable option when moving homes.³² As a result, they may struggle with their housing search, pay a premium for pet-friendly units, or move farther from their jobs to find buildings that will accommodate their animals.³³ And as renting outpaces home

28. Critics include American Bar Association, American Veterinary Medical Association, the Obama Administration, and U.S. Department of Housing and Urban Development, among others. See HUMANE SOC'Y OF U.S., REPEALING BREED-SPECIFIC LEGISLATION: MOVING BEYOND BREED TO SAVE DOGS AND STRENGTHEN COMMUNITIES 27 (2016), <https://www.animalsheltering.org/sites/default/files/BSL%20Repeal%20Toolkit.pdf> [https://perma.cc/YWL3-VZ7T].

29. *Id.* at 23.

30. See, e.g., Peter Hartlaub & Bojan Srbinovski, *Pet Owners Struggle As Fewer S.F. Landlords Allow Dogs, Cats*, S.F. CHRONICLE (July 7, 2014, 7:31 AM), <https://www.sfgate.com/bayarea/article/Pet-owners-struggle-as-fewer-S-F-landlords-allow-5603191.php> [https://perma.cc/GE7Z-3XKX].

31. See, e.g., Laura Buecker, Note, *A Different Breed Of Prejudice: Why Is Illinois Punishing Dogs For The Sins Of Their Owners?*, U. ILL. L. REV. 877 (2017); Ann L. Schiavone, *Barking Up The Wrong Tree: Regulating Fear, Not Risk*, 22 ANIMAL L. 9, 74 (2015); Meghan Hays, *Pit Bull Lives Matter: Ineffectiveness Breeds Unconstitutionality in Miami-Dade's Breed-Specific Legislation*, 29 ST. THOMAS L. REV. 59, 84 (2016).

32. See Claire Sasko, *This Philly Woman Wants to Open the First Homeless Shelter for People and Pets*, PHILA. MAG. (Sep. 19, 2017, 5:24 AM), <http://www.phillymag.com/news/2017/09/19/homeless-shelter-pets-philly/> [https://perma.cc/Z8BK-LCCK]. See also Karen Ducey, *In This Homeless Shelter, Pets Are Part of the Family*, CROSSCUT (July 7, 2016), <http://crosscut.com/2016/07/in-this-homeless-shelter-pets-are-part-of-the-family/> [https://perma.cc/EJE3-B2UM]; *infra* Part IV.B.

33. See generally Constance Rosenblum, *What Pet Owners Must Do to Get New York Apartments*, N.Y. TIMES (Mar. 29, 2013), <http://www.nytimes.com/2013/03/31/realestate/what-pet-owners-must-do-to-get-new-york-apartments.html> [https://perma.cc/E2LM-D4SQ].

buying,³⁴ people are more likely to find themselves subject to landlords' individual preferences regarding pets.

In particular, these landlord-imposed pet restrictions disproportionately impact two groups: low-income renters and renters with socially-maligned breeds of dogs. Low-income renters start with fewer options when looking for housing.³⁵ They are restricted to cheaper units and often must live either close to their jobs or to public transportation because they may lack the resources for other means of transport.³⁶ Landlord-imposed pet restrictions further restrict their choices, effectively excluding them from much of the rental market. Similarly, renters with socially-maligned breeds of dogs face limited housing pools, given the frequency of landlord-imposed breed restrictions.³⁷ Such restrictions vary by building, but generally include breeds that are commonly considered to be stronger and more volatile than average dogs, such as Pit Bulls, Dobermans, Rottweilers, Bull Dogs, German Shepherds, and Chows.³⁸ The owners of dogs of these breeds, and even of similar-looking mixed-breed dogs, often struggle to find accommodating landlords.³⁹ As a result, some Americans and their dogs become homeless, or, having fallen into homelessness for financial reasons, are unable to find new housing once they can afford it.⁴⁰

Meanwhile, due to a host of converging social and economic problems, American cities are facing homelessness epidemics.⁴¹

34. See *supra* notes 18, 19.

35. *Low-Income Renters Struggle to Afford the Least Expensive Apartments*, PR NEWSWIRE (Aug 28, 2017), <https://www.prnewswire.com/news-releases/low-income-renters-struggle-to-afford-the-least-expensive-apartments-300510537.html> [https://perma.cc/JZE4-JQT3].

36. See Gillian B. White, *Stranded: How America's Failing Public Transportation Increases Inequality*, THE ATLANTIC (May 16, 2015), <https://www.theatlantic.com/business/archive/2015/05/stranded-how-americas-failing-public-transportation-increases-inequality/393419/> [https://perma.cc/26FL-B46V].

37. See Appendix A. See also Amelia Glynn, *Pet-Friendly Apartment Hunting: "No Aggressive Breeds,"* S.F. CHRONICLE (Sept. 28, 2010, 12:48 PM), <https://blog.sfgate.com/pets/2010/09/29/pet-friendly-apartment-hunting-no-aggressive-breeds/> [https://perma.cc/YQ52-PLNF].

38. See, e.g., Catey Hill, *11 Riskiest Dog Breeds for Homeowners and Renters*, FORBES MAG. (May 30, 2012), <https://www.forbes.com/sites/cateyhill/2012/05/30/11-riskiest-dog-breeds-for-homeowners-and-renters/#7e8f838036d9> [https://perma.cc/RW4F-3XED]. As discussed *infra* Part III, breed reputations developed in large part from media reports of dog-bite statistics that have since been discredited.

39. See Rosenblum, *supra* note 33.

40. See Ducey, *supra* note 32.

41. See, e.g., Daniel Neiditch, *How Bad is Homelessness in America?*, HUFFINGTON POST (Nov. 3, 2017), <https://www.huffingtonpost.com/entry/how-bad-is-homelessness-in->

Landlord-imposed pet restrictions, and breed restrictions in particular, further exacerbate housing insecurity for low-income families.⁴² They also harm the animals themselves by forcing desperate families to surrender their pets to animal shelters and preventing many potential pet owners from adopting homeless animals.⁴³ If cities want to effectively tackle their human and animal homelessness crises, they need to acknowledge and loosen landlords' control over families with pets.

This Note analyzes how landlord-imposed pet restrictions burden dog-owning renters, with a particular focus on dog-owning renters in the Los Angeles area. While cat owners also face pet restrictions, dog ownership and dog restrictions are more common.⁴⁴ Like other major cities, Los Angeles has a stressed rental market, rapidly rising home costs, a homelessness epidemic, and widespread landlord-imposed pet restrictions.⁴⁵ The city therefore provides a useful case study for the pet-restrictive housing issue.

Part II of this Note explains how legal and cultural attitudes toward pets are evolving, making Americans more likely to choose their pets over superior housing options. Part III explores and evaluates how public and private restrictions constrain pet ownership. Part IV discusses the impact of landlord-imposed pet restrictions on renters and compares the situation to non-rental contexts in which people have sacrificed their own safety to protect pets. Part V discusses the constitutional issues

america-really_us_58f6916de4b0c892a4fb736f [https://perma.cc/2DBX-CCZF]. See also Andrew Gumbel, *The Sorriest Urban Scene: Why a US Homelessness Crisis Drags On*, GUARDIAN (Mar. 16, 2018), <https://www.theguardian.com/us-news/2018/mar/16/us-homelessness-crisis-los-angeles-politicians> [https://perma.cc/6TQ4-9ZLA] (citing rising rents, low vacancy rates, politicians' reluctance to build supportive housing projects, "decades of national and local housing policies," and a cultural resistance to creating more urban housing as reasons for the growing homelessness crisis in Los Angeles).

42. See Appendix A (demonstrating lack of affordable housing options for families with pets).

43. *Pets by the Numbers*, *supra* note 6.

44. See Carlisle-Frank et al., *supra* note 20, at 7 (showing that cats were allowed in 52.6% of rental units surveyed, while small dogs were allowed in 37% and large dogs were allowed in 11%).

45. See, e.g., Pam Fessler, *Homeless Population Rises, Driven by West Coast Affordable Housing Crisis*, NAT'L PUB. RADIO, INC. (Dec. 6, 2017, 12:02 AM), <https://www.npr.org/2017/12/06/568605069/homeless-population-rises-driven-by-west-coast-affordable-housing-crisis> [https://perma.cc/Q6K4-NP7T]. See also Elijah Chiland, *LA home prices climb back up, tying an all-time record*, CURBED L.A. (Sep. 26, 2018, 1:13 PM), <https://la.curbed.com/2018/9/26/17906274/los-angeles-home-prices-cost-report> [https://perma.cc/VKY4-6S5E]; Appendix A.

implicated by pet restrictions, exploring how the penumbral right to privacy can be interpreted to protect pet-owning families. Lastly, it discusses pet restrictions as a social policy issue, focusing on its impact on low-income renters, and suggests potential legislative solutions.

II. EVOLVING LEGAL AND CULTURAL ATTITUDES TOWARD PETS

Western legal and cultural attitudes toward pets are evolving, reflecting and reinforcing each other in the process. The American legal system traditionally failed to consider pets' sentience or importance to families, instead labeling them as nothing more than "property."⁴⁶ While the "property" label remains widespread,⁴⁷ modern legislatures and courts have expressed discomfort with it⁴⁸ and have begun to consider the animals' well-being when making decisions that impact them. At the same time, Americans have become increasingly attached to their pets, often assuming parental roles vis-à-vis their animals.⁴⁹ This Part explains how legal and cultural attitudes have developed to give pets prominent roles in American households, as part of a larger discussion about the ways in which public and private pet restrictions' increasingly burden pet-owning families.

A. LEGAL ATTITUDES

Traditionally, the American legal system has treated pets as property.⁵⁰ Early legal cases made this assumption without discussion, applying classic notions of property rights in

46. See Gary Francione, *Animals as Property*, 2 ANIMAL L. 1 (1996), <https://www.animallaw.info/article/animals-property> [<https://perma.cc/BM5Y-4K33>].

47. See R.L. Cupp, *Animals as More Than 'Mere Things,' but Still Property: A Call for Continuing Evolution of the Animal Welfare Paradigm* U. CINCINNATI L. REV. (forthcoming), Pepperdine University Legal Studies Research Paper No. 19, <https://ssrn.com/abstract=2788309> [<https://perma.cc/Y5ZV-RAKY>].

48. For example, the Oregon Supreme court ruled that a man convicted of horse abuse could be sentenced on multiple counts for each of the horses he starved, recognizing that animals can be legal victims of crimes, unlike other forms of property. *Oregon v. Nix*, 334 P.3d 437 (2014), *vacated on procedural grounds*, 345 P.3d 416 (Or. 2015).

49. See, e.g., Sami Main, *44% of Millennials See Their Pets as Starter Children, and That's a Big Opportunity for Brands*, ADWEEK (Aug. 13, 2017), <http://www.adweek.com/brand-marketing/44-of-millennials-see-their-pets-as-starter-children-and-thats-a-big-opportunity-for-brands/> [<https://perma.cc/KL2R-F6SK>].

50. See Francione, *supra* note 46.

situations like hunting and animal acquisition.⁵¹ In the twentieth century, legal scholarship advocating for animal rights began to challenge these assumptions.⁵² Between the late 1960s and early 1970s, a collection of English philosophers called the Oxford Group published a series of essays and books asserting non-human animals' inherent rights.⁵³ While their philosophical approaches varied, these philosophers agreed that sentient beings share fundamental rights regardless of species.⁵⁴ These philosophers and several of their academic acquaintances, including Peter Singer, the famed author of *Animal Liberation*, began to advocate against animal use and exploitation for human gain.⁵⁵ They denounced both the destruction of animal life for food and sport, as well as the exploitation and abuse of animals in laboratories and farm settings.⁵⁶

The Oxford Group's ideals inspired many animal rights activists throughout the second half of the twentieth century,⁵⁷ who in turn have significantly influenced the development of legal protections for pets.⁵⁸ For example, in a well-known San Francisco case, the owner of a dog named Sido committed suicide in 1979, leaving instructions in her will that the dog be terminated.⁵⁹ The San Francisco Society for the Prevention of Cruelty to Animals took legal action, claiming that Sido was not simply a piece of property that could be disposed at will, but an

51. In the seminal *Pierson v. Post* case, for example, the court decided how and at what point wild animals become the personal property of hunters, without meaningfully differentiating animals from inanimate objects. *Pierson v. Post*, 3 Cai. R. 175 (N.Y. Sup. Ct. 1805).

52. See Peter Singer, *The Oxford Vegetarians — A Personal Account*, INT'L J. STUDY ANIMAL PROBS. (1982), http://animalstudiesrepository.org/cgi/viewcontent.cgi?article=1002&context=acwp_aafhh [<https://perma.cc/J8P8-84ZB>].

53. *Id.*

54. *Id.* At the 1977 Cambridge Conference on Animal Rights, attendees signed "A Declaration Against Speciesism" that states, "we declare our belief that all sentient creatures have rights to life, liberty and the quest for happiness." Tom Regan, *The More Things Change*, BETWEEN SPECIES 110–115 (1990) (reviewing RICHARD RYDER, ANIMAL REVOLUTION: CHANGING ATTITUDES TOWARDS SPECIESISM (1989)).

55. See *Peter Singer Biography*, BIOGRAPHY, <https://www.biography.com/people/peter-singer-39994> [<https://perma.cc/ET35-EHFR>] (last visited Jan. 16, 2019).

