

THE UNCONSTITUTIONALITY OF THE COUNTY OF LOS ANGELES MANDATORY  
SPAYING AND NEUTERING LAW

Kristina R. Rozan

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ABSTRACT

An overpopulation of dogs has created significant threats to public safety in Los Angeles (LA) County ("the County"). To address this problem, the County adopted an ordinance ("the Ordinance") requiring all dogs to be spayed or neutered after a certain age, with a few specific exemptions allowed. Here, I analyzed the constitutionality of the Ordinance, and despite several court decisions suggesting the contrary, conclude that it exceeds the limits on government interference set by the Constitution. In specific, it is a taking under the Fifth Amendment for which citizens should be compensated because it demands citizens to submit to an irreversible, invasive, surgical alteration of their pets. The exemptions violate the First Amendment because they burden pet owners' protected freedom to associate, and they violate Fourteenth Amendment Equal Protection because they create classifications that cannot even survive a rational basis test. And if the Ordinance's exemptions are, indeed, unconstitutional then the Ordinance is also a regulatory taking because without the exemptions it denies dog owners all economically beneficial or productive use of their dogs. Therefore, the Ordinance should be either revised to comply with the Constitution or else repealed.

## I. INTRODUCTION

This paper analyzes the constitutionality of LA County's mandatory spaying/neutering (MSN) ordinance. Most states now have MSN laws for releasing agencies such as animal shelters and control agencies.<sup>1</sup> The County is one of the few but growing number of cities that has expanded the reach of MSN to apply to all dogs.

The purpose of the Ordinance and others like it is to serve important and undisputed goals: to reduce unwanted animals that suffer and die on the streets, decrease the risk to public health and safety, and reduce the cost to local governments for impounding and destroying animals.<sup>2</sup> But no law may conflict with the Constitution, the supreme law of the land,<sup>3</sup> which protects our rights as citizens and guards us from wrongful prosecution by the government:<sup>4</sup> "a desirable end cannot be promoted by prohibited means."<sup>5</sup> If the LA ordinance is constitutional, then the city is justified in its enforcement, but if the the law is unconstitutional, then it must be repealed or revised to remove all violating provisions. A thorough and timely constitutional review of the Ordinance is particularly important because it compels a mandatory, irreversible surgery on animals, it applies to all dog owners, it is not a prohibition but instead requires an action, and it demands that all pet owners either pay for the surgery or pay for an exemption.

While the courts rejected a recent constitutional challenge to the Ordinance,<sup>6</sup> based on the analysis described here I conclude that the LA ordinance does indeed include several

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1 Cynthia F. Hodges, *Brief Summary of State Spay and Neuter Laws*, <https://www.animallaw.info/article/brief-summary-state-spay-and-neuter-laws> (accessed Jan. 4, 2015).

2 *Id.*

3 U.S. Const. art. VI, cl. 2.

4 Russell W. Galloway Jr., *Basic Constitutional Analysis*, 28 Santa Clara L. Rev. 775, 776 (1988).

5 *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923).

6 *Am. Canine Found. v. Sun*, No. C-06-4713 MMC, 2007 WL 4208358 (N.D. Cal. Nov. 27, 2007).

constitutional violations. Part II provides relevant background on the Ordinance and information on similar MSN laws. Part III lays out the methodology to assess the constitutionality of the Ordinance. Part IV explains the promising constitutional challenges to the Ordinance, the rules governing their applicability, and case law that shows why the Ordinance is unconstitutional. In Part V, I formulate an argument that combines the challenges to prove that there are several routes to show that the Ordinance is unconstitutional. In Part VI, I conclude that the offending clauses should no longer be enforced and should be revised or repealed in order to comply with the inflexible requirement for all laws to conform with the federal Constitution.

