

The Puppy Prohibition Period: The Constitutionality of Chicago’s War on Animal Mills

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INTRODUCTION

In March of 2014, Chicago passed an ordinance stating that pet stores may only sell animals that have originated from an animal shelter or rescue organization.¹ The Chicago Ordinance was an attempt by the City to address the problem of animal mills.² An “animal mill” is a large scale breeding operation that places profit over the well being of its animals, many of which are severely neglected, without regard for responsible breeding practices.³

The Chicago Ordinance is an example of a prohibition ordinance because it completely bans the sale of live animals in pet stores within the City’s boundaries.⁴ The City Council cited several purposes for the passage of the Ordinance:

1. To combat the practice of animal “mills” because “[w]hen consumers buy [animals] from a pet store, there is a strong likelihood that consumers are unknowingly supporting the puppy mill, kitten mill, or rabbit mill industry.”⁵
2. To protect potential purchasers from the financial and emotional costs of owning an animal that originated from a mill, because many of these animals have health and behavioral issues.⁶

¹ CHI., IL., MUN. CODE § 4-384-015 (2015); *see also* Mitch Smith & Hal Dardick, *Chicago Aldermen Pass Anti-Puppy Mill Ordinance 49-1*, CHICAGO TRIBUNE (Mar. 5, 2014), http://articles.chicagotribune.com/2014-03-05/news/chi-chicago-antipuppy-mill-measure-advances-20140304_1_pet-stores-chicago-aldermen-homeless-animals.

² CHI. MUN. § 4-384-015 (Citing “inhumane breeding conditions” as one of the reasons adoption of the ordinance is in the best interests of the City); *Anti-Puppy Mill Legislation Backed by Animal Advocates, City Clerk Susana Mendoza Approved by the Chicago City Council*, CITY CLERK NEWS (Mar. 5, 2014), <http://chicityclerk.com/clerk-news/anti-puppy-mill-legislation-backed-by-animal-advocates-city-clerk-susana-mendoza-approved-by-the-chicago-city-council/> (quoting Chicago City Clerk Mendoza, in describing the Chicago ordinance “Our legislation cuts off a pipeline [of] animals from the horrendous puppy mill industry”).

³ *Puppy Mills*, ASPCA, <http://www.aspc.org/fight-cruelty/puppy-mills> (last visited Feb. 3, 2015) (this source defines an animal mill as it applies to puppies, however the concept is transferrable across species); *see also* Kailey A. Burger, Note, *Solving the Problem of Puppy Mills: Why the Animal Welfare Movement’s Bark is Stronger than its Bite*, 43 WASH. U J.L. & POL’Y 259, 261 (2013); Krysten Kenny, Note, *A Local Approach to a National Problem: Local Ordinances as a Means of Curbing Puppy Mill Production and Pet Overpopulation*, 75 ALB. L. REV. 379, 379 (2012) (stating that “puppy mill” is “synonymous with abuse and deplorable living conditions, conjuring to mind images of dogs crammed in wire mesh cages, matted with feces, and suffering from numerous untreated health problems”).

⁴ *See* Kenny, *supra* note 3, at 379 (discussing prohibition ordinances).

⁵ CHI. MUN. § 4-384-015.

⁶ CHI. MUN. § 4-384-015.

There are many individuals who have purchased a puppy, only to discover at a later date that the puppy was born in a puppy mill. By that time, the dog’s guardian has already emotionally bonded with the puppy. This fact pattern tends to impose heavy financial and emotional burdens on the guardian while he or she cares for the sick puppy. *See, e.g.*, Katie LaGrone, *More Claims Against South Florida Based Puppy Broker*, WPTV CHANNEL 5 NEWS (June 1, 2012), <http://www.wptv.com/news/local-news/investigations/more-claims-against-south-florida>

3. To reduce the financial burden to taxpayers by reducing the number of animals cared for and euthanized by animal shelters.⁷
4. To promote the adoption of rescue animals by prohibiting the retail sale of commercially bred animals by businesses within the City.⁸

By removing animal mills from the supply chain, the City Council believes that this Ordinance can remove the financial incentive of owning an animal mill.⁹

The Chicago Ordinance is not unique. Numerous local governments, including San Diego, Los Angeles and Phoenix have similar ordinances.¹⁰ Most of these ordinances share the goal of banning or severely limiting the retail sale of cats and dogs in order to curb the practice of operating an animal mill.¹¹ Many critics of these ordinances, particularly owners of pet stores, have threatened to bring lawsuits challenging the constitutionality of prohibition ordinances.¹² Despite this, there has yet to be a published opinion directly discussing this topic.¹³

This article gives an overview of the Chicago Ordinance's constitutionality. It considers three areas of constitutional law: the Equal Protection, Contracts, and Commerce Clauses. Part I

based-puppy-broker; Mary Pilon & Susanne Craig, *Safety Concerns Stoke Criticism of Kennel Club*, NY TIMES (Feb. 9, 2013), http://www.nytimes.com/2013/02/10/sports/many-animal-lovers-now-see-american-kennel-club-as-an-outlier.html?pagewanted=1&_r=3; Jeff Rossen & Avni Patel, *AKC-Registered Breeders Raising Dogs in Miserable Conditions*, TODAY NEWS (May 1, 2013), <http://www.today.com/news/akc-registered-breeders-raising-dogs-miserable-conditions-6C9640008>.

⁷ CHI. MUN. § 4-384-015 (the City Council estimates that it spends between \$200,000 - \$300,000 annually to euthanize unwanted dogs and cats. Taxpayers, who pay most of the cost to care for and euthanize unwanted animals, shoulder this financial burden. “[T]his Ordinance should reduce the amount of unwanted animals brought to organizations like the CACC, which would also reduce the financial burden on City taxpayers”).

⁸ CHI. MUN. § 4-384-015.

⁹ *See id.*

¹⁰ Smith & Dardick, *supra* note 1; *see also* CHI. MUN. § 4-384-015 (stating that 40 North American cities have similar ordinances).

¹¹ *See* John Egan, *Austin's Only Petland Store Closing Ahead of Anticipated City Ban on Retail Pet Sales*, EXAMINER.COM (July 14, 2010), <http://www.examiner.com/article/austin-s-only-petland-store-closing-ahead-of-anticipated-city-ban-on-retail-pet-sales> (stating that the Austin prohibition ordinance was meant to curb the practice of puppy mills); Smith & Dardick, *supra* note 1; *see also* Kenny, *supra* note 3, at 379-80.