56. See Cupp, *supra* note 47.

57. See Matthieu Ricard, *Beyond Species-ism*, HUFFINGTON POST (May 30, 2017, 1:33 PM), https://www.huffingtonpost.com/entry/beyond-species-ism_us_592da8f4e4b07c4c731385c6 [<https://perma.cc/8HYM-W8SZ>].

58. See Christie Keith, *Saving Sido: How One Dog Sparked a Movement*, S.F. CHRONICLE (June 22, 2010, 4:00 AM), <http://www.sfgate.com/pets/yourwholepet/article/Saving-Sido-How-one-dog-sparked-a-movement-2463520.php> [<https://perma.cc/R555-HN2Q>].

59. *Id.*

individual with her own rights.⁶⁰ A superior court judge ruled in Sido's favor, calling the will's instruction "illegal and in violation of public policy."⁶¹ He stated that "even stray and abandoned dogs have rights,"⁶² though without further specifying the contours of those rights.

More recently, some states have taken further steps to protect animal rights in judicial proceedings. In 2016, Connecticut passed Desmond's Law, which awarded judges the discretion to appoint legal representatives for animals who have suffered abuse.⁶³ Animal welfare groups lobbying for the law pointed to Connecticut's startlingly low conviction rates in animal abuse cases.⁶⁴ Before the state implemented this policy, more than 80% of animal abuse cases were dismissed or not prosecuted.⁶⁵ While it is too soon to know whether Desmond's Law will increase convictions, its adoption suggests a shift in perspectives regarding animal rights among state legislators.

A debate over legal terminology in recent years also reflects this shift. Legislation regarding pets increasingly references "pet guardians" rather than "pet owners," suggesting a growing discomfort with classifying companion animals as traditional forms of property.⁶⁶ Some argue that updating the language confers additional responsibility on people when making veterinary decisions for their animals.⁶⁷ Guardians would be required to pursue treatment that prioritizes pets' well-being, or at least balances pets' well-being against their own financial

60. *Id.*

61. *Id.*

62. *Id.*

63. See Laurel Wamsley, *In A First, Connecticut's Animals Get Advocates in the Courtroom*, NAT'L PUB. RADIO, INC. (June 2, 2017), <http://www.npr.org/sections/thetwo-way/2017/06/02/531283235/in-a-first-connecticuts-animals-get-advocates-in-the-courtroom> [<https://perma.cc/N2UR-C4ZW>].

64. *Id.*

65. *Id.*

66. See, e.g., Rhode Island's dog welfare laws: "A guardian shall also mean a person who possesses, has title to or an interest in, harbors or has control, custody or possession of an animal and who is responsible for an animal's safety and well-being." 4 R.I. GEN. LAWS § 4-13-1.2 (West 1956), https://www.animallaw.info/statute/ri-dogs-consolidated-dog-laws#s13_41 [<https://perma.cc/WEE6-FD4T>]. See also Susan J. Hankin, *Making Decisions About Our Animals' Health Care: Does it Matter Whether We Are Owners or Guardians?*, 2 STAN. J. ANIMAL L. & POL'Y 1 (2009) (citing seventeen cities that have enacted laws describing the relationship between people and their animals using the term "guardian").

67. *Position Statement on Ownership/Guardianship*, ASPCA, <https://www.aspc.org/about-us/aspc-policy-and-position-statements/position-statement-ownershipguardianship> [<https://perma.cc/L7QM-7KJG>] (last visited Jan. 16, 2019).

interests, rather than simply refraining from abusing or neglecting their animals.⁶⁸ Though the shift has some opponents,⁶⁹ this linguistic development demonstrates the evolving relationships between pets and people.

The growing body of law regarding animal custody in divorce proceedings further reflects this shift.⁷⁰ Many have argued that categorizing animals as property in divorce proceedings is inequitable, since pets have thoughts and feelings, and impractical, because pets' monetary value is difficult to pinpoint in many cases.⁷¹ Alaska, Illinois, and California have passed legislation enabling courts to consider animals' best interests in divorce proceedings, and courts in other states are more frequently allowing "pet custody" cases.⁷² As a whole, these legal

68. Hankin, *supra* note 66, at 43.

69. *Id.* at 9. Some argue that the shift in terminology is counterproductive, as it does not grant the animals themselves new legal rights, such as the right to life, but does eliminate the few legal protections pets have as property. For example, as property, pets are protected under the Fourth Amendment from unreasonable seizure by law enforcement. See Maggie McCletchie, *The Family Dog and the Fourth Amendment*, NEVADA LAWYER (May 2017), https://www.nvbar.org/wp-content/uploads/NevadaLawyer_May2017_DogAnd4thAmendment.pdf [<https://perma.cc/5MQF-PN39>]. Other opponents, such as the Animal Health Institute, have argued that the guardianship label will enable interested third parties to claim decision-making rights in veterinary contexts, undermining owners' abilities to make appropriate veterinary decisions for their animals. Pet Litigation, ANIMAL HEALTH INSTITUTE, <https://www.ahi.org/issues-advocacy/pet-litigation/> [<https://perma.cc/45F8-F7DQ>]. For example, an owner choosing to neuter her healthy animal may face legal challenges from another self-proclaimed guardian claiming that neutering is not in the animal's best interest. Hankin, *supra* note 66, at 9. Susan J. Hankin refutes guardianship opponents' claims in her article. *Id.*

70. See Christopher Mele, *When Couples Divorce, Who Gets to Keep the Dog? (Or Cat.)*, N.Y. TIMES (Mar. 23, 2017), <https://www.nytimes.com/2017/03/23/us/divorce-pet-custody-dog-cat.html> [<https://perma.cc/HWE8-3URT>].

71. See, e.g., Debra Vey Voda-Hamilton, *What Is The Value of A Pet In Divorce*, HAMILTON L. & MEDIATION (Jan. 23, 2014), <http://hamiltonlawandmediation.com/value-of-a-pet-in-divorce/> [<https://perma.cc/KEH4-8276>]; Nicole Pallotta, *Alaska Legislature Becomes First to Require Consideration of Animals' Interests in Custody Cases*, ANIMAL LEGAL DEFENSE FUND (Jan. 20, 2017), <http://aldf.org/blog/alaska-legislature-becomes-first-to-require-consideration-of-animals-interests-in-custody-cases/> [<https://perma.cc/VAX8-Y78A>].

The traditional method of valuation is a fair market value assessment, which may include consideration of the animal's pedigree, purchase price, skills, and age. See Tabby T. McLain, *Detailed Discussion: Knick-Knack, Paddy-Whack, Give the Dog a Home?: Custody Determination of Companion Animals Upon Guardian Divorce*, ANIMAL LEGAL & HIST. CTR. (2009), <https://www.animallaw.info/article/detailed-discussion-knick-knack-paddy-whack-give-dog-home-custody-determination-companion> [<https://perma.cc/3H6H-DJ8H>]. While this method may accurately pinpoint a dog's value to a person who owns them solely for dog show purposes or breeding, it fails to take into account the animal's true value to the owner or the dog's inherent worth.

72. Note that Illinois' statute requires courts to consider the animal's well-being, while the Alaska and California laws permit consideration of "well-being" and "care,"

debates and advances primarily concern pets' well-being, reflecting and perhaps reinforcing cultural values.

B. CULTURAL ATTITUDES

Cultural attitudes towards pets have evolved more drastically than legal attitudes. According to a recent study, only 1% of Americans who have pets consider those pets to be their "property."⁷³ 35.8% of Americans consider their animals to be "pets or companions," while 63.2% of Americans consider their pets to be "family."⁷⁴ Considering these statistics, it comes as no surprise that Americans spent \$62.75 billion on pet supplies and veterinary care in 2016.⁷⁵ The phenomena of veterinary insurance,⁷⁶ GPS tracking devices for pet collars,⁷⁷ and computerized "smart" dog toys⁷⁸ reflect pet owners' concerns for their animals' continued physical and emotional well-being.

A few possible factors explain this drastic cultural and legal evolution. As discussed in Part I, people are having fewer children, waiting longer to start families, and choosing to have

respectively. See Nicole Pallotta, *California's New "Pet Custody" Law Differentiates Companion Animals from Other Types of Property*, ANIMAL LEGAL DEF. FUND (Nov. 5, 2018), <https://aldf.org/article/californias-new-pet-custody-law-differentiates-companion-animals-from-other-types-of-property/> [https://perma.cc/3WZ5-5QVF]; Leonor Vivanco-Pregaman, *New State Law Treats Pets More Like Children in Custody Cases*, CHI. TRIB. (Dec. 25, 2017, 5:00 AM), <http://www.chicagotribune.com/news/local/breaking/ct-met-pet-custody-law-20171218-story.html> [https://perma.cc/JD3T-8DHM]; Debra Cassens Weiss, *Alaska Law Tells Divorce Judges to Consider the Well-being of Pets*, ABA J. (Jan. 31 2018, 10:26 AM), <http://www.abajournal.com/news/article/alaska-law-tells-divorce-judges-to-consider-well-being-of-pets> [https://perma.cc/FN4Y-GRRP]. See also Pallotta, *supra* note 71. Courts have significant discretion in determining what is in the animals' best interest. See McLain, *supra* note 71. In the past, they have taken into account testimony regarding one party's ill treatment of the animal, evidence demonstrating who has acted as the primary caretaker, as well as the safety of each potential home. *Id.* Though pets' protections under the law are growing, non-companion animals have few legal protections and suffer widespread abuse. For more on the topic, see *Farmed Animals and the Law*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/advocating-for-animals/farmed-animals-and-the-law/> [https://perma.cc/A5L3-8AXM] (last visited Jan. 16, 2019).

73. *Pets by the Numbers*, *supra* note 6.

74. *Pets by the Numbers*, *supra* note 6. Among dog owners, the "family" label is even more prevalent, at 66.7%. *Id.*

75. Power, *supra* note 1.

76. Rosenblum, *supra* note 33.

77. *The Best GPS Dog Trackers*, PET LIFE TODAY (Feb. 15, 2018), <https://petlifetoday.com/best-gps-dog-trackers/> [https://perma.cc/W2SM-WRAF].

78. See *Color Match*, CLEVER PET, <https://clever.pet> [https://perma.cc/D95W-N5FF] (last visited Feb. 2, 2019).

pets instead of children.⁷⁹ One couple interviewed in a recent study said of their dog: “We put her interests before our own, and we’ve never seen her as ‘just a dog’ or a temporary part of our lives.”⁸⁰ A separate survey of millennial homebuyers confirms this sentiment: 33% of respondents claimed they bought a home primarily for their dog, while only 19% claimed that they bought a home for their children’s well-being.⁸¹ The generation that postponed certain traditional milestones, such as marriage and childbearing, has to an extent embraced pet-rearing as a new one.

Better public education regarding animal sentience and needs has likely also contributed to modern view on pets.⁸² In the last couple decades, psychological studies have revealed that dogs have complex brains that mirror human minds in many ways.⁸³ For example, a multi-year neuroimaging study confirmed, at least to the extent that MRIs can confirm emotions, that many dogs feel strong affection for their owners.⁸⁴ Cable network shows and internet sites have circulated this news, further increasing

79. See Part I. In a recent study, 44% of millennials saw their dogs as practice for raising children. Main, *supra* note 49.

80. *Id.*

81. *SunTrust Survey: Mortgages Are Going to the Dogs*, PRNEWswire (Jul. 26, 2017), <https://www.prnewswire.com/news-releases/suntrust-survey-mortgages-are-going-to-the-dogs-300493476.html> [<https://perma.cc/7GM5-6REM>].

82. *Press Release: New Research Finds Vast Majority of Americans Concerned About Farm Animal Welfare, Confused by Food Labels and Willing to Pay More for Better Treatment*, ASPCA (Jul. 7, 2016), <https://www.aspc.org/about-us/press-releases/new-research-finds-vast-majority-americans-concerned-about-farm-animal> [<https://perma.cc/73S4-8G3U>].

83. Jeffrey Kluger, *How Smart Is a Dog Really? The Secrets of a Canine Mind*, TIME (May 11, 2017), <http://time.com/4775436/how-smart-is-a-dog-really/> [<https://perma.cc/4SAT-7LZV>]. The average dog is roughly as smart as a two-year-old child, can understand approximately 165 words (though smart dogs understand more than 250), and has a strong capacity for problem-solving and basic mathematics. Stanley Coren et al., *In The Minds of Dogs*, PSYCHOL. TODAY (Sep. 5, 2017), <https://www.psychologytoday.com/articles/201709/in-the-minds-dogs> [<https://perma.cc/3NP6-UQGZ>].

84. The brains of the dogs studied released the same levels of oxytocin when the dogs saw their owners that humans’ brains release when they see their spouses and children. Coren et al., *supra* note 83; Claudia Dreifus, *Gregory Berns Knows What Your Dog is Thinking (It’s Sweet)*, N.Y. TIMES (Sep. 8, 2017), <https://www.nytimes.com/2017/09/08/science/gregory-berns-dogs-brains.html> [<https://perma.cc/K248-4HLH>]. In addition to dogs’ comparable intellectual capacity to young human children, researchers have demonstrated that dog-owner bonds involve the Secure Base Effect, “a fundamental part of parent-child bonding” in which infants look to their parents for confidence in interacting with the inside and outside world. Christopher Bergland, *Why Do Adult Dogs Become Like Human Children to Owners*, PSYCHOL. TODAY (June 22, 2013), <https://www.psychologytoday.com/us/blog/the-athletes-way/201306/why-do-adult-dogs-become-human-children-owners> [<https://perma.cc/5KKR-E9G3>].

