

179 DPR 643 Rolon Lopez v . Depto. of Agriculture

Alfredo Rolón López, Petitioner v. Department of Agriculture and Commonwealth of Puerto Rico, Respondents

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Number: AC-2008-0101

Resolved: July 20, 2010

APPEAL PETITION for the review of a JUDGMENT by Rafael Martínez Torres, Yvonne Feliciano Acevedo and Jorge L. Escribano Medina, Js. of the Court of Appeals, which determined that Law No. 158 of July 23, 1998 does not suffer from vagueness and confirmed the euthanasia order of the Pitbull puppy that the Department of Agriculture recommended when it accepted the report of the examining officer. Because the Court is equally divided regarding the correct resolution of the case, the Judgment of the Court of Appeals is confirmed.

Cindy Badano Rosado, Attorney for the Petitioning Party; Irene S. Soroeta Kodesh, Attorney General, Valerie Díaz Aponte, Assistant Attorney General, and Leticia Casalduc Rabell, Deputy Attorney General, Attorney for the respondents

JUDGMENT

In May 2008, an agent of the Puerto Rico Police intervened with Mr. Alfredo Rolón López when he realized that he had a Pitbull puppy in his home, in violation of Law No. 158 of July 23, 1998, 5 LPRA secs. 1601 *et seq.* As a result of this intervention, the Department of Agriculture issued a euthanasia order under said statute in which it was established that she must be euthanized.

Dissatisfied, Mr. Rolón López requested the Department of Agriculture to hold an administrative hearing. After the hearing was held, the examining officer recommended that the Secretary of Agriculture confirm the euthanasia order. The Secretary, for his part, accepted the report of the examining officer and confirmed the aforementioned order.

Mr. Rolón López went to the Court of Appeals through an appeal for review. He alleged, in summary, that Law No. 158, *supra*, is unconstitutional since it lacks

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of vagueness, violates the right to substantive due process of law and equal protection of the laws. He further argued that the hearing provided to him violated his right to due process under procedural law. The Court of Appeals determined that Law No. 158, *supra*, does not suffer from vagueness and that the hearing was held in accordance with the law, therefore it confirmed the euthanasia order.

Still dissatisfied, Mr. Rolón López came before us through an appeal, which we accepted as a writ of *certiorari*. In this he reiterates the arguments he formulated before the

intermediate appellate forum. By resolution issued on May 8, 2009, we issued the writ of *certiorari*.

Having examined the briefs of the parties, this Court is equally divided as to the correct resolution of the case, therefore the Judgment of the Court of Appeals is confirmed.

This is how it was pronounced, ordered by the Court and certified by the Secretary of the Supreme Court. Associate Judge Pabón Charneco states her agreement:

By understanding that Law No. 158 of July 23, 1998, 5 LPRA sec. 1601 *et seq*, which prohibits the possession and sale of Pitbulls in Puerto Rico, is constitutional. There is no doubt that dogs, like other animals, deserve to be treated with humanity and respect by humans. Likewise, I recognize that dogs are property under the canopy of our Constitution. However, I agree with Professor Miguel Velázquez Rivera when he points out that 'the State can exercise its power of reason of state by prohibiting the possession of [Pitbulls], and even ordering their sacrifice.' M. Velázquez Rivera, *Legal Validity of the Regulation by the Legislative Assembly of the Importation, Sale and Possession in Puerto Rico of Pit Bull Dogs*, 63 Rev. Jur. UPR 1, 15 (1994). Both from Law No. 158, *supra*, and from its legislative history, it is clear that the interest of the State is

Prevent Pitbulls from causing harm to humans. This is because they are considered a threat to the general population due to their inherent

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aggressiveness and dangerousness. For this reason, Law No. 158, *supra*, seeks to reduce the population of Pitbulls through their confiscation. From the above, I understand that there is a rational, real and substantial relationship between the State's interest in protecting citizens through its *police power*, and the means used to protect it, which is the confiscation of Pitbull dogs.

Therefore, Law No. 158, *supra*, does not violate due process of law in its substantive aspect.

For the same reasons, I am of the opinion that said law does not violate equal protection of the laws either. Law No. 158, *supra*, does not establish a suspicious classification. Therefore, when applying the scrutiny of mere rationality, the interest of the State is more than justified in prohibiting the exclusive possession of that breed of dog. That is, there is a rational relationship between the classification established by the aforementioned law and the government's purpose of protecting human beings.

Associate Judge Kolthoff Caraballo states that he joins the expressions of the Associate Judge Mrs. Pabón Charneco:

To understand – as it concludes – that there exists in Law No. 158 of July 23, 1998, 5 LPRA 1601 *et seq*, a real and substantial relationship with the state interest that this law pursues.

Defendini Collazo et al. v. ELA, Cotto, 134 DPR 27, 74 (1993). As noted in the Joint Report of the Agriculture and Criminal Legal Commissions of the Chamber of

Representatives on P. de la C. 595 of June 19, 1998, 3rd Ordinary Session, 13th Legislative Assembly, pp. 23:

It is estimated that in 1996, as reported by the United States Center for Disease Control (CDC), a total of 4.5 million dog bites occurred in the United States, causing around twenty (20) deaths and 756,000 injuries requiring medical attention. **Children are the most frequent victims. It is estimated that 44,000 occur annually on children's faces, of which 16,000 require plastic surgery.**

...

Although not all Pit Bull dogs are bad, they are very strong dogs with great potential to cause severe damage with their jaws, due to their physical characteristics....(Emphasis supplied).

On the other hand, a compilation of journalistic reports 6
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published in the United States and Canada, carried out by the renowned journalist and environmentalist Merritt Clifton, editor of the prestigious *Animal People magazine*, revealed that in the last 17 years Pit bull terrier dogs have caused 153 deaths and 777 mutilations, doubling and in some cases even tripling the damage caused by any other dog. M. Clifton, *Dog attack deaths and maimings, US & Canada September 1982 to December 22, 2009.*

In view of the above, I believe that the problem with this type of dog is not necessarily its aggressiveness, that is, the frequency with which it can attack a human being – which may be similar to that of other dogs that are not covered. by Law No. 158, *supra*- but its capacity to cause serious and permanent harm to its victim.

Chief Justice Hernández Denton issued a Dissenting Opinion to which he joined Associate Judge Mr. Rivera Pérez.