¹² *See* Sally Ho, *Judge Delays Cook County Ban on 'Puppy Mill' Pet Sales*, CHICAGO TRIBUNE (Sept. 12, 2014), <http://www.chicagotribune.com/suburbs/chi-judge-delays-cook-county-puppy-mill-ban-20140911-story.html>; Deborah Howard, *CAPS Wins Lawsuit Brought by Pet Store Owners Objecting to Retail Pet Store Ban*, CAPS, (Sept. 15, 2014), <http://www.caps-web.org/item/983-caps-wins-lawsuit-brought-by-pet-store-owners-objecting-to-retail-pet-store-ban>; *see also* San Diego City Council Unanimously Votes to Ban Retail Sale of Dogs, Cats, Rabbits in Pet Stores, ABC10 NEWS (July 10, 2013), <http://www.10news.com/news/san-diego-city-council-to-vote-on-pet-store-ban-070813>.

¹³ I have extensively searched legal research databases and have located no published opinions directly discussing the federal constitutionality of prohibition ordinances.

applies existing equal protection analysis to the Ordinance, finding no violation of the Equal Protection Clause.¹⁴ Part II applies Contracts Clause analysis to the Ordinance and concludes that there is likely no violation of the Contracts Clause, however lower courts may issue opinions inconsistent with established authority.¹⁵ Part III applies Commerce Clause analysis to the Ordinance and concludes that the Ordinance violates the Commerce Clause.¹⁶ Part IV addresses the failings of the Ordinance and suggests alternative solutions.¹⁷

I. THE EQUAL PROTECTION CLAUSE

A. *Summary of Equal Protection Analysis*

The Equal Protection Clause of the Fourteenth Amendment prohibits states from denying “to any person within its jurisdiction the equal protection of the laws.”¹⁸ It requires that, with respect to the law, similarly situated individuals receive like treatment.¹⁹ Depending on how a challenged law classifies and treats different groups, a court will be more suspicious of, or more deferential to the government’s stated justifications for the law.²⁰ For laws that do not classify groups based on race, gender, national origin or ancestry, a court will uphold a policy against an equal protection challenge “if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.”²¹ This standard, called rational basis review, is extremely deferential to the government, and a law will generally be upheld under the Equal

¹⁴ See *infra* Part I.

¹⁵ See *infra* Part II.

¹⁶ See *infra* Part III.

¹⁷ See *infra* Part IV.

¹⁸ U.S. CONST. amend. XIV, § 1; see Richard B. Saphire, *Equal Protection, Rational Basis Review, and the Impact of Cleburne Living Center, Inc.*, 88 KY. L.J. 591, 599-600 (2000).

¹⁹ See U.S. CONST. amend. XIV, § 1; see *Concerned Dog Owners of California v. City of Los Angeles*, 194 Cal. App. 4th 1219, 1233 (2011); *Purdy & Fitzpatrick v. State of California*, 456 P.2d 645 (1969).

²⁰ See generally GEOFFREY R. STONE ET AL., *CONSTITUTIONAL LAW* 497-520 (7th ed. 2013).

²¹ See *Concerned Dog Owners*, 194 Cal. App. 4th at 1233; *Warden v. State Bar*, 21 Cal.4th 628, 644 (1999). Although these are California cases, their description of rational basis review for equal protection challenges is consistent with the federal rule. See *New York City Transit Authority v. Beazer*, 440 U.S. 568, 592-94 (1979); see also Saphire, *supra* note 18, at 601-02.

Protection Clause as long as it advances a legitimate government interest, even where that law seems unwise, works to disadvantage a particular group, or the rationale seems tenuous.²²

Rational basis review requires that a law be plausibly related to a legitimate government purpose.²³ Notably, the United States Supreme Court has only used rational basis review to strike down a statute on equal protection grounds four times.²⁴ On almost all other occasions in which the Supreme Court has applied rational basis review in an equal protection case, the court has upheld the challenged government statute.²⁵

A law can be underinclusive or overinclusive. A law is underinclusive when it does not regulate all individuals who are similarly situated.²⁶ That is, the law does not govern all of the individuals that it intends to. A law is overinclusive where it regulates similarly, individuals who are not similarly situated.²⁷ In other words, an overinclusive law affects individuals it did not intend to regulate. However, under rational basis review, even substantial underinclusiveness or overinclusiveness does not render a law unconstitutional for equal protection purposes.²⁸

B. The Chicago Ordinance Does Not Violate the Equal Protection Clause

As stated, courts apply rational basis review in equal protection cases when the statutory classification does not target a suspect class or involve fundamental constitutional rights.²⁹ The Chicago Ordinance does not target any of the prior established suspect classes, nor does it

²² See *Romer v. Evans*, 517 U.S. 620, 632 (1996); see also *Armour v. City of Indianapolis, Ind.*, 132 S. Ct. 2073, 2079-80 (2012); *New Orleans v. Dukes*, 427 U.S. 297, 303-04 (1976); *Saphire*, *supra* note 18, at 598.

²³ See *STONE ET AL.*, *supra* note 20, at 513.

²⁴ See generally *Lawrence v. Texas*, 539 U.S. 558 (2003); *Romer*, 517 U.S. at 620; *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985); *U.S. Dept. of Agriculture v. Moreno*, 413 U.S. 528 (1973).

²⁵ See generally *STONE ET AL.*, *supra* note 20, at 498-520.

²⁶ See *ERWIN CHERMERINSKY, CONSTITUTIONAL LAW 735* (3rd ed. 2009); *STONE ET AL.*, *supra* note 20, at 514.

²⁷ See *CHEMERINSKY*, *supra* note 26, at 737; *STONE ET AL.*, *supra* note 20, at 513-14.

²⁸ See *CHEMERINSKY*, *supra* note 26, at 735-37 (3rd ed. 2009); see generally *New York City Transit Authority v. Beazer*, 440 U.S. 568 (1979); *Williamson v. Lee Optical*, 348 U.S. 483 (1955); *Railway Express Agency, Inc. v. New York*, 336 U.S. 106 (1949).