American awareness.⁸⁵ Current generations know that dogs require both physical and mental stimulation to maintain emotional well-being,⁸⁶ and they therefore are more likely than former generations to focus on both the quantity and quality of their interactions with their pets.⁸⁷ Both the additional time spent with dogs and the enhanced understanding of canine mental capacity and emotional depth may contribute to a belief that dogs are family members.

Whatever their reasons, owners are increasingly concerned with protecting and providing for their animals. These priorities often come into conflict with public and private pet restrictions that limit whether and where people can keep pets. The next Part examines several overlapping public and private pet restrictions on renters, demonstrating the severity and scale of these barriers.

III. PUBLIC AND PRIVATE PET RESTRICTIONS

While Americans increasingly appreciate pets, pervasive government and private pet restrictions continue to constrain pet

85. Coren et al., *id.*; Dreifus, *id.*

86. Kristi Reimer Fender, *Exclusive Report: New Study Reveals Insights into Pet Owners' Purchasing Decisions*, DVM360 MAG. (July 20, 2017), <http://veterinarynews.dvm360.com/exclusive-report-new-study-reveals-insights-pet-owners-purchasing-decisions> [<https://perma.cc/VW3P-YSKZ>].

87. Modern dog training methods also reflect and promote this more nuanced understanding of animal behavior. In the 1940s, behavioral studies of captive wolf packs led to the development of dominance-based dog training methods, which encouraged owners to be forceful with their animals. Jeninne Lee-St. John, *Dog Training and the Myth of Alpha-Male Dominance*, TIME MAG. (July 30, 2010), <http://content.time.com/time/health/article/0,8599,2007250,00.html> [<https://perma.cc/7YF3-LFRX>]. However, animal behaviorists soon refuted the study's applicability to dog behavior, as the animals studied were a different species and subjected to extreme stress that likely altered their interactions. *Dogs vs Wolves*, POSITIVELY, <https://positively.com/dog-training/myths-truths/dogs-vs-wolves/> [<https://perma.cc/B5MT-C823>] (last visited Feb. 2, 2019); *Pack Theory Debunked*, POSITIVELY, <https://positively.com/dog-training/myths-truths/pack-theory-debunked/> [<https://perma.cc/CZH7-QVLZ>] (last visited Feb. 10, 2019). Modern dog training methods discard aversive tactics in favor of positive-reinforcement techniques, which encourage owners to learn their dogs' body language and promote good behavior by aligning their dogs' motivations with their own goals. *Positive Reinforcement*, POSITIVELY, <https://positively.com/dog-training/positive-training/positive-reinforcement/> [<https://perma.cc/JWS6-FS74>] (last visited Feb. 10, 2019). These methods, which promote thoughtful consideration of pets' perspectives and psychology, have proven more effective than dominance-based training. Zazie Todd, *Positive Reinforcement and Dog Training III*, COMPANION ANIMAL PSYCHOL. (Jul. 18, 2012), https://www.companionanimalpsychology.com/2012/07/positive-reinforcement-and-dog-training_18.html [<https://perma.cc/VM73-DNR8>].

ownership.⁸⁸ Restrictions control all aspects of pet ownership, from the size and number of animals people can own,⁸⁹ to the homes and cities where certain animals can live.⁹⁰ State and local governments have sweeping powers to enact these policies, while landlords have significant discretion to further regulate animals in their rental units.⁹¹ Families intent on keeping their pets must therefore navigate a complex web of government and landlord-imposed requirements, often leaving them with few suitable housing options.⁹² Illustrating the breadth of these policies, this Part describes two types: government-imposed restrictions and landlord-imposed restrictions. It then discusses breed-specific restrictions, which exist on both public and private levels.

A. GOVERNMENT-IMPOSED RESTRICTIONS

Government legislation and ordinances at the state and local level often restrict pet ownership, limiting the species and number of animals that residents may own.⁹³ In Los Angeles, for example, households may own up to four dogs and five cats at any given time.⁹⁴ Other cities limit acceptable pet sizes or numbers based on whether they live in single-family residences or multiple housing buildings.⁹⁵ Meanwhile, the state of California bans people from keeping both exotic species and some more common pets, such as gerbils and ferrets.⁹⁶

88. Calfas, *supra* note 12.

89. *Id.*

90. For example, pit bull-owning families cannot move to Denver without giving up their pets. *Breed Specific Legislation: Understanding Denver's Breed Ban for Pit Bulls*, DENVER, <https://www.denvergov.org/content/denvergov/en/denver-animal-shelter/animal-protection/breed-specific-legislation.html> [<https://perma.cc/YC6A-23DC>] (last visited Mar. 2, 2018).

91. Federal law only requires landlords to take service animals. U.S. Dept. of Hous. & Urb. Dev., Notice: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs (Apr. 25, 2013), https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF [<https://perma.cc/6JQ7-W4MS>].

92. *See* Appendix A.

93. *Id.*

94. *Los Angeles County Residents Can Now Own Four Dogs Per Household*, NBC4 (July 11, 2017), <https://www.nbclosangeles.com/news/local/Los-Angeles-County-Residents-Can-Now-Own-Four-Dogs-Per-Household-433927513.html> [<https://perma.cc/DRM9-ZZMK>].

95. Calfas, *supra* note 12.

96. *Restricted Species Laws and Regulations: Importation, Transportation and Possession of Wild Animals — Manual 67*, CAL. NAT'L RES. AGENCY, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=28427> [<https://perma.cc/M7DN-TWX3>] (last visited Feb. 2, 2019).

The justifications underlying these restrictions generally relate to protecting citizens' health, safety, and well-being.⁹⁷ Governments are reasonably worried that wild animals will endanger owners and that some species of non-dangerous pets may threaten local ecosystems.⁹⁸ California's ban on gerbils, for example, arose from a concern that escaped gerbils would thrive in the warm California climate and disrupt wildlife.⁹⁹ Governments also point to noise, cleanliness, and odor concerns when limiting the number of animals living in residences.¹⁰⁰

Courts have generally upheld ordinances limiting pet numbers as constitutional.¹⁰¹ As neither pets nor their owners are considered suspect classifications by the Supreme Court, pet restrictions are subject to rational basis review, the lowest standard of judicial scrutiny.¹⁰² Courts generally consider pet restrictions intended to reduce noise and odor to be "rationally related" to protecting health and safety, and therefore valid, even if they are overbroad in addressing that goal.¹⁰³ Legal restrictions on the size of pets are more contestable as arbitrary, but have still been upheld.¹⁰⁴ In *City of Marion v. Schoenwald*, a municipal government successfully defended its limits on large dogs, citing concerns that large dogs, even those living in single-unit homes, would be more dangerous and create more waste than smaller dogs.¹⁰⁵ This broad judicial deference, coupled with legislative eagerness to constrain pet ownership, has resulted in a patchwork of far reaching pet restrictions.

B. LANDLORD-IMPOSED RESTRICTIONS

While governments have widespread power to restrict pet ownership, landlords have near total freedom to further regulate

97. Calfas, *supra* note 12.

98. *Id.*

99. Neil Shouse, *5 Popular Animals That Are Illegal as Pets in California*, SHOUSE CAL. L. GROUP (Nov. 28, 2016), <https://www.shouselaw.com/blog/illegal-pets> [https://perma.cc/T86A-D755].

100. Calfas, *supra* note 12.

101. *Id.*

102. *Id.*

103. *See, e.g.*, *Holt v. City of Sauk Rapids*, 559 N.W.2d 444, (Min. Ct. App. 1997).

104. Calfas, *supra* note 12.

105. *City of Marion v. Schoenwald*, 631 N.W.2d 213 (S.D. 2001).

animals on their properties.¹⁰⁶ As a result, private pet restrictions are also pervasive.¹⁰⁷ However, while governments focus on health and safety, landlords concern themselves more with the economic impact of renting to tenants with pets: both the direct impact of property damage and the possibility that pets might drive away other tenants.¹⁰⁸ According to a 2003 study, the most common concern among landlords who did not allow pets was the potential for property damage, followed by concerns about noise, tenant conflicts, and insurance issues.¹⁰⁹

The same study suggests that many of these concerns are unfounded.¹¹⁰ Analysts found no statistical differences in the amount of damage caused by tenants with pets versus those without pets.¹¹¹ By contrast, tenants with children caused significantly more property damage than those without children.¹¹² Although 14.8% of landlords who allowed pets did report an increase in the amount of time they spent on pet-related issues, such as tenant conflicts or common area maintenance, they spent under one hour per year addressing these problems — less than they spent on child-related and other issues.¹¹³ A few landlord concerns also proved true: among landlords who allowed pets, 33% had received noise complaints and 48.1% had received general complaints about the animals.¹¹⁴ The landlords had also spent \$150 more on insurance on average in order to obtain pet-friendly landlord insurance.¹¹⁵ However, the financial and time costs were relatively unsubstantial compared to other landlord concerns.¹¹⁶ The fact that many landlord concerns about pets are baseless suggests the financial

106. Federal law only requires landlords to take service animals. U.S. Dept. of Hous. & Urb. Dev., *supra* note 91.

107. E.g., 62% of rental housing does not accept pets. L.A. CITY COUNCIL, MOTION FROM COUNCILMEMBER PAUL KORETZ, 5TH DISTRICT (2015), http://clkrep.lacity.org/online/docs/2015/15-0843_mot_07-01-2015.pdf [<https://perma.cc/7X74-JWQ5>].

108. Carlisle-Frank et al., *supra* note 20 at 10.

109. *Id.* at 10.

110. *Id.* at 11.

111. *Id.* at 12. While 51.8% of tenants with pets caused some damage, the landlords' worst reported tenant experiences averaged \$430, which the typical pet deposit more than covered. *Id.* at 11.

112. *Id.* at 13.

113. *Id.*

114. *Id.* at 11.

115. *Id.*

116. *See id.* at 11.

and emotional strain these bans place on renters may be unjustified.

C. BREED-SPECIFIC RESTRICTIONS

Both government and landlord-imposed dog breed restrictions have garnered attention in recent years for their severe impact on pet owners and their animals.¹¹⁷ These policies single out particular breeds of dogs, either regulating them more strictly than other breeds or prohibiting them altogether.¹¹⁸ In the United States, most of these restrictions apply to the “Pit Bull” class of dogs, generally referring not only to American Pit Bull Terriers, but many breeds that are similar in appearance, including American Staffordshire Terriers and English Bull Terriers.¹¹⁹ Other policies restrict Bulldogs, Dobermans, Rottweilers, Mastiffs, Chow Chows, Dalmatians, and German Shepherds,¹²⁰ breeds that many in the public consider either stronger or more volatile than average.¹²¹ Many of these policies also apply to any mixed breed dogs who look similar to these breeds.¹²² A lack of consensus among policymakers and landlords regarding which breeds should be regulated has led to a patchwork of contrasting policies.¹²³

On a state and city level, breed-specific legislation either prohibits residents from owning particular dog breeds or imposes different requirements on the owners of certain breeds.¹²⁴ More

117. *Position Statement on Breed-Specific Legislation*, ASPCA, <https://www.aspcapro.org/about-us/aspcapro-policy-and-position-statements/position-statement-breed-specific-legislation> [https://perma.cc/V38R-JRAB] (last visited Mar. 2, 2018).

118. *Id.*

119. *Breed-Specific Legislation*, ASPCA, <https://www.aspcapro.org/animal-cruelty/dog-fighting/what-breed-specific-legislation> [https://perma.cc/K93R-3EL9] (last visited Feb. 2, 2019).

120. *Id.*

121. See, e.g., Dom Naish, *20 Strongest Dog Breeds in the World*, TOP DOG TIPS (Jul. 19, 2017), <https://topdogtips.com/strongest-dog-breeds/> [https://perma.cc/RJ2S-QATG]; Sheila Brown, *10 Most Aggressive Breeds: Temperament Ratings and Information*, PETHelpful (Jan. 2, 2019), <https://pethelpful.com/dogs/10-Most-Aggressive-Dog-Breeds-Temperament-Ratings-and-Information> [https://perma.cc/BJ3F-34MM].

122. *Are Breed-Specific Laws Effective?*, ASPCAPRO, <https://www.aspcapro.org/resource/disaster-cruelty-animal-cruelty-animal-fighting/are-breed-specific-laws-effective> [https://perma.cc/P9KH-567P] (last visited Mar. 2, 2018).

123. Arin Greenwood, *Here's a Map of Where Your Pit Bull Isn't Welcome*, HUFFINGTON POST (Dec. 6, 2017), https://www.huffingtonpost.com/2015/05/06/bsl-map_n_7216190.html [https://perma.cc/NC69-LAMU].