Associate Judge Rodríguez Rodríguez states that:

Dissents from the Ruling issued by the Court in this case, as it understands that the provision that prohibits the possession and sale of Pitbull Terriers dogs and requires their sacrifice, is unconstitutional for violating the single matter clause contained in Section 17 of the Article III of the Constitution of the Commonwealth of Puerto Rico. Law No. 158 of July 23, 1998, 5 LPRA secs. 1601-10, which establishes the prohibition of the possession of Pitbull Terriers dogs, is an amendment to Law No. 70 of June 23, 1971. The latter granted the Secretary of Agriculture the power to designate those animals that should be prohibited by law. be harmful **to agriculture, agricultural industries, and horticulture, or that they were predatory or poisonous.** See 1971 Laws of Puerto Rico 221. It clearly emerges from the above that Law No. 158 is an amendment that introduces a foreign matter to Law No. 70, since Pitbull Terriers dogs - and their alleged danger to citizens - in no way are related to the damage that may be caused to the crops or the

agricultural industry, in addition to not being predatory or poisonous. Therefore, it is a strange amendment and not related to the matter originally regulated by Law No. 70, which is why it is unconstitutional under the single-issue clause. See, *Ismael Herrero, Jr. v.*

Sec. DTOP, res. on June 16, 2010, 2010 TSPR 95, 179 DPR 277 (2010).

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Associate Judge Mr. Martínez Torres is disqualified.

Aida I. Oquendo Graulau
Secretary of the Supreme Court

Dissenting opinion issued by the Presiding Judge Mr. HERNÁNDEZ DENTON to which the Associate Judge Mr. RIVERA PÉREZ joins.

We strongly disagree with this Court's decision because it has as a direct result not only the euthanasia of Zafira, the puppy that is the subject of this litigation, but will also imply the long-term extermination of tens of thousands of pets in Puerto Rico.

In the instant case, the Court of Appeals, Judicial Region of San Juan (Martínez Torres, J., Feliciano Acevedo, J., Escribano Medina, J.) confirmed a resolution of the Secretary of Agriculture that ordered the euthanasia of a Pitbull puppy named Zafira. After carefully examining the file before us, we understand that Law No. 158 of 23

of July 1998, 5 LPRA sec. 1601 *et seq*, which prohibits the possession and sale of Pitbull dogs (Law No. 158) and imposes on their owners the obligation to sacrifice them under penalty of fines and prison sentences, is unconstitutional.

Contrary to the members of this Court who agree to confirm the appealed sentence, we consider that said statute and its regulations violate the right to due process of law, in its substantive aspect, enshrined in Article II, Section 7 of our Constitution . Art. II, Sec. 7, Const. ELA, LPRA, Volume 1. For this reason, and because the opposite implies endorsing the indiscriminate extermination of thousands of animals, we disagree. Therefore, we would revoke the appealed sentence.

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I.

As a gift on Three Kings' Day 2008, a Pitbull puppy they named Zafira arrived at Mr. Alfredo Rolón López's family home. A few months later, an agent of the Puerto Rico Police intervened with Mr. Rolón López and filed a complaint against him when he realized that he had Zafira in his home, in violation of the prohibition on the possession of Pitbulls contained in the Law. No. 158 and without being registered in the Pitbull Registry of the Department of Agriculture. As a result of this intervention, a veterinarian from the Department of Agriculture issued an order that Zafira must be euthanized.

For his part, Mr. Rolón López requested the review of said order before the Department of Agriculture. It arises from the Report of the Examining Officer who attended to the matter, which Dr. Héctor Ortiz Llavona, veterinarian, representing the Department of Agriculture, and Mr. Rolón López testified during the hearing. In his Report, the Examining Officer concluded that Zafira is a Pitbull that is not registered with the Department of Agriculture, that she is vaccinated as required by law, that she is gentle, healthy, and that she is considered part of Mr. Rolón López's family. He determined, based on the testimony of Dr. Ortiz Llavona, that the majority of dog bites reported are made by dogs of breeds other than Pitbulls, even breeds whose number on the island is smaller.

In the conclusions of law that the Examining Officer stated in his Report, he concluded that the prohibition of Pitbulls added by Law No. 158, *supra*, to Law No. 70 of July 23, 1998 (Law No. 70), It is an "absolute contradiction." Report of the Examining Officer, Annex II, Appendix to the petition for *certiorari*. For these purposes, he pointed out that the express language of Law No. 70 empowers the Secretary of Agriculture

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(1) As a result, he stated that the Pitbull, Being a domestic mammal, it is not among those that could be prohibited under this statute, since the law only empowers it to prohibit wild mammals that are harmful to agriculture. He also concluded that since the dog is not a predatory or poisonous animal, it cannot be prohibited under this statute.

However, when making his recommendation, the Examining Officer indicated that "in this adjudicative instance we do not have the power to determine that a law is unconstitutional. Only a Court can do this." *Id.* Therefore, the Examining Officer indicated that he was obliged to confirm the euthanasia order and he did so.

For his part, the Secretary of Agriculture issued a resolution in which he established that "[a]fter studying the [Report of the Examining Officer] we adopt it in its entirety because it is found to be in accordance with the law and we make it part of this Resolution". Resolution of the Department of Agriculture, Annex II, Appendix to the writ of *certiorari*.

Dissatisfied, Mr. Rolón López went to the Court of Appeals. He alleged, first of all, that Law No. 158 is unconstitutional for violating the equal protection clause of the laws. Furthermore, he argued that the administrative hearing that was provided to him did not have the minimum guarantees of due process of procedural law, since it was a

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pro forma hearing in which he was not allowed to demonstrate that Zafira does not pose a danger to citizens. He also argued that Law No. 158 is contrary to substantive due process of law because it constitutes an arbitrary and capricious measure that does not respond to an interest

legitimate of the State. Finally, he argued that Law No. 158 suffers from vagueness, because the description it provides of the prohibited animals is insufficient.

While the appeal was pending before the Court of Appeals, the Secretary of Agriculture issued Administrative Order 2008-48 of October 27, 2008. In this, he ordered the suspension of all cases related to Law No. 158 before said agency until such time. the aforementioned forum resolved both the appeal presented by Mr. Rolón López and another presented by Ms. Fátima Montañez Vargas. He also prohibited all veterinarians of the aforementioned department from issuing euthanasia orders.