²⁹ See *New York Transit Authority*, 440 U.S. at 592-94; *Concerned Dog Owners of California v. City of Los Angeles*, 194 Cal. App. 4th 1219, 1233 (2011); *Warden v. State Bar*, 21 Cal.4th 628, 644 (1999); see *STONE ET AL.*, *supra* note 20, at 497-98, 776-90.

involve any established fundamental constitutional rights.³⁰ Thus, under an equal protection challenge, a court would apply rational basis review in considering the constitutionality of the Chicago Ordinance and likely uphold the policy.

Because rational basis review is the appropriate standard, the court would likely defer to the government's stated purposes.³¹ The Ordinance lists its intended purposes, including to curb the practice of animal mills and to reduce the number of euthanizations.³² These interests are rationally related to the law because by preventing pet stores from stocking commercially bred animals, the number of stray animals adopted may rise. In turn, this will result in fewer euthanizations. Thus, a court would likely find that the Chicago Ordinance is rationally related to these stated government interests. Thus, the Chicago Ordinance does not violate the Equal Protection Clause.

This Ordinance is both over and underinclusive. However, because of the deference afforded to the government under rational basis review, a court will likely tolerate over and underinclusiveness while finding no equal protection violation.³³ Although the Ordinance states the City is attempting to curb the unknowing support of animal mills when people buy animals from pet stores,³⁴ not all animals in pet stores originate from animal mills.³⁵ However, the

³⁰ Previously established suspect classes include race, national origin, religion, and alienage. Quasi-suspect classes receiving only heightened scrutiny include gender and possibly sexual orientation. *See generally* STONE ET AL., *supra* note 20, at 520-26, 633-42, 776-90. The Chicago Ordinance does not mention or affect classes on the basis of any of these suspect classes or fundamental rights. *See* CHICAGO, IL., MUNICIPAL CODE § 4-384-015 (2015).

³¹ For the stated government interests of the Chicago Ordinance, see CHI. MUN. § 4-384-015. These interests are also listed in the Introduction. *See supra* INTRODUCTION. For examples of courts deferring to stated government interests in the face of contradictory evidence, see *New York Transit Authority*, 440 U.S. at 593-94 (the Supreme Court deferred to the New York Transit Authority's assessment that individuals who had received methadone treatment were ineligible for employment); *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 462-63 n.7 (1981) ("In equal protection analysis, this Court will assume that the objectives articulated by the legislature are actual purposes of the statute").

³² CHI. MUN. § 4-384-015.

³³ *See* CHEMERINSKY, *supra* note 26, at 735-37; *see also supra* Part I.B (arguing that a court reviewing the Chicago Ordinance for an equal protection violation would affirm the Ordinance's constitutionality).

³⁴ *See* CHI. MUN. § 4-384-015.

Ordinance prevents the responsible breeders from stocking animals in pet stores just as much as it prevents animal mills. This shows that the Chicago Ordinance is overinclusive because the justification for the Ordinance is to prevent animal mills from stocking pet stores, but the Ordinance also prohibits the activity of responsible breeders. The Ordinance is also under-inclusive because it does not prevent individuals from purchasing animals directly from the animal mills and it does not prohibit the ownership and operation of an animal mill. The Ordinance also does not prevent individuals from purchasing an animal from a breeder through the internet,³⁶ despite the fact that many animals purchased over the internet originate from an animal mill.³⁷ Thus, the Chicago Ordinance not only encompasses activity the City did not intend to regulate, but it also does not adequately address the practice of animal mills.

II. THE CONTRACTS CLAUSE

A. Summary of Contracts Clause Analysis

The Contracts Clause proclaims that states may not “pass any . . . [l]aw impairing the [o]bligation of [c]ontracts.”³⁸ It claims to limit the power of a state to abridge existing

³⁵ See Kristina N. Lotz, *The Puppy Selling Ban Debate*, CESAR’S WAY, <http://www.cesarsway.com/dog-rescue/adoption-tips/The-Puppy-Selling-Ban-Debate> (last visited Feb. 7, 2015) (in a summary of both sides of the debate over whether states should regulate the sale of puppies by pet stores, Lotz states that some pet stores stock dogs from trusted local breeders and do not stock puppies until the owner of the pet store has personally visited the breeding facility); see also *San Diego City Council Unanimously Votes to Ban Retail Sale of Dogs, Cats, Rabbits, in Pet Stores*, ABC10NEWS (July 10, 2013), <http://www.10news.com/news/san-diego-city-council-to-vote-on-pet-store-ban-070813> (stating that David Salinas, the owner of a San Diego pet store, knows that the breeder his store purchases animals from “does things the right way”). But see Allen St. John, *Where *Not* to Buy a Dog: The Pet Store Connection to the Business of Puppy Mills*, FORBES (Feb. 22, 2012), <http://www.forbes.com/sites/allenstjohn/2012/02/22/where-not-to-buy-a-dog-the-pet-store-connection-to-the-business-of-puppy-mills/> (stating that “virtually all pet store puppies are raised in puppy mills in horrible conditions”).

³⁶ See Smith & Dardick, *supra* note 1 (“[t]he ordinance does not . . . affect online sales or purchases from small-scale breeders who don’t sell puppies in stores”).

³⁷ See *The Internet: A Puppy Mill’s Best Friend*, DOGTIME (Mar. 31, 2011), <http://dogtime.com/internet-puppy-mills.html>; *Why You Should Never Buy a Puppy Online*, ASPCA, <https://www.aspc.org/fight-cruelty/puppy-mills/why-you-should-never-buy-puppy-online> (last visited Feb. 9, 2015).

³⁸ U.S. CONST. art. I, § 10.

contractual relationships in the exercise of its legitimate police power.³⁹ However, even the Supreme Court has acknowledged that the Contracts Clause should not be interpreted literally.⁴⁰ Finding a violation of the Contracts Clause is a convoluted process. Since the New Deal era, the Supreme Court has slowly retreated from rigorous enforcement of the Contracts Clause.⁴¹ *Home Building & Loan Association v. Blaisdell* provides the basis for the modern reading of the Contracts Clause.⁴² In *Blaisdell*, the Supreme Court announced that a state government could interfere with existing contracts as long as the interference was reasonable, and for a valid public purpose.⁴³ In a later case, the Supreme Court clarified that “unless the State is itself a contracting party, courts should properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.”⁴⁴ However, the Supreme Court has enumerated a test for where state legislative action substantially impairs contractual obligations between private parties without addressing a broad economic or social problem. Application of the Contracts Clause depends upon an assessment of whether (1) the challenged state law substantially impairs an existing contractual relationship, (2) the law was enacted to address a broad economic or social problem, (3) the law operates in an area that is already regulated, and (4) the law caused severe, permanent and immediate change in the affected contracts.⁴⁵ However, the Supreme Court has not found a

³⁹ See *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 235 (1978); *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977); see also *STONE ET AL.*, *supra* note 20, at 973-76.