124. Susan Rappaport et al., *Pit Bulls: Maryland's Solesky Case Changes Liability Standard*, 44 U. BALT. L.F. 60 (2013).

than 700 cities have breed-specific policies, but these policies vary widely.¹²⁵ Denver, Colorado, for example, bans all “pit bull breeds (American Pit Bull Terrier, American Staffordshire Terrier, or Staffordshire Bull Terrier),” as well as “any dog displaying the majority of physical traits of any one or more of the above breeds.”¹²⁶ By contrast, California does not generally permit cities to enact breed-specific legislation, but does allow breed discrimination with regard to mandatory spay/neuter programs and breeding policies.¹²⁷

The main justification for these restrictions is public safety.¹²⁸ Although dog bite fatalities are extremely rare,¹²⁹ dog bites still send approximately 334,000 Americans to emergency rooms each year.¹³⁰ Starting in the 1970s, media reports on America’s “dog bite epidemic” led to the enactment of various state and municipal policies.¹³¹ Many local governments restricted breeds that legislators thought were inherently dangerous, based on statistics regarding serious and fatal dog bites.¹³²

Other breed restrictions assign liability for owners of particular breeds.¹³³ For example, Covington, Kentucky and Pine Bluffs, Arkansas require Pit Bull owners to keep \$100,000 worth of liability insurance to cover dog bites, regardless of whether

125. *Breed Specific Legislation*, *supra* note 119.

126. *Breed Specific Legislation: Understanding Denver’s Breed Ban for Pit Bulls*, *supra* note 90.

127. *Breed-specific Prohibited or Restricted Ordinances*, AVMA (Apr. 2018), <https://www.avma.org/Advocacy/StateAndLocal/Pages/sr-breed-ordinances.aspx> [<https://perma.cc/6PHF-C23J>].

128. *Tracey v. Solesky*, 50 A.3d 1075 (Md. 2012). Courts have also justified upholding pit bull bans by pointing to the traditional use of pit bulls in dog fighting to suggest they are “a problem in the urban setting.” Ann L. Schiavone, *Barking up the Wrong Tree: Regulating Fear, Not Risk*, 22 ANIMAL L. 9, 31 (2015).

129. Background and Assumptions, *Dog Bite-Related Fatalities: A Literature Review*, NAT’L CANINE RES. COUNCIL, <https://www.nationalcanineresearchcouncil.com/research-library/dog-bite-related-fatalities-literature-review> [<https://perma.cc/J8BC-ZFTC>] (last visited Feb. 10, 2019).

130. *Breed-Specific Legislation*, *supra* note 130.

131. The number of dog bites requiring medical attention rose 37% between 1986 and 1996. Serious dog bites may still be on the rise, though attacks ending in death are very rare. Safia Gray Hussain, *Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won’t Solve the Dangerous-Dog Dilemma*, 74 FORDHAM L. REV. 2847, 2848–50 (2006), <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4168&context=flr> [<https://perma.cc/3AUW-YTMZ>].

132. *The Case Against Breed-Specific Legislation*, OPPOSING VIEWS (July 16, 2011), <https://www.opposingviews.com/i/case-against-breed-specific-legislation> [<https://perma.cc/L9RW-DJUP>].

133. Rappaport et al., *supra* note 124.

their dogs have ever acted aggressively.¹³⁴ The Maryland Court of Appeals in *Tracey v. Solesky* went a step further, raising the standard of liability with regard to Pit Bulls.¹³⁵ It held not only owners strictly liable for their Pit Bulls' bites, but also any "other person(s) who has the right to control the pit bull's presence on the subject premises."¹³⁶ In this controversial ruling, Maryland became the only state to impose liability on a third party, namely the landlord, for the injuries caused by dog bites.¹³⁷ While the Maryland legislature abrogated this decision in 2014,¹³⁸ landlords throughout the state had already reacted by forcing out tenants with Pit Bulls,¹³⁹ effectively preserving the ruling.

Breed-specific laws have become increasingly controversial, as studies suggest that they are unfounded.¹⁴⁰ In defending breed-specific legislation, policymakers generally reference dog bite statistics to demonstrate that Pit Bulls and a few other breeds disproportionately gravely injure people.¹⁴¹ However, these statistics are flawed,¹⁴² and many critics argue that breed-specific laws are not only ineffective but also undermine public safety.¹⁴³

134. Pine Bluff, Ar., Code of Ordinances § 5-43; Covington, Ky., Code of Ordinances § 90 (1999). See also Charlotte Walden, *Brief Overview of Dangerous Dog Laws*, ANIMAL LEGAL & HIST. CTR. (2015) (<https://www.animallaw.info/article/brief-overview-dangerous-dog-laws>) [<https://perma.cc/G5P6-G9VY>].

135. *Tracey v. Solesky*, 50 A.3d 1075, 1089 (Md. 2012).

136. *Id.*

137. Rappaport et al., *supra* note 124, at 61.

138. Act of Apr. 8, 2014, 2014 Md. Laws Ch. 48 (S.B. 247).

139. Fredrick Kunkle, *Md. Bill Would Make All Dog Owners Liable for an Attack Regardless of Breed*, WASH.POST (Mar. 24, 2014) https://www.washingtonpost.com/local/md-politics/md-law-would-make-all-dog-owners-liable-for-an-attack-regardless-of-breed/2014/03/23/301eb210-b031-11e3-a49e-76adc9210f19_story.html?utm_term=.36dc943e39e1 [<https://perma.cc/7CNR-HAA4>].

140. *Breed-Specific Policies: No Basis in Science*, HUMANE SOC'Y, http://www.humanesociety.org/issues/breed-specific-legislation/fact_sheets/breed-specific-legislation-no-basis-in-science.html [<https://perma.cc/5DME-DADK>] (last visited Mar. 2, 2018); Aamer Madhani, *U.S. Communities Increasingly Ditching Pit Bull Bans*, USA TODAY (Nov. 17, 2014, 9:59 PM), <https://www.usatoday.com/story/news/nation/2014/11/17/pit-bulls-breed-specific-legislation-bans/19048719/> [<https://perma.cc/KFN8-UZ6K>].

141. Katie Barnett, *The Post-Conviction Remedy for Pit Bulls: What Today's Science Tells Us About Breed-Specific Legislation*, 67 SYRACUSE L. REV. 241, 275–76 (2017), https://www.animallaw.info/sites/default/files/Barnett_The%20Postconviction.pdf, [<https://perma.cc/XPM8-M4TT>].

142. The Center for Disease Control and the American Veterinary Medical Association have noted that dog bite data suffer from breed misidentification (especially among mixed-breed dogs), as well as inconsistent data on breed population and bite frequency in communities. *Position Statement on Breed-Specific Legislation*, *supra* note 117.

143. Rappaport, *supra* note 124, at 66. When animal control agencies focus their resources on enforcing breed bans, they have fewer resources to implement breed-neutral measures that have proven effective at reducing dog bites, such as anti-tethering laws,

Since significant legal scholarship exists regarding these policies' imprudence,¹⁴⁴ they are not the focus of this Note.

Landlord-imposed breed restrictions have faced far less public scrutiny but are still widespread.¹⁴⁵ While data is scarce regarding landlords' motivations for these bans, several factors likely influence their decisions. First, landlords may rely on the same flawed logic driving government bans and worry that certain breeds will pose a financial liability if those dogs attack neighbors on their property. Second, considering that 41.2% of landlords who do not accept pets worry about tenant conflicts,¹⁴⁶ landlords may also worry that breeds perceived by tenants as more aggressive will cause conflict among renters. They may also fear that certain breeds of dogs will scare away potential tenants from their buildings.

Property insurance policies also likely influence landlords who do not personally support breed bans.¹⁴⁷ Many major insurance companies refuse to insure landlords at all if they allow certain dog breeds in their buildings.¹⁴⁸ Others require landlords to pay

leash laws, and dog fighting laws. See ASPCAPRO, *supra* note 122. Anti-tethering laws prevent dogs from being tied up in particular places and weather conditions. Twenty-five percent of all fatal attacks have been inflicted by tethered dogs, who have no ability to escape when they feel threatened. Ledy VanKavage, *Why Breed-Specific Legislation Is Ineffective*, BEST FRIENDS (2009), <https://bestfriends.org/resources/bsl-why-breed-specific-legislation-all-bark-and-fiscal-bite#Introduction> [<https://perma.cc/NM62-RMUB>]. Leash laws vary but generally require owners to exercise control over their dogs in certain locations or circumstances, usually by leash. See *Table of State Leash Laws*, ANIMAL LEGAL & HIS. CTR. (2015), <https://www.animallaw.info/topic/table-state-dog-leash-laws> [<https://perma.cc/K2PE-9GGL>]. Dog fighting laws prohibit keeping dogs for the purpose of instigating fights among them for sport, instigating dog fighting, or attending dog fights as a spectator. See Hanna Gibson, *Chart of Dogfighting Laws*, ANIMAL LEGAL & HIS. CTR. (2014), <https://www.animallaw.info/article/chart-state-dogfighting-laws> [<https://perma.cc/JN2E-KHPH>].

144. See Linda S. Weiss, *Breed-Specific Legislation in the United States*, ANIMAL LEGAL & HIS. CTR. (2001), <https://www.animallaw.info/article/breed-specific-legislation-united-states> [<https://perma.cc/U484-6AFK>]; Laura Buecker, Note, *A Different Breed of Prejudice: Why Is Illinois Punishing Dogs for the Sins of Their Owners*, 2017 U. ILL. L. REV. 877; Hussain, *supra* note 131, at 2847.

145. See e.g., Constance Rosenblum, *What Pet Owners Must Do to Get New York Apartments*, N.Y. TIMES (Mar. 29, 2013), <https://www.nytimes.com/2013/03/31/realestate/what-pet-owners-must-do-to-get-new-york-apartments.html> [<https://perma.cc/VN28-GBK4>]. See also Appendix A.

146. Carlisle-Frank et al., *supra* note 20, at 10.

147. *Id.*

148. Landlord insurance companies are not upfront with this information, but maligned-breed advocates heavily advertise the few insurers that are breed inclusive: Einhorn Insurance, Chubb Group, and State Farm. See e.g., Dori Einhorn, *Insurance for Landlords When Tenants Have Dogs*, Einhorn Insurance Agency (Nov. 19, 2011) <https://einhorninsurance.com/california-insurance/insurance-landlords-tenants-dogs-pit-bull/>

“dangerous dog” premiums¹⁴⁹ or turn away tenants with maligned-breed dogs unless the dogs have earned Canine Good Citizen certification.¹⁵⁰ As a result, many landlords may feel they have no choice but to ban dogs in compliance with these policies.

Working in conjunction, public and private pet restrictions are both pervasive and insidious, blanketing the country and shaping very personal decisions about home and family. Scholars have rightly focused on critiquing breed-specific legislation, as it lacks credible justifications and forces families to surrender their dogs or move long distances. However, private pet restrictions also deserve academic and legislative attention because they are equally prevalent and often similarly driven by unfounded concerns. The following Part demonstrates the strain landlord-imposed pet restrictions impose on dog-owning families, especially those families already facing economic and legal constraints.

IV. THE IMPACT OF LANDLORD-IMPOSED PET RESTRICTIONS ON RENTERS AND DOGS

In one news interview with a Californian who lost her housing after losing her job, the interviewee explained that she had secured another job but could not find new housing because landlords refused to accept her Pit Bull, Rocco: “I can’t find a place unless I give up my dog, and everyone tells me to, but I

[<https://perma.cc/5C2U-NPQT>]. See also Anna Jones, *Detailed Discussion of Breed Specific Legislation*, ANIMAL LEGAL & HIS. CTR. (2017), <https://www.animallaw.info/article/detailed-discussion-breed-specific-legislation> [<https://perma.cc/5D5T-F9TB>]; *Renters Insurance and High-Risk Breeds*, SF GATE, <https://homeguides.sfgate.com/renters-insurance-highrisk-breeds-92788.html> [<https://perma.cc/2RB5-XUYF>] (last visited Feb. 2, 2019).

149. *Dangerous Dogs: What Landlords Need to Know*, AM. APARTMENT OWNERS ASS’N, <https://www.american-apartment-owners-association.org/property-management/latest-news/dangerous-dogs-landlords-need-know/> [<https://perma.cc/4ZTC-MP2K>] (last visited Jan. 23, 2019). Many landlords do charge renters monthly pet fees, perhaps in reaction to these premiums, though no studies demonstrate whether the correlation is direct. See Donna Jackel, *Toward a Kinder, Gentler Union Between Landlords and Pets*, CITYLAB (Mar. 25, 2016), <https://www.citylab.com/life/2016/03/toward-a-kinder-gentler-union-between-landlords-and-pets/475368/> [<https://perma.cc/ZLR3-9WF9>].

150. The American Kennel Club established the Canine Good Citizen program to evaluate dogs’ behavior in social situations. Dogs must successfully complete a series of tasks, such as greeting strangers in a friendly manner, in order to become certified. Michele C. Hollow, *Is Your Dog a Good Citizen? You’d Better Hope So, for Insurance’s Sake*, REALTOR.COM (June 16, 2015), <https://www.realtor.com/advice/buy/canine-good-citizen-insurance/> [<https://perma.cc/C9R7-PSW8>].

can't do that."¹⁵¹ At the time of the interview, she had moved into her car with the dog instead.¹⁵²

Landlord-imposed pet restrictions, and especially those related to breed, severely impact the lives of American pet owners and their animals. In one study, 82% of tenants with dogs reported having trouble finding housing.¹⁵³ These restrictions often result in one of two potentially agonizing outcomes: either owners give up pets¹⁵⁴ or choose inferior housing situations in order to keep them.¹⁵⁵ According to a 2012 American Humane Association study, 29% of people who gave up their dogs did so because their landlord or place of residence would not allow the animals.¹⁵⁶ Separation can be emotionally devastating for both animals and people, and is often deadly for animals surrendered to shelters.¹⁵⁷

At the same time, people who view pets as family members are less likely to see surrendering to shelters as a viable option.¹⁵⁸ Consequently, renters with pets often settle for housing that is pet-friendly but less desirable, more expensive, or farther from their workplaces than they would prefer.¹⁵⁹ Some struggle to find any suitable living arrangements at all and find themselves homeless with their animals.¹⁶⁰ As both the popularity of renting and the percentage of Americans who view their dogs as family

151. Eleanor Goldberg, *Family of Four Chooses Homelessness Over Giving Up Pit Bull*, HUFFINGTON POST (Feb. 21, 2014, 11:50 AM), https://www.huffingtonpost.com/2014/02/20/landlords-ban-pit-bulls_n_4823430.html [<https://perma.cc/BV5A-MLR6>].

