

THE NO BITE RULE

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ABSTRACT

This Article argues that doctrinal coherence and moral integrity demand the extension of stand your ground statutes with immunity provisions (SYGI laws) to individuals confronted with ambiguous, yet potentially dangerous, canine encounters in public spaces. It also introduces a theoretically ambitious redeployment of assumption of the risk—not as a traditional, post hoc allocative tort defense, but as a forward-looking, predictive doctrine for assigning legal responsibility in human–animal encounters, particularly within the context of public-space accountability—even in jurisdictions without SYGI laws. The analysis begins with an inquiry into what dogs are: autonomous, mobile, sentient actors simultaneously capable of inflicting sudden and lethal violence, yet consistently romanticized in both law and culture as benign property or familial extensions. It then interrogates what dogs are not: they are neither people, nor human-equivalent rights-bearing beings. Drawing on phylogenetics and taxonomic reasoning, this Article deconstructs these romanticized legal and cultural ideals by situating dogs within their evolutionary lineage as domesticated predators, thereby challenging the legal fiction of canine harmlessness. Situated within this taxonomy, the Article contends that those who introduce animals with lethal capacity into shared civic spaces should presumptively bear the legal risk of injury to the animal when human actors respond defensively under conditions of fear and temporal constraint. In critiquing the anthropomorphic distortions that infect legal reasoning, the Article ultimately argues that the refusal to treat ambiguous canine threats as legitimate triggers for self-defense immunity reflects a jurisprudence more committed to utopian fantasies of canine innocence than protecting actual human lives.

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I. INTRODUCTION

Grandpa is thrilled. Grandpa's daughter and three-year-old granddaughter Emily are visiting, and it's the first time Grandpa has seen Emily in five months. Emily holds Grandpa's hand and says, "Pop, I can walk like a big girl now. Come for a walk with me." Grandpa and Emily walk the short distance to the public walking path in the center of town.

It is a beautiful spring day, so the trail is full of walkers, runners, and cyclists. As Grandpa and Emily turn a corner on the trail, a large muscular dog with a huge head comes into view. On seeing Grandpa and Emily, the dog breaks free from the person walking it and runs toward them. The dog walker begins shouting "Get back here!" to the dog and chasing after it.

About 30 yards away, the dog is still charging toward Grandpa and Emily. Emily clings to Grandpa's hand and begins whimpering. The person chasing the dog yells, "Don't worry, he is friendly," but Grandpa is not convinced. He worries that the dog is not listening to the owner and, estimating that the dog weighs 90 pounds, knows it vastly outweighs Emily. Grandpa knows that if the dog, which is even more impressively powerful up close, reaches them, he will not be able to prevent harm to Emily or himself if the dog attacks.

At about 15 feet away, Grandpa still cannot tell whether this dog is going to lick them in a friendly greeting or bite one of them. His mind races. This massive creature could kill Emily or seriously injure him.

Grandpa unholsters his legal 9mm pistol and shoots the dog when it is about eight feet away. The dog dies. Emily is hysterical. Grandpa immediately calls the police. The jurisdiction is a stand your ground jurisdiction with immunity provisions (SYGI laws).¹ What should the police do?

1. *See infra* Part III. As of 2025, at least 23 states with stand your ground statutes also include some form of statutory or case-based immunity from criminal prosecution or civil liability for those who use force lawfully in self-defense. *See, e.g.*, ALA. CODE § 13A-3-23(d)(1) (2025); FLA. STAT. § 776.032(1) (2025); IDAHO CODE § 19-202A(1) (2025); IND. CODE §§ 34-30-31-1(b), 35-41-3-2 (2025); KAN. STAT. ANN. § 21-5231 (2025); KY. REV. STAT. ANN. § 503.085(1) (West 2025); MICH. COMP. LAWS § 780.972 (2025); MISS. CODE ANN. § 97-3-15 (2025); N.C. GEN. STAT. § 14-51.3 (2025); N.D. CENT. CODE § 12.1-05-07.2 (2025); OKLA. STAT. tit. 21, § 1289.25(F) (2025); S.C. CODE ANN. § 16-11-450 (2025); S.D. CODIFIED LAWS § 22-18-4.8 (2025) (providing full immunity from civil and criminal liability for justified use of force); TEX. CIV. PRAC. & REM. CODE ANN. § 83.001 (West 2025); W. VA. CODE § 55-7-22 (2025); WIS. STAT. § 895.62 (2025) (providing immunity from civil liability only); GA. CODE ANN. § 16-3-24.2 (2025); WYO. STAT. ANN. § 6-2-602 (2025) (providing immunity from criminal liability only). Jurisdictions like Florida, Georgia, Kansas, and South Carolina not only affirm the absence of a duty to retreat in public but also create pretrial procedural protections that prevent individuals from being arrested, detained, or sued, unless the state first overcomes a presumption that the use of force was justified. *See* FLA. STAT. § 776.032 (2025); GA. CODE ANN. § 16-3-24.2 (2025); KAN. STAT. ANN. § 21-5231 (2025); S.C. CODE ANN. § 16-11-450 (2025). In some states, like Idaho and Oklahoma, the immunity is so strong that a person shall not be placed in legal jeopardy of any kind whatsoever for using reasonable force to protect themselves or others. *See* IDAHO CODE § 19-202A(1) (2025); OKLA. STAT. tit. 21, § 1289.25 (2025).

By contrast, jurisdictions without immunity provisions may allow full prosecution and civil litigation to proceed, even when the defendant is eventually acquitted under a justification defense. *See, e.g.*, ALASKA STAT. § 11.81.335 (2025); ARIZ. REV. STAT. ANN. § 13-405 (2025); ARK. CODE ANN. § 5-2-607 (2025); COLO. REV. STAT. § 18-1-704 (2025); CONN. GEN. STAT. § 53a-19 (2025); DEL. CODE ANN. tit. 11, § 464 (2025); HAW. REV. STAT. § 703-304 (2025); IOWA CODE § 704.1 (2025); LA. STAT. ANN. § 14:20 (2025); ME. STAT. tit. 17-A, § 108 (2025); MO. REV. STAT. § 563.031 (2025); MONT. CODE ANN. § 45-3-102 (2025); NEB. REV. STAT. § 28-1409 (2025); NEV. REV. STAT. § 200.120 (2025); N.H. REV. STAT. ANN. § 627:4 (2025); N.J. STAT. ANN. § 2C:3-4 (West 2025); N.Y. PENAL LAW § 35.15 (McKinney 2025); OHIO REV. CODE ANN. § 2901.09 (West 2025); 18 PA. CONS. STAT. § 505 (2025); TENN. CODE ANN. § 39-11-611 (2025); UTAH CODE ANN. § 76-2-402 (West 2025) (providing defenses for use of force but no immunity); *see* *People v. Collins*, 11 Cal. Rptr. 504 (Dist. Ct. App. 1961); *Gillis v. United States*, 400 A.2d 311 (D.C. 1979); *People v. McGraw*, 149 N.E.2d 100 (Ill. 1958); *Burch v. State*, 696 A.2d 443 (Md. 1997); *Commonwealth v. Lapointe*, 522 N.E.2d 937 (Mass. 1988); *State v. Carothers*, 594 N.W.2d 897 (Minn. 1999) (en banc); *State v. Anderson*, 364 P.3d 306 (N.M. Ct. App. 2015); *State v. Sandoval*, 156 P.3d 60 (Or. 2007); *State v. Hatcher*, 706 A.2d 429 (Vt. 1997); *Foote v. Commonwealth*, 396 S.E.2d 851 (Va. Ct. App. 1990); *State v. Redmond*, 78 P.3d 1001 (Wash. 2003) (en banc) (discussing immunity for justified force in states without SYG statutes).

This Article argues that the answer to that question should be nothing beyond ensuring that all parties are unharmed and subsequently allowing the parties to proceed on their respective ways.² This Article further argues that the answer should be the same if Grandpa was walking alone, or if he was walking in a neighborhood and the same dog ran out of the front yard of a house into the street toward him.³ The answer should also be nothing if Grandpa was walking his leashed dog instead of Emily.⁴ And as we discuss, the answer should be the same even in a non-SYGI jurisdiction.⁵

Ultimately, this Article advocates for the legal right to prevent yourself from being bitten by a dog if that dog's approach is ambiguous, such that it is impossible to tell if the dog intends to bite or not. People in public spaces—where they have a right to be—should not have to wait to be attacked or bitten by a dog before they are entitled to defend themselves. Self-defense, to be meaningful, must include the right to prevent harm to your person. Self-defense cannot be limited to only mitigating further harm after some harm has already occurred. If a human approaches another human in a way that would make a reasonable person feel unsafe, the reasonable person is entitled to defend themselves from that person.⁶ If the reasonable person made a reasonable mistake in the exercise of self-defense, the privilege is not negated.

Part II of this Article discusses what dogs are and are not. It explores the dichotomy between dogs being our most loyal and dedicated companions deserving of our utmost love and affection, and the reality that these animals, apart from domestication, are taxonomically indistinguishable from wolves.⁷ The resulting reality is that some dogs have lethal capacity in their interactions with humans.⁸ While this Article does not distinguish or suggest that breed type affects temperament, it demonstrates that breed type influences the lethal capacity of the animal. Some breeds are so powerful and massive that it is very difficult for an unarmed human to defend themselves against these lethally capable animals.⁹ For

2. *See infra* Part IV.

3. *See infra* Part IV.

4. *See infra* Part IV.

5. *See infra* Part V.

6. *See, e.g.,* Briana Trujillo, *Man with Machete Killed in Self-Defense Shooting in Hialeah over Used Tire: Police*, NBC MIA. (Nov. 2, 2024, at 13:57 CT), <https://www.nbcmiami.com/news/local/man-with-machete-killed-in-self-defense-shooting-in-hialeah-over-used-tire-police/3461605/> [<https://perma.cc/353N-ST7N>].

7. *See infra* Part II.

8. *See infra* Part II.B.

9. *See infra* Part II.B.

the purpose of this Article, dogs with the physical capacity to grievously endanger or kill an unarmed human being are called “lethal-capacity canines.”

Part III of the Article explores the permissible use of deadly force in self-defense when a human is attacked by another human in a SYGI jurisdiction. By examining the Kansas and Florida SYGI laws, this Article demonstrates that SYGI laws do not significantly alter the substantive law of self-defense. Rather, they alter only the procedural nature of criminal conviction by employing presumptions of immunity to shift the burdens of proof, largely preventing arrest and criminal prosecution of a person asserting that they were justified in using deadly force in self-defense.

This Article also explores the legal status of dogs, questioning whether dogs are still considered chattels or whether society has anthropomorphized domesticated canids to the point that the law affords them the same level of protection as humans.¹⁰ It concludes that dogs are legally entitled to much less protection than human beings. As a result, SYGI presumptions prohibiting criminal prosecution should apply with even greater force in cases where a human being uses lethal force against an ambiguously approaching lethal-capacity canine than in situations where lethal defensive force is employed against an attacking human. Certainly, many readers will experience moral outrage at these conclusions. Readers should reflect on the potential hypocrisy of that outrage by contrasting your outrage with, instead of a large powerful dog approaching Grandpa and Emily, it was a black male whose intentions you could not discern.¹¹

In Part IV, the Article reinforces prior conclusions with a unique, predictive application of the doctrine of assumption of the risk such that responsibility and criminality are predetermined in dog-attack situations even before harm occurs, rather than employing it in the traditional role of determining liability only after harm has occurred. This predetermined certainty is consistent with the legislative history of SYGI laws, which suggests that these laws were designed to introduce certainty in self-defense scenarios. In this Article’s proposed self-defense model, the culpability of the dog owner is irrelevant to the analysis, because the analysis exclusively addresses what force is permissible in defense against an attacking dog. While the culpability of the owner may be relevant to criminal law, this

10. See *infra* Part III.

11. See Gregory S. Parks, “When They See Us” *The Great White Awakening to Black Humanity*, 21 U. MD. L.J. RACE RELIGION GENDER & CLASS 1, 19 (2021) (“In certain segments of the Black community, there is the notion that Whites recognize the ‘humanity’ in dogs more readily than they do Blacks. This is at least related to—may be driven by or resulting from—the fact that Whites have more meaningful engagement with pets, dogs in particular, than Blacks.” (footnote omitted)).

analysis is unconcerned with what factual situations caused the dog attack. Instead, the analysis is confined only to the question of what self-defense actions are permissible once the human–canid interaction begins. Similarly, this analysis, unlike tort law, is not concerned with the damage sustained by the person attacked by a lethal-capacity canine. While that may be relevant to civil actions and tort law, this analysis is concerned not with recovery but solely with what actions an armed human should be able to take in a SYGI jurisdiction to prevent harm when attacked by a lethal-capacity canine.

II. DOGS ARE

A. Love

Dogs are love. As I walked through the streets of San Francisco in early January of 2025 while attending the American Association of American Law Schools (AALS) annual meeting,¹² I was dismayed by the number of very young, unhoused people I saw. Some of them had dogs, many of which appeared to be pit bull mixes or pit bulls. These animals would often be lying next to their person, intensely licking or maintaining body contact with them. Nothing else in the world mattered to these animals but the well-being and protection of their person.¹³ Dogs are capable of a level of selfless love and devotion to humans which no human is capable of.¹⁴

I saw other unhoused individuals walking the streets and, at their feet, never straying more than a few inches, was an intensely focused dog. The animal's focus was on nothing else but maintaining proximity with their person. A person's lack of resources, mental illness, filth, and poverty were irrelevant to their dog. This was the person the dog loved, and nothing else mattered. Similarly, I observed another person riding a bicycle with a cart of belongings behind the bike. A large

12. *Annual Meeting 2025*, ASS'N OF AM. L. SCHS., <https://am.aals.org/past/am25/> [<https://perma.cc/7GDR-6XZB>].