⁴⁰ *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 480, 502 (1987) (“it is well-settled that the prohibition against impairing the obligations of contracts is not to be read literally”).

⁴¹ See *Manigault v. Springs*, 199 U.S. 473, 480 (1905); see generally *Home Building & Loan Ass’n v. Blaisdell*, 290 U.S. 398 (1934) (a controversial decision credited with lowering the level of scrutiny in Contracts Clause cases); Roger T. Roots, *Government by Permanent Emergency: The Forgotten History of the New Deal Constitution*, 33 *SUFFOLK U. L. REV.* 259, 269-279 (2000) (discussing the history of the emergency powers doctrine).

⁴² *Blaisdell*, 290 U.S. at 398; see also James W. Ely Jr., *Whatever Happened to the Contract Clause?*, 4 *CHARLESTON L. REV.* 371, 388-90 (2010).

⁴³ See *Blaisdell*, 290 U.S. at 442 (“the question is no longer merely that of one party to a contract as against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends”).

⁴⁴ *DeBenedictis*, 480 U.S. at 505; see also *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 413 (1983); *U.S. Trust Co.*, 431 U.S. at 26.

⁴⁵ See *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-50 (1978).

Contracts Clause violation under this assessment since 1978.⁴⁶ Although the Supreme Court applies a very low level of scrutiny to Contracts Clause Challenges, some state courts continue to invoke the Contracts Clause to invalidate state laws that impair contracts.⁴⁷

At least one court has held that an ordinance regulating pet stores may violate the Contracts Clause.⁴⁸ In 2010, El Paso, Texas passed an ordinance setting a maximum price for which pet stores could sell puppies and kittens.⁴⁹ The purposes for the Ordinance included to reduce the overall number of stray animals, in turn reducing the number of euthanizations and animal bites, and to give special treatment to animal welfare organizations at the expense of pet retailers.⁵⁰ In *Six Kingdoms Enterprises, LLC v. City of El Paso, Texas*, the court applied a version of the four-step analysis to find that the Contracts Clause challenge to the El Paso Ordinance was likely to succeed on the merits, supporting the grant of a temporary restraining order.⁵¹ The *El Paso* court held that the Ordinance impaired the franchise agreement between the plaintiff and Petland by preventing the plaintiff from selling puppies for profit, in violation of the franchise contract.⁵² The court found that this was sufficient to show that the Ordinance substantially impaired plaintiff's contract.⁵³ Lastly, the court found that the price regulation portion of the El Paso Ordinance was not necessary to achieve the stated purposes because El

⁴⁶ See, e.g., *General Motors Corp. v. Romein*, 503 U.S. 181 (1992); *National R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co.*, 470 U.S. 451 (1985); *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983); *Nachman Corp. v. Pension Ben. Guaranty Corp.*, 446 U.S. 359 (1980).

⁴⁷ See *Six Kingdoms Enterprises, LLC v. City of El Paso, Tex.*, 2011 WL 65864 (W.D. Tex. Jan. 10, 2011); see, e.g., *Earthworks Contracting Ltd. v. Mendel-Allison Constr. of Cal., Inc.*, 804 P.2d 831 (Ariz. Ct. App. 1990); *Fed. Land Bank of Omaha v. Arnold*, 426 N.W.2d 153 (Iowa 1988); *Schantz v. O'Sullivan*, 780 N.Y.S.2d 813 (N.Y. App. Div. 2004), *appeal dismissed*, 821 N.E.2d 975 (N.Y. 2004).

⁴⁸ *El Paso*, 2011 WL 65864 at *6-7.

⁴⁹ *Id.* at *1-2.

⁵⁰ *Id.* at *6.

⁵¹ *Id.* at *1, 4, 10 (the temporary restraining order restrained from enforcing the section of the El Paso Ordinance governing "Dog and cat sales and transfers" against plaintiff for a period of two weeks).

⁵² *Id.* at *5-6 (the plaintiff showed that it would not be able to continue in business under the Ordinance because the mandated maximum price was lower than the cost of transporting dogs to the store).

⁵³ *Id.*

Paso did not demonstrate that the plaintiff's pet store contributed in any significant way to the population of stray animals.⁵⁴

The *El Paso* decision is difficult to reconcile with existing Contracts Clause doctrine. The *El Paso* court seems to apply a higher level of scrutiny than the Supreme Court recommends for Contracts Clause challenges.⁵⁵ The *El Paso* court also insists that all interests asserted by the Ordinance be legitimate, contrary to the Supreme Court's lesser requirement that there merely be at least one legitimate interest.⁵⁶ This seems to be why the *El Paso* court applied the four-step analysis, even though the court acknowledged that the Ordinance served legitimate interests.⁵⁷ Thus, this decision runs contrary to existing Supreme Court authority on the Contracts Clause, which states that a state government could interfere with existing contracts as long as the interference was reasonable, and for a valid public purpose.⁵⁸ This decision could also be an example of state courts that continue to invoke the Contracts Clause to invalidate contractual impairments despite the Supreme Court's authority stating that the court should be deferential to the government in most Contracts Clause challenges.⁵⁹ The Supreme Court's stance on this issue is clear: as long as the state is not a party in the contract being impaired, the court will generally defer to the legislature for the reasonableness and necessity of a particular state measure.⁶⁰ Thus,

⁵⁴ *Id.* at *6-7.

⁵⁵ Consider, for example, the fact that the Supreme Court has not invalidated a state law, in a Contracts Clause challenge, since 1978. *See Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 442 (1934) (enumerating a highly deferential standard for assessing Contracts Clause challenges).