## II. BACKGROUND

The Los Angeles County Code Section 10.20.350 requires all residents of unincorporated areas in Los Angeles County to have their dogs over the age of four months spayed or neutered.<sup>7</sup> Dogs are exempt from the Ordinance if: 1) there is a high likelihood of suffering serious bodily harm or death due to age or infirmity, 2) they are used by law enforcement agencies, 3) they are service or assistance dogs that assist disabled persons, or 4) they are "competition dogs" (used to show, to compete, or to breed and are of a breed recognized by an approved breed registry ("purebred")) and have recently competed in at least one dog show or sporting competition, earned a "title" from a purebred dog registry or dog sport association, or their owner or custodian is a member of a purebred dog breed club.<sup>8</sup>

Concerns have arisen over the efficacy and propriety of these MSN laws. There is no

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<sup>7</sup> lacounty.gov, *Spay & Neuter*, <http://www.lacounty.gov/residents/animals-pets/spay-neuter> (accessed Jan. 4, 2015).

<sup>8</sup> Department of Animal Care and Control: County of Los Angeles, *Spay and Neuter*, <http://animalcare.lacounty.gov/wps/portal/acc/programs/spay/> (accessed Jan. 4, 2015).

dispute that dog overpopulation is a significant problem in the United States that results in millions of animals being euthanized annually and trauma, starvation, and disease for unwanted pets.<sup>9</sup> There is also general agreement that spaying and neutering can be part of the solution to reduce the number of unwanted animals.<sup>10</sup> But, mandatory spaying and neutering may contribute to pet owners avoiding licensing, rabies vaccination and veterinary care for their pets, and may have other unintended consequences.<sup>11</sup> And, veterinary experts suggest that the age at which the spay/neuter surgery should be performed should be made on an individual basis.<sup>12</sup>

There are also continuing questions as to the constitutionality of MSN laws. In 2007, the American Canine Foundation (ACF) filed a lawsuit against the County of Los Angeles ("*ACF v. LA*") asserting that the Ordinance: (1) is preempted by the federal Animal Welfare Act, (2) violates the federal and state constitutional rights to procedural due process, (3) violates federal and state constitutional rights to substantive due process and equal protection, (4) is an ex post facto law in violation of Article I, sections 9 and 10, of the United States Constitution, (5) violates the Takings Clause of the Fifth Amendment to the United States Constitution, (6) adversely affects interstate commerce in violation of the Commerce Clause of the United States Constitution, (7) violates the freedom of contract, (8) is "unconstitutionally vague," (9) violates the right to freedom of association under the First Amendment to the United States Constitution, and (10) violates the California Constitution.<sup>13</sup> Similar lawsuits were filed in San Francisco by

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9 American Veterinary Medical Association, *Dog and Cat Population Control*, <https://www.avma.org/KB/Policies/Pages/Dog-And-Cat-Population-Control.aspx> (accessed Jan. 5, 2015).

10 American Veterinary Medical Association, *Pediatric Spay/Neuter of Dogs and Cats*, <https://www.avma.org/KB/Policies/Pages/Pediatric-Spay-Neuter-Dogs-And-Cats.aspx> (accessed Jan. 5, 2015).

11 *Id.*

12 *Id.*

13 *Am. Canine Found. v. Sun*, C-06-4713 MMC, 2007 WL 4208358, at \*1 (N.D. Cal. Nov. 27, 2007).

ACF<sup>14</sup> and Coalition of Human Advocates for K9's and Owners<sup>15</sup> challenging the legality of an ordinance prohibiting the ownership of unsterilized pit bulls. In all three cases the United States District Court, Northern District of California dismissed the plaintiffs' constitutional claims.

Despite the holdings of the District Court, I argue here that the Los Angeles Ordinance requiring the spaying or neutering of dogs over four months is unconstitutional.

### III. METHODOLOGY

My approach to formulate a constitutional challenge to the Ordinance was to first compare its language, intent, and circumstances to a general list of constitutional limits to check whether any was arguably applicable.<sup>16</sup> If so, I reviewed the rules developed by the Supreme Court to determine whether, in fact, the limit was applicable. I then contrasted the important federal cases describing the operation of the limit with the United States District Court, Northern District of California's 2007 reasoning to decide whether a case could be made that the Ordinance had violated that limit.

I then combined the individual promising constitutional limits (Fifth, First, and Fourteenth Amendments) to form a single integrated challenge which shows how the limits work together such that court could find the Ordinance to be unconstitutional following several different routes, and how favorable decisions on some limits strengthen the arguments that can be made on behalf of the other limits.

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14 *Am. Canine Found. v. Sun*, C-06-4713 MMC, 2007 WL 878573, at \*1 (N.D. Cal. Mar. 21, 2007).