That same day, the Court of Appeals issued a ruling in which it confirmed the appealed euthanasia order.² (2) The intermediate appellate forum considered that in the administrative hearing the due process of procedural law was complied with, because Mr. Rolón López had a fair chance to be heard. He also concluded that, since the Pitbull was an illegal asset *per se*, it was not appropriate to return it once confiscated.³ (3) Regarding the vagueness approach, he determined that any person of average intelligence could conclude that an animal that exhibits the characteristics described in the statute is a Pitbull. However, the Court of Appeals did not express itself regarding Mr. Rolón López's allegations regarding the constitution.

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rationality of Law No. 158 in light of substantive due process of law and equal protection of the laws.

Given this determination, Mr. Rolón López came before us through an appeal, which we accepted as a *certiorari*. In essence, he alleged that the Court of Appeals erred in determining that the administrative hearing complied with due process of procedural law and in ruling that Law No. 158 does not suffer from vagueness. Finally, he maintains that said forum erred by not addressing his allegations regarding the validity of the statute in light of the constitutional guarantees on substantive due process of law and equal protection of the laws.

Having examined the appeal, we agreed to issue. The Attorney General appeared and argued, in summary, that Law No. 158 does not suffer from vagueness because it provides an adequate description of the prohibited dogs, which does not violate the constitutional guarantees of due process of law in its substantive aspect and the equal protection of the laws and that the administrative hearing complied with due process of procedural law.⁴ (4)

Unfortunately, we have not been able to agree on a position regarding the correct resolution of this controversy. This despite the fact that it is precisely in the face of extraordinary cases like this that we must exercise with prudent courage the power of judicial review that the Constitution deposits in this Curia and, therefore, in each of its members.
No

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However, and in view of the fact that because we are equally divided, the appealed sentence has been confirmed, we are obliged to express our opinion so that there is no doubt that we would have revoked the appealed sentence.

II.

A.

Law No. 70 was approved by the Legislative Assembly in 1971 to, according to its Section 1, grant the Secretary of Agriculture the power to designate those fish, mollusks, crustaceans, amphibians, reptiles, wild birds, microorganisms, insects, wild mammals, or their eggs or offspring, the introduction, possession, acquisition, sale and transfer of which must be prohibited because they are harmful to agriculture, agro-livestock industries, horticulture, forestry or wildlife, or due to their predatory or poisonous characteristics. may constitute a threat or risk to the life or safety of humans. 5 LPRA sec. 1601.

Law No. 158 amended Section 1 of Law No. 70 to prohibit the introduction, importation, possession, acquisition, breeding, purchase, sale and transfer of any nature **of dogs known as Pitbull Terriers, and hybrids resulting from crosses between these and dogs of other breeds.** *Id.* Specifically, crosses between bulldogs and terriers are prohibited and it is defined as a breed of bull terrier that includes Staffordshire Bull Terriers, American Staffordshire Terriers, American Pit Bull Terriers and mixes of these and other breeds of terriers. *Id.*

Note that by also prohibiting mixes, that is, satoos that arise from crossings of the aforementioned dogs that, in themselves, are supposedly mixes of bulldogs and terriers, the number of animals that are subject to Law No. increases exponentially. 158.

In the Explanation of Reasons for this law, the legislator expressed that Pitbulls are extremely dangerous;

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that they have attacked and mutilated hundreds of citizens; that many states have chosen to ban them, and that this should be done to put an end to the situation. Explanation of Motives, Law No. 158, 1998 (Part 1) Laws of Puerto Rico, 626. With this purpose in mind, the legislator approved a measure of immediate effect, aimed at achieving the extermination of the Pitbulls of the Island.

Law No. 158 provided that any person who owned one of these dogs on the date of its approval could register it, within a "grace period," in a registry that should have been created for those purposes in the Department of Agriculture. 5 LPRA sec. 1601.5 (5) The grace period that was initially established for registration in the registry was nine months from the approval of Law No. 158, but was later extended to one year, by Law No. 111 of 30 April 1999, which would end on July 23, 1999. 5 LPRA sec. 1601. According to the measures in controversy, after said date, a Pitbull that is not registered may be seized by the Secretary of Agriculture or destroyed in the manner that said official deems most appropriate. 5 LPRA sec. 1605.

However, the registry was created by regulation on November 18, 1999, after the grace period provided for in Law No. 158 expired. See the Regulations for

Prohibit the Introduction, Importation, Possession, Acquisition, Breeding, Sale and Transfer in Puerto Rico of Dogs known as "Pitbull Terriers" and their Crossbreeds, as well as to Establish a Registry of said Dogs Existing in Puerto Rico, Regulation No. 6045 of the Department of Agriculture November 18

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1999. Therefore, the grace period had ended on July 23, 1999, four months before the aforementioned regulation was approved. That is, contrary to what is established in the law, never There was a grace period as the registry was not created in time and citizens never had the real opportunity to register their Pitbulls on the registry.

Although the registry was not established within the period established in the law, because the regulation that created it was approved after the period expired, Article VII of said regulation provides that any Pitbull dog that is not registered will be considered illegal. and will be subject to compulsory euthanasia. Art. VII, Regulation No. 6045, *supra*. This article also states that the dog owner will be responsible for the costs of compulsory euthanasia and the disposal of their pet's body. *Id.*

In addition to being forced to euthanize his dog and bear the costs thereof, the animal owner may also be punished by a fine of up to \$1,000, imprisonment of up to one year, or both, at the discretion of the court. 5 LPRA sec. 1610; *Art* . Repeat offenders face fines of \$5,000, imprisonment of three years, or both, at the discretion of the court. 5 LPRA sec. 1610; *Art* .

Clearly, the intended result through the implementation of the absolute prohibition, the compulsory euthanasia of the animals and the fines and prison sentences for their owners is the extermination of the Pitbulls and their crossbreeds on the Island. This, since it was established that the dogs that were alive at the time Law No. 158 was approved, and those that were born within a year after it was approved had to be sterilized and registered. Likewise, those that have not been registered must be sacrificed. However, since the registry was not created within the period provided for in Law No. 158, the net result of the implementation of said law and its regulations is that all Pitbulls and

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Their crossings in Puerto Rico are considered illegal and must be euthanized by their owners.

Having explained the content of Law No. 158 and its regulations, it is necessary to review the context in which both provisions were approved and the current situation in the United States and Puerto Rico.

B.