⁵⁶ *Compare El Paso*, 2011 WL 65864 at *6-7 (finding that plaintiff was likely to succeed on the merits of the Contracts Clause claim, even though it found two of the interests to be credible, and only took issue with the third interest) *with Blaisdell*, 290 U.S. at 442 (stating that a state government could interfere with existing contracts as long as the interference was reasonable, and for a valid public purpose).

⁵⁷ *See El Paso*, 2011 WL 65864 at *6-7.

⁵⁸ *See Blaisdell*, 290 U.S. at 442.

⁵⁹ *See Ely Jr.*, *supra* note 42, at 392 (stating, without explanation, that some state courts continue to invalidate impairment of agreements under the Contracts Clause in federal and state constitutions).

⁶⁰ *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 480, 505 (1987); *see also Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 413 (1983).

even if a state court holds that there is a Contracts Clause violation, on appeal, the Supreme Court is unlikely to affirm such a holding.

B. The Chicago Ordinance Likely Does Not Violate the Contracts Clause

It is likely that a court would find that the Chicago Ordinance does not violate the Contracts Clause because of the high deference paid to the government and because the Ordinance states a legitimate government interest. The general rule for Contracts Clause violations is that a government may interfere with existing contracts if that interference is reasonable and for a valid public purpose, and that courts should defer to legislative judgment as to the necessity and reasonableness of a measure.⁶¹ Curbing the practice of animal mills and reducing the need for euthanasia are both legitimate interests, constituting a broad social and economic problem. Thus it is likely that the court would hold the Chicago Ordinance is valid under the Contracts Clause.

However, it is clear that some courts do not follow the established Supreme Court authority with regards to the Contracts Clause. Thus, a court may still consider the four factor assessment. The first involves whether the state law substantially impairs an existing contractual relationship.⁶² Pet stores and regularly contract with breeders to obtain steady supplies of animals.⁶³ Franchisors, like Petland, also regularly contract with franchisees.⁶⁴ The Chicago

⁶¹ See *Blaisdell*, 290 U.S. at 442; *Debenedictis*, 480 U.S. at 505.

⁶² See *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-50 (1978).

⁶³ See Interview with Asha Singh, Store Supervisor, Pet Extreme, in Woodland, Cal. (Feb. 8, 2015) (Ms. Singh indicated that Pet Extreme regularly contracts with local breeders in order to supply the Woodland franchise with live animals, including rabbits, reptiles, birds and rodents).

In attempting to extrapolate this generalization to pet stores in Illinois, I contacted several pet stores surrounding Chicago. I explained that I was researching the constitutionality of prohibition ordinances. For reasons that were not explained, none of the owners of these pet stores were willing to discuss this matter.

⁶⁴ *Six Kingdoms Enterprises, LLC v. City of El Paso, Tex.*, 2011 WL 65864 at *2-3 (W.D. Tex. Jan. 10, 2011).

Ordinance would likely impair contracts between both of these groups by prohibiting the pet stores from stocking animals from anywhere but the animal shelter.⁶⁵

For the second factor, the City would assert that the purposes listed in the Ordinance constitute broad social and economic problems, which the Ordinance properly addresses. The El Paso Ordinance stated similar interests as the Chicago Ordinance.⁶⁶ The *El Paso* court found that reducing the number of stray animal euthanizations represented a credible motive for the El Paso Ordinance.⁶⁷ As this is also one of the listed interests of the Chicago Ordinance, a court would likely consider this a legitimate interest. This step of the assessment only requires that one of the purposes be legitimate,⁶⁸ thus this factor of the assessment is satisfied. The *El Paso* court took issue with the purpose of “giv[ing] special treatment and status to animal welfare organizations at the expense of retailers of pets.”⁶⁹ The Chicago Ordinance states that it aims to “promote the rehabilitation and adoption of rescue cats and dogs by prohibiting the retail sales of commercially-bred cats and dogs by business establishments.”⁷⁰ This justification is similar to the justification that the *El Paso* court deemed questionable. It is invalid for the same reasons as in *El Paso*, because it constitutes “a legislative body acting to benefit one group of special interests at the expense of another.”⁷¹ However, the purpose of reducing the number of euthanizations is legitimate. Because of the high deference in Contracts Clause challenges involving private contracts, it is likely that just one legitimate interest would suffice.

⁶⁵ See CHI., IL., MUN. CODE § 4-384-015 (2015) (prohibiting pet stores from stocking animals from breeders).

⁶⁶ Compare CHI. MUN. § 4-384-015 with *El Paso*, 2011 WL 65864 at *6.

⁶⁷ *El Paso*, 2011 WL 65864 at *6.

⁶⁸ See *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-50 (1978).

⁶⁹ *El Paso*, 2011 WL 65864 at *6.

⁷⁰ See CHICAGO, IL., MUNICIPAL CODE § 4-384-015; see also *Six Kingdoms Enterprises, LLC v. City of El Paso, Tex.*, 2011 WL 65864 at 6.

⁷¹ The court stated that legislative bodies acting to benefit one group of special interests at the expense of another was prohibited in the court’s prior decisions. See *Six Kingdoms Enterprises, LLC v. City of El Paso, Tex.*, 2011 WL 65864 at 6; see also *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 413 (1983); *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 248-49 (1978).

The third factor is whether the law operates in a regulated area. The *El Paso* court held that the retail pet industry is somewhat regulated.⁷² It is also clear that Chicago has numerous regulations affecting the retail pet industry.⁷³ Thus, this step of the assessment is satisfied.

The final step asks whether the law caused severe, permanent and immediate change in the affected contracts. The Chicago Ordinance changes the law in a way that impairs the contract between the pet store and breeders because the Ordinance bars the parties from continuing their contract.⁷⁴ The Ordinance ends the contract without providing compensation. However, the contract is between private parties, and the state is not abridging its own contract.⁷⁵ Thus, even though the law caused severe change to the contracts, the court should defer to the Ordinance's legitimate purpose. This is sufficient to persuade the court that there is no Contracts Clause violation.

The deference paid to the Chicago Ordinance's stated purposes is crucial to a finding of constitutionality. Because the Ordinance regulates contracts between private parties (instead of a contract where the state is a party), the court defers to the government's stated purposes.

However, heightened scrutiny is allowed where a state abrogates a contract to which it is a party, because it gives reason to believe that a state's self interest, rather than the public good, is at stake.⁷⁶ Although it is clear that the state is not a party to the contracts being impaired, the same rationale for applying heightened scrutiny may apply to the Chicago Ordinance because there is

⁷² *Six Kingdoms Enterprises, LLC v. City of El Paso, Tex.*, 2011 WL 65864 at 6.