15 *Coalition of Human Advocates for K9's and Owners v. City and County of San Francisco*, C-06-1887 MMC, 2007 WL 641197, at \*1 (N.D. Cal. Feb. 27, 2007).

16 Galloway, 28 Santa Clara L. Rev. at 778.

## IV. ANALYSIS

### A. Fifth Amendment violation: the Ordinance affects a regulatory taking which must be compensated because it affects economic and non-economic interests of dog owners

In general terms, the state may "take" a person's property for public use with compensation under Fifth Amendment or without compensation by employing its police powers implied under the Tenth Amendment. All types of property (real, tangible, and intangible) may be the subject of takings claims."<sup>17</sup> Furthermore, the courts have found that a regulation on use *can* be a taking.<sup>18</sup> Indeed, there are two types of regulatory deprivations that are compensable under the Fifth Amendment, even without case-specific inquiry into any public interest advanced in support of restraint. First, the Supreme Court has held that a regulation compelling a property owner to suffer a physical "invasion" of his property is a taking, and that for permanent physical invasions, "no matter how minute the intrusion, and no matter how weighty the public purpose behind it, we have required compensation."<sup>19</sup> Second, the Supreme Court has held that regulations denying all economically beneficial or productive use of land are takings.<sup>20</sup> Note that a use regulation is not a taking requiring compensation if it goes no further than what could have been achieved under a state's law of private nuisance or police powers to abate private nuisance.<sup>21</sup> However, when the denial of economically productive or beneficial uses of land goes beyond what the relevant background principles would dictate, compensation must be paid to

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<sup>17</sup> *Conti v. United States*, 291 F.3d 1334, 1338–39 (Fed.Cir.2002) (citing *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1003–04, 104 S.Ct. 2862, 81 L.Ed.2d 815 (1984), and *Andrus v. Allard*, 444 U.S. at 65, 100 S.Ct. 318).

<sup>18</sup> *Wilkins v. Daniels*, 913 F. Supp. 2d 517, 541 (S.D. Ohio 2012) aff'd, 744 F.3d 409 (6th Cir. 2014).

<sup>19</sup> *Lucas v. S. Carolina Coastal Council*, 112 S. Ct. 2886, 2893 (U.S.S.C. 1992).

<sup>20</sup> *Lucas v. S. Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992).

<sup>21</sup> *Id.* at 1029 (in other words, the use was unlawful before the new law was passed).

sustain it.<sup>22</sup>

Here, a strong argument can be made that a consequential, irreversible surgery such as spaying and neutering, is a taking requiring compensation. Despite the fact that this surgery removes a piece of a dog's body and that subsequent to its performance the property's use is restricted (the dog's reproductive capacity has been eliminated), a court is unlikely to find this to be a permanent physical taking because the owner may still keep the animal.<sup>23</sup> Still, a court could find that a dog owner whose dog has been spayed/neutered has suffered a taking deserving of compensation no matter how undeniable the need for pet population control. The United States District Court, Southern District of Ohio acknowledged that even the implantation of a microchip "is undoubtedly at least minimally invasive to the animal."<sup>24</sup> Here, the Ordinance demands an irreversible, surgical procedure requiring anesthesia on a living creature. If this were not a serious physical invasion of a dog, than any lay person would be permitted to perform it (at their peril) like changing the oil on their car or replacing their own roof. Instead, this surgery can only be performed by a trained licensed veterinary doctor and anyone attempting this operation on their own would be charged with criminal animal cruelty. The government might argue that spaying/neutering surgery is not a physical invasion of property because, similar to a microchip implantation, the surgery has no impact on an animal owner's use, enjoyment, or possessory interests.<sup>25</sup> But in justifying the passage of the law, the County argued that spaying changes the behavior of the animals, and that this behavioral change is in fact one of the desired

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<sup>22</sup> *Lucas v. S. Carolina Coastal Council*, 112 S. Ct. 2886, 2901 (U.S.S.C. 1992).

<sup>23</sup> *City of Aurora*, 618 F.Supp.2d at 1279 (restriction on pit bulls "does not result in a taking of physical property if a dog owner may keep the dog by obtaining a license and complying with the minimum standards for keeping the dog").

