



Anti-Breeding Laws

Increasingly, municipalities throughout the United States are contemplating, and some are actually enacting, local laws that severely restrict or even prohibit the breeding of cats and dogs. Sometimes, these laws are antecedent to other laws providing for mandatory spaying and neutering.

Needless to say, there is substantial opposition to these types of laws, especially from organized breeders and associations, such as the American Kennel Club, which have a huge financial stake in the breeding of cats and dogs. Among their other arguments against anti-breeding (and mandatory spaying and neutering) laws, the opponents claim they are unconstitutional.

They are not.

The core of a typical anti-breeding law is its “findings,” which usually are that:

- Euthanasia of unwanted cats and dogs is rampant, with totals annually of millions of animals;
- The destruction of these animals, though necessary, is immoral and not befitting a humane society;
- The practice is not cost effective;
- The root cause of this mass killing is the problem of overpopulation, which causes social problems beyond those of euthanasia.

Based on these findings, the anti-breeding laws provide for a moratorium on the breeding of cats and dogs, and if that doesn’t reduce the overpopulation problem in that municipality then a mandatory spaying and neutering program is provided.

Important to the constitutional question is the “Declaration of Intent” found in typical anti-breeding laws:

The Board of Supervisors of the Town of Wherever hereby finds and declares that it intends to provide for the public health safety, and welfare, through a moratorium on the breeding of cats and dogs owned, harbored, or kept in this municipality in order to bring the population of abandoned and stray animals to an acceptable level for protection of the public health, safety, and welfare. Further, if the moratorium does not achieve this goal, a

program for mandatory spaying and neutering will be instituted in order to attain an acceptable population level.

To understand why anti-breeding laws like this one will be held constitutional if defended properly it is necessary to understand something about the American system of government.

When the United States was founded, the Constitution created a new federal government possessing substantial power. Concern was expressed about whether any power was left to the states. To address this concern, the Tenth Amendment to the federal Constitution reserved to the states what are commonly referred to as “police powers” – not in the sense of law enforcement, but rather powers to legislate for the public’s health, safety, welfare (and morals.) All state constitutions, in turn, delegate this police power from the state to municipalities, which gives the latter power to pass laws related to the public health, safety, welfare (and morals.)

But those laws, like all legislative enactments made by every level of government – federal, state, municipal – must pass the test of constitutionality.

Laws affecting rights so fundamental that they are expressly protected by the federal and state constitutions – e.g., speech, religion, self-incrimination, due process – are tested by a very strict standard: in effect, these laws must be designed to protect or advance an extremely important governmental interest (e.g., protecting the nation from terrorists), and be virtually the only way to accomplish that goal.

On the other hand, laws not affecting such fundamental rights are tested for constitutionality by a lesser test: is there a problem properly within the government’s area of concern, and is the enacted law a rational way to deal with that problem? Put another way, it is a question of “ends” and “means.”

Since anti-breeding laws do not affect fundamental rights expressly given constitutional protection, they are to be tested by this lesser standard.

Clearly, the number of unwanted cats and dogs causes significant social problems: senseless killing, health risks, wasted taxes, and more. Clearly, these problems raise important issues of public health, safety, welfare – and even morals. In other words, the “end” is entirely appropriate constitutionally.

Thus, the next (and last) question is one of “means”: are the anti-breeding ordinances a rational way to deal with the problem? The short answer is obvious: if there are too many unwanted cats and dogs, it’s certainly rational to prevent the breeding of any more to prevent the population from growing, and to leave it to attrition to actually reduce that population.

The more fulsome answer is that that the overpopulation problem is a moral outrage. Municipalities have the constitutional power and the moral duty to solve it – to alleviate, if not eliminate, visiting the sins of irresponsible owners, especially breeders, on innocent animals. When it comes to anti-breeding laws, the end does certainly justify the means – constitutionally and morally.