



**American Rottweiler Club, Inc.
16005 Pine Creek Way
Magnolia, TX 77358**

July 14, 2009

Sen. James B. Eldridge (Chair)
Joint Committee on Municipalities and Regional Government
State House, Room 213-A
Boston, MA 02133

RE: MA HB 1997 - OPPOSED

Dear Senator Elbridge and respected members of the Joint Committee on Municipalities and Regional Government Committee:

The American Rottweiler Club, Inc. (ARC), the parent club of the American Kennel Club (AKC) for the Rottweiler breed in the United States, representing thousands of dog owners, is writing to express our grave concern over **Massachusetts HB 1997, An Act Relative to Dogs which provides for breed-specific legislation.**

Since its inception, the American Rottweiler Club has been deeply engaged in advancing animal welfare and the humane care and treatment of dogs.

ARC members and supporters devote significant time, effort and resources in educating the public on responsible dog ownership, dog bite prevention and safety around dogs, especially where children and the elderly are concerned, and supporting to scores of animal rescue and sheltering organizations across the United States through direct donations and grants and volunteer support.

The American Rottweiler Club is adamantly opposed to the cruel and inhumane treatment of dogs, the exploitation of innocent animals, and illegal, sub-standard breeding operations.

We therefore respectfully submit our official and unequivocal opposition to Massachusetts MA HB 1997 and to any other bill which makes criminals out of law-abiding, tax-paying citizens and home and hobby breeders, or anyone owning intact dogs.

In addition:

- MA HB 1997 contains unreasonable requirements for intact animal permits**
- MA HB 1997 promotes breed specific legislation**
- MA HB 1997 fails to improve upon existing animal cruelty statutes**
- MA HB 1997 places arbitrary limits on animal ownership**
- MA HB 1997 deprives dog-owning citizens of Due Process & Equal Protection**
- MA HB 1997 creates possibilities for warrantless searches and seizures**

MA HB 1997's Arbitrary Enclosure Requirements Are Booby Trapped Backdoors To Anti-Dog, Anti-Breeding Legislation

The enclosure requirements specified in MA HB 1997, may seem innocuous, however they are anything but. There are numerous issues for the Committee to consider:

1. These arbitrary enclosure requirements are not in any way based in science concerning the humane treatment of dogs.
2. These arbitrary enclosure requirements are a back door to anti-tethering laws, the intent of which is to criminalize the safe and humane restraint and containment of dogs.
3. These arbitrary enclosure requirements are a back door to placing limits on the ownership, keeping breeding of hunting dogs, sled dogs and ownership and keeping of certain breeds.
4. These arbitrary enclosure requirements leave open the issue of enforcement – what personnel will be responsible for the enforcement of this clause?
5. The arbitrary enclosure requirements are a backdoor to possible warrantless searches and seizures, as detailed below.

MA HB 1997: Criminalizes Humane Restraint & Containment

A primary flaw of MA HB 1997 is criminalization of the humane and responsible restraint of dogs by imposing “enclosure” requirements.

For thousands of years, the leashing or tethering of dogs has been a time-honored and humane means of safely containing or restraining dogs when correctly done.

MA HB 1997 eliminates by statute this very method of safe and humane restraint or containment, thereby significantly reducing, if not eliminating entirely, the ownership, breeding and keeping of multiple, intact dogs, and in particular, sled dogs, hunting dogs and certain breeds.

MA HB 1997: Outlawing Breeders Via Criminalization Of Humane Restraint & Containment

Literally thousands of dogs, dog owners, breeders and fanciers of the American Pitbull Terrier will be impacted by MA HB 1997.

- ❑ **American Pit Bull Terrier Owners/Breeders** – Many of these dogs are traditionally tethered, a traditional and humane means of restraint or containment.

The American Pit Bull Terrier is the second most popular breed recorded by the country's second largest registry, the United Kennel Club, and the most popular breed registered by the American Dog Breeders Association, the country's third largest registry.

In addition, numerous specialty registries will be impacted by MA HB 1997, such as the All American Dog Registry and other single breed registry.

We question if is the desire to eliminate American Pit Bull Terriers from the State of Massachusetts through backdoor legislation such as MA HB 1997?

MA HB 1997: Criminalizing Humane Restraint & Containment Of Farm Animals

Whether it is the intention or not of the Committee to limit the ownership, breeding, passion of farm animals, it is clear that with just a minor change, MA HB 1997 quickly becomes a bill that threatens all animal agriculture in the State of Massachusetts.