<sup>24</sup> *Wilkins v. Daniels*, 913 F. Supp. 2d 517, 542 (S.D. Ohio 2012) aff'd, 744 F.3d 409 (6th Cir. 2014).

<sup>25</sup> *Id.*

consequences of the surgery.

In addition, if a court holds that the exemptions to the Ordinance are unconstitutional,<sup>26</sup> then the County's MSN Ordinance is also a regulatory taking because it eliminates the reproductive capacity of a dog which obviously denies the owner all economic use related to its ability to produce puppies, the sole reason why many persons keep dogs. The government may argue that an "owner of any form of personal property must anticipate the possibility that new regulation might significantly affect the value of his business,"<sup>27</sup> and in *ACF v. Sun* the court noted that the Ordinance does not unfairly single out any property owner because it applies to everyone with a dog.<sup>28</sup> But, the Ordinance goes far beyond what could have been achieved under the County's nuisance laws or what the County's particular circumstances would justify. Under Section 1.23.010, any person who endangers public health, safety and welfare, invites crime, reduces property values, degrades the environment, or negatively impacts the quality of life of the residents is committing a nuisance justifying abatement by law enforcement. For example, Section 10.32.010 prohibits persons from allowing their dogs to run at large and Sections 10.37.130 and 10.37.140 permit the courts to assign consequences to persons who have potentially dangerous or vicious dogs, respectively. But these consequences are assigned to the owners only when there was *probable cause* that the dog posed an immediate threat to public safety<sup>29</sup> and only after a *public hearing*.<sup>30</sup> Here, all persons owning dogs must have them spayed/neutered notwithstanding the fact that no evidence was presented to suggest that their

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26 *Infra* Part IV, Section C in this document.

27 *Holliday Amusement Co. of Charleston v. South Carolina*, 493 F.3d 404 (4th Cir.2007) (citing *Lucas*, 505 U.S. at 1027–28, 112 S.Ct. 2886).

28 *Am. Canine Found. v. Sun*, C-06-4713 MMC, 2007 WL 4208358, at \*8 (N.D. Cal. Nov. 27, 2007).

29 Los Angeles County Code Section 10.37.100.

30 Los Angeles County Code Section 10.37.110.

dogs were irresponsibly contributing to the overpopulation problem. Furthermore, data from several studies suggest that all pet owners are not equally likely to contribute to the problems the County is trying to solve, but instead that factors like household income could be used to focus spaying/neutering support where it is needed most.<sup>31</sup>

Therefore, while the County would like to characterize the Ordinance as the State's permissible use of its “police powers” to enjoin a property owner from activities akin to public nuisances, it is in fact an unconstitutional taking.

**B. First Amendment violation: the Ordinance unconstitutionally burdens the fundamental right of freedom of association**

Among the rights protected by the First Amendment is the freedom from coerced association with groups,<sup>32</sup> and the Supreme Court has held that freedom of association is unconstitutionally burdened where the state requires an individual to support or espouse ideals or beliefs with which he or she disagrees.<sup>33</sup> For example, in *Keller v. State Bar*, the Court held that the state bar could not compel attorney members to pay dues to further ideological causes with which some members might disagree.<sup>34</sup> But in *Besig v. Dolphin Boating and Swimming Club*, the Ninth Circuit Court of Appeals held that nonmembers of a club are not deprived of their right not to associate if they have access to swimming and boating facilities, even if that access may be on less favorable terms than that granted to members, as long as access does not depend on club

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31 ASPCA, *Position on Mandatory Spay/Neuter Laws*, <http://www.asPCA.org/nyc/mobile-spay-neuter-clinic/position-statement-on-mandatory-spayneuter-laws> (accessed Jan. 5, 2015).

32 *Besig v. Dolphin Boating and Swimming Club*, 683 F.2d 1271, 1275 (9th Cir. 1982).

33 *Wooley v. Maynard*, 430 U.S. 705, 97 S. Ct. 1428, 51 L. Ed. 2d 752 (1977).