13. Kim Eckart, *What the Bond Between Homeless People and Their Pets Demonstrates About Compassion*, UNIV. OF WASH.: NEWS BLOG (June 16, 2017), <https://www.washington.edu/news/2017/06/16/what-the-bond-between-homeless-people-and-their-pets-demonstrates-about-compassion/> [<https://perma.cc/B7VP-5X2N>] (discussing the intense bond between an unhoused person and their dog, one that often includes forgoing food for oneself in favor of their pet).

14. Studies indicate that many humans experience their dogs' devotion as surpassing even the emotional support they receive from other people. See Sam Walters, *We May Value Our Dogs More than Our Human Relationships*, DISCOVER MAG. (Apr. 23, 2025, at 04:00 CT), <https://www.discovermagazine.com/we-may-value-our-dogs-more-than-our-human-relationships-47447> [<https://perma.cc/DKT8-QT23>].

pit bull ran inches away from the rear tire of the bicycle and was focused on nothing else but staying close to their person on the bike. When the bike stopped, the dog stopped instantly. The rest of the world walking on the sidewalk seemed nonexistent for this animal. We reiterate that humans are incapable of the selfless, unconditional, and often unearned love dogs are capable of for human beings.¹⁵

My own dog Hazel came to my family at a time of familial stress and strain. Her presence and her love for all of us refocused my family and helped to create and maintain a cohesive and strong family unit. We can never be grateful enough to her.

This fondness for dogs has resulted in us anthropomorphizing these animals.¹⁶ For example, consider the popular Farmer's Dog commercial which implies an equivalence between dogs and humans such that dogs can replace humans as companions.¹⁷ Haley Young also identifies "some examples of unhealthy anthropomorphism" of dogs as follows:

Expecting my dog to automatically understand human social norms[;]

Thinking she does things to spite me (especially long after the fact)[;]

Wanting her to understand verbal language without clearly teaching associations[;]

Assuming she enjoys being hugged like a primate[;]

Expecting her to "just know" when a prey animal is supposed to be a friend[; and]

15. See generally Emilia Raczkowska, *Was Freud More of a Dog Person than a Cat Person?*, FREUD MUSEUM LOND.: BLOG (Oct. 14, 2019), <https://www.freud.org.uk/2019/10/14/was-freud-more-of-a-dog-person-than-a-cat-person/> [<https://perma.cc/9Z2D-ZDTE>] ("Dogs love their friends and bite their enemies, quite unlike people, who are incapable of pure love and always have to mix love and hate in their object relations." (quoting Sigmund Freud in a letter to his friend Marie Bonaparte)).

16. See Jia Tolentino, *Why Humans Treat Their Dogs Like People*, THE NEW YORKER (May 23, 2019), <https://www.newyorker.com/culture/culture-desk/anthropomorphism-and-the-world-of-canine-luxuries> [<https://perma.cc/KP99-NBNJ>].

17. *All About the Farmer's Dog Commercials*, THE FARMER'S DOG: DIG. (Jan. 13, 2024), <https://www.thefarmersdog.com/digest/all-about-the-farmers-dog-commercials/> [<https://perma.cc/7S3B-CXKC>].

Resisting helpful tools (crates, muzzles, etc.) because they seem “mean” to humans.¹⁸

This anthropomorphizing of dogs is big business,¹⁹ but ultimately it is not supported by any scientific evidence.²⁰ Instead, such anthropomorphizing represents “the human need for a certain type of relationship, rather than trying to acknowledge, recognize and appease the animal’s actual emotions, motivations, and intentions.”²¹

Despite this reality, in 2019, Americans spent \$95.7 billion on pet food, pet supplies, veterinary, and on other unspecified pet services.²² Further evidence of this anthropomorphizing includes the realities that:

Niche markets have developed in the pet product and services industry, as well. For example, Chinese herbal treatments, as well as acupuncture, are now available for pets. The market for grooming, training, boarding, pet sitting, and dog-walking has nearly doubled over the past decade, particularly price-premium services. In-home pet-sitting and dog-walking services can prove quite lucrative for entrepreneurs. The availability of natural pet food stores, pet boutiques, pet bakeries, dog spas, doggie day-care facilities, and off-leash dog parks all suggest that people love and spoil their pets. Hotels also welcome pets, sometimes with special packages designed specifically for them.²³

18. Haley Young, *Critical Anthropomorphism as a Domestic Dog Owner*, PAWS & REFLECT (July 17, 2024), <https://www.pawsandreflect.blog/p/critical-anthropomorphism-as-a-dog-owner> [https://perma.cc/R7KV-A6VX] (formatting as original with bullets omitted).

19. See Tolentino, *supra* note 16; see also Megan Jander, *Humanization of Pets, Pet Products Resonates Within Creative Market*, PET AGE (Jan. 9, 2019), <https://www.petage.com/humanization-of-pets-pet-products-resonates-within-creative-market/> [https://perma.cc/LLF8-XYHU] (explaining pet humanization is on the rise).

20. Daniel Mota-Rojas et al., *Anthropomorphism and Its Adverse Effects on the Distress and Welfare of Companion Animals*, ANIMALS, Nov. 15, 2021, at 1, 2.

21. *Id.*

22. Debra D. Burke, *A Clarion Call for Emotional Damages in Loss of Companion Pet Cases*, 15 TENN. J. L. & POL’Y 250, 258 (2021).

23. *Id.* at 258–59 (footnotes omitted).

The problem, of course, is that dogs are also unpredictable,²⁴ and their love makes them protective.²⁵ Most of the dogs I saw in San Francisco were off leash, making it very difficult to control the dog if it were to act unpredictably violent. I often wondered what could happen if a child running along the sidewalk suddenly approached a dog.

B. Dangerous

1. The Phylogenetics of the Danger

Despite the anthropomorphism involved in describing these creatures as “fur babies”²⁶ and the reality of the capacity for love just described, phylogenetically, many dogs can be incredibly dangerous. As members of the order *Carnivora*, they belong to the group of mammals that have adapted to killing prey and eating meat.²⁷ All members of this family have (1) large carnassials, or canines, which are blade-like teeth that shear past each other to slice meat;²⁸ (2) jaws that move vertically;²⁹ (3) digestive enzymes that allow them to digest meat quickly, and

24. *Aggression*, ASPCA, <https://www.asPCA.org/pet-care/dog-care/common-dog-behavior-issues/aggression> [<https://perma.cc/25YJ-XYLY>] (noting the danger presented by an unpredictable dog).

25. See DOGSBITE.ORG., U.S. DOG BITE FATALITIES: BREEDS OF DOGS INVOLVED, AGE GROUPS AND OTHER FACTORS OVER A 13-YEAR PERIOD (2005 TO 2017), at 2 (2018) [hereinafter U.S. DOG BITE FATALITIES], <https://www.dogsbite.org/reports/13-years-us-dog-bite-fatalities-2005-2017-dogsbite.pdf> [<https://perma.cc/5H9H-F3FE>] (reporting the number of dogs that have attacked or killed people in the United States); *A Dissection of Why and How Dogs Protect Their Humans*, ANIMAL WELLNESS MAG. (Oct. 8, 2025), <https://animalwellnessmagazine.com/a-dissection-of-why-and-how-dogs-protect-their-humans/> [<https://perma.cc/5JWJ-8NDH>] (“Your dog’s desire to protect you comes from love and loyalty.”).

26. See *Fur Baby*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/fur-baby> [<https://perma.cc/EU82-CXAF>].

27. Joshua R. Ginsberg, *Mammals, Biodiversity of*, in *ENCYCLOPEDIA OF BIODIVERSITY* 681, 693 (discussing the evolution of the carnassials, or canine teeth, which allow carnivores to slice through meat).

28. *Id.* Some carnivorans also have molars for grinding other types of food. *Id.*

29. *Carnivora (Carnivores)*, NHPBS, <https://nhpbs.org/kn/vs/scilab6fa4hacarnivora.asp> [<https://perma.cc/2D8E-NHBX>].

short, small intestines, which are three to six times the length of their body;³⁰ and (4) blunt claw nails on their paws.³¹

Taxonomically, dogs are also members of the family *Canidae*.³² The *Canidae* family includes various animals such as wolves, jackals, and coyotes, in addition to dogs.³³ The *Canidae* are distinguishable by their dentition, which “consists of sharp canine teeth and the carnassials (the upper pre-molar and lower molar), which are optimized for shearing meat and tendons.”³⁴

More taxonomically specific, the genus *Canis* includes dogs and dog-like canids.³⁵ They are distinguished from other members of the family *Canidae* by their massive, well-developed skulls and dentition, their moderate to large size, long legs, and comparatively short ears and tails.³⁶

Wolves are phylogenetically identified by the genus and species *Canis lupus*, and dogs are simply a domesticated version of wolves.³⁷ Therefore, dogs are a subspecies of *Canis lupus* designated *Canis lupus familiaris*.³⁸ One of the major distinctions between dogs and wolves is domestication.³⁹ However, there are also instances of wolves being kept like a domestic dog, rendering their differences even more tenuous.⁴⁰

30. See Vicente Javier Clemente-Suárez et al., *Human Digestive Physiology and Evolutionary Diet: A Metabolomic Perspective on Carnivorous and Scavenger Adaptations*, METABOLITES, July 4, 2025, at 1, 11; Wenliang He, Erin D. Connolly & Guoyao Wu, *Characteristics of the Digestive Tract of Dogs and Cats*, in NUTRITION AND METABOLISM OF DOGS AND CATS 15, 20 (Guoyao Wu ed., 2024).

31. W. D. Matthew, *The Phylogeny of Dogs*, 11 J. MAMMALOGY 117, 134 (1930).

32. See *id.* at 120.

33. *Id.*

34. *What's a Canid?*, JUDITH A. BASSETT CANID EDUC. & CONSERVATION CTR., <https://www.jabcecc.org/the-canids-of-the-world> [<https://perma.cc/J93V-HDUF>].

35. *Id.*

36. MAMMALS OF THE SOVIET UNION, 2, pt. 1a, at 124 (V.G. Heptner & N.P. Naumov eds., Bolos Abdul Malek Botros et al. trans., 1998).

37. Jean A. Nemzek et al., *Biology and Diseases of Dogs*, in LABORATORY ANIMAL MEDICINE 511, 511 (James G. Fox et al. eds., 3d ed. 2015).

38. *Id.*

39. See *id.*

40. See *So You Think You Want a Wolf as a Pet?*, COLO. WOLF & WILDLIFE CTR., <https://www.wolfeducation.org/wolves-as-pets> [<https://perma.cc/89E9-RBCN>].

Today, there are over 250,000 wolves and wolf-dogs living as pets in the U.S. Over 75% of these animals will die before their first birthday due to abuse, neglect, and misunderstanding. Those that do survive end up living at refuges and sanctuaries set

Dogs, as domesticated descendants of wolves, share their ancestor's dentition designed to shear meat from tendons; it is uncontroversial that dogs are therefore capable of inflicting significant harm and death to humans.⁴¹ But not all dogs are equally capable of harm.⁴²

To be clear, this Article does not rely on differences in temperament, aggression, or tendency for viciousness according to breed. A recent study out of the University of Massachusetts demonstrated that canine behavior is only minimally influenced by the dog's breed.⁴³ In fact, breed type is associated with only nine percent of behavioral variations in dogs.⁴⁴ As a result, this Article does not rely on generalized tropes or breed comparisons about *behavioral* tendency between, say, a pit bull and a border collie.⁴⁵ Because breed is not a reliable distinguisher of behavior, we need not engage with the scholarship assailing breed-specific laws.⁴⁶

up just to care for these cast-off pets. All refuges are facing a population crisis because of the increasing popularity of pet wolves. More people are buying and abandoning wolves and wolf-dogs each year than there are enclosures to take them in. Many pet wolves and wolf-dogs are "set free" by owners that cannot bear to put them down, nearly all dying a slow and painful death of starvation or being shot on sight by a fearful person.

Id.

41. Many states have dangerous dog laws. *See, e.g.*, TEX. HEALTH & SAFETY CODE ANN. §§ 822.041–.047 (West 2025) (governing the regulation of dangerous dogs); *see also* Kristina B. Otterstrom, *A Bark with No Bite: Should Texas' Dangerous Animal Law Be Changed?*, 84 TEX. BAR J. 818, 818–19 (2021) (discussing section 822.005(a)(1) of the Texas Health & Safety Code, which criminalizes unprovoked off-property attacks by "dangerous dogs" that cause injury or death). The offense is punishable by 2-20 years in prison and fines as high as \$10,000. *Id.* at 819.

42. *See* Nemzek et al., *supra* note 37, at 541 (discussing beagles as a great research dog because of their docile nature).

43. Kathleen Morrill et al., *Ancestry-Inclusive Dog Genomics Challenges Popular Breed Stereotypes*, SCI., Apr. 29, 2022, at 1, 5.

44. *Id.* at 1.

45. *See id.* at 5.

46. *See, e.g.*, Ann L. Schiavone, *Unleashing the Fourteenth Amendment*, 2016 WIS. L. REV. FORWARD 27, 28 (2016) [hereinafter Schiavone, *Unleashing the Fourteenth Amendment*] (discussing the validity of breed-specific laws regarding dogs by comparing them to recent jurisprudence on sexual orientation discrimination).

