



Animal Law Committee

BREED SPECIFIC LEGISLATION AS A DISSERVICE TO SERVICE ANIMALS

By: Michele L. Warnock

Breed specific legislation banning certain dogs from municipalities can squarely collide with Title II of the Americans with Disabilities (“ADA”) Act.¹ This was recently illustrated by Aurelia, Iowa wherein there is a city ordinance banning “pit bulls” and the City Council refused to incorporate an exception for pit bull service dogs. This refusal led to a disabled resident’s loss of his service dog and an order from the Northern District Court of Iowa granting preliminary injunctive relief, returning the animal to the residents.

When retired Chicago police officer James Sak and his wife, Peggy Leifer, relocated to Peggy’s hometown of Aurelia, they were surprised to learn their mere residence in city limits was considered against the law. Rather than being greeted into the small town of approximately 1,100 people,² Sak was summoned to the City Council meeting for a discussion of his contraband—Snickers. Not the candy bar, rather a five-year-old mixed breed dog whose physical appearance has earned him the label “pit bull.” Snickers, however, is far more than a member of the Sak family, he is also Sak’s service dog. Sak suffered a severe, life-changing stroke leaving him largely confined to a wheelchair with severe limitations, including difficulties with balance, speech, and control over the right side of his body. Snickers is individually trained to assist Sak with balance and to help him if he

falls. Snickers has absolutely no history or allegations of aggression.

Aurelia has a breed specific ordinance banning pit bulls—all pit bulls, except those registered prior to the

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1 42 U.S.C. § 12101, et seq.

2 CITY OF AURELIA, IOWA, <http://www.aureliaia.com/> (last visited Feb. 10, 2012).

penning in Florida, the FWC decided to permanently ban coyote and fox penning in Florida.¹⁸ This major victory came after Project Coyote and other organizations advocated banning penning completely in Florida.

What You Can Do to Ban Fox and Coyote Penning

Contact legislators of states where fox or coyote penning is legal to let them know that penning is bad for their citizens because it:

- Is inhumane;
- Spreads disease and parasites to humans, dogs, coyotes, foxes, and other wildlife;

- Attracts illegal and illicit activity; and
- Does not control coyote and fox populations.¹⁹

You may also use your skills to help an organization like Project Coyote, which is working to end coyote and fox penning.²⁰ ⚖️

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¹⁸ FL. ADMIN. CODE ANN. r. 68A-24.002(c) (2010).

¹⁹ See Project Coyote, *Letter Re: Proposed rule to regulate fox/coyote penning in Indiana* (Dec. 8, 2010) at <http://www.projectcoyote.org/action/IN-Penning-Sign-on-letter-Dec%202010.pdf>.

²⁰ For more information on Project Coyote, see www.ProjectCoyote.org.

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ordinance and considered “grandfathered in.”³ The ban includes service dogs. Sak, his wife, and Snickers attended the City Council meeting seeking a reprieve based on Snickers’ status as a service dog. The matter was tabled to seek legal advice.

After that meeting, the Sak family retained counsel to draft a proposed exception permitting service animals, pursuant to the ADA. Correspondingly, a group of Aurelia citizens circulated a petition to enforce the ordinance. At the next City Council meeting, the Sak family and their attorney presented the proposed language and were denied. The petition signed by less than forty residents was received by the City Council.⁴ The City Council, in a 3-2 decision, voted Snickers’ presence violated the ordinance and that he must be removed.

Distraught and confused, the Sak family sought assistance from the Animal Farm Foundation, a non-

profit advocacy group dedicated to securing equal treatment and opportunity for “pit bull” dogs. With a commitment from the Animal Farm Foundation to assist the Saks with the case, the Sak family engaged subsequent counsel to file a federal lawsuit pursuant to the ADA, Title II and sought preliminary injunctive relief pursuant to [Federal Rule of Civil Procedure 65](#).

Sak alleged Title II is a mandate to municipalities against discrimination of disabled persons.⁵ Contained therein is the requirement to “reasonably accommodate” one’s disability.⁶ Sak alleged a service animal is considered a reasonable accommodation.

