

**IN THE SUPREME COURT OF OHIO**

**City of Toledo,**

Appellant,

v.

**Paul Tellings,**

Defendant-Appellee,

\* On Appeal from the  
\* Lucas County Court of Appeals,  
\* Sixth Appellate District  
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\* Supreme Court Case No. 2006-0690  
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\* Court of Appeals Case No. L-04-1224  
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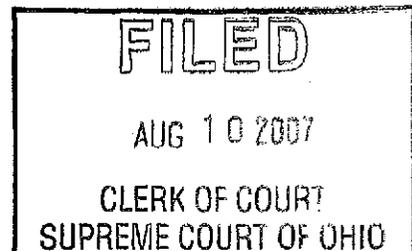
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**APPELLEES MOTION FOR RECONSIDERATION**

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## **APPELLEES MOTION FOR RECONSIDERATION**

Appellee respectfully asks this Court to reconsider its August 1<sup>st</sup> 2007, decision that 955:11 and 955:22 of the Ohio Revised Code is constitutional. A memorandum in support follows and is incorporated herein.

### **MEMORANDUM IN SUPPORT**

The Appellee seeks reconsideration in the interests of using credible and accurate data to ensure the publics protection against vicious dogs. The Appellee also asks this court to reconsider this case on the facts that after the trial was over Lucas County Assistant Prosecutor Dan Pilrose took Exhibit K from the record and never returned it. Exhibit K was a book called Fatal Dog Attacks, The Stories Behind the Statistics. The book listed every fatal dog attack that had occurred in Ohio since 1965 and is vital to this case because it proves that Pit Bull Terriers are not the dog responsible for killing more Ohioans than any other breed. The Toledo Municipal Court reporter who reported the trial made a statement to verify the record on the taking of Exhibit K and it is filed with the Ohio Supreme Court.

Appellee asks this Court to reconsider the fact that Justice O'Connor was the head of the Ohio Dog Fighting Task Force and knows what will work to assist in combating illegal dog fighting and protect the public from vicious dogs. Justice O'Connor found from reading the statistics and evidence offered at trial that it's the owners not the breed of dog and that breed specific laws will not protect the public. It should be in the interests of this court to do everything possible to ensure legislation serves a legitimate governmental purpose and not allow political pressure and other agendas to lead to decisions that will not ensure the publics welfare. Ohio's Revised Code 955:11 and 955:22 were originally passed to assist in combating illegal dog fighting.

The head of Ohio's Dog Fighting Task Force Justice O'Connor does not approve of 955:11 declaring the Pit Bull vicious and this should send a serious message to the court that Ohio's breed specific legislation is not combating dog fighting and doing nothing to protect the public.

Appellee asks this Court to reconsider the fact that no proof was submitted by the Lucas County Dog Warden to support his statements that (1) when Pit bulls attack they are more likely to inflict severe damage to their victim than other breeds; (2) Pit Bulls have killed more Ohioans than any other breed of dog;(3) Toledo Police Officers fire their weapons in the line of duty at pit bull more often than they fire at people and all other breeds of dogs combined; (4) pit bulls are encountered more frequently in drug raids than any other breed of dog. The Lucas County Dog Warden failed to bring forward any evidence to support his statements and he could have easily accessed the data if it existed.

Appellee asks this Court to reconsider that there was no credible evidence presented in the trial court to prove that pit bulls or any breed of dog pose a serious danger to the safety of citizens. Breed specific laws plain and simple do nothing to combat illegal dog fighting and they do not protect the public from dog attacks.

#### **1. THE COURTS AUGUST 1, 2007 DECISION MERIT RECONSIDERATION**

The Lucas County Dog Warden Tom Skeldon admitted at trial the Chow in Toledo is responsible for the most sutures, refer to (Tom Skeldon Trial Transcript pg 100). Data in this case was presented to show many other breeds in Ohio were responsible for fatal attacks before and after ORC 955:11 – 955:22 was amended in 1987.

The numbers of other breeds greatly outweighed American Pit Bull Terriers (refer to Appellee's exhibit C Fatal Dog Attacks ACF). The data showed that in Ohio between 1975 and

2001, 1 Great Dane, 2 German Shepherds, 1 Malamute, 2 Dobermans, 2 Chows, 3 Mixed breeds, 3 Pit Bulls, 2 Rottweilers, 1 Husky and 1 Wolfdog. Exhibit K would also verify the fatal dog attacks that have occurred on Ohio.

The Dog warden also gave testimony that the Pit Bulls housed in his shelter had to be kept in special confinement because of aggression (Tom Skeldon T 105). Four issues of serious concern (1) The majority of these dogs were seized because of violations of the breed specific laws and in society were not aggressive; (2) No other shelter Appellee knows of in the United States has to keep Pit Bulls in special confinement; (3) Testimony by Toledo Humane Society Officer, Jed Mignano, demonstrated that American Pit Bull Terriers housed at the Humane Society (1) never act vicious; and (2) are not housed in a separate area. (Jed Mignano T – all pages); (4) Appellant's own expert, Dr Borchelt, testified about Pit Bulls being in shelters and being adopted out (Dr. Borchelt T –84).

Tom Skeldon testified (refer to Tom Skeldon transcript pg 105-106 lines 15-25/1-3) he does not know what the Pit Bulls in Lucas County are bred for and if the dog had Pit Bull in it but did not look like a Pit Bull he would never be in front of the judge, but if it looks like a Pit Bull we will bring it forward for a case. The Lucas County Dog Warden goes on to admit that many young canines could resemble a Pit Bull but when they grow up they turn out to be something else. Appellant admits it doesn't care about the breed and are seizing all breeds that look like American Pit Bulls Terriers.