As we noted previously, Law No. 158 was approved in 1998. At that time, and throughout the eighties and nineties, there was a boom in this type of prohibitions in the United States. This generated, in turn, multiple litigations in which

He questioned the constitutionality of the measures. With specific exceptions, the constitutionality of the laws and ordinances was upheld by virtue of the power of reason of State.

In 1994, Professor M. Velázquez Rivera carried out an analysis of the different types of restrictions existing in the United States. See M. Velázquez Rivera, *Legal Validity of the Regulation by the Legislative Assembly of the Importation, Sale and Possession in Puerto Rico of Dogs of the Pit Bull Breed*, 63 Rev. Jur. UPR 1 (1994). In his analysis he reviewed some cases in which the validity of certain municipal ordinances was upheld in the Federal Court for the Southern District of Ohio, the Wisconsin Court of Appeals, and the Ohio Court of Appeals, among others. When analyzing a possible constitutional attack under the due process of law in its substantive aspect, the aforementioned author expressed that he found no impediment under the substantive due process of law for the State to prohibit the possession of Pitbulls and even order that they be sacrificed. *Id.*, p. 15. However, he also pointed out that, in the jurisdictions in which the position he called "radical" of completely prohibiting Pitbulls is adopted, the measures do not apply to owners who already had them and who register them in the registries. *corresponding. Id.*, pp. 7, 13.

In recent years the legal landscape in the United States has changed dramatically. Currently, ten states

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prohibit their municipalities from passing ordinances to regulate specific breeds.⁶ (6) Only one state, Ohio, has state legislation that imposes restrictions on Pitbulls, which it defines as dangerous dogs in its dog ownership legislation. See Ohio Rev. Code Ann. Sec. 955.01 *et seq.* (2010). There it is required that all dogs over three months old, without distinction of breed, be registered in the municipal pet registries. Ohio Rev. Code Ann. Sec. 955.01 (2010). Note, however, that in this state only the possession of Pitbulls and other dogs classified as dangerous is strictly regulated through requirements on the confinement to which they must be subjected, the use of muzzles and the liability insurance that their dogs must acquire. owners, among others. Ohio Rev. Code Ann. Sec. 955.22(D)

(2010). **That is, in Ohio, the state whose legislation is the strictest regarding Pitbulls, their ownership is not absolutely prohibited nor is their automatic euthanasia ordered. There, euthanasia can only be ordered in addition to or alternative to other sanctions in specific cases.** Thus, for example, compulsory euthanasia is carried out when they have been surgically silenced, which is prohibited in Pitbulls. *Id.*; Ohio Rev. Code Ann. Sec. 955.99(f) (2010).

Today no state orders the compulsory and automatic euthanasia of all Pitbulls ⁷ (7) The fact that no state prohibits it **within the limits of its jurisdiction.** specifically to Pitbulls does not mean that they have not

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taken strict measures to protect its constituents from attacks by dogs. The vast majority of states have chosen to regulate the possession of what they call “dangerous animals.”

In light of these changes in the United States, our Legislature recently passed House Bill 1890 of August 18, 2009 in an effort to harmonize our legislation with the prevailing trend in the states. As indicated by its title, P. de la C. 1890, *supra*, was created to “Establish the Obligations of Owners and Guardians of Dangerous and Potentially Dangerous Domestic Animals; and Amend Law No. 70 of June 1971, as amended, for the purpose of eliminating anything that is incompatible with the New Standard.”

The purpose of said project was to repeal Law No. 158 and establish the restrictions applicable to the owners of dangerous and potentially dangerous animals as defined therein. In the Explanation of Reasons of P. de la C. 1890, *supra*, it was expressed:

It is our opinion that through the application of the aforementioned Law No. 70 [as amended by Law No. 158, *supra*] an error was made by relying on the premise that only “Pitbull” dogs are dangerous. It is necessary to indicate that Law No. 70, cited above, was adopted even when animal interest groups that participated in public hearings maintained their firm opposition against said Law. Explanation of Motives, P. de la C. 1890, *supra*.

The Report on said project from the Senate Committee on Public Security and Judicial Affairs of November 12, 2009, recommended approval of the project. Likewise, the Second Positive Report with Amendments on P. de la C. 1890, *supra*, of the Commission on Natural, Environmental and Energy Resources of the House of Representatives of September 30, 2009, reviews the positive presentations on the project submitted by the De-

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Department of Justice, the Department of Agriculture, the Puerto Rico Police, the College of Veterinary Doctors, the Puerto Rico Pitbull Organization and the Puerto Rico Dog Federation.

The Report provides an extensive review of the content of the presentation offered by the College of Veterinary Doctors of Puerto Rico. This professional group expressed that, like the American Veterinary Medical Association, they do not support the absolute ban on Pitbulls because scientific studies show that they are no greater threat to society than any other type of dog. They also indicated that according to Dr. Karen Overall, a veterinary expert in animal behavior and professor in the Department of Psychiatry at the University of Pennsylvania School of Medicine, the breeds that occupy the first places on the lists of bites are, Generally, the most popular breeds at the time so this must be taken into account when determining the frequency with which they bite. Dr. Overall also maintains that the term “Pitbull” is used to describe a large number of types of dogs without considering their genetic basis, which is why a dog is often identified as such when, in reality, it is not. On the other hand, the College of Veterinary Physicians also based its presentation on studies carried out by Dr. Randall Lockwood, an expert in animal behavior and researcher at the Humane Society of the United States. According to studies

conducted by this expert, there are no behavioral differences that indicate that Pitbulls are more dangerous than any other type of dog.⁸ (8)

It should be noted that the aforementioned report concludes by stating that Father de la C. 1890, *supra*, It is a measure **“of justice for thousands of Puerto Rican citizens[...]. The**

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"The current prohibition does not advance any public purpose nor does it respond to the reality of responsible management by the majority of owners of a dog of the 'pit bull' breed." Report of the Committee on Natural, Environmental and Energy Resources of the House of Representatives on P. de la C. 1890, *supra*.

The project in question was approved by the Legislative Assembly and sent to the Governor for his signature. However, he vetoed it. We are officially aware of a statement issued by the Fortress Press Office, which outlined the reasons that motivated said veto. In this it was indicated that the First Executive did not agree with the economic burden that would be involved in obtaining the liability insurance that the measure required and that "the impositions found in this project on the confinement of animals would undermine the well-being and fair treatment of all domestic animals." Press Release, "Governor vetoes domestic animal law," January 1, 2010, http://www.fortaleza.gobierno.pr/news_detalle.php?id=485.