However, anti-containment laws are the foundation upon which HSUS has built its state legislative strategy, from chickens in California to swine in Iowa.

State legislators may be unaware of the anti-animal agriculture activity happening in other states, however to quote the CEO of the Humane Society of the United States, Wayne Pacelle, who summarized his philosophy over ten years ago in *Animal People News*:

"We have no ethical obligation to preserve the different breeds of livestock produced through selective breeding ... One generation and out. We have no problems with the extinction of domestic animals. They are creations of human selective breeding."

- Wayne Pacelle, CEO, Humane Society of the United States

MA HB 1997: Outlawing Hunting Dogs Via Criminalization Of Humane Restraint & Containment Of Hunting Dogs

MA HB 1997 and its provisions will lead to the extermination of innocent dogs and heartbreak for Massachusetts's dog-owning citizens.

It is important to point out to the Committee the types of hobby breeders and dog enthusiasts impacted by this clause, which includes:

- ❑ **Hunting Dog Owners/Field Trial Enthusiasts** – Hunters and those participating in Field Trials own large numbers of intact dogs, such as Hounds or Sporting Dogs, such as German Shorthaired Pointers. These dogs are traditionally by “staked out” – that is to say tethered, a traditional and humane means of restraint or containment.

Massachusetts Sportsmen's associations should be alerted to the impact of MA HB 1997 upon hunting and field trial activities throughout the state.

MA HB 1997: Outlawing Sled Dog Via Criminalization Of Humane Restraint & Containment Of Sled Dogs

Sled dogs are kept in teams, or packs, and the imposition of said arbitrary enclosure requirements thus criminalize the keeping of sled dogs.

- ❑ **Sled Dog Enthusiasts/Mushers** - These dogs are traditionally by “staked out” – that is to say sled dogs, such as Alaskan Malamutes, Siberian Huskies and other Northern breeds are tethered, a traditional and humane means of restraint or containment.

Numerous sled dog and mushing organizations should be alerted to the threat that MA HB 1997 presents.

MA HB 1997: Enforcement Issues

We ask the Esteemed Members of the Committee to consider what personnel at the local or state level will be responsible for identifying “banned or restricted dogs”?

MA HB 1997, left to the subjective interpretation of breed identification of local animal control or police, or humane societies will **criminalize ordinary dogs and make criminals of dog owners** and send innocent dogs to their deaths.

Increased Surrenders, Overburdened Shelters & Out-Of-Control Budgets

Shelters in cities where breed specific laws have been enacted have seen a sharp spike in owner surrenders, which in turn increases sheltering costs and euthanasia of formerly-owned dogs.

This is directly due to the fact that many dog owners become fearful of new, anti-dog, anti-breeding laws, and find it difficult, expensive to comply or cannot afford to move out of town or out of state with their dogs.

The impact of anti-dog laws is the swelling of already overburdened shelter populations, budgets that quickly spiral out of control, and the unnecessary euthanasia of healthy dogs. Instead of functioning life-saving stations, local shelters will become death camps for innocent dogs.

MA HB 1997: Eliminating Presumption Of Innocence

MA HB 1997 **eliminates the presumption of innocence** making all dog owners of multiple “intact dogs” **guilty and without recourse**.

Under the rules of our judiciary, it is unimaginable to think that a state government would create a reverse onus – thus shifting the burden of proof from the state to the accused.

This bill is counter to the very principles upon which our democracy stands.

Our response is to respectfully remind the Committee Members that our judicial system operates upon the presumption that all citizens in the United States **are innocent until proven guilty**, not the reverse.

Furthermore, there is *no* hearing or an appeals process by which may defend themselves against charges.

MA HB 1997: Proxy For Warrantless Search & Seizure

It should be noted that MA HB 1997 contains provisions allowing for possible warrantless searches and seizures and seriously compromises the constitutional protections to which all citizens are entitled under the guise of animal protection.

Civil liberties groups and criminal defense attorneys should be alerted to the fact that MA HB 1997 is a smokescreen to lower the threshold of evidence needed to support the issuance of search warrants.

We respectfully ask the Committee Members just what would constitutes “*probable cause*” under MA HB 1997 – just a law enforcement officer’s word that pets may be intact, OR be of a “specific breed?”

MA HB 1997: Lowering Thresholds of Evidence For Probable Cause

Furthermore, the issuance of any warrant under MA HB 1997 would be based on a visual ID that the alleged dogs may be of a breed or type that a particular town may ban or restrict.