Instead, the Article asserts an unassailable truth: *physical* differences between breeds render their capacity for harm to humans different.⁴⁷ For example, an attacking four-pound Yorkshire Terrier has way less capacity to shear human meat from tendon than does a 130-pound American bulldog, Presa Canario, or other Molosser breed derivative.⁴⁸ Certain breeds have even been selectively bred to have physical characteristics that make them more potentially harmful to human beings.⁴⁹ For example, Great Danes were bred in Europe to hunt wild boars, and:

Killing a wild boar means coming face to face with an incredibly dangerous animal, so only the toughest hunting dogs could take one down. The tall, powerful Great Dane was the only dog in Europe capable of boar hunting successfully and German emperors would take hundreds of Danes on a single boar hunt.⁵⁰

Additionally, Rhodesian Ridgebacks were bred to have the physical and athletic characteristics necessary for hunting lions.⁵¹

Likewise, the American Kennel Club describes the Dogo Argentino as a “deliberate act of creation.”⁵² A wealthy Argentine in the 1920s decided he wanted to create an all-white dog capable of hunting wild boars and pumas in Argentina, where the hunting was traditionally done without firearms.⁵³ While this dog is the result of the deliberate genetic mixing of various breeds, the base breed was the Córdoba fighting dog.⁵⁴ The Córdoba fighting dog was a master fighting dog and

47. See, e.g., P. Rezac, K. Rezac & P. Slama, *Human Behavior Preceding Dog Bites to the Face*, 206 VETERINARY J. 284, 287 (2015); Jennifer Lynn Ellis et al., *Cranial Dimensions and Forces of Biting in the Domestic Dog*, 214 J. ANATOMY 362, 371 (2009).

48. Contrast, e.g., Arlene Divina, *What's the Bite Force of a Yorkie & Does It Hurt?*, iHEARTDOGS (June 18, 2025), <https://iheartdogs.com/whats-the-bite-force-of-a-yorkie-does-it-hurt/> [https://perma.cc/U368-2382] (relaying that a Yorkshire terrier's bite force is 60–75 PSI), with Arlene Divina, *What's the Bite Force of a Bulldog & Does It Hurt?*, iHEARTDOGS (June 17, 2025), <https://iheartdogs.com/whats-the-bite-force-of-a-bulldog-does-it-hurt/> [https://perma.cc/D3H2-PVHH] (relaying that a bulldog's bite force is over 300 PSI).

49. See Kyle Johansen, *10 Dog Breeds and What They Were Originally Bred to Do*, HOW I MET MY DOG, <https://www.howimetmydog.com/index.php/blog/10-dog-breeds-and-what-they-were-originally-bred-to-do> [https://perma.cc/57WW-N4F9] (discussing various origins of dog breeds, several of which were bred for guard or war).

50. *Id.*

51. *Id.*

52. Denise Flaim, *Dogo Argentino History: From Argentine Grasslands to Global Recognition*, AM. KENNEL CLUB (Apr. 24, 2025), <https://www.akc.org/expert-advice/dog-breeds/dogo-argentino-history/> [https://perma.cc/Y5V3-CWWT].

53. *Id.*

54. *Id.*

a good hunter, but it also had intense aggression.⁵⁵ The American Kennel Club goes on to describe the breeding sequence of the Dogo as follows:

Dr. Nores Martinez crossed various breeds with Cordoba's unrelenting fighting dog . . . to give it the missing traits that he believed would make it a peerless hunter and effective pack dog. The Pointer enhanced scenting ability, while the harlequin Great Dane added height. The Bull Terrier contributed the white coat that has become the breed's hallmark – as well as the occasional “pirate” patch that is sometimes present over one of the eyes (the only place where a Dogo can have an allowable black patch). Yet-another white breed, the rare Pyrenean Mastiff, imparted a steady, calm temperament, while the Boxer gave additional tractability as well as agility. The need for powerful jaws occasioned crosses to Bulldogs.⁵⁶

The result of this breeding is a dog that, according to the American Kennel Club, is “unerringly steady and brave[,]” but also “athletic enough to track their prey, agile enough to dodge tusk and claw, and *powerful enough to hold their own in a fight to the death.*”⁵⁷ Just imagine what this dog, designed to hunt pumas and wild boars, could do to an adult human if it decided to attack.⁵⁸ It would be extremely difficult to defend against an attack from a creature like this without sustaining severe injury.⁵⁹

Due to their size and strength, there are many other kinds of dogs that would be very difficult to defend against if they attack. In addition to the Dogo, the Rhodesian Ridgeback, and the Great Dane discussed above, other large breeds

55. *Id.*

56. *Id.*

57. *Id.* (emphasis added).

58. See Fabrizio Iarussi et al., *Fatal Dog Attacks in Italy (2009–2025): The Urgent Need for a National Risk Registry*, ANIMALS, Dec. 6, 2025, at 1, 8 (discussing Dogo Argentino as a subset of the Molossian-type breeds involved in 22 of the 54 fatal dog attacks in the study); see also Jeong Park, *80-Year-Old Woman Mauled to Death by Two Dogs in San Bernardino County*, L.A. TIMES (Oct. 9, 2022, at 11:02 PT), <https://www.latimes.com/california/story/2022-10-09/80-year-old-woman-mauled-to-death-by-two-dogs-in-san-bernardino-county> [<https://perma.cc/P2WW-3QB4>] (reporting an elderly woman was mauled to death by two Dogo Argentino dogs); Brad Bell & Kendra Mann, *Woman Dies After Attack by Fiancé's Dog in Calvert County, Md.*, KTVL10 (June 21, 2018, at 17:25 CT), <https://ktvl.com/news/nation-world/maryland-dog-attack-calvert-county-woman> [<https://perma.cc/WBR3-GDPU>] (noting a 28-year-old woman was killed by a Dogo Argentino her fiancé was breeding).

59. See Jen Gale, *Can a Human Win in a Fight Against a Big Dog?*, INST. FOR ENV'T RSCH. & EDUC. (Oct. 6, 2025), <https://iere.org/can-a-human-win-in-a-fight-against-a-big-dog/> [<https://perma.cc/ZT4D-9SW9>] (noting that the size and strength of an attacking dog is relevant, but other factors like a person's level of preparation can influence the outcome).

could include: Rottweilers, Malamutes, Doberman Pinschers, Newfoundlands, German Shepherds, Saint Bernards, Pit bulls, American bullies, American bulldogs and similar breeds.⁶⁰ This list is far from exclusive, and we express no opinion on the temperaments of the breeds listed. Rather, the reality is that for certain breeds, unarmed self-defense against their attack is extremely difficult and often results in the victim needing medical treatment.⁶¹

2. *Cars in Central Park*

Perhaps analogizing dogs to vehicles is helpful to illustrate this point. In New York's Central Park, bicycles, but not cars, are allowed on the trails that pedestrians use.⁶² The reason bicycles are allowed and cars are not has nothing to do with a belief that car drivers are more aggressive or dangerous people than cyclists, but because we know there is much less potential for severe harm if a bicycle strikes a pedestrian than if a car strikes a pedestrian.⁶³

"Sure, brakes and engineering can limit the force delivered by the car to the pedestrian, but it enters the equation with 40 times the energy [than a bicycle] that it has to somehow divert away from the pedestrian's body."⁶⁴ This same analogy applies to the capacity for harm to a human when they are attacked by a two-pound Yorkshire Terrier versus a fully grown American bully.⁶⁵

We do not care about the brand of the car, only the size and capacity for harm. This, hopefully, clears up the confusion created by distracting scholarship

60. See Jeffrey J. Sacks et al., *Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 and 1998*, 217 J. AM. VETERINARY MED. ASS'N 836, 838 (2000) (reporting dog breeds involved in fatal attacks); Carri Westgarth & John Tulloch, *Dog Attacks on Adults Are Rising – But Science Shows It's Wrong to Blame Breeds*, UNIV. OF LIVER. (Aug. 15, 2023), <https://news.liverpool.ac.uk/2023/08/15/dog-attacks-on-adults-are-rising-but-science-shows-its-wrong-to-blame-breeds/> [<https://perma.cc/6AUH-TDAC>] (explaining that while breed alone does not predict aggression, fatalities disproportionately involve large, powerful dogs).

61. See Gale, *supra* note 59; Sacks et al., *supra* note 60, at 839.

62. *Park Drives & Regulations*, CENTRALPARK.COM, <https://www.centralpark.com/visitor-info/park-drive-regulations/> [<https://perma.cc/46B6-FENG>].

63. *Reminder: Cars Are Exponentially More Dangerous Than Bikes*, GEORGETOWN METRO. (Apr. 26, 2018, at 10:00 CT), <https://georgetownmetropolitan.com/2018/04/26/reminder-cars-are-exponentially-more-dangerous-than-bikes/> [<https://perma.cc/BY6W-GANH>].

64. *Id.*

65. See sources cited *supra* notes 47–49.

suggesting breed bans are completely irrational.⁶⁶ Realizing that a large, powerful canine has a much greater capacity for separating meat from tendon than does a two-pound lap dog also negates the argument that empirical studies show breed-specific bans are ineffective at reducing dog bites.⁶⁷ All dog bites are not created equal.

This difference in capacity for harm explains that even though Pit bulls and Rottweilers make up only six percent of the U.S. dog population, they account for 76 percent of all fatal dog bites.⁶⁸ While acknowledging arguments about the inability to identify precisely the exact percentages of the different breeds making up a dog,⁶⁹ certain breeds, whether correctly identified or not, because of their physical stature, simply have a much greater capacity for harm than others. Again, in this Article these dogs are referred to as lethal-capacity canines and their specific breed is largely unimportant.⁷⁰

Additionally, there is an unpredictability about dogs that some disregard. For example, consider the trope, that dog behavior is largely a reflection of the dog's owner.⁷¹ As Barbara Woodhouse, a famous British dog trainer, stated: "There are

66. See, e.g., Schiavone, *Unleashing the Fourteenth Amendment*, *supra* note 46, at 35–36.

Courts employing a meaningful rational basis review would find bite statistics analyses, surveys, epidemiological studies, and brain chemistry research all tending to undermine breed-specific laws as a reasonable or effective policy. Additionally, and most importantly, current research also shows that humans cannot accurately identify canine breeds by sight. This research calls into question both the reasonableness of the observations that led to the laws and the clear inability of the laws to ever be fairly or rationally enforced. It cuts the connection between the laws and the legislative goal, showing breed-specific laws are not rationally related to legitimate governmental ends.

Id. (footnotes omitted).

67. Ann L. Schiavone, *Real Bite: Legal Realism and Meaningful Rational Basis in Dog Law and Beyond*, 25 WM. & MARY BILL RTS. J. 65, 114 (2016) [hereinafter Schiavone, *Rational Basis in Dog Law*].

68. Monika Martyn, *Dog Bite Statistics & Dog Attacks by Breed 2026*, WORLD ANIMAL FOUND. (Aug. 9, 2025), <https://worldanimalfoundation.org/advocate/dog-bite-statistics/> [https://perma.cc/3CQP-8Z37].

69. Schiavone, *Rational Basis in Dog Law*, *supra* note 67, at 117.

70. See *supra* Part I.

71. See Yana Bender et al., *Like Owner, Like Dog – A Systematic Review About Similarities in Dog-Human Dyads*, PERSONALITY & INDIVIDUAL DIFFERENCES, 2025, at 1, 1 (examining “empirical evidence supporting the anecdotal assumption, that dogs look like and behave like their owners”).

no bad dogs, only bad owners.”⁷² The reality is that “humans do not really know what goes on in a canine’s mind,” and suggestions to the contrary are what “humans want to be true rather than what is actually reality.”⁷³

Humans have enough trouble understanding what another human is expressing or thinking, so imagine the potential for miscommunication when another species is added to the mix.⁷⁴ Further, a recent study at Utrecht University of the Netherlands involving 374 dogs conducted between 2020 and 2022 established that only 20 percent of aggressive dog owners were aggressive and less than one-third of the owners of aggressive dogs were antisocial.⁷⁵

The fact that 54 percent of fatal dog attacks in the United States were inflicted by family pets highlights how unpredictable dogs are.⁷⁶ Additionally, 77 percent of people bitten by dogs are not strangers to the animals but are related to or friendly with the owners.⁷⁷ Despite these established realities, delusional

72. Stanley Coren, *When Dogs Are Bad, Are Their Owners to Blame?*, PSYCH. TODAY (Mar. 29, 2023) [hereinafter Coren, *When Dogs Are Bad*], <https://www.psychologytoday.com/us/blog/canine-corner/202303/do-bad-dogs-have-bad-owners?msocid=15fad11c9fbc6a023fd6c77f9e9d6bb7> [https://perma.cc/4ZD3-PBES].

73. Phyllis Coleman, *We Say “Tomato,” They Say “Woof”: The Argument for Abandoning “Provocation” in Dog Bite Statutes*, 47 U. MEM. L. REV. 485, 486–87 (2016). Some researchers also suggest that dog behavior is more ambiguous than we like to admit, and instead of us understanding what our dogs are thinking we are instead usually projecting onto the dog what we as humans might be thinking in similar situations. *See, e.g.*, Stanley Coren, *Do We Project Our Own Personalities onto Our Dogs’ Behavior?*, PSYCH. TODAY (Apr. 2, 2015), <https://www.psychologytoday.com/us/blog/canine-corner/201504/do-we-project-our-own-personalities-our-dogs-behavior?msocid=15fad11c9fbc6a023fd6c77f9e9d6bb7> [https://perma.cc/SCM6-ZS2M].

For example, when dogs show nonverbal submission after misbehaving, their behavior may have just the right amount of ambiguity—that is, it is easy to interpret the action as indicating guilt, but also easy to see it as a learned response—for people’s own dispositions to shape their perceptions of dogs. Or to put it in a simpler way, suppose we observe a dog’s behavior in an ambiguous situation. At least when it comes to feelings of guilt, when we are unsure of what our dog is feeling or why he is behaving in a particular way, we have a tendency to perceive the dog’s behavior according to our own personality predispositions. If it is likely that we would have felt guilty had we been a dog in such a situation, these data suggest that we are apt to project our emotional predisposition and conclude that our dog must be feeling guilt as well.

Id. (quotation mark omitted).