Likewise, we take official notice that the House of Representatives approved House Joint Resolution 443 of May 18, 2009 with the approval of the Legal and Ethics Commission. Through the aforementioned resolution, it sought to establish a moratorium in all cases related to Law No. 158. The Explanation of Reasons of the aforementioned resolution provides:

Information provided by officials of the Department of Agriculture and the Carolina area command have confirmed that in 2008 over eight hundred (800) dogs of the "Pit-Bull Terrier" breed have been sacrificed. Said extermination was carried out even though the case of Alfredo Rolón López vs. Department of Agriculture is heard in the Courts[...]. The ineffectiveness of the pet registry aggravates the current situation, and with even more reason this Legislative Assembly should promote a moratorium in order to stop sacrifices

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unjustified. (Emphasis supplied). Explanation of Reasons RC of C. 443, *supra*.

Given the above, let's move on to explain the law applicable to a dispute about due process of law.

III.

Section 7 of Article II of the Constitution of Puerto Rico provides that "no person shall be deprived of his liberty or property without due process of law." Art. II, Sec. 7, Const.

ELA, LPRA, Volume 1. As is known, due process of law is manifested in two dimensions: substantive and procedural. In its substantive aspect, due process of law prevents the State, when passing laws or acting, from affecting in an unreasonable, arbitrary or capricious manner the property or freedom interests of citizens. *Rivera Rodríguez & Co. v. Lee Stowell*, 133 DPR 881, 887-88 (1993). For its part, due process of procedural law guarantees that when any right of property or freedom is affected, the citizen will have access to a fair, equitable and impartial process. *Id.* That is why, as a threshold question, it is necessary to determine whether we are facing a controversy that involves a right of property or freedom.

Almost half a century ago, in *Infante v. Leith*, 85 DPR 26 (1962), we recognized that in the Puerto Rican legal system, dogs are considered objects of law capable of being part of individual assets. In this case, one of the most picturesque in our jurisprudential heritage, the plaintiffs' dog, a Fox Terrier named Nero, was attacked by the defendants' dogs while he was in his owners' yard digging a hole to hide a prey. . The trial court refused to grant any amount under Article 1805, 31 LPRA sec. 5144, by

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the emotional damage suffered by its owner when she saw the poor state in which Nero was left. By revoking that determination we express that:

[i]n our legislation, animals are considered objects of law that can form part of real and contractual relationships. They constitute part of individual assets. Over them, as well as over the other goods that man possesses, the right of enjoyment is exercised, considered a "fundamental right of the human being." Constitution Art. II(7). *Infante v. Leith*, *supra*, at p. 39.

At that time our decision contrasted with that made by the United States Supreme Court at the end of the 19th century in *Semtell v. New Orleans*, 166 US 698 (1897). There, the highest federal forum determined that the right to property over dogs was imperfect, so it was not within the scope of protection of the United States Constitution. He reasoned that unlike other domestic animals, such as horses and cows, whose economic value is intrinsic, dogs are like cats and birds in that they are owned for pleasure, curiosity, or whim. *Id.*, p. 694. Therefore, he concluded that dogs are not protected by the due process of law of the Fourteenth Amendment to the United States Constitution. Emda. XIV, Const. USA, LPRA, Volume 1. However, he stated that if dogs were considered property in the full sense of the word, they would still be subject to the power of reason of state. *Id.*, pp. 695-696. See also *Nicchia v. People of the State of New York*, 254 US 228, 231 (1924).

In recent years, most federal circuit courts have departed from the United States Supreme Court's decision in *Semtell v. New Orleans*, *supra*, and have recognized that the right to property over dogs and cats is full and deserves constitutional protection. Thus, for example, the Federal Court of Appeals for the First Circuit determined that

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ciently that the contours of the constitutional right to property over dogs are sufficiently delimited to deny the qualified immunity claim of a mayor who ordered the seizure of all dogs found in public housing in his municipality. *Maldonado v. Fontanez, Municipality of Barceloneta*, 568 F.3d 263 (1st Cir. 2009).

There, twenty families residing in public housing projects in the Municipality of Barceloneta filed a lawsuit before the Federal District Court for the District of Puerto Rico against the mayor of the aforementioned municipality. After the mayor filed a motion to dismiss, which was denied, he appealed to the Court of Appeals for the First Circuit. The aforementioned forum described the events that gave rise to the lawsuit in this way:

[e]uniformed employees of the Municipality [of Barceloneta] and workers from Animal Control Solutions ('ACS'), a private contractor hired by the Municipality, arrived at three public residences and violently captured numerous dogs and cats. They went door to door and demanded that residents hand over their pets or face eviction... Municipal employees and ACS workers also captured several pets that were in the common areas of the residential complex, even taking them from the children... Once the pets were captured, municipal employees and ACS workers injected some animals with an unknown substance. They also violently slammed the animals against the sides of a truck, causing some residents to believe their pets had been killed in their presence. Those animals that survived the initial trauma were thrown to their deaths from a 50-foot-high bridge known as El Paseo del Indio... Some residents eventually found their pets dead under the bridge. *Maldonado v. Fontanez, Municipality of Barceloneta, supra*, p. 266-267.

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Al confirmar en parte la decision de la Corte de Distrito, dicho foro apelativo expresó que, “[a]n individual’s interest in his pet cat or dog does fall within the Fourth Amendment’s prohibition of unreasonable seizures, though we have not addressed the question before... Privately owned pet dogs do qualify as property such that pets are 'effects' under the seizure clause of the Fourth Amendment.” *Id.*, p. 271. In this way, it was established that dogs are property for the purposes of protection against unreasonable seizures of the Fourth Amendment of the United States Constitution, applicable to the states through the due process of law clause of the Amendment. XIV of said constitution. Emdas. IV and XIV, Const. USA, LPRA, Volume 1; *Maldonado v. Fontanez, Municipality of Barceloneta, supra*.