To grant relief under [Rule 65\(a\)](#), the federal court, in its discretion, considers plaintiff’s probability of success on the merits; the threat of irreparable harm to plaintiff; the balance between the harm to plaintiff and defendant if an injunction is granted; and, whether an injunction serves the public interest.⁷ No single factor is dispositive, requiring consideration of each factor to determine the balance of the equities.⁸



³ AURELIA, IOWA, CODE § 48, *et seq.* (2011)

⁴ Aurelia City Council Minutes (Dec. 14, 2011), http://www.aureliaia.com/City_Council_Agendas_&_Minutes.htm.

⁵ 42 U.S.C. § 12131, *et seq.*

⁶ 28 C.F.R. § 35.130(b)(7); *Wis. Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 751 (7th Cir. 2006).

⁷ *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981).

⁸ *Sanborn Mfg. Co., Inc. v. Campbell Hausfeld / Scott Fetzer, Co.*, 997 F.2d 484, 486 (8th Cir. 1993).

The ADA broadly states “no qualified individual with a disability shall . . . be subjected to discrimination by any such entity.”⁹ At the preliminary stage, there was no dispute Sak was a qualified individual and Aurelia was a public entity.¹⁰ The contested issues were the applicability of the ADA and whether breed specific ordinances banning breeds pass muster as reasonable accommodations. The City argued Sak was not covered by the ADA because he is largely unable to leave his home, and further, the ordinance did not prohibit Sak from having a service animal, it just limited the breed. The federal court categorically disagreed.

First, the Court found the City’s argument that Sak must leave his home and attempt to utilize a municipal service, program, or facility to trigger the anti-discriminatory protection under Title II lacked legal support.¹¹ The Court reasoned ordinances affecting the ability to accommodate one’s disability within a home are certainly subject to ADA protection.¹² An example was an ordinance restricting the width of residential doorways prohibiting wheelchairs from passing; the Court reasoned this ordinance would effectively ban a person from living within the city, notwithstanding the ordinance purported to regulate private homes and not access to public areas.¹³

Second, the Court found the regulations interpreting the ADA make “clear that an accommodation only is required when *necessary* to avoid discrimination *on the basis of* disability, and “that any accommodation must be a *reasonable* one.”¹⁴ Service animals are considered reasonable accommodations.¹⁵ “Service animal”

generally means any dog “individually trained to do work or perform tasks for the benefit of an individual with a disability.”¹⁶ Notably, the regulations are silent as to breed limitations. Recently, the Department of Justice (DOJ) issued a guidance stating:

[t]he Department does not believe that it is either appropriate or consistent with the ADA to defer to local laws that prohibit certain breeds of dogs based on local concerns that these breeds may have a history of unprovoked aggression or attacks. Such deference would have the effect of limiting the rights of persons with disabilities under the ADA who use certain service animals based on where they live rather than on whether the use of a particular animal poses a direct threat to the health and safety of others.¹⁷

The Court found the DOJ’s guidance persuasive and that a replacement service dog is inconsistent with the ADA. The Court ruled that Snickers was to be returned, finding Sak would likely prevail on the merits, that an irreparable harm would result in denying Sak his service dog, and the balances of equities weighed in Sak’s favor.

The preliminary injunction was not appealed; Snickers is under federal protection in the Sak home while the case is pending. ⚖️

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9 42 U.S.C. § 12132.

10 The parties entered Stipulated Facts for the purposes of the preliminary injunction. The facts at a preliminary injunction hearing are not binding for trial. *U. of Texas v. Camenisch*, 451 U.S. 390, 305 (1981).

11 *Sak v. City of Aurelia*, No. C-11-4111-MWB, 2011 WL 6826146, at * 25-6, n.5 (N.D. Iowa Dec. 28, 2011).

12 *Id.*

13 *Id.*

14 *Id.* at 21 (quoting *Wis. Cmty. Servs.*, 465 F.3d at 751).

15 28 C.F.R. § 35.136.

16 28 C.F.R. § 35.104.

17 28 C.F.R. Pt. 35, App. A.

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<http://www.americanbar.org/tips/animal.home.html>