74. Coleman, *supra* note 73, at 491.

75. Coren, *When Dogs Are Bad*, *supra* note 72.

76. U.S. DOG BITE FATALITIES, *supra* note 25, at 4.

77. Coleman, *supra* note 73, at 501.

anthropomorphism and erroneous assumptions about our ability to communicate and understand a dog's brain perhaps result in most owners being surprised their dog bit someone.⁷⁸

The unpredictability of dogs should not be surprising because there is an unpredictability to humans as well.⁷⁹ Reflect on your life experiences and consider the instances when a calm person suddenly and uncharacteristically lost control. Consider the times in which a traffic jam, a crowd, or another social situation caused behavior more aggressive than normal. Dogs, like humans, are sentient beings. They are not robots. When my two-year-old granddaughter loses control, there is way less potential for harm to other human beings than if her six-foot-two, 196-pound dad loses control. And I say that without any reference to their tendencies or temperaments. Finally, no amount of legal anthropomorphizing⁸⁰ can rebut that “dog bites are a major public health issue[.]”⁸¹

A few facts here should help in contextualizing the potential danger that domesticated canines pose to humans. First, dogs are the third-deadliest animals to humans on earth.⁸² They kill approximately 30,000 humans per year.⁸³ Only mosquitoes and snakes kill more humans than dogs.⁸⁴

Second, in the United States, fatal dog attacks are increasing. Between 2018 and 2021, the number of fatal dog attacks more than doubled.⁸⁵

78. *See id.*

79. PHILIP LIEBERMAN, *THE UNPREDICTABLE SPECIES: WHAT MAKES HUMANS UNIQUE* 2 (2013).

80. *See, e.g.,* Amber M. Lopez-Hunter, Note, *Fur Babies Matter: My Dog Is Not Property!*, 4 SAVANNAH L. REV. 259, 272 (2017).

Under the animal guardianship system, dogs will be viewed as persons for limited purposes under the law. Thus, dogs would have legally recognized protections, rights, and interests, such as the right to own or inherit property, and the right to tort law remedies, which would be enforced by the dog guardian acting on the dog's behalf.

Id.

81. Cinnamon A. Dixon et al., *Dog Bite Prevention: An Assessment of Child Knowledge*, 160 J. PEDIATRICS 337, 337 (2012).

82. Conor Stewart, *Deadliest Animals Worldwide by Annual Number of Human Deaths as of 2024*, STATISTA (Nov. 26, 2025), <https://www.statista.com/statistics/448169/deadliest-creatures-in-the-world-by-number-of-human-deaths/>.

83. *Id.*

84. *See id.*

85. QuickStats: *Number of Deaths Resulting from Being Bitten or Struck by a Dog,* by Sex – National Vital Statistics System, United States, 2011–2021*, CDC (Sep. 8, 2023), <https://www.cdc.gov/mmwr/volumes/72/wr/mm7236a6.htm> [<https://perma.cc/N2QW-92YD>].

Third, apart from fatalities, in the United States alone, dogs bite over four million people, or over two percent of the population annually.⁸⁶ Of these dog bites, 885,000 require medical care, and over 370,000 require emergency room treatment.⁸⁷ In 2023 alone, 5,800 postal workers were attacked by dogs.⁸⁸ And these figures cannot account for the fact that dog bites are underreported.⁸⁹

Fourth, more than 50 percent of bite victims are children,⁹⁰ and “more than half of American children have been bitten at least once before the age of twelve.”⁹¹

Fifth, apart from being killed, dog-bite victims are often disfigured and experience a lifelong fear of dogs,⁹² perhaps from the sheer primal terror a canid attack invokes.⁹³

While some legal scholars suggest the above statistics demonstrate dog-bite problems have reached epidemic proportions,⁹⁴ at the very least, it is undeniable that “dog bites are a major public health issue[.]”⁹⁵ But these relatively sterile statistics need to be considered in light of the sheer primal terror and suffering that dog-attack victims experience. A review of recent reported dog attacks is instructive in illustrating this terror and suffering.

3. Recent Dog Attacks

a. Chris Culberson, 46, 2024. Chris Culberson was attacked by a group of pit bulls in Kansas City, Missouri for 23 minutes.⁹⁶ He died in the hospital four hours

86. Jonathan R. Shulan, Note, *Animal Law—When Dogs Bite: A Fair, Effective, and Comprehensive Solution to the Contemporary Problem of Dog Attacks*, 32 U. ARK. LITTLE ROCK L. REV. 259, 261–62 (2010).

87. Martyn, *supra* note 68.

88. *Id.*

89. *See id.*

90. *See* Shulan, *supra* note 86, at 261.

91. *Id.*

92. *See* Carri Westgarth et al., *Review of Psychological Effects of Dog Bites in Children*, BMJ PAEDIATRICS OPEN, June 6, 2024, at 1, 5 (“[D]og bites in children represent a traumatic event that can cause devastating psychological consequences in the victims and in their families.”)

93. *See id.*

94. *See, e.g.,* Shulan, *supra* note 86, at 261.

95. Dixon et al., *supra* note 81, at 337.

96. Madeline Sherratt, ‘They Were Trying to Drag Me Like I Was Their Dinner’: Woman Recounts How Her Brother Was Mauled to Death by Dogs for 23-Minutes, INDEP. (Nov. 11, 2024, at 14:05 EST), <https://www.the-independent.com/news/world/americas/crime/dog-attack-kansas-city-death-pitbull-b2645140.html> [<https://perma.cc/6UHU-77SZ>].

after the attack.⁹⁷ During the attack, he suffered more than 300 bites and needed 500 stitches.⁹⁸ The dogs attacked him after he fell off his bike while riding on the street.⁹⁹ In the four hours between the attack and his death, Chris mentioned the dogs “were trying to drag me like I was their dinner[.]”¹⁰⁰ Chris’s sister mentioned that the dogs ripped off his cheeks, his chin, and the heels of his feet.¹⁰¹ His attempts to stop the attack by hitting the animals with a golf club were ineffective.¹⁰²

b. Elle Doherty, seven months old, 2024. Elle Doherty was at home with her mother, father, and the family’s Belgian Malinois.¹⁰³ Baby Elle was looking out of a window, and the 31-kilogram Malinois was near her.¹⁰⁴ She leaned in the direction of the dog, and in less than a second, the dog bit her on her head causing fatal skull fractures.¹⁰⁵ The parents pulled the dog off immediately, but the injuries were fatal.¹⁰⁶ The parents are quoted as saying, “[h]e never showed any signs of aggression[.]” and a dog handler called to the scene stated, “The dog ha[d] shown no signs of aggression to baby Elle or, indeed, any of the occupants of that home.”¹⁰⁷

c. Justin Gilstrap, 11, 2023. In Augusta, Georgia, 11-year-old Justin Gilstrap was riding his bicycle when three pit bulls attacked him and dragged him into a ditch.¹⁰⁸ The dogs ripped off 80 percent of his scalp and half of his ear.¹⁰⁹ Even though Justin survived the attack because of help from a neighbor who pulled him to safety, the boy’s mother recalled, “She couldn’t tell where he was bleeding

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. Javed Ahmed, *Baby Girl Killed by Pet Dog in Attack Lasting Less Than a Second, Inquest Hears*, INDEP. (Nov. 21, 2024, at 12:31 EST), <https://www.the-independent.com/news/uk/home-news/dog-attack-elle-doherty-coventry-belgian-malinois-b2651318.html> [<https://perma.cc/B7C5-XD5R>].

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. Andrea Blanco, *Eleven-Year-Old Boy Mauled by a Pack of Pit Bulls Shares Comforting Update from Hospital Bed*, INDEP. (Jan. 17, 2023, at 17:46 EST), <https://www.the-independent.com/news/world/americas/crime/justin-gilstrap-pit-bull-attack-georgia-b2264056.html> [<https://perma.cc/27RL-KA4N>].

109. *Id.*

from . . . but apparently he was bleeding from everywhere because there's not an inch of his body that is not covered in a cut or bruise."¹¹⁰

d. Diane Whipple, 33, 2001. Just days before her 34th birthday, Diane Whipple returned home to her apartment in San Francisco, California.¹¹¹ The 110-pound female was in the hallway outside her apartment when a 130-pound Presa Canario attacked her.¹¹² By the time neighbors heard her screaming and called the police, the dog had bitten her almost 80 times over her entire body and had fatally severed her trachea.¹¹³ The medical examiner stated that her entire body was bitten by the dog, except "the top of her head and the soles of her feet."¹¹⁴

e. Elizabeth Warren, adult female, 2024. In Albany, Georgia, Elizabeth Warren was in her backyard feeding her pets when her neighbor's pit bull attacked her.¹¹⁵ The dog's owner was also bitten.¹¹⁶ By the time she managed to escape back into her house, "her face was peeled off and bitten, her arm was broken and she was bleeding profusely."¹¹⁷ The responding police officer said there was blood everywhere on the property.¹¹⁸ A medical report mentioned she suffered a broken right arm, puncture wounds to her neck, injuries to her face and teeth, and that her left ear was partially bitten off.¹¹⁹ And this was a dog she was familiar with and had been comfortable just scooting "him back away from" her yard on previous occasions.¹²⁰ Three surgeries later and with more scheduled, the doctors consider it a miracle that she survived, saying that when the dog "failed to get to her throat, it just stopped and walked away."¹²¹

110. *Id.*

111. Katie Dowd, 'Dog of Death': The Horrific Killing of Diane Whipple in San Francisco, SFGATE (Feb. 27, 2023, at 10:59 CT), <https://www.sfgate.com/bayarea/article/diane-whipple-dog-mauling-death-sf-17802167.php> [<https://perma.cc/ZNG4-XE3H>].

112. *Id.*

113. *Id.*

114. *Id.* (internal quotation marks omitted)

115. Lenah Allen, Mackenzie Petrie & Andrew McMunn, 'Bleeding Profusely': Woman Severely Injured in Dog Attack, Police Say, KBTX (Nov. 5, 2024, at 13:07 CST), <https://www.kbtx.com/2024/11/05/bleeding-profusely-woman-severely-injured-dog-attack-police-say/> [<https://perma.cc/ANU5-2AC5>].

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. Mackenzie Petrie, *Albany Woman Recovering After Dog Attack, Husband Speaks Out*, WALB (Nov. 6, 2024, at 21:58 CST), <https://www.walb.com/2024/11/07/albany-woman-recovering-after-dog-attack-husband-speaks-out/> [<https://perma.cc/BJ5W-DYLQ>].

121. *Id.*

There are thousands more examples which demonstrate that some dogs are so powerful that if they attack an unarmed human being, the attack can easily be fatal or cause grievous, horrifying, disfiguring, and disabling bodily injury. Further, these attacks are often unpredictable and caused by animals the victims are familiar with.¹²² Since 2019, there have been over 45 reported fatal dog attacks on adults and over 50 fatal dog attacks on children by supposedly friendly, loving family dogs.¹²³ And these are only the fatal attacks; they do not include the attacks that left people close to death or severely maimed and disfigured.¹²⁴

The harms associated with a canine's ability to separate meat from tendon are not the only harms that lethal-capacity canines can inflict on humans. The human femoral artery is often less than one inch under the skin of the inner thigh,¹²⁵ and it takes only two to five minutes for a human to bleed to death when this artery is ruptured.¹²⁶ Given that a normal dog's canine can be 2.1 inches long,¹²⁷ a dog bite can easily puncture a human's femoral artery. Because of the quick bleed out time for an artery puncture, there is a risk of death even when bitten by a dog on

122. See *Family Dog Attacks*, DOGBITE.ORG, <https://www.dogsbite.org/staying-safe-family-dog-attacks.php> [https://perma.cc/PL56-MF83].

123. See *id.* And these are only fatal attacks. The statistics here do not include unreported attacks and non-fatal mauling. Two recent examples of this are especially tragic and confirm the unpredictability of domestic canids. See Natalie Neysa Alund, *Family Dogs Kill 2 Tennessee Children, Injure Mom Who Tried to Stop Mauling, Family Says*, USA TODAY (Oct. 10, 2022, at 08:34 ET), <https://www.usatoday.com/story/news/nation/2022/10/08/2-children-killed-mother-hospitalized-after-tennessee-dog-mauling/8219201001/> [https://perma.cc/JEF4-EWAM] ("Two young children are dead and their mother suffered major injuries after two family dogs attacked a baby and toddler[.] . . . The family owned the pets, Cheech and Mia, for more than eight years without a violent incident[.]"); Jordan Gartner, *Family Dog Kills 4-Day-Old Baby Girl, Police Say*, WSJ (Dec. 22, 2022, at 17:28 CST), <https://www.wsj.com/2022/12/22/family-dog-kills-4-day-old-baby-girl-police-say/> [https://perma.cc/PP4G-HL78] (reporting an incident where a three year old "family dog" killed the family's 4 month old baby).

124. See *Family Dog Attacks*, *supra* note 122.

125. Benjamin R. Zambetti et al., *Diameter and Depth of Femoral Vessels by Duplex Ultrasound*, 26 J. VASCULAR ACCESS 162, 163 (2025) (finding the average depth of the common femoral artery is 1.7cm or 0.67 inches).

126. Brian Graddon, *How Long Does It Take to Bleed Out from an Artery?*, TRUE RESCUE (Dec. 2022), https://truerescue.com/blogs/knowledge/how-long-does-it-take-to-bleed-out-from-artery?srsId=AfmBOoqvR7DDduuAz_IGAdp91ehEhjFcuFptGi95uwNLAkHO2IPVcVy8 [https://perma.cc/XEM4-AWXL].