152. *Id.*

153. Carlisle-Frank et al., *supra* note 20, at 7.

154. U.S. *Pet (Dog and Cat) Population Fact Sheet*, AM. HUMANE ASS'N, <http://www.bradfordlicensing.com/documents/pets-fact-sheet.pdf> [<https://perma.cc/LGJ3-SNW6>] (last visited Feb. 6, 2019).

155. Mike Hoff, *As Pet Owners Suffer Rental Insecurity, Perhaps Landlords Should Think Again*, CONVERSATION (Aug. 15, 2016, 4:08 PM), <http://theconversation.com/as-pet-owners-suffer-rental-insecurity-perhaps-landlords-should-think-again-63275> [<https://perma.cc/9PE6-M4FD>].

156. *Keeping Pets (Dogs and Cats) in Homes: A Three-Phase Retention Study*, AM. HUMANE ASS'N 6 (2012), <https://www.americanhumane.org/app/uploads/2016/08/aha-petsmart-retention-study-phase-1.pdf> [<https://perma.cc/V9ER-8GWR>].

157. Approximately 3.3 million dogs enter animal shelters each year and 670,000 are euthanized per year, mainly due to overpopulation. *Pet Statistics*, ASPCA, <https://www.aspc.org/animal-homelessness/shelter-intake-and-surrender/pet-statistics> [<https://perma.cc/7B4H-5CC9>] (last visited Jan. 23, 2019).

158. *E.g.*, Sasko, *supra* note 32; *Why Some Homeless Choose The Streets Over Shelters*, NAT'L PUB. RADIO (Dec. 6, 2012, 1:00 PM), <https://www.npr.org/2012/12/06/166666265/why-some-homeless-choose-the-streets-over-shelters> [<https://perma.cc/3XDR-BDHJ>].

159. Hoff, *supra* note 155.

160. Goldberg, *supra* note 151.

members grow, pervasive landlord restrictions increasingly create barriers to housing access.

This Part discusses how landlord-imposed pet restrictions reduce housing availability in already tight rental markets for families who refuse to give up their pets. It then explores other contexts in which people prioritize their pets over superior lodging options, and finally it proposes that government and nonprofit responses to pet prioritization in these contexts serve as model for solving issues that arise out of landlord-imposed pet restrictions.

A. BLOCKING ACCESS TO MODERATELY-PRICED HOUSING¹⁶¹

Landlord-imposed pet restrictions in the United States are widespread. In a nationwide survey of landlords, approximately 47% of rental housing did not allow pets and only 9% of pet-friendly units allowed pets without limitations on type or size.¹⁶² Large dogs were welcome in only 11% of rental housing.¹⁶³ Meanwhile, pet-friendly rentals had a 20 to 30% rent premium, costing on average \$222 more per month than rentals that did not allow pets.¹⁶⁴ As a major city with a tight housing market, Los Angeles has more restrictions than average: in 2016, more than half of rental units did not allow any pets at all.¹⁶⁵ In an author-conducted study of apartment listings across fifteen Los Angeles zip codes, only 212 out of 612 apartment listings allowed dogs.¹⁶⁶

161. This Note uses “moderately-priced housing” to refer to rental apartments priced at the low end of publicly listed apartments. It does not use the term “affordable housing,” which HUD uses to mean “housing for which the occupant(s) is/are paying no more than 30 percent of his or her income” and which can also refer to the system of programs throughout the United States working to promote housing stability among low-income renters. *Resources*, U.S. DEPT. OF HOUS. & URB. DEV., https://www.huduser.gov/portal/glossary/glossary_a.html [<https://perma.cc/ZFG5-5QHB>] (last visited Feb. 12, 2019); *What is Affordable Housing?*, AFFORDABLE HOUS. ONLINE, <https://affordablehousingonline.com/what-is-affordable-housing> [<https://perma.cc/XPD6-T2N4>] (last visited Feb. 12, 2019). Public housing, low-income housing, and voucher-subsidized housing are outside of the scope of this Note. However, private landlords also dictate pet restrictions for many of these units, and therefore these units are susceptible to some of the same issues discussed in this Note. For the purpose of this Note, apartments publicly listed for up to \$2000 and \$1800 per month in the Los Angeles area are “moderately-priced.” See Appendix A.

162. Carlisle-Frank et al., *supra* note 20, at 7.

163. *Id.*

164. *Id.* at 8.

165. Bianca Barragan, Los Angeles Wants to Make a Lot More Apartments Take Pets, CURBED LA (Feb. 2, 2016; 1:41 PM), <https://la.curbed.com/2016/2/2/10942502/los-angeles-pet-friendly-rentals-law> [<https://perma.cc/246B-RH5H>].

166. See Appendix A.

Moreover, landlord-imposed dog breed bans shut out owners of maligned breeds from nearly the entire rental market. In the author-conducted study, of 212 dog-friendly listings, only 116 listings (about 19% of all listings) did not explicitly restrict breed or restrict size to an extent that effectively excludes commonly banned breeds.¹⁶⁷ The author's follow-up inquiries revealed that many of these apparently breed-friendly apartments do in fact have breed restrictions.¹⁶⁸

While anecdotal evidence suggests that even high-income renters with animals often struggle to find pet-friendly housing,¹⁶⁹ pet restrictions particularly impact low-income families. Given that at least one study found low-income owners are more attached to their pets than any other income group,¹⁷⁰ this impact could be particularly burdensome. Even without pets, low-income renters already face severe housing restrictions. In Los Angeles, the median rent has increased 32% since 2000 while the median renter income has decreased by 3%, adjusted for inflation.¹⁷¹ Full-time minimum wage workers earn \$2080 per month, while the median asking rent for an apartment is \$2499.¹⁷² Low-income, pet-owning renters face the dual burden of finding affordable rental units that will also accept their pets. In the above-referenced author-conducted study of Los Angeles apartment listings, the availability of pet-friendly apartments drastically drops with even a modest decrease in rent.¹⁷³ Across fifteen zip codes, only nineteen apartments costing \$1800 per month or less did not ban dogs. Because landlords often charge a

167. *Id.*

168. Though only eight of the fifteen landlords contacted responded, six of those eight reported imposing breed restrictions not mentioned in their online rental listings.

169. *See id.*

170. Lisa DeMarni Cromer and M. Rose Barlow, *Factors and Convergent Validity of the Pet Attachment and Life Impact Scale (PALS)*, 1 HUM.-ANIMAL INTERACTION BULLETIN 34, 40 (2013). Recognizing that insufficient pet care may stem from owners' financial constraints rather than from indifference to animal needs, non-profit organizations across the United States have opened in recent decades to provide financial support to pet owners for veterinary care, backyard fence construction, and pet equipment. *See, e.g.*, Nita Lelyveld, *Animal-Welfare Advocates Push to Help the Poor Keep Their Pets*, L.A. TIMES (Oct. 29, 2015, 2:00 AM), <http://www.latimes.com/local/california/la-me-beat-animal-poverty-forum-20151029-story.html> [<https://perma.cc/FK34-2G4W>].

171. CAL. HOUS. PARTNERSHIP, LOS ANGELES COUNTY RENTERS IN CRISIS: A CALL FOR ACTION 1 (2017), <http://1p08d91kd0c03rlxhmhtydpr.wpengine.netdna-cdn.com/wp-content/uploads/2017/05/Los-Angeles-County-2017.pdf> [<https://perma.cc/D27H-PRUT>].

172. *Id.*

173. 212 pet-friendly apartments were listed for \$2000 or less per month, but only nineteen were listed for \$1800 or less per month. *See* Appendix A.

premium for pet-friendly rentals,¹⁷⁴ in addition to a pet deposit,¹⁷⁵ low-income pet owners have even fewer options in their price ranges than low-income renters without pets. And unlike high-income families, they generally cannot raise their housing budgets to find pet-friendly options or leave the rental market entirely by purchasing homes.¹⁷⁶ As a result, many must choose between the trauma of giving up pets and becoming or staying homeless, despite being able to afford housing for themselves. As discussed in the following subpart, some of those who cannot fathom abandoning their animals fall into homelessness.

Breed restrictions also disproportionately impact low-income families and may be used as a tactic to bar certain renters. In the study referenced above, of the nineteen apartments across fifteen zip codes that cost \$1800 per month or less and allowed dogs, only twelve did not explicitly restrict breed or particular size of dog.¹⁷⁷ As previously noted, the actual number of breed-inclusive apartments is likely to be significantly lower than the online apartment listings indicate.¹⁷⁸ In *Pit Bull: The Battle of an American Icon*, author Bronwen Dickey suggests that breed stigma's disproportionate impact on low-income Americans is not coincidental.¹⁷⁹ Panic regarding Pit Bulls, she argues, has arisen out of racism and classism because society and the media traditionally disparaged breeds of dogs commonly kept by racial minorities and low-income groups.¹⁸⁰ While Dickey highlights the police practice of using of Pit Bull ownership to criminally profile African American men in inner-city neighborhoods,¹⁸¹ scholar Ann Linder suggests that breed-specific legislation may also involve racism and “may be used as a new form of redlining to keep minorities out of majority-white neighborhoods.”¹⁸²

174. See Carlisle-Frank et al, *supra* at note 20 at 8.

175. *Id.*

176. Households earning 50% or less of the median income on average spend 70% of their income on rent in Los Angeles County, which suggests that they cannot afford to raise their budgets. CAL. HOUSING PARTNERSHIP, *supra* note 171 at 3.

177. Appendix A.

178. See *supra* note 168.

179. BRONWEN, PIT BULL: THE BATTLE OVER AN AMERICAN ICON 21, 238 (1st ed. 2016).

180. *Id.*

181. *Id.*

182. While no data demonstrates correlations between breed ownership and race, one study does show that African American men are *perceived* to be the most likely owners of Pit Bulls. Ann Linder, *Article: The Black Man's Dog: The Social Context of Breed Specific Legislation*, 25 ANIMAL L. 51, 60 (2018). These perceptions could result in landlords attempting to engage in discriminatory practices through breed bans. Whether these

Presumably then, racism may also arise in the rental context, in that landlords who are unable to exclude renters on the basis of racial and socio-economic stereotypes might try to achieve the same result by excluding these renters' dogs. Regardless of the origins of and factors contributing to landlord-imposed breed restrictions, their pervasiveness makes it almost impossible for low-income families with maligned breeds to find housing through standard rental listings.

Landlord-imposed pet restrictions also have financial implications for local governments. Each year, Los Angeles County spends more than \$30 million on animal services,¹⁸³ and close to \$1 billion managing human homelessness.¹⁸⁴ More than half of this \$1 billion goes to healthcare spending because people experiencing homelessness are not only more likely to have mental health issues but also suffer from physical ailments associated with weather exposure.¹⁸⁵ Law enforcement, libraries, parks, sanitation crews, and paramedics also spend significant resources monitoring, cleaning up after, and caring for people experiencing homelessness.¹⁸⁶ A 2014 study found that providing supportive housing for people experiencing homelessness is less expensive to the city than leaving them on the streets.¹⁸⁷ It is likely, therefore, that the city spends more on public services when people who could otherwise afford their own rental units cannot access the rental market because they have pets. Evidently then, landlord policies that block access to housing strain entire communities — not only families with pets, but also city employees and taxpayers.

discriminatory practices are effective depends on whether dog ownership trends actually reflect societal perceptions.

183. In the 2017–18 Fiscal Year, L.A. County spent \$33,709,146.64 on animal services, up from \$30,491,132.33 in the previous year. County of Los Angeles, 2018-19 Final Budget 77, <https://ceo.lacounty.gov/wp-content/uploads/2018/12/2018-19-Final-County-Budget-1.pdf> [https://perma.cc/47BY-AFD5].

184. Gale Holland, *Los Angeles County Spends \$1 Billion Managing Homelessness, Report Finds*, L.A. TIMES (Feb. 5, 2016, 6:23 PM), <http://www.latimes.com/local/lanow/la-me-county-homelessness-spending-20160205-story.html> [https://perma.cc/6T6M-E95Q].

185. *See id.*

186. *See id.*

187. Once people are housed, they visited emergency rooms less frequently, spent less time in hospitals, and are arrested less frequently. Housing also led to improvements in mental health. Elijah Chiland, *Report: Housing the Homeless Is Actually Saving LA County Money*, CURBED L.A. (Dec. 5, 2017, 2:20 PM), <https://la.curbed.com/2017/12/5/16738952/la-homelessness-housing-for-health-study> [https://perma.cc/W8RL-836N].