34 *Keller v. State B. of California*, 496 U.S. 1, 4 (1990).

membership or club association.<sup>35</sup>

Here, the Ordinance's exemptions<sup>36</sup> do unconstitutionally compel associations for persons who do not want to have their dog spayed because, unlike in *Besig*, access to the desired "facility" (here, immunity from MSN), does hinge on unwanted "membership" for many dog owners. The government would argue that there is no compelled association because a dog owner's choice to meet the conditions of an exemption is self-imposed,<sup>37</sup> and in *ACF v. LA* the Court stated that neither benefits of an unaltered dog license nor compliance with the Ordinance depend on club membership/association because a dog owner can apply for another exemption which does not involve registering. But, based on the exemptions' current structure, for owners of dogs of recognized breeds ("purebred") whose dogs are not infirm, law enforcement/service animals, or used for breeding, their only option to avoid MSN is the competition dog exemption for which they must participate in either shows or training sanctioned by a national registry, such as the American Kennel Club (AKC), or approved by the department. To participate in these shows or training, dog owners must join clubs and/or register their dogs.<sup>38</sup> Therefore, without associating with these groups and registries, dog owners cannot receive the competition dog exemption.

And similar to *Keller*, this compelled association with other purebred dog owners will coerce some persons to pay fees that support or espouse ideals or beliefs with which they disagree. Unlike in *Besig* where the Court noted that swimming and boating clubs are apolitical in nature and advocate no special view or philosophy that the plaintiff had identified as

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35 *Besig v. Dolphin Boating and Swimming Club*, 683 F.2d 1271, 1276 (9th Cir. 1982)

36 *Supra* Part II in this document.

37 *See Wilkins v. Daniels*, 913 F. Supp. 2d 517, 534 (S.D. Ohio 2012) aff'd, 744 F.3d 409 (6th Cir. 2014).

38 American Kennel Club, *How Do I Get Started in AKC Dog Shows, Trials and Tests?*, [http://images.akc.org/pdf/Dog\\_Shows.pdf](http://images.akc.org/pdf/Dog_Shows.pdf) (accessed Jan. 6, 2015).

offensive,<sup>39</sup> dog registries are not without controversy. Purebred dog associations have a venerable history of supporting the interests of dogs, as evidenced by the AKC's mission to advocate for the purebred dog as a family companion, advance canine health and well-being, work to protect the rights of all dog owners, and promote responsible dog ownership.<sup>40</sup> But not all dog welfarists applaud these associations. For example, critics have questioned the prevalence of genetic disorders in purebred dogs registered by the AKC,<sup>41</sup> and asserted that their breed standards do not encourage dogs' emotional or behavioral health.<sup>42</sup> Regardless of the merits of these unfavorable claims, it is certain that not all dog owners share the ideals or beliefs of dog registering organizations.

Therefore, the Ordinance coerces owners who strongly object to spaying/neutering to endure an unconstitutional burden on their freedom to associate.

C. Fourteenth Amendment violation: the Ordinance's exemptions violate citizens' rights to equal protection because persons similarly situated with respect to its purpose do not receive like treatment and the Ordinance's classifications do not pass the rational basis test

While nearly all legislation classifies on the basis of some criteria, bestowing benefits or imposing burdens on one group and denying them to another,<sup>43</sup> the Fourteenth Amendment's Equal Protection clause requires that people who are similarly situated receive like treatment.<sup>44</sup>

The determination as to whether persons are "similarly situated" should be evaluated with respect

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39 *Besig v. Dolphin Boating and Swimming Club*, 683 F.2d 1271, 1276 (9th Cir. 1982).

40 American Kennel Club, *AKC Mission Statement*, <http://www.akc.org/about/mission.cfm> (accessed Jan. 6, 2015).

41 Michael D. Lemonick, *A Terrible Beauty*, TIME Magazine (June 2001).

42 Temple Grandin; Johnson, Catherine (2005). *Animals in Translation*. New York, New York: Scribner. p. 82.

43 Law Brain, *Equal Protection*, [http://lawbrain.com/wiki/Equal\\_protection](http://lawbrain.com/wiki/Equal_protection) (accessed Jan. 6, 2015).