A) **the basis for “probable cause” is nothing more than the subjective and arbitrary opinion** of alleged “breed” by local animal control or police with no legal or rational basis

B) is done so in the context of reverse onus clause, thereby **eliminating the presumption of innocence.**

Selective Enforcement

We urge the committee to reconsider and reject this bill, since it is already quite clear that should MA HB 1997 become law, it could only be enforced selectively and subjectively.

However, there is an even greater risk in MA HB 1997 as it relates to Unequal Protection, which is where race or ethnicity comes into the equation, and the potential for the abuse of our justice system is great.

It becomes a question of which dog owners will be selectively targeted for enforcement and prosecution by local authorities and to what extent will law enforcement engage in racial profiling.

MA HB 1997 leaves the door open to abuse of powers by local law enforcement officials and creates a number of questions. For instance:

- **Will minority or poor dog owners be targeted for enforcement over non-minority or middle class dog owners?**
- **Will owners of hunting dogs or American Pit Bull Terriers be targeted for enforcement?**
- **Will MA HB 1997 be used to dispense with evidence thresholds necessary to establish probable cause and create a proxy to bypass Due Process?**

Civil Rights & Constitutional Issues

MA HB 1997 presents a multitude of civil rights issues and constitution challenges, including but not limited to unequal protection, violation of due process, removal of the presumption of innocence, selective enforcement, interference with lawful activities and

MA HB 1997 also sets the stage for unequal protection in that owners of subjectively targeted breeds or intact or dogs of breeding stock are thus arbitrarily and subjectively held to a different and higher legal standard than other dog-owning citizens, for which the State Of Massachusetts has not proven nor cannot prove a rational or legal basis.

And since dogs are considered private and valuable property, violations of the 4th, 5th and 14th amendments are of concern, as outlined in the attached report by the Centers for Disease Control and the AVMA.

Minefield of Expense

MA HB 1997, with its many issues and potential infringements of civil rights and constitutional protections, would place the State Of Massachusetts, and the counties and municipalities in the state in a position of defending against what could be a multitude of lawsuits brought on behalf of dog-owning citizens.

The American Rottweiler Club respectfully points out that MA HB 1997 is fraught with issues not only with regard to public safety, but issues that make MA HB 1997 a potential minefield of expense, legal issues, unintended consequences and a waste of valuable taxpayer dollars.

Legal challenges to the constitutionality of such legislation is now underway in other states, including Pennsylvania, where a large group of plaintiffs, including dog owners, breeders and enthusiasts has filed suit against lawmakers there.

- **The definition of "competition dog" rules out all mixed breeds which are currently competing in USDAA/NADAC events.**
- **"Health Certificate" definition requires vaccinations that may be inappropriate and controversial.**
- **Mandates a statewide leash law – many towns in rural Massachusetts do not have leash laws.**
- **The officer in charge of animals or the person charged with the responsibility of handling dog complaints shall have the authority of determining that a dog is dangerous. No training for the "officer in charge of animals" has been prescribed therefore this person may have little or no knowledge of animal behavior.**
- **Requires intact animal permits with a health certificate (requiring inappropriate/controversial vaccinations) and compliance with town "license requirements" (rules, regulations and fees associated with an intact permit).**
- **Contains anti-tethering language.**
- **Minimal infractions can lead to nuisance designation which allows for recommendations as extreme as a destruction order**
- **Promotes banning or further regulating a particular breed of dog.**

Closing Thoughts

In closing, the American Rottweiler Club rejects the criminalization of responsible dog ownership, the flawed concept of outlawing or eliminating though heavy-handed regulation the lawful breeding, ownership, and custody of dogs – or ANY animals.

We formally oppose the erosion by proxy laws of the civil rights and liberties guaranteed to all citizens of the United States under the guise of animal protection.

MA HB 1997 In Summary

The American Rottweiler Club urges the committee members to act appropriately and responsibly by voting NO on MA HB 1997.

American Rottweiler Club, Inc.

We urge the Committee Members to reject MA HB 1997 in its entirety, and not allow this dangerous and misguided piece of legislation, no matter how well- intentioned, to bring about the destruction of innocent dogs, eliminate the responsible and ethical ownership of dogs, discriminate against owners of intact dogs, and deprive people of their civil rights.

We thank you for your attention to this very important matter and remain committed to providing the State of Massachusetts with expert advice in matters of animal husbandry and the humane care and treatment of dogs. We would be honored to be called upon to serve.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeff Shaver". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jeff Shaver
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cc: American Rottweiler Club Board, Peter Piusz, Delegate