⁷³ See generally CHI., IL., MUN. CODE § 4-384 (featuring license fee regulations, kennel standards, setting inspection guidelines, etc.).

⁷⁴ See CHI. MUN. § 4-384-015 (the Chicago Ordinance bars breeders from entering into a contract with a pet store for the purpose of supplying the pet store with live animals because “[a] retailer may offer for sale only those dogs, cats or rabbits that the retailer has obtained from: (1) an animal control center, animal care facility, kennel, pound or training facility . . . or (2) a humane society or rescue organization”). This is a change from the prior law, which allowed pet stores to contract with breeders to stock the store with animals. *Id.*

⁷⁵ *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 480, 505 (1987); see also *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 413 (1983).

⁷⁶ *STONE ET AL.*, *supra* note 20, at 241; see also *DeBenedictis*, 480 U.S. at 505.

reason to believe that the state’s self interest, rather than the public good, is at stake. The state has a significant financial incentive to prevent pet stores and breeders from contracting, because it forces pet stores to stock animals from animal shelters. The City receives a \$65 adoption fee per animal.⁷⁷ Additionally, the City no longer has to feed and maintain that animal. This could be a reasonable argument for applying heightened scrutiny to this Contracts Clause analysis. Under heightened scrutiny, it is likely that a court would look more severely at the significant impairment of these contracts and find a violation of the Contracts Clause. That analysis may also consider the over and underinclusiveness of the Ordinance.⁷⁸

III. THE DORMANT COMMERCE CLAUSE

A. Summary of Commerce Clause Analysis

The Commerce Clause gives Congress the power to “regulate [c]ommerce . . . among the several States.”⁷⁹ This is a power that Congress has and that the states lack.⁸⁰ A two-step analysis called the “two-tiered approach” determines whether a state law impermissibly intrudes on Congress’ power to regulate interstate commerce.⁸¹ The first step enumerates that state laws that directly regulate interstate commerce or discriminate against out of state commerce are typically deemed unconstitutional.⁸² A showing of discriminatory purpose or effect can prove a law’s

⁷⁷ CHI. MUN. § 4-384-015 (“Because the [Chicago Commission on Animal Care and Control] receives adoption fees of \$65 per animal, there is a significant financial incentive for the City to promote the rehabilitation and adoption of rescue cats and dogs by prohibiting retail sales of commercially-bred cats and dogs by business establishments”).

⁷⁸ See the equal protection analysis for a discussion of how the Chicago Ordinance is both over and underinclusive. *Supra* Part I.B.

⁷⁹ U.S. CONST. art. I, § 8.

⁸⁰ See *Dickerson v. Bailey*, 336 F.3d 388, 395 (5th Cir. 2003) (“The Supreme Court has long recognized that [the Commerce Clause] has a necessary, logical corollary: If Congress has the power to regulate commerce among the states, then the states lack the power to impede this interstate commerce with their own regulations”); see also U.S. CONST. art. I, § 8; STONE ET AL., *supra* note 20, at 241.

⁸¹ *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 578-79 (1986); *Dickerson*, 336 F.3d at 396.

⁸² *Bacchus Imps., Ltd. v. Dias*, 468 U.S. 263, 270 (1984); See *Dickerson*, 336 F.3d at 396; see also *Brown-Forman Distillers*, 476 U.S. at 579; Michael A. Lawrence, *Toward A More Coherent Dormant Commerce Clause: A Proposed Unitary Framework*, 21 HARV. J.L. & PUB. POL’Y 395, 417 (1998) (stating that if the statute is facially

discriminatory nature.⁸³ Discrimination against out of state commerce exists if it protects local economic interests at the expense of out of state competitors.⁸⁴

Under the second step of the analysis, for a discriminatory law to be valid, the state must demonstrate, under rigorous scrutiny, that there is no other way to advance the legitimate interests served by the law.⁸⁵ In other words, the state must show that the law is almost certain to achieve its legitimate purpose and that the state cannot achieve that purpose by less discriminatory means.⁸⁶

In *El Paso*, the court applied Commerce Clause analysis to find that there was a substantial likelihood that the plaintiff's Commerce Clause challenge would succeed on the merits.⁸⁷ The court found that the El Paso Ordinance had a discriminatory impact on out of state interests because the price limit was set so low that distant states could not deliver animals to El Paso without losing money on each animal.⁸⁸ That the price limit also interfered with sales from other parts of Texas did not change the finding of discriminatory nature.⁸⁹ El Paso was unable to show that it had no other means to advance a legitimate interest.⁹⁰ Thus, the *El Paso* court held that the Ordinance likely violated the Commerce Clause.⁹¹

discriminatory, it is “virtually per se invalid”). For examples of this generalization, see *Edgar v. MITE Corp.*, 457 U.S. 624, 640-43 (1982); *Philadelphia v. New Jersey*, 437 U.S. 617 (1978).

⁸³ *Bacchus Imps.*, 468 U.S. at 270.

⁸⁴ *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 355-56 (1959) (a state law discriminated against out of state milk competitors by requiring all milk sold within the city to be processed and bottled locally); *see also City of Philadelphia v. New Jersey*, 437 U.S. 617, 626-27 (1978).

⁸⁵ *Dickerson*, 336 F.3d at 396 (quoting *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 392 (1994), “[t]he only way in which a state may escape a determination that it is engaging in constitutionally prohibited economic protectionism is if it ‘can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest’ ”); *STONE ET AL.*, *supra* note 20, at 245.

⁸⁶ *See Dickerson*, 336 F.3d at 396; *STONE ET AL.*, *supra* note 20, at 245.

⁸⁷ *El Paso*, 2011 WL 65864 at *7.

⁸⁸ *Id.* at 8. The *El Paso* court cited another case, drawing a comparison to a law that had the effect of excluding “from distribution in Madison wholesome milk produced and pasteurized in Illinois.” *See Dean Milk Co. v. City of Madison, Wis.*, 340 U.S. 349, 354 (1951).

⁸⁹ *El Paso*, 2011 WL 65864 at *8.

⁹⁰ *Id.*

⁹¹ *See id.* (in granting the temporary restraining order, the court stated that the plaintiff was likely to succeed on the merits in the Commerce Clause challenge).