44 *See People v. Noyan*, C074049, 2014 WL 7175120, at \*5 (Cal. App. 3d Dist. Dec. 17, 2014).

to the function or purpose of the law.<sup>45</sup> For example, in *People v. Nolan*, the court held that persons who knowingly bring contraband into a custodial facility, regardless of the nature of the contraband, are similarly situated with respect to criminal laws intended to deter theft.<sup>46</sup>

Courts are generally deferential to the legislative judgment on laws involving classifications as long as they neither burden a fundamental right, like freedom of speech, nor target a suspect class, such as gender, and they will be upheld so long as they bear a rational relation to some legitimate end.<sup>47</sup> But, despite the deference that courts afford to the legislature when reviewing statutes for Fourteenth Amendment violations using a rational basis standard, many have failed to meet the rational basis test. For example, in *City of Cleburne, Tex. v. Cleburne Living Ctr.* the Supreme Court held that zoning ordinances excluding group homes for mentally disabled persons were unconstitutional because there was no rational basis for believing that these homes would threaten any legitimate interests of the city in a way that other permitted uses, such as boarding houses and hospitals, would not.<sup>48</sup>

Here, the Ordinance does not give like treatment to dog owners who are similarly situated with respect to its purpose. According to the County of Los Angeles Department of Animal Care and Control, the purposes of its MSN Ordinance are to reduce the number of unwanted dogs, to promote the health and safety of dogs (lower cancer rates, few strays being struck by cars), and to promote the health and safety of people (fewer dog bites, less traffic accidents/disease/damage due to strays).<sup>49</sup> The Ordinance creates eight classes of dogs with differing MSN requirements

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45 *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966).

46 *People v. Noyan*, C074049, 2014 WL 7175120, at \*6 (Cal. App. 3d Dist. Dec. 17, 2014).

47 *Romer v. Evans*, 517 U.S. 620, 631, 116 S.Ct. 1620, 1627, 134 L.Ed.2d 855 (1996).

48 *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985).

49 County of Los Angeles, Department of Animal Care and Control, *Spay and Neuter*, <http://animalcare.lacounty.gov/wps/portal/acc/programs/spay/> (accessed Jan. 7, 2015).

and exemption eligibility. There are four classes of dogs which are excused from MSN: 1) dogs under four months old, 2) law enforcement dogs, 3) service/assistance dogs, and 4) elderly/infirm dogs, there are three classes of dogs which may be exempt if they meet certain requirements: 5) purebred dogs over four months used to show, 6) purebred dogs over four months that are used to compete, 7) purebred dogs over four months that are used to breed, and there is one class of dogs that are never excused or eligible for exemptions: 8) non-purebred dogs over four months old. It is obviously reasonable to exempt owners with very young dogs (class 1) from MSN because it is unlikely that their dogs are reproducing or exhibiting the hormonally-related behaviors that would make them more prone to attacks or to stray. It is defensible that law enforcement and assistance dogs (classes 2 and 3) could undergo behavioral changes subsequent to spaying/neutering that make them less able to serve the health and safety of people. And, subjecting elderly/infirm dogs to elective surgery (class 4) could violate animal cruelty laws.

But, the remaining four class distinctions (classes 5-8) are unrelated or even potentially counterproductive to the purpose of the Ordinance. First, just as in *City of Cleburne*, the distinction between the owners of non-purebred (class 8) and purebred (classes 5-7) dogs is irrelevant, when there is no rational basis to assume that owners of non-purebred dogs are more irresponsible than owners of purebred dogs and should be ineligible for exemptions.<sup>50</sup> The owners within each of these classes are surely not "cut from the same pattern"<sup>51</sup> but instead range from those who allow or encourage their dogs to excessively breed and those who do not. To the contrary, studies have shown that the likelihood of having an intact cat varies with household

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<sup>50</sup> See *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985).

<sup>51</sup> *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 442 (1985).

income,<sup>52</sup> and stories of the reckless behavior of some "puppy mills"<sup>53</sup> are tragically common.