127. William Powell, *Military Working Dog Receives 'Canine' Treatment, Sports Gold Crowns*, AIR EDUC. & TRAINING COMMAND (Aug. 25, 2006), <https://www.aetc.af.mil/News/Article-Display/Article/263538/military-working-dog-receives-canine-treatment-sports-gold-crowns/> [https://perma.cc/2RN9-VQX8].

just a short, ten-minute hike on a city trail, for example. Michelle Hempstead, a 34-year-old mother of five, died in 2024 after a “Bullmastiff-type breed” bit her left arm, puncturing her left axillary artery causing multi-organ failure and hypovolemic shock due to the “severe loss of blood or other fluids prevent[ing] the heart from pumping enough blood[.]”¹²⁸

Furthermore, given the fact that almost 40 percent of American dog owners are hesitant to vaccinate their dogs,¹²⁹ the risk of rabies infection, even though low in the United States, is real. This is a risk that should not be ignored since a rabies infection is almost 100 percent fatal.¹³⁰

III. DOGS ARE NOT HUMAN

Despite commercial and societal attempts to anthropomorphize dogs, dogs are not people and are not entitled to the same legal protection humans receive. Therefore, humans should be permitted to employ deadly force when defending against a lethal-capacity canid more liberally than they can when defending against an attack by another human.

The law has long viewed dogs as personal property or chattels.¹³¹ Despite this, recent scholarship recognizes that the law may not be reflective of the way people view their dogs. For example, 66.7 percent of dog owners consider dogs to be family members, and only 0.7 percent of owners think of their dogs as property.¹³² Moreover, “a majority of people in the United States agree that animals possess emotions, and even more people believe that animals and humans are alike

128. Andrew Levy, Emily Jane Davies & Emily Cooper, *Mother-of-Five, 34, Killed by One of Her Dogs at Home Died from a ‘Single Bite to Her Arm’ – With Tragedy Coming Just Weeks After Her Daughter’s Sudden Death*, DAILY MAIL (Aug. 15, 2024, at 19:23 EDT), <https://www.dailymail.co.uk/news/article-13748659/Mother-killed-dogs-home-single-bite-arm-daughters-death.html> [https://perma.cc/4DL3-LYTQ].

129. Jillian McKoy, *Nearly Half of Dog Owners Are Hesitant to Vaccinate Their Pets*, BOS. UNIV.: SCH. OF PUB. HEALTH (Aug. 31, 2023), <https://www.bu.edu/sph/news/articles/2023/nearly-half-of-dog-owners-are-hesitant-to-vaccinate-their-pets/> [https://perma.cc/TJV9-CRJ5].

130. *Id.*

131. Lopez-Hunter, *supra* note 80, at 261.

According to the current U.S. legal system, animals are treated as a form of personal property. A person’s legal right to own and control property is rooted in common law tradition. At common law, a person is said to have “absolute” possession of their personal property, even though there might be some restrictions imposed on the use of personal property.

Id. (footnotes omitted)

132. *Id.* at 260.

in every relevant way.”¹³³ Scholarship further subtly suggests that dogs should be considered persons,¹³⁴ and that perhaps it is only the inertia of the common law that prevents us from reaching this normative legal waypoint.¹³⁵ Generally, scholarship arguing for dogs to be considered persons or pseudo persons reflects the reality that dogs are sentient beings¹³⁶ and therefore deserving of a “property-plus” status because some people are so emotionally attached to their pets.¹³⁷

Dogs are also anthropomorphized for commercial gain. For example, consider the dog food commercials suggesting that dog owners should rightfully excommunicate and stop contact with their human friends who refuse to accept that dogs are considered people.¹³⁸ One such commercial ends with the female dog owner telling her dog Peter that “we do make a pretty cute couple.”¹³⁹ In another commercial involving a dog named Junior, some mafia members are socializing and when one of them arrives, he proceeds to put something in the host’s refrigerator.¹⁴⁰ Upon opening the refrigerator and seeing dog food in there, he asks the host incredulously, “Whoa!! What’s this!? You keep dog food in the fridge!?” and further mockingly asks, “No disrespect, but what are we doing here?”¹⁴¹ All the members of the mafia stand angrily, and the commercial implies that the person surprised about dog food in the fridge was understandably and rightly killed and placed in the trunk of a car.¹⁴² Then in a final act brilliantly suggesting dogs should be considered human, the dog’s owner tells the dog that if anyone asks where they were at the time of the killing, Junior (the dog) should say they were at “Grandma’s.”¹⁴³

While these advertisements are humorous, they unquestionably recognize a modern blurring of the lines in human–dog interaction. This blurring is observed in other situations as well. For instance, many stores have signs prohibiting all

133. *Id.* at 265–66.

134. *Id.* at 261 (“Dogs should be seen as a type of person[.]”).

135. *Id.* at 260–61 (suggesting that in the eighteenth century both children and dogs were viewed as property, but now children are no longer viewed as property, and it is a legal shortcoming that the common law still treats dogs as property).

136. *See, e.g., id.* at 265.

137. *Id.*

138. FRESHPET, *Freshpet Peter Commercial*, at :30 (YouTube, Dec. 23, 2024), <https://www.youtube.com/watch?v=vIEGA00NWaU>.

139. *Id.*

140. FRESHPET, *Freshpet My Boy Junior Commercial* (YouTube, Dec. 25, 2024), https://www.youtube.com/watch?v=ya_z_8_nex0.

141. *Id.*

142. *Id.*

143. *Id.*

animals except service animals from entering but ignore violations of this policy.¹⁴⁴ In Topeka, Kansas, where I live, dogs are allowed in most grocery stores. It is not uncommon to see dogs sitting in a grocery cart as their owners shop. Everyone seems to pretend away the sanitation concerns presented by having an animal touching the same surface the next shopper will likely place food on.¹⁴⁵ Dogs can even be seen off-leash in businesses, which presents an even greater danger to other customers.¹⁴⁶ As one social media commentator put it, pets are so frequently in stores because, even in a state where pets are prohibited from being in grocery stores, “nobody wants to have to tell a self entitled pet owner their pet can’t be there.”¹⁴⁷

But the less cynical reality is that the Americans with Disabilities Act (ADA) explains the frequency of animals in stores. The ADA provides that organizations open to the public must allow service animals to accompany people.¹⁴⁸ Under the ADA, with a limited exception for miniature horses, dogs of any size or any breed are the only animals considered service animals.¹⁴⁹ And even though the ADA requires these animals to be under the disabled individual’s control, meaning that typically they must be harnessed, leashed, or tethered to the individual, there is an exception to this tethered requirement.¹⁵⁰ The animal does not need to be tethered

144. See Ariana Garcia, *H-E-B Employees Rebel Against Non-Service Animals*, CHRON. (Mar. 25, 2025), <https://www.chron.com/news/houston-texas/article/heb-pets-policy-20231881.php> [<https://perma.cc/AW26-RXTA>]; Amanda Hoover, *Doghouse Nation: I Got My Cavapoo a Fake Service Dog Badge. He Never Got Carded*, BUS. INSIDER (Mar. 16, 2026, at 03:09 CT), <https://www.businessinsider.com/cavapoo-fake-service-dog-badge-offices-restaurants-2026-3> (discussing how easy it was to get a fake service dog ID, and how easy it was to bring a dog into a store, even when there were “no dogs allowed” signs).

145. Garcia, *supra* note 144; see IOWA ADMIN. CODE r. 481-31.1(9) (2026) (requiring dogs not be present in shopping carts presumably because of the food safety concerns).

146. Sara Deseran, *Dogs in Restaurants? It’s Getting Hairy*, S.F. STANDARD (Oct. 8, 2025, at 06:00 CT), <https://sfstandard.com/2025/10/08/dogs-restaurants-s-getting-hairy/> [<https://perma.cc/B6L7-6J4V>]; Videotape: Rory Bahadur & Nicolette Rodriguez (on file with author).

147. Deborah McCullar, FACEBOOK, *Concerned Citizens of Columbia County (otherwise known as 4C’s)* (Dec. 19, 2024), <https://www.facebook.com/groups/1500528176836781/posts/3915615315328043/>.

148. *ADA Requirements: Service Animals*, ADA.GOV (Feb. 28, 2020), <https://www.ada.gov/resources/service-animals-2010-requirements/> [<https://perma.cc/V4MU-B7PR>]; 28 C.F.R. § 35.136(a) (2025); 28 C.F.R. § 36.302(c)(1) (2025).

149. *ADA Requirements: Service Animals*, *supra* note 148; 28 C.F.R. § 35.136(h)(i)(1) (2025); 28 C.F.R. § 36.302(c)(9)(i) (2025).

150. *ADA Requirements: Service Animals*, *supra* note 148; 28 C.F.R. § 35.136(d) (2025); 28 C.F.R. § 36.302(c)(4) (2025).

when the tethering is prevented by the individual's disability, or it interferes with the animal's performance of its tasks.¹⁵¹

Furthermore, service dog fraud, or pretending a regular pet is a service dog under the ADA, is widespread.¹⁵² Service dog fraud occurs in part because "some unscrupulous people want to take their dogs to places where pets are generally not allowed, like restaurants, planes, or shopping centers, and want to avoid any applicable pet fees."¹⁵³ This type of fraud is not difficult to perpetuate because, under the ADA, the store owner is essentially prohibited from asking about the authenticity of the service designation.¹⁵⁴

Under the ADA, business owners can only ask if the animal is a service animal, and if the answer to that question is yes, the only other question they may ask is what task the animal has been trained for.¹⁵⁵ It is impermissible under federal law to ask "about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task."¹⁵⁶ Business owners cannot require or rely on identifying vests, patches, or special harnesses to differentiate

151. *ADA Requirements: Service Animals*, *supra* note 148; 28 C.F.R. § 35.136(d) (2025); 28 C.F.R. § 36.302(c)(4) (2025).

152. *See, e.g.,* Marc Ramirez, 'Doors Are Being Shut': Fake Service Dogs Hurt Real Service Animals' Credibility, *Advocates Warn*, USA TODAY (Apr. 18, 2025, at 12:35 ET), <https://www.usatoday.com/story/news/nation/2025/04/15/fake-service-dogs-hurt-credibility-harm-users/83050280007/> [<https://perma.cc/V4MU-B7PR>]; *Fake Service Dogs: The Growing Problem and Its Impact*, EDUCATED CANINES ASSISTING WITH DISABILITIES, <https://www.ecad1.org/index.php/resources/blog/212-fake-service-dogs-the-growing-problem-and-its-impact> [<https://perma.cc/7RZB-3RHJ>] ("Unfortunately, the proliferation of fake service dogs has become a growing concern recently. Fake service dogs are more than a minor nuisance; they pose real challenges for businesses, communities, animals, and individuals who genuinely rely on them.").

153. *Fake Service Dogs: The Growing Problem and Its Impact*, *supra* note 152; *see also* 28 C.F.R. § 36.302(c)(8) (2025) (requiring public accommodations to not charge a surcharge to individuals with a disability requiring a service animal but allowing charges for damages caused by the animal).

154. *See* Ian Adams, *Service-Animal Fraud Throws the ADA to the Dogs*, R ST. (Apr. 5, 2016), <https://www.rstreet.org/commentary/service-animal-fraud-throws-the-ada-to-the-dogs/> [<https://perma.cc/23UE-796J>].

155. *ADA Requirements: Service Animals*, *supra* note 148; 28 C.F.R. § 35.136(f) (2025); 28 C.F.R. § 36.302(c)(6) (2025).

156. *ADA Requirements: Service Animals*, *supra* note 148; *see* 28 C.F.R. § 35.136(f) (2025); 28 C.F.R. § 36.302(c)(6) (2025).

service animals from pets.¹⁵⁷ As long as the person with the dog says that it is a service dog and identifies a task the dog is trained to do, the animal cannot be removed from the premises.¹⁵⁸ And federal law preempts any state or local law to the contrary, including state health codes relevant to dogs in places where food is prepared or sold.¹⁵⁹ And contrary to common belief, service dogs are neither required to go through a professional training program nor are they required to wear any identification that they are a service dog.¹⁶⁰

The same accommodations and even anthropomorphism can be observed in airports and on airlines where the presence of pets is commonplace. According to one animal website, the travel industry recognizes that for many people, “hitting the road without their favorite four-legged friend is unthinkable.”¹⁶¹ As a result, “[j]ust about all domestic airlines now allow pets to come aboard.”¹⁶² Alaska Airlines now has a “Fur-st Class” option,¹⁶³ which should not be a surprise because, “[t]hanks in part to airline pet policies like these, more than 2 million pets and animals are transported by air each year, according to the U.S. Department of Transportation.”¹⁶⁴

Despite this contemporary blurring of the entitlement lines between people and dogs, legally, dogs are not people and are entitled to less legal protection than people. Consider that in the United States it is an advisable practice to have perfectly healthy domesticated dogs spayed and neutered as early as eight weeks old.¹⁶⁵ By contrast, outside of an individual’s own reproductive health choices or

157. See *Frequently Asked Questions About Service Animals and the ADA*, ADA.GOV (Feb. 28, 2020), <https://www.ada.gov/resources/service-animals-faqs/> [<https://perma.cc/4EV4-C4YC>].

158. *Id.*; see 28 C.F.R. § 35.136(f) (2025); 28 C.F.R. § 36.302(c)(2)–(6) (2025).

159. See *ADA Requirements: Service Animals*, *supra* note 148 (“Establishments that sell or prepare food must generally allow service animals in public areas even if state or local health codes prohibit animals on the premises.”).

160. *Frequently Asked Questions About Service Animals and the ADA*, *supra* note 157.

161. Chewy Editors, *Complete Airline Pet Policy Guide for All U.S. Airlines*, CHEWY (July 1, 2025), <https://be.chewy.com/complete-airline-pet-policy-guide-for-all-u-s-airlines/> [<https://perma.cc/FUW2-FPZY>].