B. THE PRIORITIZATION OF PETS OVER SHELTER

The phenomenon of people prioritizing pets is not specific to the rental context. Faced with the choice of staying with their pets or seeking safe shelter, people often prioritize their animals.¹⁸⁸ Legislative and private solutions born in the context of emergency shelter, homeless shelters, and domestic violence shelters serve as a model for solving landlord-imposed pet restriction issues.

In 2005, Hurricane Katrina became one of the most devastating and expensive natural disasters on record.¹⁸⁹ Between 150,000 and 200,000 people refused or were unable to evacuate for various reasons, and more than 1800 people died.¹⁹⁰ The state of Louisiana evacuated 1.5 million people,¹⁹¹ but evacuation buses and emergency shelters did not allow pets.¹⁹² According to the co-chair of the Congressional Friends of Animals Caucus in May 2006, “when asked to choose between abandoning their pets or their personal safety, many pet owners chose to risk their lives.”¹⁹³ Many owners who did evacuate were told that they would be able to return shortly to rescue their pets, but flooding and storm damage prevented residents from returning for days, and as a result, 600,000 animals died or became homeless.¹⁹⁴ According to a poll taken after Hurricane Katrina, 61% of pet owners said they would only evacuate if allowed to take their pets with them.¹⁹⁵

Recognizing the deadly effects of not accounting for pets in disaster planning, Congress quickly passed the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act).¹⁹⁶ The Act requires the Federal Emergency Management Agency (FEMA) to ensure that emergency preparedness plans take into

188. For example, pet owners suffering from homelessness often choose to stay outdoors with their pets when homeless shelters refuse to accept animals. NAT'L PUB. RADIO, *supra* note 158.

189. THE NAT'L ACADS. PRESS, *Environmental Public Health Impacts of Disasters: Hurricane Katrina Workshop Summary* 16 (2007); Marita Mike et al., *Katrina's Animal Legacy: The PETS Act*, 4 J. ANIMAL L. & ETHICS 133 (2011).

190. Mike et al., *supra* note 189.

191. THE NAT'L ACADS. PRESS, *supra* note 193.

192. Mike, *supra* note 189, at 134–35.

193. *Id.* at 133.

194. *Id.* at 133.

195. *Id.* at 136.

196. *Id.* at 134.

account “the needs of individuals with household pets prior to, during, and following a major disaster or emergency.”¹⁹⁷ It also authorizes FEMA to financially contribute to local and state emergency shelters that accommodate pets and authorizes federal agencies responding to disasters to care for and shelter pets.¹⁹⁸

In the homelessness context, animal restrictions also deter pet owners from seeking essential shelter.¹⁹⁹ The National Coalition for the Homeless estimates between 5% and 10% of the 3.5 million Americans who experience homelessness every year have dogs or cats,²⁰⁰ with rates up to 25% in some areas.²⁰¹ However, the vast majority of both government- and non-profit-run homeless shelters do not allow pets.²⁰² For example, more than 78,000 people experience homelessness in New York City²⁰³ and not one of its city-run shelters allow pets.²⁰⁴ Los Angeles County has more than 52,000 people experiencing homelessness,²⁰⁵ but only “a handful” of emergency shelters in the region allow pets.²⁰⁶

197. Pets Evacuation and Transportation Standards Act of 2006, Pub. L. No 109-308, § 2(2)g, 120 Stat. 1725 (2006).

198. *Id.* FEMA advertised that first responders rescued 5234 pets after Hurricane Harvey. *Historic Disaster Response to Hurricane Harvey in Texas*, FEMA (Sep. 22, 2017), <https://www.fema.gov/news-release/2017/09/22/historic-disaster-response-hurricane-harvey-texas> [<https://perma.cc/ZS23-GE2A>]. More than thirty states now have emergency operation plans that include evacuating and rescuing pets. *Map of States with Disaster Planning Laws*, ANIMAL LEGAL & HIST. CTR., <https://www.animallaw.info/content/map-states-disaster-planning-laws> [<https://perma.cc/4GUX-U3KQJ>] (last visited Jan. 12, 2019).

199. When homeless shelters prohibit animals, pet owners suffering from homelessness often choose to sleep outside with their pets rather than leave their pets behind. *Position Statement on Keeping Pets and People Together*, ASPCA, <https://www.aspc.org/about-us/aspc-policy-and-position-statements/position-statement-keeping-pets-and-people-together> [<https://perma.cc/FD5S-8FM2>] (last visited Feb. 10, 2019).

200. *FAQs*, PETS HOMELESS, <https://www.petsofthehomeless.org/about-us/faqs/> [<https://perma.cc/US39-HPWR>] (last visited Jan. 12, 2019).

201. *Id.*

202. Hilary Hanson, *When Homeless Shelters Create Room for Pets Everybody Wins*, HUFFINGTON POST (Nov. 9, 2015), https://www.huffingtonpost.com/entry/homeless-shelters-pets-petsmart-family-promise_us_563a5f3de4b0307f2cabb415 [<https://perma.cc/WGL8-JKQP>].

203. U.S. DEPT. OF HOUS. & URB. DEV., THE 2018 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 20 (Dec. 2018), <https://www.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf> [<https://perma.cc/78GD-SJZ9>].

204. MAYOR'S ALLIANCE FOR NYC'S ANIMALS, *Supportive Housing Programs in NYC that Accommodate Pets*, HELPING PETS & PEOPLE (2015), <http://www.helpingpetsandpeoplenyc.org/list-of-supportive-housing-programs-in-nyc-accepting-pets> [<https://perma.cc/VXX9-K2M6>].

205. *2018 Greater Los Angeles Homeless Count*, LOS ANGELES HOMELESS SERVICES AUTHORITY (July 23, 2018), <https://www.lahsa.org/documents?id=2000-2018-greater-los>

Although no studies have documented the number of pet owners who choose to sleep on the streets rather than surrender their animals, interviews with shelter workers and pet owners suggest that the practice is common.²⁰⁷ “Humans will decide to stay on the street rather than seek shelter if it means being permanently separated from their pet,” said one former shelter worker who had often turned away pet owners.²⁰⁸ The Executive Director of the National Coalition for Homeless stated, “We get calls like that all the time, which say, ‘Do you know any shelters which will allow you to keep your pets?’”²⁰⁹ At one of the rare shelters that does allow pets, one pet owner remarked, “If it came down to a choice of whether to give up the pets . . . I’d rather stay in the van and not have a place. . . . They’re family too.”²¹⁰ In an NPR interview, a formerly homeless woman explained, “When I was homeless, I had a dog . . . And you know, they wouldn’t let him in shelters. . . . I mean, that dog was kind of my family. And we slept outside because I didn’t want to have to give up my dog.”²¹¹ The Homeless Rights Advocacy Project at Seattle University School of Law has recognized this problem and has issued a report recommending that public and private facilities that provide life-sustaining services, including shelters, adopt pet-friendly policies.²¹² While government agencies and non-profits have been slow to accommodate animals, a few shelters throughout the United States have made strides.²¹³

angeles-homeless-count-data-summary-total-point-in-time-homeless-population-by-geographic-areas [https://perma.cc/PQ9E-ER2H].

206. No definitive list of pet-friendly L.A. homeless shelters exists. According to the founder of Downtown Dog Rescue, an organization which assists homeless people with their animals, only a “handful” of shelters in the region allow pets. Leo Duran, *LA’s Midnight Mission Is Building a Park For Homeless People’s Pets In Santa Ana*, LAIST (Aug. 23, 2018; 8:15 AM), https://laist.com/2018/08/23/many_homeless_people_stay_on_the_streets_to_stay_with_their_pet_but_some_shelters_are_trying_to_help.php [https://perma.cc/F8LU-LKWZ].

207. See Sasko, *supra* note 32.

208. Sasko, *supra* note 32.

209. Alicia Robinson, *Riverside: Homeless Shelter Now Has Place for Pets*, PRESS-ENTERPRISE (May 20, 2011), <https://www.pe.com/2011/05/20/riverside-homeless-shelter-now-has-place-for-pets/> [https://perma.cc/KHA7-N3MH].

210. Sasko, *supra* note 32.

211. NAT’L PUB. RADIO, *supra* note 158.

212. Ruby Aliment et al., *No Pets Allowed: Discrimination, Homelessness and Pet Ownership*, HOMELESS RIGHTS ADVOCACY PROJECT 3 (2016).

213. For example, the Family Promise homeless shelter became the first in Arizona to provide on-site pet accommodation. Family Promise of Greater Phoenix, *Promise for Pets*,

Pet-owning victims of domestic violence are similarly likely to prioritize their pets over finding safe shelter.²¹⁴ According to one study, up to 48% of pet-owning victims of domestic violence expressed reluctance to leave their home situations because they worried about leaving their pets behind.²¹⁵ As many as 25% of survivors have also returned to their abusive partners in order to protect their pets.²¹⁶ In response to this situation, Congress recently passed the Pets and Women Safety Act as part of the 2018 farm bill, directing the Department of Agriculture to fund programs to assist domestic violence survivors and their pets.²¹⁷ Meanwhile, non-profit domestic violence shelters have started to adapt to address the issue.²¹⁸ Though the vast majority still do not allow pets, approximately two dozen domestic violence shelters in the United States allow residents to keep pets and a hundred more provide kennels on the premises.²¹⁹ Many animal shelters also now participate in the Animal Safety Net program, which temporarily shelters pets of domestic violence survivors at no cost.²²⁰

The rental market context is similar to emergency, homeless, and domestic violence shelter contexts in that pet owners facing landlord restrictions may also fear for their pets' safety. If renters cannot find alternate pet-friendly housing and surrender their animals to shelters in order to house themselves, they run

<https://familypromiseaz.org/programs/transitional-shelter-2/> [https://perma.cc/6G39-GYT K].

214. See Clifton P. Flynn, *Woman's Best Friend: Pet Abuse and the Role of Companion Animals in the Lives of Battered Women*, 6 VIOLENCE AGAINST WOMEN 162–177 (2000).

215. National Resource Center on Domestic Violence, *Why Pets Mean So Much: The Human Animal Bond in the Context of Intimate Partner Violence* (Sep. 2014), https://vawnet.org/sites/default/files/materials/files/2016-09/NRCDV_TAG-AnimalAbuse-IPV-Sept2014.pdf [https://perma.cc/8KGN-HQFE].

216. *Domestic Violence Awareness Month is About Protecting People and Pets*, ASPCA (Oct. 30, 2017), <https://www.aspc.org/blog/domestic-violence-awareness-month-about-protecting-people-and-pets> [https://perma.cc/V9KG-5B6M].

217. Agriculture Improvement Act of 2018, 115 H.R. 2 § 12503(b)(1); Emanuella Grinberg, *A New Law Aims to Help the Pets of Domestic Violence Victims*, CNN (Dec. 21, 2018, 8:41 AM), <https://www.cnn.com/2018/12/20/politics/paws-act-farm-bill/index.html> [https://perma.cc/58KR-EU4H].

218. See *SAF-T Shelters*, ALLIE PHILLIPS (Jan. 2019), <http://alliephillips.com/saf-t-program/saf-t-shelters/> [https://perma.cc/5MC4-H5R6].

219. Andy Newman, *Where the Abused, and Their Pets, Can Be Safe*, N.Y. TIMES (Apr. 14, 2016), <https://www.nytimes.com/2016/04/17/nyregion/where-the-abused-and-their-pets-can-be-safe.html> [https://perma.cc/SSZ7-26VQ].

220. *Animal Safety Net*, SPCALA, <https://spcala.com/programs-services/asn/> [https://perma.cc/3HPF-WSYJ] (last visited Jan. 12, 2019).

the risk that their animals will be euthanized.²²¹ In Los Angeles, between July 2016 and July 2017, 2178 dogs were euthanized,²²² including 866 dogs identified as Pit Bulls.²²³ Less affluent cities have much higher euthanasia rates due to an even greater inability to provide adequate shelter for the number of homeless animals in their care.²²⁴ Policymakers should take note that the threat of separation and potential danger to pets incentivizes owners to choose inferior housing options, and even homelessness.

As discussed, landlord-imposed pet restrictions heavily constrain renters who refuse to be separated from their animals, often blocking them from accessing the majority of rental markets. These restrictions are particularly burdensome for low-income families, who already have budget constraints, and for families whose dogs resemble socially-maligned breeds, as many policies specifically ban these animals. Legislators and nonprofits have implemented laws to keep families and their pets together in other sheltering contexts, recognizing that they cannot solve major social issues without respecting human-animal bonds. In the rental context, policymakers must take a similar approach to ensure that pet owners can find suitable housing. The following Part elaborates on pet-owner rights and possible legislative pathways to promoting housing stability.

V. MOVING TOWARD CONSTITUTIONAL AND LEGISLATIVE PROTECTIONS FOR FAMILIES WITH PETS

Government and landlord-imposed restrictions on pet ownership in rental housing raise a host of constitutional and public policy issues. Some government policies regarding pet ownership, such as breed-specific legislation, unfairly infringe on personal liberty and privacy interests. Federal courts should counteract these damaging policies by reinterpreting certain

221. See *LA Animal Services Outcome Totals for Dogs by Fiscal Year From 7/1/12 to 1/31/18*, L.A. ANIMAL SERVICES, <http://www.laanimalservices.com/pdf/reports/DogIntakeNOutcomes.pdf> [https://perma.cc/6WRQ-6R9E] (last visited Jan. 12, 2019).