Second, while owners of show, competing, and breeding dogs are certainly not similarly situated with "other" kinds of owners (the majority of which are probably families keeping a dog purely as a companion animal) with respect to their intense motivation for *avoiding* MSN, they are similarly situated with the *purposes* of the Ordinance. It would be unreasonable to assume that "other" kinds of owners are more irresponsible than show/competing/breeding owners. And, it could be argued that an owner of a purebred, breeding dog is more likely to contribute to the overpopulation problem than any individual owner of a "family dog", when it is estimated that 25% of the dogs in shelters are purebreds.<sup>54</sup> The government may argue that show/competing/breeding owners have a greater economic interest in their unfixed dogs that entitles them to special consideration in the form of possible exemptions. But, even a law that likely will have a negative impact on certain business owners is constitutional if this impact is a consequence of the adjustment of rights as the legislature reasonably deems appropriate.<sup>55</sup> For example, in *Wilkins v. Daniels* the United States District Court for the Southern District of Ohio upheld a state act to protect the public from dangers associated with the possession of exotic animals even though it increased the costs of ownership, devalued businesses, and hindered economic activity related to the animals.<sup>56</sup> The breeders' contrary interest in continuing to breed their dogs does not nullify the County's legitimate interest in restricting this activity.<sup>57</sup>

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52 *Supra* n. 31.

53 American Veterinary Medical Association, *Legislation Would Regulate Puppy Mills*, <https://www.avma.org/News/JAVMANews/Pages/051215a.aspx> (accessed Jan. 7, 2015).

54 The Humane Society of the United States, *Pets by the Numbers: U.S. Shelter and Adoption Estimates for 2012-13*, [http://www.humanesociety.org/issues/pet\\_overpopulation/facts/pet\\_ownership\\_statistics.html](http://www.humanesociety.org/issues/pet_overpopulation/facts/pet_ownership_statistics.html) (accessed Jan. 7, 2015).

55 *Wilkins v. Daniels*, 913 F. Supp. 2d 517, 544 (S.D. Ohio 2012) *aff'd*, 744 F.3d 409 (6th Cir. 2014).

56 *Id.*

57 *See Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

Further evidence of the objectionable mismatch between the situation of the various owner classes and the purposes of the Ordinance can be seen in the exemption requirements for show/competing/breeding purebred owners (classes 5-7). These owners are exempt from MSN if they meet at least one of three conditions: 1) their dog has recently competed in a sanctioned/approved show or competition, 2) their dog has earned a "title" from a sanctioned/approved registry or dog sport association, or 3) the owner is a member of an approved, purebred dog breed club with a code of ethics that includes restrictions from breeding dogs with genetic defects and life threatening health problems. The satisfaction of these conditions can be used to prove that purebred owners have active and valid show, competing, or breeding dogs. But, these conditions are entirely unrelated as to whether is dog is likely to produce unwanted offspring, to run stray, or to bite people.

For these reasons, the classifications and the system of exemptions applied by the Ordinance are an unconstitutional violation of the Fourteenth Amendment.

## V. THE INTEGRATED ARGUMENT

The Fifth, First, and Fourteenth Amendment violations argued above that could be successful independently can be logically combined to strengthen each other and form an integrated constitutional challenge of the Ordinance. In specific, the Ordinance is a taking under the Fifth Amendment for which citizens should be compensated because it demands citizens to submit to a irreversible, invasive physical intrusion, a surgical alteration of their pets. The exemptions violate the First Amendment because they burden pet owners' protected freedom to associate, and they violate Fourteenth Amendment Equal Protection because they create

classifications that cannot even survive a rational basis test. The *ACF v. LA* court reasoned that the Ordinance was not an economic regulatory taking because it does not require breeders or show dog owners to sterilize their dogs.<sup>58</sup> Therefore, if the exemptions are, indeed, unconstitutional then the Ordinance is also an economic regulatory taking because without the exemptions it denies pet owners all economically beneficial or productive use of their dogs.

## VI. CONCLUSION

The County of Los Angeles mandatory spaying/neutering law for dogs is an unconstitutional violation of the Fifth, First, and Fourteenth Amendments. Therefore, the Ordinance should be either revised to comply with the Constitution or else be repealed. There is no question as to the seriousness and pervasiveness of the pet overpopulation problem in the United States or that spaying and neutering is part of the solution to that problem. But no law may reach beyond the limits placed on the state by the Constitution or improperly burden any citizen's fundamental rights.

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<sup>58</sup> *Am. Canine Found. v. Sun*, C-06-4713 MMC, 2007 WL 4208358, at \*9 (N.D. Cal. Nov. 27, 2007).