DogsBite.org
Some dogs don't let go

Email to House Judiciary Chair Rep. Laurie Jinkins

RE: Rep. Appleton's Testimony for HB 1018

House Bill 1018 - 2015 Regular Session

February 14, 2015

Email sent by Colleen Lynn, the president and founder of DogsBite.org, on February 14, 2015.

Subject: HB 1018 - Cited Supreme Court ruling 100% false

Dear House Judiciary Chair Rep. Laurie Jinkins,

I watched the public hearing for HB 1018 that would terminate the right of local governments from regulating dangerous dog breeds in the state of Washington. I also transcribed Rep. Appleton's oral testimony, which is filled with "personal" and anecdotal statements and lacks even the most modest citations.

However, she did cite one case by the U.S. Supreme Court in 1920, *Nicchia v. New York*, and alleged that the decision found that it was "unconstitutional to have breed-specific ordinances" (her exact words). I will briefly explain why Rep. Appleton's reasoning is like saying *Brown v. Board of Education* supports separate schools for black and white students.

Part of the primary basis of the *Nicchia v. New York* decision relies upon the U.S. Supreme Court decision in *Sentell v. New Orleans & Carrollton R. Co. - 166 U.S. 698 (1897)*, which determined that the "property in dogs is of an imperfect or qualified nature" and that government officials could shoot and kill loose dogs that pose a danger to the community.

The combination of citing *Nicchia* and *Sentell* by appellate courts pertaining to upholding well-written breed-specific ordinances was done as recently as 2007 (*American Canine Foundation v. Sun, Dist. Court, ND California 2007*). These two SCOTUS decisions are used to support breed-specific laws, which is in direct opposition to Rep. Appleton's analysis.

See relevant part of *Nicchia* (attached):

> *"Property in dogs is of an imperfect or qualified nature and they may be subjected to peculiar and drastic police regulations by the state without depriving their owners of any federal right. *231 Sentell v. N. O. & C. R. R. Co., 166 U. S. 698, 17 Sup. Ct. 693, 41 L. Ed. 1169; Fox v. Mohawk & H. R. Humane Society, supra. Its power to require those who wish to keep dogs to secure licenses from and pay fees to a public officer is also clear. And when the state in the reasonable conduct of its own affairs chooses to entrust the work incident to such licenses and collection of fees to a corporation created by it for the express purpose of aiding in law enforcement, and in good faith appropriates the funds so collected for payment of expenses fairly incurred and just compensation for the valuable services rendered, there is no infringement of any right guaranteed to the individual by the federal Constitution. Such action does not amount to the taking of one man's property and giving it to another, nor does it deprive dog owners of liberty without due process of law."*

It is very easy to do a search on Google Scholar to see the number of times pit bull owners and breed advocates have tried and failed in federal and state appellate courts to advance similar "unconstitutional" and "property rights" arguments pertaining to breed-specific pit bull ordinances. These search terms are "Sentell" and "pit bull" and "property."

Two recent examples of appellate courts citing the two cases, *Nicchia* and *Sentell*, to uphold breed-specific ordinances:

American Canine Foundation v. Sun, Dist. Court, ND California 2007

> *"With respect to the first factor, the Supreme Court long ago held that "[e]ven if it were assumed that dogs are property in the fullest sense of the word, they would still be subject to the police power of the state, and might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens." See Sentell v. New Orleans & C.R. Co.,166 U.S. 698, 703 (1897); see also Nicchia v. People of the State of New York, 254 U.S. 228, 230 (1920) ("Property in dogs is of an imperfect or qualified nature and they may be subjected to peculiar and drastic police regulations by the state without depriving their owners of any federal right."). Accordingly, the "private interest that*

> *will be affected by the official actions," see Wilkinson, 545 U.S. at 224, is not substantial."*

Bess v. Bracken County Fiscal Court, 210 SW 3d 177 - Ky: Court of Appeals 2006

> *"With respect to the constitutionality of measures related to dogs, courts have universally recognized the right of state legislatures to exercise their police power to regulate dog ownership. See, e.g., Nicchia v. People of State of New York, 254 U.S. 228, 230, 41 S.Ct. 103, 104, 65 L.Ed. 235 (1920) (dogs "may be subjected to peculiar and drastic police regulations by the state without depriving their owners of any federal right"); Sentell v. New Orleans & C.R. Co., 166 U.S. 698, 704, 17 S.Ct. 693, 695, 41 L.Ed. 1169 (1897) (dogs are "subject to the police power of the state, and might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens"). Kentucky decisions have been no exception."*

I thank you for your attention on this matter.

Sincerely,

Colleen Lynn
Founder & President
DogsBite.org