In thus ruling, the Court of Appeals for the First Circuit joined six other circuits that since 1994 have been recognizing the constitutionally protected ownership interest that people have in their dogs. See *Viillus v. Eyre*, 547 F.3d 707 (7th Cir. 2008); *Altman v. City of High Point*, 330 F.3d 194 (4th Cir. 2003); *Brown v. Muhlenberg Township*, 269 F.3d 205 (3rd Cir. 2001); *Fuller v. Officer Vines*, 36 F.3d 65 (9th Cir. 1994); *Leshner v. Reed*, 12 F.3d 148 (8th Cir. 1993). **Furthermore, recently the Court of Appeals**

for the Tenth Circuit, in reversing the dismissal of a lawsuit that challenged, in light of substantive due process of law, the constitutionality of a ban similar to the one at issue, recognized the plaintiffs' proprietary right to their dogs. *Days v. City and County of Denver*, 567 F.3d 1169 (10th Cir. 2009).

Although we recognize that in our system dogs are property and that the majority of federal circuits follow the same course, this does not place them outside the reach of the power of reason of State, as correct.

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established by the United States Supreme Court in *Semell v. New Orleans*, *supra*.
Therefore, the power of reason of State does not refer to a specialized power of government, but to the inherent power of state and local governments to protect the health, safety, morals and general well-being of the people within their jurisdiction. JE Nowak and RD Rotunda, *Constitutional Law*, 8th ed., St. Paul, West, 2010, sec. 11.1(c), p. 465.
Professor M.

Velázquez Rivera also recognized this limit to the proprietary power that is exercised over dogs by expressing,

[i]t is true that every owner of a Pit Bull dog has a proprietary right over his animal and that the State has the duty to respect that right. But, the constant jurisprudence of the Supreme Court of the United States and Puerto Rico is clear in the sense that the exercise of the right of property is not absolute. It is subject to social interests that are grouped into the concept of 'state power of reason' or 'police power'. Velázquez Rivera, *supra*, p. 15.

Said State power, in turn, must respect the limits imposed by substantive due process of law. *Navy Ind. v. Brown Boveri Corp.*, 114 DPR 64 (1983), citing *ELA v.*
Marquez, 93 DPR 393 (1966) and *A. Roig, Sucrs. v. Sugar Board*, 77 DPR 342 (1957). In the past we have used two different scrutiny when reviewing a law under the microscope of substantive due process of law. The type of scrutiny to be applied will depend on the nature of the regulation in question. If it is a socioeconomic regulation, we have used a criterion of minimum rationality.

Under the aforementioned criterion, the measure will be valid if it responds to a legitimate objective of the State and if it is rationally related to that objective. *Id.* It is understood that a measure is rationally related

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nothing with the legitimate objective of the State if it is not arbitrary, irrational or capricious and if it has a real and substantial relationship with it. *Chambers v. Municipality of Moca*, 199 DPR 625, 633 (1987); *Navy Ind. v. Brown Boveri Corp.*, *supra*.

We must always keep in mind that legislative action is presumed constitutional, so when interpreting a law, courts must strive to preserve it. *ELA v Aguayo*, 80 DPR 552, 597 (1958); *Nogueras v. Hernández Colón*, 127 DPR 405, 412 (1990). For happiness

For this reason, this Court has rightly declined to evaluate the wisdom of legislative measures of a socioeconomic nature. *Morales v. Lizarribar*, 100 DPR 717 (1972).

However, this does not imply that we do not have the obligation to determine, in the exercise of our duty of constitutional review, whether a measure of a socioeconomic nature is rationally related to a legitimate state objective when a citizen claims the protection of a property right or freedom. That is, regardless of the social or economic aspect that the legislator decides to regulate in the exercise of his prerogatives, and, even in the face of our deference to the discretion he has to do so, the measure must respect the substantive due process of law in light of the Section 7 of Article II of the Constitution of Puerto Rico.⁹ (9) Art. II, Sec. 7, Const. ELA, LPPRA, Volume 1.

For its part, due process of law in its procedural aspect guarantees that the procedure by which a person is deprived of his property or liberty is fair

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and equitable. *Hernandez v. Secretary*, 164 DPR 390, 395 (2005). The core purpose of due process of law in its procedural aspect is to provide the citizen with a fair procedure in the resolution of the facts and rights that serve as a basis for the actions of the State that deprive him of his freedom or property. *Id.*, citing *López Vives v. Puerto Rico Police*, 118 DPR 219 (1987).

After it is determined that there is a right to freedom or property affected by a government action, it is necessary to determine what guarantees should be offered to the citizen. *Hernandez v. Secretary*, *supra*, p. 395. As is known, the minimum requirements of due process of procedural law are: (1) adequate notification of the process; (2) trial before an impartial judge; (3) opportunity to be heard; (3) right to cross-examine witnesses and examine evidence presented against them; (5) have the opportunity for assistance of counsel; and, (5) that the decision is based on the record. *Id.* citing *Rivera Santiago v. Srio. of the Treasury*, 199 DPR 265, 274 (1987).

Having explained the law applicable to the controversy before us, we proceed to specifically examine the statements of Mr. Rolón López.

IV.

We will examine, first of all, Mr. Rolón López's argument that the administrative hearing held before the Department of Agriculture was pro forma and that, therefore, it did not comply with due process of law in its procedural aspect. Specifically, Mr. Rolón López argues that he was not given the opportunity to prove that Zafira is not an aggressive Pitbull and that, therefore, Law No. 158 should not be applied to her. He is not justified.

As can be seen from the Report of the Examining Officer adopted in its entirety by the Secretary of Agriculture

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Through a resolution, Mr. Rolón López had ample opportunity to present his position during the hearing and to offer evidence in his favor. There, all the arguments he put forward are outlined in detail. In fact, he submitted in evidence, and the Examining Officer admitted, a copy of the certification of the rabies vaccine given to Zafira, as well as a copy of another veterinary consultation. That is, he had and took advantage of the opportunity provided to him to be heard and present evidence in his favor before Zafira's euthanasia order was confirmed, as required by due process of procedural law. *Hernandez v. Secretary, supra*; 3 LPRA sec. 2163.

Furthermore, Mr. Rolón López has not alleged that the procedure established in the Adjudicative Procedures Regulations of the Department of Agriculture has not been followed. Regulation No. 3784 of the Department of Agriculture of February 6, 1989. It details the way in which the agency must notify the parties, hold the hearing, create a file and adjudicate the controversy. Art. VII of Regulation No. 3784, *supra*. Nor does the file show any irregularity in the procedure followed before the Department of Agriculture.

Having clarified the above, we move on to examine the constitutional validity of Law No. 158 in light of substantive due process of law.

V.

A.

