



**THE HUMANE SOCIETY
OF THE UNITED STATES**

**Testimony Presented to the Joint Task Force Considering *Tracey v. Solesky*
June 19, 2012
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On behalf of The Humane Society of the United States (The HSUS) and our more than 284,000 supporters in Maryland, thank you for the opportunity to submit testimony regarding the recent Court of Appeals decision in *Tracey v. Solesky*. The Court's decision that pit bull dogs and pit bull mixes are "inherently dangerous" and that owners *and anyone with the authority to control the dog's presence on the premises* are strictly liable is unprecedented and, if left standing, will have disastrous impacts on Maryland dog owners, landlords, property owners, animal shelters and small businesses. We urge this task force to:

1. At a minimum, craft legislation to address the immediate effects of the ruling so that the General Assembly can take action if a special session is called in July.
2. Review existing state dog bite laws and create a comprehensive bill that will be effective in protecting our communities by establishing a breed-neutral standard focusing on the dog owner's responsibility without assigning unfair responsibility to third parties.

This decision is unprecedented.

While many states have strict liability rules for dog owners, none of these states single out a specific breed, and none extend this liability so far beyond owners as did the Court in this case. While it's obvious that an owner should be responsible for the actions of his or her dog, this principle has never been extended to landlords, veterinarians, kennel owners, and other non-owners who simply failed to "exclude" a dog from certain premises.

Moreover, until this Court's opinion, dangerous dog policy had consistently been left to—and made by—state and local legislatures. Indeed, this Court is the first in the United States to unilaterally adopt breed-specific strict liability. Although the Court cited several cases where courts have enforced breed-specific strict liability standards, all of those cases involved breed-wide determinations that had been made by legislative bodies.

This kind of policy decision is best left up to the legislature.

The Court made this dramatic and far-reaching decision without new and conclusive scientific evidence regarding dogs. It was made without any public hearings or comprehensive expert testimony. And it was made against the will of Maryland voters who seek to treat all dogs the same. The Court charted this drastic new course based merely on its own judgment—a judgment grounded in limited information,

disputed studies and anecdotal evidence. When policy decisions are made without comprehensive information and process, the public pays the price.

This type of a policy decision is most appropriately made by the legislature, which can acquire all potentially relevant information through public hearings and expert testimony and debate competing policy considerations to ensure that all points of view are heard. In fact, the topic of dangerous dogs and how to adequately protect public safety while treating dogs and dog owners fairly has been much discussed in the General Assembly over the last several years. Banning or discriminating against a particular breed has been widely understood to be ineffective, and the conversation in Maryland has rightly focused on comprehensive legislation that emphasizes responsible dog ownership. The list of bills introduced over the last ten years illustrates the robust and ongoing debate in the General Assembly—debate that the Court effectively (and recklessly) quashed with this one decision.

- **2001** – HB 567 introduced by Del. Charles Boutin to ban pit bulls in Maryland.
- **2002** – HB 562 introduced by Del. Boutin to amend the existing breed-neutral dangerous dog law to include spay/neuter, microchipping and obedience training requirements. Prohibited local laws that classified dogs based on breed.
- **2004** – HB 78, introduced by Del. Rick Impallaria to prohibit local laws that classified dogs based on breed.
- **2008** – HB 1419, introduced by Del. Herman Taylor to require dogs determined to be dangerous (under the state breed neutral dangerous dog law) to be spayed or neutered.
- **2010** – HB 1314, introduced by Del. Cheryl Glenn, to strengthen the existing state breed neutral dangerous dog law
- **2010** – SB 192/HB 15, introduced by Sen. Richard Colburn and Del. Jeannie Haddaway-Riccio, to require dogs determined to be dangerous (under the state breed neutral dangerous dog law) to be spayed or neutered.
- **2011** – HB 169, introduced by Del. Cheryl Glenn, to strengthen the existing state breed neutral dangerous dog law.

The trend across the country—and in Maryland—is moving away from breed specific laws.

With this court decision, Maryland became the *only state* in the country with any sort of breed specific law. For many years, Ohio included pit bull type dogs in its definition of “vicious” dog, but the legislature repealed that law earlier this year. Furthermore, 12 states have passed laws affirmatively *prohibiting* the passage of breed-specific legislation by local governments. Breed specific laws are commonly understood to be ineffective and nearly impossible to enforce, and jurisdictions that have tried them haven’t seen any improvement in the protection of public safety.

Within Maryland, two localities—Prince George’s County and North Beach—currently ban the possession of pit bulls. Prince George’s County passed their ordinance in 1996, and it was reviewed by a Work Study Group in 1998 and a Task Force in 2002. In both cases, the groups recommended overturning the ban on pit bulls, and the Task Force stated that the policy is “inefficient, costly, difficult to enforce, subjective and questionable in its results.”

North Beach passed a law banning pit bulls in 2000 and their town council is in the process of repealing the ban and putting in place a comprehensive breed-neutral dangerous dog ordinance. In a May 9, 2012 editorial, Town Councilmember Ken Wilcox said that the ordinance was enforced just once in the 12

years since it was enacted. When a dog attacked another dog in the community last year, the Town of North Beach opened a “taxpayer-funded investigation” to determine if the dog was a pit bull in violation of the ordinance—and found that exercise to be virtually impossible.

This ruling is having immediate and widespread impacts—particularly on dog owners who rent their homes.

The immediate response to the Court’s opinion in this case graphically demonstrates the pitfalls of courts wading into the realm of legislative policy judgments. The Court’s decision has, and will continue to have, far-reaching negative consequences across the State—adversely affecting citizens who own loving pit bull type dogs as pets, damaging businesses that provide animal services, paralyzing local governments responsible for enforcing animal control laws and operating animal shelters, and potentially increasing the risk that pit bull type dogs will be abandoned in Maryland communities.

In Maryland, there are around 1,050,000 dogs in the state, living in approximately 31% of Maryland households. Some estimates place pit bull type dogs at 6.9% of the dog population—meaning that 70,000 dogs in Maryland are directly targeted by this ruling. However, many dogs merely resembling the pit bull-type look will be swept up and punished by this ruling, and there may be expensive court battles over whether a dog is or isn’t a pit bull. This ruling imposes liability on landlords based on the assessment of what a dog looks like, as opposed to behavior or temperament, so some landlords may decide to disallow *all dogs* to err on the side of caution.

There is no breed of dog called “pit bull.” “Pit bull” is a socially constructed category of dogs and there is no universal measure to objectively identify what makes a dog a pit bull or a pit bull mix, nor is there a proven scientific method to do so. According to a [recent study](#) by the Maddie’s Fund Shelter Medicine Program at the University of Florida, which looked at a group of 120 dogs at four animal shelters, 55 of those dogs were identified as “pit bulls” by shelter staff, but only 25 were confirmed as pit bulls by DNA analysis. Additionally, the staff missed identifying 20 percent of the dogs who were pit bulls by DNA analysis, while only 8 percent of the “true” pit bulls were identified by all staff members. (Even DNA testing is not 100 percent reliable, but the study underscores why breed-specific policy is unworkable.) If shelter professionals are unable to accurately identify “pit bulls,” surely it is unworkable to require landlords, property owners and small business owners to make those determinations.

Conclusion

For all of these reasons, the Court of Appeals’ decision in *Tracey v. Solesky* imposes an unworkable and unfair standard that singles out one group of dogs and targets responsible Maryland residents, while ignoring real factors that lead to dog bite incidents. We urge this task force to support legislation during the July special session to alleviate the immediate impacts of this ruling.