B. The Chicago Ordinance Likely Violates the Commerce Clause

The two-tiered approach shows that the Chicago Ordinance violates the Commerce Clause. The first tier says that state laws that directly regulate interstate commerce or discriminate against out of state commerce are generally unconstitutional.⁹² In the Chicago Ordinance, Chicago discriminates against out of state commerce because by preventing pet stores from stocking commercially bred animals, Chicago ensures that individuals wishing to purchase an animal will not purchase an animal originating from out of state.⁹³ Out of state breeders have no means by which to sell their animals to individuals in Chicago.⁹⁴ Meanwhile, the option to purchase an animal directly from a local breeder remains.⁹⁵ Thus, under the Chicago Ordinance, local breeders may continue to sell commercially bred animals directly to individuals while out of state breeders may not. This amounts to a discriminatory effect.

Where a state law discriminates against out of state commerce, there is a presumption of unconstitutionality, unless the state can demonstrate, under rigorous scrutiny, that there is no less discriminatory way to advance the legitimate interests served by the law.⁹⁶ Curbing the practice of animal mills and reducing euthanizations of stray animals are legitimate interests. However, it does not seem that the Ordinance represents the least discriminatory way to advance those legitimate interests. There are numerous ways the City could have directly regulated animal mills. For example, to directly address the animal mills, the City could have:

⁹² *Bacchus Imps., Ltd. v. Dias*, 468 U.S. 263, 270 (1984); *Dickerson v. Bailey*, 336 F.3d 388, 396 (5th Cir. 2003).

⁹³ See CHICAGO, IL., MUNICIPAL CODE § 4-384-015 (2015).

Although the Ordinance does not explicitly state that individuals can purchase live animals directly from the breeder, that is how the Ordinance is being interpreted. See *Smith & Dardick*, *supra* note 1 (“The ordinance does not . . . affect online sales or purchases from small-scale breeders who don’t sell puppies in stores”).

⁹⁴ See CHI. MUN. § 4-384-015 (stating that “[b]ecause the [Chicago Commission on Animal Care and Control] receives adoption fees of \$65 per animal, there is a significant financial incentive for the City to promote the rehabilitation and adoption of rescue cats and dogs by prohibiting the retail sales of commercially-bred cats and dogs by business establishments”).

⁹⁵ See *Smith & Dardick*, *supra* note 1; see also CHI. MUN. § 4-384-015.

⁹⁶ *Dickerson*, 336 F.3d at 396; see also *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 392 (1994).

1. Provided for more frequent and thorough inspections of breeding facilities
2. Required breeders to regularly bring breeding animals outside
3. Limited the ratio of breeding animals to square foot of the facility
4. Required genetic testing of breeding animals
5. Required breeding animals to be up to date with their vaccines⁹⁷

These regulations would directly address animal mills and raise the quality of life for breeding animals, thus furthering the legitimate interests of the Ordinance. These regulations would also be less discriminatory than the current Chicago Ordinance. These regulations would all directly influence the behavior of animal mills and are not discriminatory because these apply evenly to all animal breeders. Thus, these regulations, if adopted by Chicago, would have curbed the practice of owning and operating an animal mill by less discriminatory means than the Chicago Ordinance. Thus, the Ordinance impermissibly interferes with interstate commerce in violation of the Commerce Clause. The Ordinance has a discriminatory effect in that it excludes out of state breeders from selling their animals in Chicago while local breeders are free to sell animals as long as the sale does not involve a pet store. Further, Chicago could have directly regulated the animal mills with an ordinance that would apply evenly to all animal breeders. This demonstrates that Chicago could have adopted an ordinance that was more likely to achieve the purpose of curbing animal mills by less discriminatory means.

IV. ALTERNATIVE MEANS OF REGULATION AND SOLUTIONS TO THE ORDINANCE'S

UNCONSTITUTIONALITY

Critics have suggested a few other arguments for the unconstitutionality of prohibition ordinances. Those arguments are not as persuasive as those discussed in this article because they

⁹⁷ These suggestions arose from articles noting the lack of inspections, outdoor areas, poor space to animal ratios, etc. *See generally* Farrow, Keown & Farnworth, *An Exploration of Attitudes Towards Pedigree Dogs and their Disorders as Expressed by a Sample of Companion Animal Veterinarians in New Zealand*, 62 NEW ZEALAND VETERINARY J. 5, 267 (2014); Robyn F. Katz, *Detailed Discussion of Commercial Breeders and Puppy Mills*, THE LEGAL AND HISTORICAL ANIMAL CENTER (2008), available at <http://www.animallaw.info/articles>; LaGrone, *supra* note 7; *Laws that Protect Dogs in Puppy Mills*, ASPCA, <http://www.aspc.org/fight-cruelty/puppy-mills/laws-protect-dogs-puppy-mills> (last visited Feb. 5, 2014); *Puppy Mills*, ASPCA, <http://www.aspc.org/fight-cruelty/puppy-mills> (last visited Feb. 5, 2014).

can be dismissed with little effort. One argument is that the federal Animal Welfare Act preempts any attempt of the states to regulate in the area of animal welfare in violation of the Supremacy Clause. However, from the language of the Animal Welfare Act, it is clear that the federal government did not intend to preempt state legislation on the matter and actually anticipated that states would continue to legislate in animal welfare.⁹⁸ There have also been attempts to tie animal welfare issues to freedom of expression.⁹⁹ This argument was dismissed by the court because obeying a law “does not require one to convey a verbal or symbolic message” to be interpreted as a statement of support for that law.¹⁰⁰

One author has suggested that a solution to avoid the potential Contracts Clause violation in prohibition ordinances would be to amend the ordinance to apply only prospectively to new contracts.¹⁰¹ The Contracts Clause does not apply to government regulations limiting future contracts because all contracts implicitly incorporate the law in existence at the time the parties are contracting.¹⁰² Under these circumstances, the ordinance would not impair existing contractual relationships. Thus, it is more likely that a court would find a prohibition ordinance with this amendment to be constitutional under the Contracts Clause.