Mr. Rolón López maintains that Law No. 158 violates substantive due process of law because it is irrational and arbitrary in relation to its purpose. As we indicated, substantive due process of law prevents the State, when passing laws or acting, from unreasonably or capriciously affecting the freedom or property of people. *Rodríguez & Co. v. Lee Stowell, supra*.

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As in our system, as we recognized in *Infante v. Leith, supra*, animals are part of the individual patrimony, any measure that impacts the proprietary interests exercised over them is subject to the limits imposed by the substantive due process of law clause of Section 7 of Article II of the Constitution of Puerto Rico. Art. II, Sec. 7, Const. ELA, LPRA Volume 1. Of course, this does not mean that the State is prevented, in the exercise of the power of reason of State, from establishing measures to regulate the ownership of animals in search of the protection of health, safety and security. well-being of people.

According to the Explanation of Motives of Law No. 158, its purpose is to protect citizens from attacks by Pitbulls, dogs that are described as dangerous animals. Explanation of Motives, Law No. 158, Laws of Puerto Rico, *supra*. Obviously, the protection of the health and physical integrity of citizens constitutes a legitimate purpose of the State and the legislator deserves our deference regarding the way in which he pursues the achievement of said purpose. However, it is necessary that Law No. 158 and its regulations maintain a rational relationship with this objective to be in harmony with the clause on due process of law, as required by our Constitution. That is, they must comply with the minimum rationality scrutiny to which socioeconomic measures are subject.

When applying this scrutiny, we should not limit ourselves to an erudition exercise in a vacuum, but rather we should keep in mind the public policy established by Law No. 154 of August 4, 2008, 5 LPRA 1651 *et seq.*, known as the Law for the Welfare and Protection of Animals. In the Explanatory Memorandum of said law it was stated that, during recent years, the world's view of animals has changed dramatically, since they have become fundamental parts of our lives and society. Explanation of Motives, Law No. 154, 2008 (Part 3) Laws of Puerto Rico, 231.

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There it was also expressed that animals are sensitive entities and worthy of humane treatment and that international bodies such as the United Nations have approved declarations in which "the premise is that every animal has rights and, in particular, the right to to existence, respect, attention, care and protection by human beings."¹⁰ (10) *Id.* From the transcribed text it is clear that, with regard to the humane treatment of animals, Puerto Rico seeks to place itself among the countries whose public policy is advanced. In fact, the Explanatory Memorandum in question concludes by establishing that "**Puerto Rico must stand out as a sensitive and avant-garde society, which respects, protects and cares for its animals.** (Emphasis supplied). *Id.*, p. 232. Therefore, when analyzing the relationship between the protection of citizens and Law No. 158, to determine whether it is rational, we must keep in mind the public policy established in Law No. 154, *supra*.

As we indicated previously, Law No. 158 absolutely prohibits the possession of Pitbulls, unless they have been registered, within one year of the prohibition coming into effect, in a registry that is supposed to have been created for the effects. 5 LPRA sec. 1601. If they are not registered in the registry, they are subject to compulsory euthanasia and the possible imposition of fines and prison sentences on their owners. Regulation No. 6045, *supra*.

It is necessary to keep in mind that the Pitbull Registry was created by Regulation No. 6045, *supra*, almost four months after the one-year grace period established in Law No. 158 expired, so the owners

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Pitbulls kids never had time to take advantage of the grace period. In other words, the provision by which the grace period was established was always a dead letter, since there was never a legally effective possibility of registering dogs to exempt them from compulsory euthanasia.¹¹ (11) This has the consequence that all Pitbulls in Puerto Rico must be euthanized, without exception.

As can be seen from the above, the implementation of the measures contained in Law No. 158 and its regulations result in the eradication of all Pitbulls in Puerto Rico through compulsory euthanasia. That is, to guarantee the safety of people, the State chose to exterminate all Pitbull dogs, forcing their owners to sacrifice them, under penalty of being exposed to fines and prison sentences. The core question before us

consideration is, therefore, whether there is a rational relationship between the protection of citizens and the compulsory euthanasia of all the Pitbulls on the Island.

After a careful examination of this controversy, we consider that the absolute prohibition of ownership of Pitbulls as well as the lack of a registry, which results in the euthanasia of all Pitbulls in Puerto Rico, do not have a reasonable relationship with the purpose of guaranteeing safety of the citizens. This, then, a set of measures that inevitably causes the euthanasia of thousands of pets, like Zafira, whose owners consider them - more than objects over which they exercise a constitutionally protected property right - part of their family, cannot be conceived as measures that have a rational relationship with the security of citizens.

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Despite the broad power that the legislator has to regulate the possession of dogs and other animals in the legitimate exercise of the power of reason of State, and that the way in which he chooses to exercise it deserves our due deference, we understand that it cannot be maintained that There is a rational relationship between the pursuit of citizen security and Law No. 158 and its regulations that comply with the minimum applicable rationality scrutiny. As we indicated previously, Puerto Rico is the only state jurisdiction in which compulsory euthanasia is ordered for all Pitbulls, without exception. This is indicative that the extermination of a type of dog is not considered, by any of the fifty states, rationally related to the purpose of guaranteeing the safety of citizens. Furthermore, the elimination of an entire class of dogs and their crossbreeds whose behavior, according to experts, is no more dangerous than that of other dogs, is illogical, especially in view of the strong public policy in favor of the humane treatment of dogs. animals established by Law No. 154, *supra*, and the tenacious opposition exerted for decades by students of animal behavior.¹² (12)

The above does not mean, under any circumstances, that we ignore the fact that any domestic animal, like the dogs involved here, are in constant contact with human beings to whom they can harm either through their bite, their force or through the spread of diseases. For this reason, every citizen who enjoys proprietary rights over their animals must ensure that they take the necessary measures at all times to prevent them from causing harm to members of their own family, their neighbors and anyone they may come into contact with. with these. In fact, as is known, Art.

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1805 of our Civil Code imposes liability on animal owners for the damage they cause. 31 LPRA 5144.

We also emphasize that the State has broad power to regulate the possession of animals and pets and thus ensure the protection of citizens. As we noted, Law No. 70 empowers the Secretary of Agriculture to proscribe those animals that are harmful to the industries it regulates. 5 LPRA sec. 1601. It should also be noted that the Secretary of the Department of Natural Resources is authorized to designate those

species that it deems harmful to the wildlife of our island and its natural habitat. See Law No. 241 of August 15, 1999, known as the Wildlife Law of 1999, 12 LPRA 107 *et seq.*

In the specific case of dogs, the legislator has broad power to restrict their possession in the exercise of his power of reason of state. In fact, in the vast majority of state jurisdictions their possession is strictly regulated, without violating the property rights of citizens. Thus, for example, it could require owners to register them in pet registries, to guard them in a specific way inside and outside their home, and to comply with fines and penalties if they do not do so. He could even order euthanasia in specific cases.