162. *Id.*

163. *Id.*

164. *Id.*

165. See, e.g., *Juvenile Spay/Neuter*, AM. HUMANE SOC’Y (July 8, 2022), <https://www.americanhumane.org/public-education/juvenile-spay-neuter/> [<https://perma.cc/6QU4-MHYU>] (“[S]upport[ing] the practice of appropriate juvenile spay/neuter and the establishment of high-quality, high-volume, low-cost spay/neuter clinics that ensure the accessibility and affordability of spay/neuter services for all pet owners across the country.”).

medical necessity, it is both illegal and immoral to neuter or spay a human being. A court considered this issue in *In re Grady*.¹⁶⁶

At the time, Lee Ann Grady was a 19-year-old woman with severe Down Syndrome¹⁶⁷ such that:

Although in a physical sense her sexual development has kept pace with that of others her age, Lee Ann's severe mental impairment has prevented the emotional and social development of sexuality. She has no significant understanding of sexual relationships or marriage. If she became pregnant, she would neither understand her condition nor be able to make decisions about it. Her lack of awareness could lead to severe health problems. It is uncontradicted that she would not be able to care for a baby alone. Indeed, she will probably need lifetime supervision to care for her own needs.¹⁶⁸

As a result of this reality, the fact that she would likely outlive them, and on the advice of a doctor, Lee Ann's parents determined that sterilization was in Lee Ann's best interest and tried to have her sterilized at a hospital in the region.¹⁶⁹

In considering whether to permit Lee Ann's sterilization, the New Jersey Supreme Court considered the United States Supreme Court case of *Eisenstadt v. Baird*,¹⁷⁰ and reiterated, "If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."¹⁷¹ The court ultimately concluded, "The potential for abuse in sterilization of mentally impaired persons allows the exercise of substituted consent only when rigid procedural and substantive criteria are satisfied."¹⁷² The court based this finding on the need for courts to "be able to protect the *human rights* of people least able to protect themselves."¹⁷³

The inherent legal protections that apply to humans do not extend to dogs, even perfectly healthy and domesticated dogs. Rather, as mentioned above, sterilization is considered a best practice for non-breeding dogs.¹⁷⁴

166. 426 A.2d 467 (N.J. 1981).

167. *Id.* at 469.

168. *Id.* at 470.

169. *Id.*

170. 405 U.S. 438 (1972).

171. *In re Grady*, 426 A.2d at 473 (emphasis added) (quoting *Eisenstadt*, 405 U.S. at 453).

172. *Id.* at 486.

173. *Id.* (emphasis added).

174. *See supra* note 165 and accompanying text.

Similarly, we cannot just drop off our children at a homeless shelter, exclaiming to the shelter personnel that we do not feel like having a child any longer.¹⁷⁵ In the rare situations where it is permissible to terminate parental responsibility, the child cannot be euthanized because the state's resources are scarce.¹⁷⁶ But, we can drop a dog off at an animal shelter simply because we no longer desire to keep the animal.¹⁷⁷ And as of 2024, 237,000 dogs were killed in shelters in the United States, rather than being rehomed.¹⁷⁸

Finally, euthanasia of humans is illegal in all 50 states, for any reason.¹⁷⁹ By contrast, “[I]t’s legal to euthanize healthy dogs in most states[.]”¹⁸⁰ And euthanasia is perfectly normal for incontinent¹⁸¹ or biting dogs.¹⁸²

So, despite the scholarship and anthropomorphic norms that exist, legally, dogs are not human and are entitled to much less protection from death under the law.¹⁸³ The premise of this Article is that this difference in the legal protection

175. *See Safe Haven Laws by State 2026*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/safe-haven-laws-by-state> [<https://perma.cc/F5VE-TTVA>] (reporting that states generally allow a parent to surrender a child shortly after birth, but the period where this is available can be extremely short).

176. *See IOWA CODE § 707A.3 (2025)* (prohibiting a healthcare professional from administering a medication or procedure with the intent of causing death).

177. Shelters that identify as “open admission” accept every animal regardless of circumstances. *See What Does it Mean to be No-Kill?*, ANIMAL HUMANE SOC’Y (May 21, 2021), <https://www.animalhumanesociety.org/news/what-does-it-mean-be-no-kill> [<https://perma.cc/5SZP-7DWF>].

178. *The Most Up-to-Date Animal Shelter Statistics Available*, BEST FRIENDS, <https://bestfriends.org/no-kill-2025/animal-welfare-statistics> [<https://perma.cc/JBH2-84WD>].

179. Mandy Armitage, *Is Physician-Assisted Death Legal in the U.S.?*, GOODRX (May 2, 2024), <https://www.goodrx.com/hcp-articles/providers/physician-assisted-death> [<https://perma.cc/A2RR-KXBE>]; Terri L. Jones, *Physician-Assisted Death: Is It Your Choice?*, SENIORS GUIDE (Mar. 23, 2023), <https://www.seniorsguide.com/lifestyle/physician-assisted-death-is-it-your-choice/> [<https://perma.cc/4VWK-RMLT>].

180. *Is It Legal to Euthanize a Healthy Dog?*, PAWS INTO GRACE, <https://pawsintograce.com/is-it-legal-euthanize-healthy-dog/> [<https://perma.cc/7S6T-93WS>].

181. Valter Carlos, *Bowel Incontinence in Dogs*, JOII PET CARE (Oct. 16, 2025), <https://www.joiipetcare.com/blogs/health-symptoms/bowel-incontinence-in-dogs> [<https://perma.cc/MHX9-LT9K>].

182. Stephanie Gibeault, *When to Consider Behavioral Euthanasia*, AM. KENNEL CLUB (Nov. 10, 2021), <https://www.akc.org/expert-advice/health/consider-behavioral-euthanasia/> [<https://perma.cc/55MQ-C687>].

183. Richard L. Cupp, Jr., *Litigating Nonhuman Animal Legal Personhood*, 50 TEX. TECH L. REV. 573, 573, 597 (2018) (discussing the decision of *In re Nonhuman Rights Project, Inc. v. Lavery* by the New York Supreme Court, Appellate Division connecting rights broadly to

afforded to canids compared to humans is especially relevant when a lethal-capacity canine attacks a human being or ambiguously approaches a human being as in the introductory hypothetical involving Grandpa and Emily.

Legally then, we should be able to use deadly force to defend against attacking lethal-capacity canines in a much broader range of circumstances than we are allowed to use lethal force against an attacking human.¹⁸⁴ SYGI jurisdictions arguably represent the most liberal jurisdictions in terms of the force humans are permitted to use in self-defense against another human.¹⁸⁵ By examining SYGI jurisdictions and the situations where the use of deadly force against other humans is permissible, it becomes clear that deadly force against an attacking lethal-capacity canid should be presumptively permitted.

Before doing that, however, it is important to clarify why none of the existing liability regimes designed to reduce dog attacks are relevant to the specific issue this Article addresses: the permissible level of force to *prevent being harmed* when attacked or approached ambiguously by a lethal-capacity canine.

Attorney Jonathan Shulan divides the current regulatory schemes designed to reduce dog-attack frequency into three types: municipal regulation of dog ownership, civil suits for harm caused by dog bites, and criminal liability for harm caused by dog bites.¹⁸⁶

Municipal regulation includes dangerous dog laws, breed-specific bans, and dog registration laws.¹⁸⁷ Shulan notes that the established paucity of enforcement regarding dangerous dog laws renders them of little utility.¹⁸⁸ But most dangerous dog laws are invoked to determine if a dog should be considered dangerous *after* an attack injuring someone has occurred.¹⁸⁹ This Article focuses on what actions are permissible to neutralize an attacking dog *before* harm occurs. Next, Shulan examines breed-specific legislation and explains that the typical arguments about identifying the breed make this an unrealistic option.¹⁹⁰ Relatedly regarding dog-registration laws, specifically in the case of pit bulls:

“humans’ norm of capacity for legal duties” and noting the responsibility for animal welfare lies with legislative action rather than recognizing animal legal personhood).

184. See discussion *infra* Part IV.

185. See discussion *infra* Part IV.

186. See Shulan, *supra* note 86, at 262–77.

187. *Id.* at 262–66.

188. *Id.* at 263.

189. *Id.*

190. See *id.*

Owners of banned breeds have successfully argued that the ordinances, particularly with regard to the statutory definition of a pit bull, are unconstitutionally vague because there is no such breed as a “pit bull” and that “the statute[s] [fail] to adequately define the breeds included within the classification and thus subject to the regulation.”¹⁹¹

Additionally, as demonstrated in Part (II)(B)(1), so many canines fit the definition of a lethal-capacity canine that a large number of breeds would need to be registered, rendering these laws unwieldly at best and too cumbersome for effective enforcement.

Similarly, criminal and tort regimes permitting recovery for harm caused by dog attacks are irrelevant to the questions presented in this Article because these regimes address appropriate punishment and compensation respectively *after* harm from a dog attack has already occurred.¹⁹² But this Article is concerned with *preventing harm* from a lethal-capacity canine. In essence, the criminal and tort regimes operate on the opposite end of the space time continuum than this Article does.

Relatedly, the criminal and tort regimes are inapplicable because they generally depend on the culpability of the animal’s owner to determine punishment or compensation.¹⁹³ Culpability is irrelevant to the use of force proposed in this Article, which is solely concerned with what level of defensive force is permissible when a human is attacked or ambiguously approached by a lethal-capacity canine.

This Article argues that the answer does not depend on whether the owner of the animal actively instructed the dog to attack, whether the owner was negligent in restraining the dog, or if the interaction came about despite the owner’s reasonable attempts to prevent the interaction. In other words, whether the owner said “sic ‘em” to the canine, or the dog unpredictably escaped from a formidable and effective enclosure is irrelevant. The sole issue this Article discusses is what level of defensive force is permissible when attacked or ambiguously approached by a lethal-capacity canine.¹⁹⁴ The circumstances that create the interaction between the human and the lethal-capacity canine are irrelevant to how much force is permissible to use against the canine once the interaction is occurring, because the potential for harm does not depend on the genesis of the interaction. While what caused the interaction is relevant to the criminal and civil liability regimes

191. *Id.* at 266 (alterations in original) (citation omitted).

192. *Id.*

193. *Id.* at 267–68 (noting that the criminal and tort regimes often require some form of scienter, such as knowing the dog was dangerous or viscous).

194. *See infra* Part V.

because culpability is relevant to these regimes,¹⁹⁵ it is simply irrelevant to the province of this Article.

Because dogs are entitled to less legal protection than humans, lethal defensive force should be more freely available against lethal-capacity canines that are attacking a person than in the scenarios where the law allows lethal defensive force to be used against human beings who are attacking other humans. SYGI laws represent the most liberal allowances of lethal defensive force against attacking human beings and provide a starting point for ascertaining the permissible use of deadly force against lethal-capacity canines.¹⁹⁶

IV. SYGI LAWS

The first SYGI statute was signed into law by Florida Governor Jeb Bush on April 26, 2005.¹⁹⁷ In addition to enacting SYGI, the state simultaneously amended its self-defense statutes to remove the duty to retreat before a person can use deadly force in self-defense.¹⁹⁸ At common law, a person has a duty to retreat before using deadly force in self-defense.¹⁹⁹ The common law duty did not apply within one's own house, however, and this exception to the duty to retreat is known as the Castle Doctrine.²⁰⁰

195. Shulan, *supra* note 86, at 267–68.

196. See discussion *infra* Part IV.

197. 2005 Fla. Laws ch. 2005-27; FLA. STAT. § 776.012 (2025); David K. Humphreys, Antonio Gasparrini & Douglas J. Wiebe, *Evaluating the Impact of Florida's "Stand Your Ground" Self-Defense Law on Homicide and Suicide by Firearm*, 177 JAMA INTERNAL MED. 44 (2017). In 1971 Indiana passed a statute stating that no person “shall be placed in legal jeopardy of any kind whatsoever” for acting in self-defense. Eric Ruben, *Self-Defense Exceptionalism and the Immunization of Private Violence*, 96 S. CAL. L. REV. 509, 520 (2023) (citation omitted). However, the Indiana Supreme Court held that the law “neither creates a new remedy nor does it alter our procedure in any respect[.]” *Loza v. State*, 325 N.E.2d 173, 176 (Ind. 1975). Colorado passed a law providing immunity from criminal prosecution for self-defense in narrow circumstances within a dwelling by an occupant against an uninvited entrant in 1986. See Bill Curry, *'Make My Day' Law Stirs Furor After Shooting*, L.A. TIMES (Aug. 17, 1986, at 00:00 PT), <https://www.latimes.com/archives/la-xpm-1986-08-17-mn-16514-story.html> [https://perma.cc/MCS4-LEVP].

198. 2005 Fla. Laws ch. 2005-27; FLA. STAT. §§ 776.012, .031 (2025). Florida also codified the castle doctrine. See FLA. STAT. § 776.013 (2025).

199. Connor Bishop, Comment, *Proving the Negative: Florida's Stand Your Ground Law and the Burden of Proof*, 27 BARRY L. REV. 200, 201 (2022).

200. *Id.*

Florida's SYGI law expanded the Castle Doctrine to anyone who "is not engaged in a criminal activity and is in a place where he or she has a right to be."²⁰¹ Thus, a person has a right to use deadly force in self-defense anywhere they lawfully are without retreating first.²⁰² While Florida's SYGI law requires a reasonable belief of another's "imminent use of unlawful force" to justify nondeadly force,²⁰³ the statute allows for deadly force even in the absence of an imminent threat of death or great bodily harm:

A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another *or to prevent the imminent commission of a forcible felony*.²⁰⁴

Perhaps the most radical changes wrought by the Florida SYGI statute are the presumptions and immunity that it establishes.²⁰⁵ According to the statutes,

use of deadly force is justified without a duty to retreat when a person "reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another or to prevent the commission of a forcible felony." Additionally, section 776.013(1) presumes the existence of "reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another" in a wide variety of circumstances.²⁰⁶

And if the presumption is established,

the person using deadly force is "immune from criminal prosecution and civil action for the use of such force," according to Florida Statute 776.032[.] The statute further explains that once the presumption is established, law enforcement may investigate the use of force, "but may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful." Civil suits for wrongful death against the person using deadly force are also discouraged as 776.032 provides that if the user of force is found to be immune from prosecution the court "shall award

201. FLA. STAT. § 776.012(2) (2025).

202. *See id.*

203. *Id.* § 776.012(1).