222. *Id.*

223. *LA Animal Services Outcome Totals for Pit Bulls by Fiscal Year From 7/1/12 to 1/31/18*, L.A. ANIMAL SERVS., <http://www.laanimalservices.com/pdf/reports/PitBullsIntakeNOutcomes.pdf> [https://perma.cc/6WRQ-6R9E] (last visited Jan. 12, 2019).

224. *Targeted Spay/Neuter. Targeting Help Where It's Needed Most.*, TARGET ZERO, <http://www.target-zero.org/subsidized-income-targeted-spay-neuter-surgeries> [https://perma.cc/UJV7-3H3Y] (last visited Jan. 12, 2019).

constitutional rights to include families with pets. Landlord-imposed pet restrictions invoke similar liberty and privacy concerns and place significant practical burdens on families. However, because these restrictions are private, they fall less squarely within the realm of constitutional protections. In order to adequately protect families with pets, legislatures will need to supplement judicial protections against public restrictions with legislation that reins in private landlord discretion.

This Part first explores the liberty and privacy issues implicated by government-imposed pet restrictions and offers constitutional rights-based solutions. It then considers how these issues, as well as the practical concerns, should inform legislative and judicial responses to landlord-imposed pet restrictions.

A. CONSTITUTIONAL PROTECTIONS FOR FAMILIES WITH PETS

Families with pets are entitled to the same constitutional protections that shield other families from governmental and private discriminatory practices. This Part presents two constitutional rights to protect pet-owning families and help them keep their homes: the penumbral right to privacy and Fourteenth Amendment substantive due process rights.

Pet restrictions not only serve as a practical barrier to housing access, but also raise fundamental liberty issues. In the past, debates over the right to own pets have implicated concerns regarding the freedom of property ownership.²²⁵ Through common restrictions on the number and types of pets that owners can keep, municipal governments have attempted to balance the property interests of pet owners and their neighbors.²²⁶ Homeowners living near pet owners have claimed a right to quiet enjoyment and freedom from nuisance (including smells, barking, and property damage), while pet owners have resisted constraints on their property rights, particularly those restrictions that constrain their ability to breed and train show dogs.²²⁷ However, American's shifting view of pets as family members rather than property²²⁸ requires a reevaluation of these competing liberty interests. Rather than attempting to reconcile the conflicting

225. Wisch, *supra* note 25.

226. *Id.*

227. *Id.*

228. *Pets By the Numbers*, *supra* note 6.

interests of property owners, governments should focus on providing equal liberty to families regardless of whether those families include pets.

The constitutional right to privacy can be interpreted to ensure greater protections for families with pets. While the Constitution does not explicitly confer a right to domestic privacy, the Supreme Court has read a combination of amendments to imply such a right.²²⁹ The issue first arose in *Griswold v. Connecticut* in 1968, when the Court invalidated a state law prohibiting physicians from prescribing birth control, holding that the law violated the right to marital privacy.²³⁰ In its defense of this right, the Court pointed to the First Amendment's protection of political association from governmental intrusion, the Third Amendment's guarantee of domestic privacy, the Fourth Amendment's protection against searches and seizures, the Fourteenth Amendment's due process requirement, and the Ninth Amendment's assurance of unenumerated rights.²³¹ The Court then extended the right to privacy in the use of contraception to unmarried people in *Eisenstadt v. Baird*.²³² Later cases continued this trend, emphasizing individuals' privacy and broadening the right to include choices regarding abortions and same-sex relations.²³³

Standing alone, the Fourteenth Amendment's Due Process Clause also protects individual decisions regarding the home and family on a substantive due process theory.²³⁴ In its 1923 *Meyer v. Nebraska* decision, the Supreme Court found that the Due Process Clause protects not only physical freedom, but also "the right of the individual to . . . establish a home and bring up children."²³⁵ More recently, the Supreme Court affirmed parents' constitutional right to make decisions for their children in *Troxel v. Granville*, which struck down a law allowing third parties to gain visitation rights to children over parental objections.²³⁶ The

229. See R. H. Clark, *Constitutional Sources of the Penumbra Right to Privacy*, 19 VILL. L. REV. 833 (1974).

230. See *Griswold v. Connecticut*, 381 U.S. 479 (1965).

231. See Clark, *supra* note 128, at 835.

232. See *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

233. See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973) (extending privacy right to abortion decisions); *Lawrence v. Texas* (striking down a Texas sodomy law), 539 U.S. 558 (2003).

234. See, e.g. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (striking down a state law requiring children to attend public school, regardless of their parents' wishes).

235. See *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

236. See *Troxel v. Granville*, 530 U.S. 57 (2000).

Court stated: “The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”²³⁷

Clearly, many privacy and substantive due process rights center around personal autonomy in domestic contexts. They suggest that the freedom to make important home and family decisions is fundamental to achieving the American ideals of “Life, Liberty and the pursuit of Happiness.”²³⁸ Moreover, these rights seem to be evolving. As American culture and priorities have changed, the Supreme Court has expanded substantive due process and privacy rights to cover issues now widely considered to be important to domestic self-determination, such as birth control²³⁹ and, in combination with principles of equal protection and federalism, same-sex marriage.²⁴⁰

Dogs have become central to family life.²⁴¹ Americans commit significant financial and emotional resources to pet care,²⁴² and many owners have taken on parent-like roles vis-à-vis their dogs.²⁴³ As a result, decisions that impact pets — particularly regarding their well-being and ability to stay in the family home — have become increasingly important to Americans. These decisions are now significant enough to implicate autonomy and liberty concerns that drive the constitutional protections of home and family decisions. Therefore, Fourteenth Amendment protections and the penumbral right to privacy should be interpreted to extend to families with pets, granting pet owners the freedom to make decisions concerning the care and custody of their animals.²⁴⁴ Unfortunately, the application of heightened scrutiny in cases of parental decision-making is inconsistent, and

237. *Id.* at 66.

238. The Declaration of Independence para. 2 (U.S. 1776).

239. *Supra* note 232.

240. *See* United States v. Windsor, 570 U.S. 744 (2013); Obergefell v. Hodges, 135 S. Ct. 2584 (2015).

241. *See* Stanley Coren, *How Important Is Your Dog in Your Family and Social Life?* PSYCHOL. TODAY (May 18, 2017), <https://www.psychologytoday.com/blog/canine-corner/201705/how-important-is-your-dog-in-your-family-and-social-life> [https://perma.cc/Y7NS-J2RL]

242. *See* AM. PET PRODUCTS ASS'N, *supra* note 2.

243. *See* Bergland, *supra* note 84.

244. This interpretation would not require a judicial conclusion that pets have personhood rights, entitling them to protection under the Fourteenth Amendment. The right to define one's family belongs to the parents, or in this case owners, who already enjoy Fourteenth Amendment protection.

would be so as well for families with pets. Still, an upward departure from rational basis review in at least some instances of pet restrictions would benefit families with pets, requiring courts to review pet restrictions with a heightened scrutiny and a greater sensitivity to the needs of families that contain pets.

Municipalities that enforce breed-specific legislation violate these both of these constitutional guarantees. While many regulations regarding the species of animals that people may own have common sense purposes,²⁴⁵ breed-specific legislation arbitrarily interferes with pet owners' abilities to establish their own homes and retain custody of animal family members who cannot function independently. The practice of banning dog breeds does not pass a heightened level of scrutiny because it is both over- and under-inclusive. Most individual dogs of any given dog breed are not dangerous, and breed-specific policies necessarily exclude dangerous individual dogs of non-maligned breeds. Therefore, even where local courts have accepted that breed bans promote public safety, they would not be able to uphold the same bans if pet-owning families enjoyed constitutional protections.

None of this is to say all municipal pet restrictions lack reasonable justifications.²⁴⁶ For example, allowing people to keep wild animals in their homes would endanger public safety and health, threaten surrounding habitats, and deprive the animals of their inherent rights to live in appropriate habitats in which they can express normal behaviors.²⁴⁷ Similarly, permitting people to hoard domestic animals would endanger public safety and health through excessive excrement and deprive the animals of their basic spatial needs.²⁴⁸ Even under a heightened scrutiny standard, these laws would be considered appropriately tailored to achieve a reasonable government interest. But over-burdensome housing restrictions on those who legally acquire and properly care for their domestic animals, however, would not pass such scrutiny.

245. See Wisch, *supra* note 25.

246. *Id.*

247. Under the commonly accepted Five Freedoms of Animal Welfare, created by the Farm Animal Welfare Council, animals are entitled to freedom to express normal behavior. See *Five Freedoms*, ASPCA, http://www.aspcapro.org/sites/pro/files/aspca_asv_five_freedoms_final_0_0.pdf [https://perma.cc/DZ8P-UPR8] (last visited Jan. 13, 2019).

248. *Id.*

Conferring these rights would nevertheless introduce the challenge of determining their content and limitations. Since rights are not absolute, they are susceptible to government infringement under particular circumstances.²⁴⁹ While people have the right to live with one animal who is part of their family, it may be unsafe or unsanitary to allow them to have five or ten animals in any given unit, even if people claim those animals as family members. At the same time, housing codes effectively regulate the number of children families can keep in units, and they could similarly keep pet ownership in check.²⁵⁰ Noise regulations and stricter animal quality of care standards could also effectively limit pet numbers to reasonable levels.

Determining which species fall in the category of “family,” thereby invoking these rights, is also challenging. While wild animals can be excluded for reasons discussed above, some people may view hamsters, snakes, or birds as family members. The question of whether families with these pets should be afforded the same housing protections as families with dogs and cats does not have a simple answer. On one hand, non-dog or -cat household pets, such as rodents, may suffer less if separated from their families, because of lower intellectual and emotional capacities. On the other hand, some pets, such as pigs, may have higher capacities than dogs and cats, and may suffer more.²⁵¹ Owners of other types of pets may also love their animals as much dog or cat owners do, and may similarly fear that they will be euthanized if surrendered to shelters. In any case, even housing protections limited to dog and cat owners would

249. Circumstances warranting infringement depend on the right involved. For example, laws violating fundamental rights are generally only valid when they are “narrowly tailored” to a “compelling government interest.” See, e.g., *Contractors Ass’n v. City of Philadelphia*, 893 F. Supp. 419, 422 (1995).

250. For example, California upholds occupancy requirements set forward in the Uniform Housing Code, which requires that rental rooms used for sleeping have a minimum floor space that depends on the number of occupants in the home. See *California Tenants: A Guide to Residential Tenants and Landlords’ Rights and Responsibilities*, STATE OF CALIFORNIA, DEPARTMENT OF CONSUMER AFFAIRS 1, 8 (2010), <http://www.lapublichealth.org/eh/docs/housing/brochure/tenright.pdf> [https://perma.cc/XRQ7-P2W9].

251. For a discussion of pig intelligence, see Lori Marino & Christina M. Colvin, *Thinking Pigs: A Comparative Review of Cognition, Emotion, and Personality in Sus Domesticus*, 28 INT’L J. COMP. PSYCHOL. 1 (2015).

significantly ease housing insecurity issues, as Americans are more likely to own dogs and cats than other pets.²⁵²

B. THE FAIR HOUSING ACT AND OTHER LEGISLATIVE SOLUTIONS

While landlord-imposed pet and breed restrictions are private and thus do not fall within the realm of constitutional protection,²⁵³ they nonetheless invoke privacy and liberty concerns. Because landlords are able to ban and restrict pets arbitrarily,²⁵⁴ their power reaches far into the private lives of families with pets, threatening housing insecurity for those who do not conform their family structures to landlord expectations. As a result, many tenants are forced to compromise on property quality, cleanliness, commute distance, financial security, and safety in order to keep their families intact.²⁵⁵ Moreover, these pet-related housing issues are likely to become worse as both the housing rental market and number of families with pets grow. The fact that most housing in the United States is privatized, and therefore that renters are excluded from constitutional protections against state action, should not deprive so many Americans of control over important family decisions.²⁵⁶ Accordingly, a legislative solution is necessary.

252. *U.S. Pet Ownership Statistics*, AVMA, <https://www.avma.org/KB/Resources/Statistics/Pages/Market-research-statistics-US-pet-ownership.aspx> [<https://perma.cc/QV83-9FY5>] (last visited Mar. 2, 2018).

253. Most constitutional protections restrain government actions but do not protect individuals from private actors. Those who advocated for the inclusion of the Bill of Rights worried that the federal government could become tyrannical. Since the purpose of the Bill of Rights was to constrain rather than empower the federal government, it makes sense that the Bill of Rights would not dictate the boundaries of private interactions. The thirteenth amendment, which applies to private actors, later became a notable exception. See *Wallace v. Jaffree*, 472 U.S. 38, 92–93 (1985) (Rehnquist, J., dissenting); U.S. Const. amend. XIII.

254. Analysts have concluded that landlords act in economically irrational ways, overlooking opportunities to make a profit because they overestimate the burdens associated with pet-friendly housing. Carlisle-Frank, *supra* note 20, at 3,18. In light of the skewed media reports regarding breeds, landlords may also rely on flawed data, not having the full information they need to make rational decisions. In a perfectly efficient market, the percentage of pet-friendly units would rise to meet demand. Clearly that has not happened.

255. Power, *supra* note 1.

256. Congress has extended constitutional protections to the private housing context before. As discussed below, the Fair Housing Act provides tenants with protections against certain discriminatory landlord practices that would otherwise be permissible because private landlords are not state actors.