The Sentence issued today by this Forum constitutes a *de facto* order so that, as happened in this case, the State intervenes with every family that has a Pitbull in their home and orders them to sacrifice it, under penalty of fines and even penalties. of jail. Having equally divided, so that it proceeded to confirm the appealed sentence, this Court endorses the implementation of a statute that is contrary to Art. II, Sec. 7 of our Constitution and whose result will be the euthanasia of thousands of pets.

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With the doors of this Court closed, the fate of these animals remains in the hands of the other Constitutional powers. We have no doubt about your disagreement with the implementation of this measure, as it has been clearly evidenced on several occasions. Thus, for example, the Secretary of Agriculture paralyzed all cases related to Law No. 158 and prohibited the veterinarians of the agency he directs from issuing additional euthanasia orders. For its part, the Legislative Assembly approved P. de la C. 1890, *supra*, in whose Explanatory Statement catalogs Law No. 158 as an error and whose Report of the Commission on Natural, Environmental and Energy Resources of the House of Representatives, *supra*, indicates that said law “does not advance any public purpose.” Additionally, the House of Representatives approved House Resolution 443, *supra*, to establish an additional moratorium on cases related to Act No. 158 and “stop unjustified sacrifices.”
Explanation of Reasons RC of C. 443, *supra*.

In view of the above, we trust that both the Executive and Legislative Branches, unlike this Court, will carry out what is within the scope of their respective powers so that the Department of Agriculture does not proceed with the euthanasia of Zafira or of any other pet under Law No. 158 and its regulations.

Footnotes:

1 (1) It should be noted that the only time that the Secretary of Agriculture exercised his regulatory powers under the aforementioned statute, he did so to test the Regulation to Designate as Harmful Animals Certain Species Detrimental [sic] to the Interests of Agriculture and the Public health. Regulation No. 7299 of the Department of Agriculture of August 7,

2007. Through the aforementioned regulation, the importation and trafficking in Puerto Rico of three types of monkeys was prohibited: pawed monkey, *Rhesus* monkey and squirrel monkey.

2 (2) The intermediate appellate forum also issued another ruling in which it confirmed the euthanasia order issued against another Pitbull in the case of Mrs. Montañez Vargas. See *Fátima Montañez Vargas v. Department of Agriculture*, [KLRA-2008-01296](#).

3 (3) However, as can be seen from the file, Zafira has never been confiscated and has remained in Mr. Rolón López's home at all times.

4 (4) Mr. Rolón López also argued that the Court of Appeals erred in determining that the Report of the Examining Officer, as adopted by the Secretary of Agriculture, confirmed the euthanasia order. He is not right. It clearly emerges from the Report of the Examining Officer that he recommended confirming the euthanasia order. This fact is independent of the fact that he has also expressed in his legal conclusions that he has doubts about the constitutionality of Law No. 158.

Nor is it appropriate to analyze whether Law No. 158 suffers from vagueness, since in the case at hand, Mr. Rolón López has not denied that Zafira is a Pitbull. In fact, Mr. Rolón López registered Zafira in the Puerto Rico Kennel Federation as an *American Pitbull Terrier*, and the file contains a letter signed by the president of said organization in which he attests to this. Therefore, since in the case before us it has not been alleged that Law No. 158 is unconstitutional due to vagueness in its application with respect to the object of the controversy, that is, with respect to Zafira, it is inappropriate to investigate further as to this indication of

error.

5 (5) Law No. 158 also provides that, in order to be registered, dogs had to be sterilized and tattooed with a sign indicating that they had undergone this surgical process. 5 LPRA sec. 1601. Once the registration application is submitted with the other required documents and a \$25 fee is paid, the Department of Agriculture would issue a license plate and registration certificate. *Id.* The tag would be engraved with the number assigned to the dog in registration and was to be affixed to its collar. *Id.*

6 (6) These states are: Florida, Illinois, Maine, Minnesota, New Jersey, New York, Oklahoma, Pennsylvania, Texas and Virginia. S. Gray Hussain, *Attacking the Dog-bite Epidemic: Why Breed-specific Legislation Won't Solve the Dangerous-Dog Dilemma*, 74 *Fordham L. Rev.* 2847, 2860 n.115 (2004). In California, a state law allows municipal ordinances that prescribe the sterilization of certain breeds. However, it is prohibited for a specific breed to be classified as dangerous *per se*. *Id.*; Cal. Health & Safety Code sec. 122331 (2009).

7 (7) However, in some states where breed-specific legislation has not been outlawed, there are municipalities and cities where there are ordinances prohibiting the ownership of Pitbulls.

8 (8) See Report on P. de la C. 1890 of the Senate Committee on Public Security and Judicial Affairs of November 12, 2009.

9 (9) It should be noted that, although the adjudication standards for socioeconomic measures in light of substantive due process of law are similar to those applicable under the guarantee of equal protection of the laws also found in Section 7 of the Article II of the Constitution, there is a fundamental difference. As Professor JJ Álvarez González explains, substantive due process of law requires that the measure be reasonable in relation to its

purpose, regardless of whether it contains a classification. For its part, under the equal protection of the laws, the rationality of the classification is judged in light of the governmental purpose. JJ Álvarez González, Constitutional law of Puerto Rico and constitutional relations with the United States, Bogotá, Editorial Temis, 2009, page. 826.

10 (10) We clarify that we would not resolve at this time whether, as indicated in the Explanation of Motives of Law No. 158, animals have rights from a strictly legal point of view. The aforementioned text only seeks to outline the sources from which the legislator drew when establishing public policy regarding certain animals. 11 (11)

According to the Resolution of the Secretary of Agriculture in which the Report of the Examining Officer was adopted, only 18 dogs were registered in the registry. However, and despite the fact that they gained access to the registry, at the time of their registration the grace period had already expired.

12 (12) In view of the above, it is unnecessary to evaluate the constitutionality of Law No. 158 in light of the constitutional guarantee of equal protection of the laws and, therefore, we will not discuss Mr. Rolón López's indication of those effects.