204. *Id.* § 776.012(2) (emphasis added).

205. *See* Rory Bahadur, *Treyvon Martin and Comments on the Florida Self Defense Law*, ARIZ. ST. L.J., <https://arizonastatelawjournal.org/2012/04/10/treyvon-martin-and-comments-on-the-florida-self-defense-law/> [<https://perma.cc/9WU4-LE3D>].

206. *Id.*

reasonable attorney's fees, court costs, compensation for loss of income and all expenses incurred by" the person using the deadly force. The Florida Supreme Court has recently stated that a judge rather than a jury should determine the existence of the immunity.²⁰⁷

SYGI statutes like the ones in Florida and Kansas, while often the source of sensational news reports and articles,²⁰⁸ do not add any significant substantive rights to criminal defendants seeking to assert the privilege of self-defense.²⁰⁹ Instead, they allow the defendant to raise self-defense arguments earlier than they otherwise would have been able to do in a typical criminal investigation.²¹⁰

Before illustrating this reality with an example, it is important to clarify that although SYGI statutes expressly overrule the common law rule that the defender must first attempt to retreat before employing deadly force in self-defense,²¹¹ that duty has always been largely illusory, weak, obsolete, and riddled with exceptions, even before the introduction of stand your ground laws.²¹² In this regard then,

207. *Id.*

208. *See, e.g.,* John Hanna & Heather Hollingsworth, *Kansas Teen's Death Has Spotlight on 'Stand Your Ground' Law*, AP (Jan. 21, 2022, at 15:53 CDT), <https://apnews.com/article/kansas-wichita-topeka-legislature-gun-politics-6f61a926a56353a4b22ffecf90c46be3> [<https://perma.cc/9VFQ-MKXG>]; Darrell Miller, *When Stand Your Ground Meets Blue Lives Matter*, DUKE CTR. FOR FIREARMS L. (May 22, 2020), <https://firearmslaw.duke.edu/2020/05/when-stand-your-ground-meets-blue-lives-matter> [<https://perma.cc/HG9P-EWSN>].

209. Admittedly, stand your ground statutes eliminate the common law requirement that a person defending themselves exhausts the duty to retreat before employing force to defend themselves. *See Self-Defense and 'Stand Your Ground'*, NAT'L CONF. OF STATE LEGISLATURES (Sep. 23, 2025), <https://www.ncsl.org/civil-and-criminal-justice/self-defense-and-stand-your-ground> [<https://perma.cc/Z6AQ-VQFC>].

210. *See id.*

211. *See, e.g.,* KAN. STAT. ANN. § 21-5222(c) (2025) ("Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person.").

212. *See* RICHARD MAXWELL BROWN, NO DUTY TO RETREAT: VIOLENCE AND VALUES IN AMERICAN HISTORY AND SOCIETY 155–75 (1991) (providing historical examples in which a duty to retreat was not enforced); *see also* Jason W. Bobo, Comment, *Following the Trend: Alabama Abandons the Duty to Retreat and Encourages Citizens to Stand Their Ground*, 38 CUMB. L. REV. 339, 343–45 (2008) (explaining, using examples from Ohio and Indiana courts, that long before stand your ground statutes and as early as 1876, American jurisprudence reflected the reality that "Americans viewed the duty to retreat as a doctrine of cowardice, and rebelled against the English law just as they had rebelled against English rule.").

despite copious sensationalist opposition to these laws,²¹³ stand your ground laws do not really alter the legal landscape regarding the duty to retreat.²¹⁴

Consider the following example from a jurisdiction without a stand your ground statute. Person A is at a gas station, standing outside of her car at night filling her car with gas. Another car driven by person C pulls up alongside person A's car. Person B emerges from a second vehicle and points a gun at person A while threatening to shoot person A unless she relinquishes her car or money. Person B, while still pointing the weapon at person A, is distracted by a noise and briefly diverts their eyes from person A to the direction the noise was coming from. During that brief period, person A withdraws her own legal weapon and fatally shoots person B.

Person C calls the police alleging that person A fatally shot person B without provocation. When the police arrive on the scene, they are unable to tell whether person A was legally acting in self-defense, and they may not be especially motivated to discover all the facts. The law allows them to arrest person A and leaves the burden on person A to prove that she was acting in self-defense.²¹⁵ Additionally, this is a much less labor-intensive option for many overworked police officers.²¹⁶

As a result of the uncertainty, the police arrest person A, transport them to the police station, and begin to investigate whether person A has violated a statute in the jurisdiction that prohibits the discharge of a firearm in a public space.²¹⁷ The overworked police department takes almost a month to obtain the video recordings from the store, but even those have inconclusive audio and the district attorney begins criminal proceedings against person A for unlawful discharge of a firearm

213. See, e.g., *Why We Stand Against Stand Your Ground Laws*, EVERYTOWN L. (Feb. 3, 2020), <https://everytownlaw.org/why-we-stand-against-stand-your-ground-laws/> [https://perma.cc/4ZVG-LV8L].

214. See Bobo, *supra* note 212, at 343–45; see also Paese v. State, 381 So. 3d 4, 17 (Fla. Dist. Ct. App. 2024) (“[T]he SYG statute we are interpreting here does not abolish any common law right. Instead, the statute simply augments and clarifies, without diminishing, the right to use reasonable non-deadly force to ‘prevent or terminate’ interference with a person’s personal property or chattels.”).

215. See, e.g., *People v. Goetz*, 497 N.E.2d 41, 47 (N.Y. 1986) (explaining that, because the law conditions the use of deadly physical force on the actor’s reasonable belief in both the existence of a qualifying threat and the necessity of such force, justification is a fact-intensive defense that the defendant must establish).

216. But see FLA. STAT. § 776.032(2) (2025) (requiring officers to determine that there is probable cause that the use of force was unlawful).

217. See, e.g., KAN. STAT. ANN. § 21-6308a (2025).

and homicide.²¹⁸ Up to this point, person A remains in custody, unable to afford bail.

During the trial seven months later,²¹⁹ person A's attorney introduces witness testimony and a version of the video recording with audio that the attorney paid an expert to enhance, and it strongly suggests that person A acted in self-defense. Eventually, the jury agrees with person A, and person A is acquitted—almost eight months after first being detained—of the homicide charge by self-defense. Similarly, person A was acquitted of the statutory firearm discharge violation because the statute permits the discharge of the firearm “in lawful self-defense or defense of another person against an animal attack.”²²⁰

SYGI statutes do not give person A the substantive right to do anything differently than they otherwise would have been able to do without the stand your ground statutes, but as explained below, these statutes rearrange the sequence and burdens of proof such that person A would never have been arrested or would have been released much earlier in a SYGI jurisdiction.²²¹

As described above, the typical SYGI statute only eliminates what has always been a perfunctory duty to retreat and codifies the generally accepted right for a person to employ deadly force in self-defense when imminently threatened with deadly force or great bodily harm.²²² And some statutes clarify what should

218. See, e.g., Greg Suskin, *9 Investigates Surveillance Video Policies Complicating Criminal Investigations*, WSOC-TV (May 24, 2016, at 18:42 EDT), https://www.wsoctv.com/news/9-investigates/9-investigates-surveillance-video-policies-complicating-criminal-investigations/300779036/?utm_source=perma.cc/34T4-HNJC [https://perma.cc/34T4-HNJC] (explaining that law enforcement often faces delays in obtaining surveillance footage due to warrant requirements, corporate compliance protocols, and data-retention policies).

219. See, e.g., Callie Cassidy, *Speedy Trial Act Signed to Address Years-Long Trial Delays*, WVUA 23 (June 20, 2025), https://www.wvua23.com/news/speedy-trial-act-signed-to-address-years-long-trial-delays/article_a3dd101d-4619-4380-bf9b-66797769752d.html [https://perma.cc/S26Z-Y5DK] (noting that due to “a backlog of criminal cases in Alabama . . . some defendants could wait years before they go to trial”).

220. See, e.g., KAN. STAT. ANN. § 21-6308a(b)(7) (2025).

221. See *infra* notes 226–28 and accompanying text.

222. See, e.g., KAN. STAT. ANN. § 21-5222 (2025).

(a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such use of force is necessary to defend such person or a third person against such other's imminent use of unlawful force.

be obvious, that the person using deadly force to defend themselves is entitled to use that force whenever they are in a place where they have a right to be.²²³ In the example above, person A had a right to be at a gas station filling up their car with gas.

Despite copious pedantic academic noise about the change in substantive rights occasioned by SYGI laws,²²⁴ the real impact of these laws is the change they make to procedural aspects of criminal prosecutions. Contrasting the experience of person A in a SYGI jurisdiction with her experience in a non-SYGI jurisdiction described above is illustrative.

In a SYGI jurisdiction, person A would perhaps never even have been detained or would have been detained for a comparatively brief period.²²⁵ As described above, in a typical criminal proceeding in a non-SYGI jurisdiction the government may detain the person after an initial investigation and the detained person usually must rebut the government's assertion of criminal conduct in the self-defense phase of the prosecution.

(b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person.

Id.

223. See, e.g., FLA. STAT. § 776.012(2) (2025).

A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

Id.

224. See, e.g., Sounak Chakraborty, Charles E. Menifield & Ranadeep Daw, *Impact of Stand Your Ground, Background Checks and Conceal and Carry Laws on Homicide Rates in the U.S.*, 29 J. PUB. MGMT. & SOC. POL'Y 89 (2022); Ahmad Abuznaid et al., "Stand Your Ground" Laws: International Human Rights Law Implications, 68 U. MIA. L. REV. 1129 (2014); Katryna Santa Cruz, Comment, *The Distraction That Is Stand Your Ground*, 14 FIU L. REV. 149 (2020).

225. See Abuznaid et al., *supra* note 224, at 1134 ("[I]f the defendant is successful in proving his self-defense claim at the pre-trial hearing, the criminal case is dismissed, and the defendant is deemed immune from criminal prosecution for the killing." (quoting Tamara F. Lawson, *A Fresh Cut in an Old Wound-A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, the Prosecutors' Discretion, and the Stand Your Ground Law*, 23 U. FLA. J.L. & PUB. POL'Y 271, 288 (2012))).

Hence the notion that in a criminal prosecution, the government goes first, and then the defendant is allowed to rebut the assertion of criminality by alleging self-defense.²²⁶ However, in a SYGI jurisdiction, the government is prohibited from *even going* and must first rebut the assertion of self-defense before the person using deadly force can even be arrested.²²⁷ If person A plausibly asserts self-defense in a SYGI jurisdiction, they are immune from criminal prosecution and even arrest, unless the government overcomes the presumption that person A acted in self-defense.²²⁸

These laws entitle people to a “motion for probable cause determination on whether defendant is immune from prosecution” even before a preliminary hearing.²²⁹ This procedure essentially shifts the burden of proof to the prosecution to be able to even justify arrest.²³⁰

The Kansas case of *State v. Ultreras* clearly illustrates the impact of SYGI laws.²³¹ In this case, three men claimed they were injured by Manuel Ultreras in a bar fight.²³² When police arrived on the scene, “several people were ‘fighting or arguing’ in the street.”²³³ “According to officers’ testimony, all three victims were on their feet, agitated, and excited[,]”²³⁴ and “Ultreras was ultimately charged with three counts of aggravated battery.”²³⁵ Before trial, Ultreras argued his actions were justified, and as a result, he was immune from prosecution under Kansas’s SYGI law.²³⁶ The Kansas Supreme Court explained:

226. *See id.* at 1133.

227. *Id.* at 1134.

228. *See, e.g.*, KAN. STAT. ANN. § 21-5224 (2025) (establishing a presumption of permission to use self-defense which once established renders the person asserting self-defense immune from prosecution); *see also id.* § 21-5231(a) (defining prosecution broadly as “arrest, detention in custody and charging or prosecution of the defendant”). Florida law also contains similar provisions. *See* FLA. STAT. § 776.032 (2025). A person is presumed to be entitled to self-defense pursuant to § 776.013 and once that presumption exists, the person may not be arrested detained charged or prosecuted by the government. *Id.*

229. *Stand Your Ground Law in Kansas*, MCLANE L. FIRM (capitalization modified), <https://www.duikc.com/stand-your-ground-law-in-kansas-k-s-a-21-5231-formerly-k-s-a-21-3219> [<https://perma.cc/JL9F-HM6F>].

230. *Id.*

231. 295 P.3d 1020 (Kan. 2013) (per curiam).

232. *Id.* at 1023–24.

233. *Id.* at 1024.

234. *Id.*

235. *Id.* at 1025.