Some foreign governments are starting to recognize that landlords should not have such far-reaching power over their tenants' family structures. In Ontario, while landlords can refuse to rent to people with pets, they cannot include "no pet" provisions in leases and cannot evict tenants for having pets.²⁵⁷ Austria prohibits landlords from banning small pets, such as turtles and hamsters,²⁵⁸ and Belgium allows landlords to restrict pets but rejects general pet bans as too great an imposition on tenants' family and private lives.²⁵⁹

On both federal and local levels, governments should act sooner rather than later to address these barriers. The most comprehensive solution would involve amending the Fair Housing Act. Enacted as Title VIII of the Civil Rights Act of 1968, the Fair Housing Act initially prohibited landlords from arbitrarily discriminating against renters on the basis of race, color, religion, and national origin.²⁶⁰ Today, it also protects against discrimination on the basis of sex, disability, and familial status.²⁶¹ Discriminatory practices include refusing to rent or negotiate housing, making housing unavailable, and establishing different terms and conditions of housing.²⁶²

Added in 1988, the familial status protections prevent landlords from refusing to rent to people because they have children under the age of eighteen or are pregnant.²⁶³ According to the statute, "Familial Status" means:

One or more individuals (who have not attained the age of 18 years) being domiciled with — (1) a parent or another person having legal custody of such individual or individuals; or (2) the designee of such parent or other

257. While this regulation falls short of helping pet owners in search of housing, it does protect tenants whose landlords change their minds about allowing pets or who acquire pets after starting their lease. See Residential Tenancies Act, S.O. 2006, c. 17 (Can.).

258. Christoph U. Schmid & Jason R. Dinse, *My Rights as Tenant in Europe*, TENANCY L. & HOUSING POL. IN MULTI-LEVEL EUROPE 27, 28 (Jan. 12 2014), <http://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf> [<https://perma.cc/UA3X-A95K>].

259. *Id.* at 55.

260. The Fair Housing Act of 1968, 42 U.S.C. §§ 3601–3619 (1968).

261. *Id.*

262. *Id.*

263. See 1968: *Federal Fair Housing Act*, THE FAIR HOUSING CTR., <http://www.bostonfairhousing.org/timeline/1968-Fair-Housing-Act.html> [<https://perma.cc/R2G5-9B4P>] (last visited Mar. 2, 2018).

person having such custody, with the written permission of such parent or other person.²⁶⁴

The statutory language quite apparently refers to human children, and it can be assumed that the federal government had only humans in mind when crafting the amendment. However, shifting American family dynamics call for either an amendment to or a judicial reinterpretation of this definition to include pets. Congress should amend the definition to explicitly include pets as part of the familial status for which landlords may not discriminate against renters.²⁶⁵ This would prevent landlords from banning renters with pets, evicting renters after they discover the renters have pets, or charging extreme premiums for pet-friendly housing.

Alternatively, federal courts could reinterpret the statutory language to include pets. Since the term “individual” is species-neutral,²⁶⁶ dogs and cats could be regarded as falling under the category of “one or more individuals (who have not attained the age of 18 years).”²⁶⁷ Since the vast majority of American pet owners do not regard their animals as property, courts would be reasonable in regarding pet owners as “person[s] having legal custody of such individual or individuals,” rather than as “owners” of their pets. A court could conceivably reinterpret the current FHA language to include pets, though doing so would likely open up more animal-related statutory interpretation questions.

Although the aforementioned federal solutions are unlikely considering the ongoing political gridlock in Congress²⁶⁸ and the

264. 42 U.S.C. § 3602 (2012).

265. The FHA focuses on the disparate consequences of the landlord’s actions, rather than the landlord’s intent. Therefore, the fact that landlords may not harbor ill will toward pet owning families is irrelevant. *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015) (finding disparate impact claims cognizable under the FHA).

266. The concept of animals as individuals relates to a longstanding philosophical debate about animal personhood, which this Note does not discuss in depth. Proponents of personhood status point to animals’ cognitive capacities and abilities to suffer, which are comparable to those of small human children, as indicating personhood. *See, e.g.*, Tamie L. Bryant, *Sacrificing the Sacrifice of Animals: Legal Personhood for Animals, Legal Personhood for Animals, the Status of Animals as Property, and the Presumed Primacy of Humans*, 39 RUTGERS L.J. 247, 258 (2008).

267. Senior cats and dogs eighteen years and older would need to lie about their age until Congress amends the law to include them.

268. While these are not necessarily partisan issues, rising congressional gridlock will likely prevent the federal government from making any substantial changes to the

potential controversies that could arise from such a dramatic change in judicial interpretation, municipal and state governments can and should address pet restrictions. Without giving up common-sense restrictions — such as bans against keeping wildlife — local governments should pass legislation prohibiting landlords from discrimination against tenants on the basis of pet ownership. Specifically, they should require that landlords disregard whether tenants have pets when making rental decisions, as long as the pets are legally-owned and registered, and regardless of the pets' breed, size, or species. It is important to explicitly ban landlord-imposed breed-specific policies for two reasons. First, pet owners of maligned-breed dogs suffer the most from current landlord restrictions and are in need of government support. Second, without breed discrimination bans, landlords currently banning all pets would be able to alter their restrictions to exclude most breeds, effectively circumventing the new laws.

Though pet-friendly housing legislation would shift more public safety and property destruction risk to landlords, governments could impose several measures to mitigate this risk. One method is to shift landlords' legal liability for pet-caused injuries to tenants. Because landlords can be liable for dog bites on their property under certain circumstances,²⁶⁹ some landlords already require that tenants take out personal insurance plans to cover their pets.²⁷⁰ These plans are preferable to landlord insurance plans because non-profit organizations that provide services for low-income pet owners could conceivably pay for or provide these policies. By contrast, non-profits cannot feasibly pay portions of landlord insurance premiums because the increase in cost attributable to any one tenant's pet would be

Federal Housing Act. See Sheryl Gay Stolberg & Nicolas Fandos, *As Gridlock Deepens in Congress, Only Gloom is Bipartisan*, N.Y. TIMES (Jan. 27, 2018), <https://www.nytimes.com/2018/01/27/us/politics/congress-dysfunction-conspiracies-trump.html> (“Mr. Trump’s presidency has pushed an already dysfunctional Congress into a near-permanent state of gridlock.”). Sarah Binder, *Here are 4 Things to Expect from a New, Trumpier, More Polarized Congress*, WASH. POST (Nov. 7, 2018), https://www.washingtonpost.com/news/monkey-cage/wp/2018/11/07/here-are-4-things-to-expect-from-a-new-trumpier-more-polarized-congress/?utm_term=.bb8000c4b02a [<https://perma.cc/D7NW-FKEU>].

269. See Rebecca F. Wisch, *Brief Summary of Landlord Liability for Injury by Tenant’s Animals*, ANIMAL LEGAL & HIST. CTR. (2004), <https://www.animallaw.info/article/brief-summary-landlord-liability-injury-tenants-animals> [<https://perma.cc/FL5J-BNH6>].

270. See Angela Colley, *Renters, You May Need Pet Insurance for Your Four-Legged Friend*, REALTOR MAG. (Feb. 13, 2017), <https://www.realtor.com/advice/rent/renters-may-need-separate-insurance-for-pets/> [<https://perma.cc/7CPG-6ULY>].

difficult to measure. In addition, continuing to allow landlords to charge reasonable, one-time pet deposits would alleviate concerns about property damage. Regulations should limit these deposits to small percentages of move-in deposits, so that they both reflect the actual average cost of pet-related property destruction and are affordable by tenants or low-income pet-support organizations. Finally, legislatures could create pet-related exceptions to the general rule that landlords must keep common areas of residential buildings safe,²⁷¹ instead shifting the liability for dog bites that take place in these areas to the owners themselves.

Prohibitions against banning pets would also likely require some exceptions, but reasonable exceptions would not undermine the purpose of the prohibitions. While most neighbors with allergies would not be affected by having animals in other units, people with extreme fur or dander allergies should have some housing options without animals. Similarly, people with debilitating phobias of animals deserve access to human-only housing. However, these populations are significantly smaller than the pet-owning population, and their housing needs can be accommodated without locking pet-owning families out of the rental market.

Short of these restrictions on landlords, state and local governments can create measures and programs to encourage landlords to accept pets, and maligned breeds in particular. The most effective measure would be requiring all companies that sell landlord insurance to cover all breeds of pets. Since many major insurance companies currently refuse to insure landlords who accept maligned dog breeds,²⁷² this requirement would free landlords to make economically driven, if not morally driven, decisions regarding tenants' pets. Michigan and Pennsylvania have passed legislation to this effect,²⁷³ forbidding insurance companies from denying coverage to homeowners based on their dogs' breed.

271. See H. May Spitz, *It's Up to the Landlord to Maintain a Building's Common Areas*, L.A. TIMES (Aug. 14, 2005), <http://articles.latimes.com/2005/aug/14/realestate/rental> [<https://perma.cc/NK69-7AL4>].

272. See *supra* note 148.

273. See *Spotlight On: Dog Bite Liability*, INS. INFO. INST. (Apr. 3, 2017), <https://www.iii.org/issue-update/dog-bite-liability> [<https://perma.cc/RQ6U-HESM>].

Governments could also impose a sliding scale of fees on landlords who impose pet bans. A fee system would economically incentivize landlords to allow pets, while allowing those who are particularly opposed to animals to maintain current bans — at a price. It would also steer landlords toward the few insurance companies that do currently insure pet-friendly rentals, incentivizing other insurance companies to adopt better policies. Alternatively, the fee system could be levied on the insurance companies themselves. Local governments could use the profits from this program to subsidize low-income housing or support homeless and animal shelters.

In our current system, landlords and insurance companies wield enormous power over renters. However, considering our complex legal system and the number of Americans affected by this issue, landlords and insurance companies are perhaps the least qualified parties to make decisions regarding what constitutes proper families. They should certainly not dictate whether families with pets have the same access to affordable and appropriate housing as other renters. As traditional family structures shift to accommodate society's cultural priorities and economic realities, government policies must also evolve to protect these new families. The policy changes discussed could lessen the burdens facing pet-owning renters in the United States. While they range from drastic to incremental and vary in terms of the scale of their implementation and likelihood of approval, each policy would have a positive and meaningful impact on families and their animals.

VI. CONCLUSION

In past generations, landlord-imposed pet restrictions did not broadly impact Americans. Many couples avoided rental markets by marrying early and purchasing homes. Further, most people did not view their animals as family members, and therefore likely felt more comfortable surrendering animals to shelters when they were unable to keep them in their homes. However, American culture and appreciation for animal sentience has evolved.

As Americans increasingly rent their homes and consider their pets to be family members, landlord-imposed pet restrictions severely reduce access to housing. When people need to move

residences, those who view their pets as family often do not consider leaving their pets behind as an acceptable option. As a result, landlord-imposed pet restrictions become restrictions on entire families. For many renters, finding pet-friendly housing is a significant obstacle. For low-income families in stressed rental markets, who already face limited options, and owners of maligned-breeds, who confront sweeping breed bans, pet-restrictions can severely limit or entirely cut off housing access.

From a constitutional perspective, the penumbral right to privacy and the Fourteenth Amendment Due Process Clause can be interpreted to protect families with pets from government intrusions, such as breed-specific legislation. These rights, which safeguard individual autonomy regarding important domestic decisions, should extend to protect families' desires to keep their pets in their homes from laws that unreasonably demand forfeiture. While these constitutional protections do not apply to the landlord-imposed restriction context, they do suggest that landlords are also unreasonably interfering with private family decisions. Accordingly, legislatures should amend federal and municipal laws to prohibit landlords from arbitrarily denying housing to pet-owning families. Short of this, governments should enact laws that encourage landlords to rent to families with pets, either by shifting liability for pets entirely to owners or by requiring insurance providers to insure pet-friendly buildings.

While governments had little reason to interfere in private landlord policies regarding pets in the past, shifting cultural and economic realities now make government intervention necessary. Furthermore, governments grappling with human and animal homelessness will need to address landlord-imposed pet restrictions in order to make headway on their own public policy goals.

APPENDIX A

TABLE 1: AUTHOR-CONDUCTED STUDY OF APARTMENT LISTINGS
ACROSS 15 LOS ANGELES ZIP CODES²⁷⁴

Zip Code	Apartments Listed (up to 2k in rent)	Dog Friendly (up to 2k in rent)	Breed Restrictions (up to 2k in rent)	Size Restrictions (up to 2k in rent)	Evidently “all-breed friendly” (up to 2k in rent)	Dog Friendly (up to 1.8k in rent)	Evidently “all-breed friendly” (up to 1.8k in rent)
90012	27	15	11	0	4	0	0
90013	22	12	10	1	1	0	0
90014	11	10	3	1	6	0	0
90015	28	10	6	1	3	0	0
90016	22	2	0	0	2	0	0
90017	23	8	2	1	5	1	0
90018	20	6	0	1	5	1	1
90019	75	22	4	4	14	2	2
90020	111	53	9	13	31	4	2
90011	12	4	0	1	3	0	0
90026	50	18	6	0	12	3	2
90008	61	10	0	2	8	2	1
90038	49	15	4	4	7	4	3
90029	39	16	1	1	14	1	1
90028	62	11	4	6	1	1	0
Total	612	212	60	36	116 ²⁷⁵	19	12

274. Source: Apartments.com. Date: 02.28.18.

275. (18.95% of 612).