This proves beyond a reasonable doubt the Ohio Revised Code 955:11/22 and Toledo Municipal Code 505.14 are unconstitutionally void for vagueness, it proves the laws encourage arbitrary and erratic arrests and convictions, it makes criminal activities that by modern standards are normally innocent, and it places almost unfettered discretion in the hands of the police.

Forty-nine states allow due process for dogs that bite or act aggressive and cause severe injury without having enacted breed specific legislation.

Appellee asks this Court to consider in the majority of the country in urban areas they do not have breed specific legislation and there is not a problem with American Pit Bull Terriers living in urban areas. In Aurora Colorado where they recently passed a breed specific law it was revealed after a study was completed using Aurora's dog bite incident reports from 2003 –2005 that less than 1.9 percent of the severe injuries inflicted to citizens were attributed to what was identified as a pit bull. Aurora is an urban area and they are suffering from dog attacks of which 98.1 percent are from other breeds than the Pit Bull yet Aurora passed a breed ban.

This court agreed with the trial court that the pit bull is not inherently vicious and therefore this court must reconsider its decision that 955:11(A)(4)(a)(iii) is constitutional law and find it unconstitutional.

The only problems associated with this case is the media hype fueled by the extreme animal rights agenda that does not use rational thinking in an attempt to combat dog fighting or protect the public when they use their methods of convincing the judicial system that breed specific laws work.

Before a dog owner may be deprived of his property, the owner must be given a meaningful opportunity to be heard.

Appellee is challenging the right to life, liberty, due process and property interest. *Nicchia v. People of State of New York*, 254 U.S. 228 (1920). While the *Nicchia* case is referring to the licensing of dogs, the U.S Supreme Court does address due process and makes it very clear that the requirement of dog licenses does not **take one mans property and give it to another, nor does it deprive dog owners of liberty without due process of law.** The US Supreme Court supports a finding from a New York Appeals Court case *Fox v. Mohhawk & H.R. Humane Society* (1901) The broad power to regulate and control dogs that the US Supreme Court means is a menacing dog can be destroyed without due process, however the dog has to be dangerous and it does not refer to specific breeds of dogs. The *Nicchia*

case clearly supports a finding that dog owners have a **right to liberty and due process**. The Toledo Ordinance TMC 505.14 and the Ohio Revised Codes 955:11 – 955.22 take away due process and liberty by declaring a Pit Bull vicious with no evidence to prove the breed is vicious.

### CONCLUSION

Appellee asks this Court to consider that in the interests of justice it would be believed that the Ohio Supreme Court would do everything in its power to ensure that the citizens of Ohio receive adequate protection against vicious dogs and that everything possible is done to combat illegal dog fighting. This case has the evidence and testimony to prove declaring a specific breed of dog dangerous or vicious does nothing to protect the public and does nothing to address illegal dog fighting. Breed specific laws do not target irresponsible dog owners, they do not target the criminal who can make any breed of dog dangerous and most of all breed specific laws do not prevent fatal attacks or injuries inflicted by dogs.

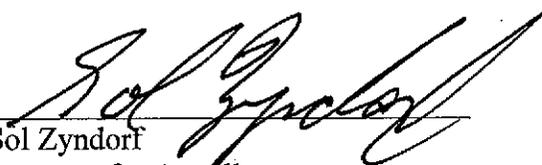
The majority of the country does not have breed specific laws even though the animal rights agenda supporting it is trying to pass it on a daily basis. American Pit Bull Terriers along with all other breeds reside in family homes in urban and rural areas of our country and except for the media and the few animal rights organizations that support breed specific legislation no other organizations or individual citizens support such laws.

Breed specific laws cause dogs to be impounded that have no inherent vicious or dangerous temperament, this leads to criminal citations in which the tax payer and government suffer from financial burden brought upon by a law which was based on flawed data. When flawed or manipulated data including media hype is allowed to influence legislators or the courts it leads to results such of that in Ohio where it was proven at trial in this case that Ohio's amended Revised Code 955:11 declaring the Pit Bull vicious has not reduced dog bites, has not reduced problems associated with illegal dog fighting and most of all has not prevented fatal dog

attacks because Ohio has suffered fatal dog attacks since 1987. Strong penalties that hold owners of dogs responsible for their dog's behavior have been proven to reduce dog attack numbers in urban areas, strong penalties for illegal activity involving canines has been proven to reduce the problems associated with dog fighting. Laws that hold the owner responsible are rational, not capricious and are effective in protecting the public. Below are cases which support Appellee's motion for reconsideration Toledo v. Tellings, 2006 WL 513946, \*513946+, 975+ (Ohio App. 6 Dist. Mar 03, 2006) (NO. L-04-1224) State v. Murphy, 2006 WL 2532516, \*2532516+, 4549+ (Ohio App. 3 Dist. Sep 05, 2006) (NO. 9-06-24).

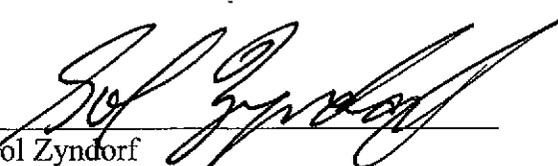
Appellee asks this court to reconsider this case and find 955:11 (A)(4)(a)(iii) unconstitutional because it serves no legitimate governmental purpose based on the evidence and testimony presented at trial.

Respectfully submitted,

  
Sol Zyndorf  
Attorney for Appellee

#### CERTIFICATION

I hereby certify that a copy of the following response to the Motion for Reconsideration was sent by regular U.S. mail to John T Madigan, Prosecutor for the City of Toledo Ohio, One Government Center, Suite 1710, Toledo Ohio, 43604 , on August 9, 2007.

  
Sol Zyndorf