To cure the Commerce Clause violation, the doctrines of preemption and consent may provide a remedy. If a court issues a judicial decision holding that the Chicago Ordinance violates the Commerce Clause, Chicago could lobby the federal government to draft legislation

⁹⁸ See Animal Welfare Act, 7 U.S.C. § 2143 (2015) (stating the Act “shall not prohibit any State . . . from promulgating standards in addition to those” in the federal law); *Kerr v. Kimmell*, 740 F. Supp. 1525, 1529-30 (D. Kan. 1990) (dismissing an argument that the Animal Welfare Act preempted state animal welfare legislation); see also *Zimmerman v. Wolff*, 622 F. Supp. 2d 240, 245 (E.D. Pa. 2008).

⁹⁹ See *Concerned Dog Owners of California v. City of Los Angeles*, 194 Cal. App. 4th 1219, 1228 (2011).

¹⁰⁰ *Concerned Dog Owners*, 194 Cal. App. 4th at 1228; see also U.S. CONST. amend 1.

¹⁰¹ *Kenny*, *supra* note 3, at 404 (“one potential way to save the [prohibition] ordinances in the face of a challenge would be to expressly include in the ordinance a provision that stalls enforcement against any retail pet stores currently under contracts . . . and to apply the ordinance once the contract term ends”).

¹⁰² *Ogden v. Saunders*, 25 U.S. 213, 264-65 (1827).

permitting the Ordinance, amounting to consent.¹⁰³ If a court rejects the challenge, pet stores could lobby for federal legislation preempting the Ordinance.¹⁰⁴ Thus, so long as the parties have sufficient lobbying power, the Commerce Clause violation is theoretically simple to remedy.

However, even if Chicago amends the Ordinance and a court affirms its constitutionality, there is a possibility that the Ordinance may still be ineffective at reducing the prevalence of animal mills. There is some evidence to suggest that once a jurisdiction enacts a prohibition ordinance, rather than abide by the ordinance, pet stores choose to simply shut down or move out of the city limits.¹⁰⁵ This outcome does nothing to curb the practice of operating animal mills. The ability of individuals within the Ordinance's jurisdiction to simply drive into the suburbs in order to purchase an animal directly from the animal mill or from a pet store in the suburbs exacerbates the Ordinance's ineffectiveness. Further, experts confirm the fact that dog lovers will frequently travel great distances in order to purchase a dog.¹⁰⁶

Animal mills have proven to be a difficult area to regulate. The obvious reason for why Chicago's City Council did not attempt to directly regulate animal mills is that most animal mills are not located in Chicago.¹⁰⁷ Thus, a Chicago ordinance directly regulating animal mills would

¹⁰³ See *STONE ET AL.*, *supra* note 20, at 244 (“the doctrines of preemption and consent mean that a judicial decision on a commerce clause challenge need not be final. If the challenge is rejected, those who oppose state regulation may secure federal legislation preempting it. If the challenge is sustained, those who support state regulation may secure federal legislation permitting it”).

¹⁰⁴ See *id.*

¹⁰⁵ See Egan, *supra* note 11 (reporting that Austin's only pet store carrying live puppies voluntarily shut down in advance of the City Council considering whether to pass a prohibition ordinance); Smith & Dardick, *supra* note 1 (quoting Susan Nawrocki, owner of Chicago pet store Hug-A-Pup as stating that she planned to move her business into the suburbs surrounding Chicago because of the prohibition ordinance).

¹⁰⁶ Interview with Courtney Korff, Veterinary Student, UC Davis School of Veterinary Medicine, in Davis, Cal. (Feb. 7, 2015) (Ms. Korff, an exhibitor at dog shows, stated that exhibitors are typically willing to travel long distances in order to obtain the right dog. Korff stated that she drove from California to Texas to purchase one of her dogs, and that she has heard of exhibitors who traveled from North America to as far as South Africa in order to purchase a dog. Based on this information, the one-hour drive from Chicago into the suburbs seems negligible by comparison).

¹⁰⁷ *Puppy Mill FAQ*, ASPCA, <https://www.aspc.org/fight-cruelty/puppy-mills/puppy-mill-faq> (last visited Feb. 8, 2015) (stating that most puppy mills are located in the Midwest, with Missouri being considered the leading puppy mill state).

have little effect on the majority of mills. One possible alternative method of regulation would be for local governments to assist responsible breeders in outcompeting animal mills. A jurisdiction could achieve this by passing local laws that provide government subsidies for some of the more expensive aspects of responsible animal breeding to improve the animal's quality of life, such as vaccinations, genetic testing, and spaying or neutering animals with hereditary conditions.¹⁰⁸

CONCLUSION

Many jurisdictions have passed prohibition ordinances similar to the one in Chicago.¹⁰⁹ At least one pet storeowner has expressed a desire to challenge the constitutionality of the Chicago Ordinance.¹¹⁰ Thus, the constitutionality of prohibition ordinances will likely be determined in the near future. This article has argued that the Chicago Ordinance is likely unconstitutional for violating the Commerce Clause. Depending on the level of scrutiny applied, the Ordinance may also violate the Contracts Clause. Although these violations can be remedied with minor alterations to the Ordinance, it is likely that alternative and less discriminatory methods of regulation will yield more success at curbing the practice of animal mills. Although over and underinclusiveness do not render the Chicago Ordinance unconstitutional, it is still distressing that it hurts seemingly innocent parties such as pet stores and responsible breeders in an attempt to curb the operation of animal mills. Thus, it is the conclusion of this article that there are better alternative means of combating animal mills than the Chicago Ordinance.

¹⁰⁸ See Interview with Lisa Ma, DVM PhD Candidate, UC Davis School of Veterinary Medicine, in Davis, Cal. (Feb. 7, 2015) (Ms. Ma believes that this method of government subsidies may allow responsible breeders to better compete with the low prices available for animals from mills).

¹⁰⁹ Smith & Dardick, *supra* note 1; see also CHICAGO, IL., MUNICIPAL CODE § 4-384-015 (2015) (stating that 40 North American cities have similar ordinances).

¹¹⁰ *San Diego City Council Unanimously Votes to Ban Retail Sale of Dogs, Cats, Rabbits in Pet Stores*, ABC10 NEWS, (July 10, 2013), <http://www.10news.com/news/san-diego-city-council-to-vote-on-pet-store-ban-070813> (the article states that David Salinas, the owner of a Chicago pet store, plans to challenge the constitutionality of the Ordinance or lobby state legislators to have to law changed).