236. *Id.*

the standard of proof for whether a defendant is entitled to immunity from criminal prosecution under K.S.A. 21–3219 is probable cause. We further find that *the State bears the burden of establishing proof that the force was not justified* as part of the probable cause determination required under K.S.A. 21–3219(b) and (c).²³⁷

In other words, when a person asserts they were entitled to stand their ground, the state must establish probable cause before they can even arrest or detain the person asserting their entitlement to immunity.²³⁸ The Kansas Supreme Court reasoned that to assert a burden of proof on the person claiming their entitlement to immunity would be contrary to the language of the statute and would mean the person asserting immunity “from arrest or prosecution would never be able to obtain that benefit.”²³⁹ In the 2017 case, *State v. Hardy*,²⁴⁰ the Kansas Supreme Court clarified the procedural requirements of the doctrine announced in *Ultreras*.²⁴¹ The court unambiguously reaffirmed the massive procedural shift SYGI statutes necessitate, such that:

[U]pon a motion for immunity pursuant to K.S.A. 2016 Supp. 21–5231, the district court must consider the totality of the circumstances, weigh the evidence before it without deference to the State, and determine whether the State has carried its burden to establish probable cause that the defendant’s use of force was not statutorily justified. Such a process is demanded by and inherent in the meaning of the terms used by the legislature.²⁴²

Florida courts also agree that “a defendant is no longer required to prove that he or she acted in self-defense by a preponderance of the evidence at an immunity hearing; instead, a defendant need only make a prima facie showing [to demonstrate entitlement to immunity].”²⁴³ By contrast, in order to overcome that immunity, the government needs to overcome a higher evidentiary standard and “must prove by clear and convincing evidence that the defendant did not act in self-defense.”²⁴⁴

So, in a SYGI jurisdiction, person A would likely not even have been arrested in our example above, given the availability of witness statements and

237. *Id.* at 1031 (emphasis added).

238. *See id.*

239. *Id.*

240. 390 P.3d 30 (Kan. 2017).

241. *See id.* at 34 (“*Ultreras* gave no explicit procedural guidance[.]”).

242. *Id.* at 38–39.

243. *Boston v. State*, 326 So. 3d 673, 675 (Fla. 2021).

244. *Id.*

video evidence. Further support for this assertion is found in the actual examples where SYGI statutes have been applied.

A review of instances of SYGI in Florida showed that nearly 70 percent of people who invoked SYGI to avoid prosecution were successful.²⁴⁵ In one-third of approximately 200 cases in the first seven years of SYGI in Florida, the person raising SYGI “initiated the fight, shot an unarmed person or pursued their victim – and still went free.”²⁴⁶ The following examples demonstrate that the statutes permit the widespread use of lethal force with impunity against an attacking human.

Some examples from Florida include:

1. A judge relied on Florida’s SYGI law in dismissing charges against a 78-year-old man who shot and killed his neighbor who approached him while yelling threats after he asked the neighbor to stop trimming branches on a tree over both properties.²⁴⁷
2. A mechanic was justified in shooting and killing a customer armed with a machete who charged toward the mechanic, according to police.²⁴⁸
3. A man found his daughter’s boyfriend Jose Ramirez walking up the driveway angrily, flexing, and swinging his fists.²⁴⁹ The man shot and killed Ramirez on approach.²⁵⁰ No charges were filed as a result of the killing.²⁵¹

245. Susan Taylor Martin, *Florida ‘Stand Your Ground’ Law Yields Some Shocking Outcomes Depending on How Law Is Applied*, TAMPA BAY TIMES (Feb. 17, 2013), <https://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133/> [<https://perma.cc/F459-VYAJ>].

246. *Id.*

247. Christie Zizo, Stephanie Rodriguez & Anthony Talcott, *Stand Your Ground Case Dismissed for Florida Man Who Shot Neighbor Who Was Trimming a Tree*, CLICK ORLANDO (Dec. 30, 2024, at 23:30 CT), <https://www.clickorlando.com/news/local/2024/12/30/stand-your-ground-case-dismissed-for-florida-man-who-shot-neighbor-who-was-trimming-a-tree/> [<https://perma.cc/F6LK-VH7H>].

248. Trujillo, *supra* note 6.

249. Martin, *supra* note 245; Times Staff Writer, *A Shooter’s Lament: He’s Free but Not Proud of It*, TAMPA BAY TIMES (Feb. 17, 2013), <https://www.tampabay.com/news/publicsafety/crime/a-shooters-lament-hes-free-but-not-proud-of-it/1233132/> [<https://perma.cc/8W6A-H834>].

250. Times Staff Writer, *supra* note 249.

251. *Id.*

4. When Cleveland Murdock tailgated the car Patrick Lavoie's girlfriend was driving in West Palm Beach in 2010, Lavoie got out of the car with a cigarette lighter in his hand and angrily approached Murdock's truck.²⁵² Murdock claimed Lavoie attempted to open the door before Murdock shot Lavoie dead.²⁵³ Murdock was detained for questioning, then released without charges.²⁵⁴

And some examples from Kansas include:

1. In Wichita, Kansas, the Sedgwick County District Attorney declined to press criminal charges against a man who fatally shot Zachary Tre'veon Miller outside of a bar on November 10, 2024.²⁵⁵ Miller's girlfriend, who witnessed the incident, stated she and Miller attempted to enter the bar, but the man (shooter) pushed them back, away from the door.²⁵⁶ Miller and the man began arguing, and some people stepped between them.²⁵⁷ The man (shooter) said a racial slur to Miller, then left the area.²⁵⁸ He returned with a gun and shot Miller.²⁵⁹ The District Attorney stated that he "did not have evidence" to overcome a self-defense claim.²⁶⁰

252. Ihosvani Rodriguez, *West Palm Beach Man Freed After Fatally Shooting Man in Road Rage Incident*, PALM BEACH POST (Jan. 17, 2013, at 14:39 ET), <https://www.palmbeachpost.com/story/news/2010/09/17/west-palm-beach-man-freed/7444006007/> [<https://perma.cc/7STV-GAKA>].

253. *Id.*

254. *Id.*

255. Michael Stavola, *No Charges Filed After Man Was Killed Outside Wichita Bar. It Was Self-Defense, DA Says*, WICHITA EAGLE (Nov. 29, 2024, at 11:43 CT), <https://www.kansas.com/news/local/crime/article296313234.html#storylink=cpy> [<https://perma.cc/7AYX-WE8A>].

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

2. The same District Attorney²⁶¹ declined to press charges against another shooter who killed Dontis Carter on April 9, 2024.²⁶² The Wichita Police Department arrested the man after their investigation showed that Carter and the man knew each other and were “engaged in a dispute at the time of the shooting.”²⁶³ The D.A. did not press criminal charges on the basis of self-defense.²⁶⁴
3. Prosecutors have used Kansas’s SYGI laws to justify the use of deadly force by a sheriff’s deputy who shot and killed an unarmed woman in a high-speed chase (for fear of bodily injury to himself and fellow deputies),²⁶⁵ and by a police officer who shot and killed a 17-year-old backing out of his family’s driveway in a van toward the officer.²⁶⁶ Cases of “justifiable homicides” based on self-defense without a duty to retreat are increasing after Kansas’s implementation of SYGI laws.²⁶⁷

And in other states, SYGI laws permitted the use of deadly force against human attackers in the following scenarios:

1. On November 14, 2007, 61-year-old Joe Horn reported two men breaking into his neighbors’ house and asked the 911 operator, “I’ve

261. Sedgwick County District Attorney Marc Bennett is accused of using Kansas’s SYGI statutes as a “sword” instead of a “shield” by giving law enforcement the right to use deadly force wherever they are. *See* Stefania Lugli, *In His Nine-Year Tenure, Sedgwick County District Attorney Has Yet to Prosecute a Police Killing*, BEACON (Mar. 8, 2022), <https://thebeaconnews.org/stories/2022/03/08/stand-your-ground/> [<https://perma.cc/VF9G-MQXH>].

262. Laura McMillan, *DA: Wichita Man’s Death Was ‘Self-Defense,’ No Charges*, KSN (Apr. 24, 2024, at 17:34 CDT), <https://www.ksn.com/news/crime/da-wichita-mans-death-was-self-defense-no-charges/> [<https://perma.cc/XR2D-Q6EB>].

263. *Id.*

264. *Id.*

265. *Prosecutor: No Charges Against Kansas Deputy Who Shot Woman*, AP (May 13, 2021, at 17:46 CST), <https://apnews.com/article/kansas-shootings-c7acfa2d81604524b913130e375b410f> [<https://perma.cc/WA4S-KS5D>].

266. *Investigators: Fatal Overland Park Police Shooting Justified*, AP (Feb. 20, 2018, at 12:54 CST), <https://apnews.com/general-news-8e1f2fd04bf44b068f51897677880dfc> [<https://perma.cc/32YT-2RH5>].

267. Chance Swaim, *Self-Defense Killings Drive Wichita’s Homicide Total Above Last Year’s*, WICHITA EAGLE (Dec. 29, 2018, at 14:00 CT), <https://www.kansas.com/news/local/crime/article223267510.html> [<https://perma.cc/77JT-JP3T>].

got a shotgun; do you want me to stop them?”²⁶⁸ Although the operator repeatedly told Horn not to leave his house or engage with the men, Horn referred to the recent enactment of SYGI laws in Texas and said “I’m going to kill them.”²⁶⁹ He did.²⁷⁰ Horn shot Hernando Torres and Diego Ortiz in the back as they ran away from the neighbors’ house.²⁷¹ Horn was not indicted for the killings.²⁷²

2. A 21-year-old shot at an SUV of teenagers speeding away after a drug deal gone wrong.²⁷³ The shooter killed 15-year-old Jamonta Miles.²⁷⁴ The surviving teens faced drug and gang activity charges, but the shooter was not indicted on any charges, based on SYGI laws and the belief that “someone could have jumped out of the vehicle with a gun.”²⁷⁵ The teens had fireworks and a taser in the SUV but no gun or other weapons.²⁷⁶
3. During Ramadan, Ziad Abu Naim was driving with his wife to a Houston mosque for Friday prayers when another driver nearly collided with Abu Naim’s car at a four-way stop.²⁷⁷ The other driver, Robert Craig Klimek, pulled up next to Abu Naim, both rolled down their windows, and Klimek yelled at Abu Naim, “Go back to

268. Ralph Blumenthal, *Shootings Test Limits of New Self-Defense Law*, N.Y. TIMES (Dec. 13, 2007), <https://www.nytimes.com/2007/12/13/us/13texas.html> [<https://perma.cc/J2GE-3AN2>].

269. *Id.*

270. *Id.*

271. *Id.*

272. Brian Rogers, Ruth Rendon & Dale Lezon, *Joe Horn Cleared by Grand Jury in Pasadena Shootings*, CHRON. (June 30, 2008), <https://www.chron.com/neighborhood/pasadena-news/article/joe-horn-cleared-by-grand-jury-in-pasadena-1587004.php> [<https://perma.cc/79R8-PUAV>].

273. Katie Urbaszewski, *Case Closed on Teen’s Shooting Death*, HOUMATODAY (Feb. 24, 2012, at 08:12 CT), <https://www.houmatoday.com/story/news/crime/2012/02/23/case-closed-on-teens-shooting-death/27007925007/> [<https://perma.cc/E2Z6-J3YG>].

274. *Id.*; Suevon Lee, *Five ‘Stand Your Ground’ Cases You Should Know About*, PROPUBLICA (June 8, 2012, at 12:31 CT), <https://www.propublica.org/article/five-stand-your-ground-cases-you-should-know-about> [<https://perma.cc/WH9Z-8HXE>].

275. Urbaszewski, *supra* note 273; Lee, *supra* note 274.

276. Urbaszewski, *supra* note 273.

277. Leah Caldwell, *‘Go Back to Islam’: When Hatred Collides with Texas’ Stand Your Ground Law, the Result is Fatal*, TEX. OBSERVER (Jan. 4, 2016, at 09:30 CST), <https://www.texasobserver.org/stand-your-ground-islam-shooting-houston/> [<https://perma.cc/H4BH-2WZK>].

Islam!”²⁷⁸ Abu Naim opened his door and stepped out of the car. Then, Klimek shot Abu Naim dead.²⁷⁹ A grand jury declined to indict Klimek.²⁸⁰

4. In Surprise, Arizona, in a Taco Bell drive-thru, 24-year-old Adrian Garduno got out of his vehicle, pulled out a gun, and pointed it at two people in another car after an argument with them.²⁸¹ A man in the other vehicle shot and killed Garduno.²⁸² The shooter was not apprehended by police and has not been charged with any crime.²⁸³

This is the extent to which SYGI laws permit deadly force to be employed to eliminate human life, even in the face of alarming statistics regarding their application. For instance, SYGI laws have led to notable increases in shootings and gun deaths in Florida and some other states, while homicide rates have otherwise generally declined in the United States.²⁸⁴ Moreover, while deterrence of crime is cited as a purpose for SYGI laws, “there is no evidence” that SYGI laws deter crime generally.²⁸⁵ Homicides have been trending downward in the last two decades, but states that adopted SYGI laws saw an increase in homicides compared to states without SYGI laws.²⁸⁶

278. *Id.*

279. *Id.*

280. *Id.*

281. Brent Corrado, *Man Shot, Killed During Dispute in Arizona Taco Bell Drive-Thru: PD*, FOX10 PHX. (Feb. 13, 2024, at 08:01 MST), <https://www.fox10phoenix.com/news/man-shot-killed-taco-bell-drive-thru-dispute> [<https://perma.cc/SYD3-22WT>]; Kit Silavong, *Man Shot Dead at Surprise Taco Bell Drew Gun First, Police Say*, ARIZ.’S FAM. (Feb. 12, 2024, at 16:37 CST), <https://www.azfamily.com/2024/02/12/man-shot-dead-surprise-taco-bell-drew-gun-first-police-say/> [<https://perma.cc/8ANX-Y3FG>].

282. Corrado, *supra* note 281.

283. Silavong, *supra* note 281.

284. Alexa R. Yakubovich et al., *Effects of Laws Expanding Civilian Rights to Use Deadly Force in Self-Defense on Violence and Crime: A Systematic Review*, 111 AM. J. PUB. HEALTH e1, e10–11 (2021); Humphreys, Gasparrini & Wiebe, *supra* note 197, at 47.

285. Cheng Cheng & Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Castle Doctrine* 17 (Nat’l Bureau of Econ. Rsch., Working Paper No. 18134, 2012).

286. *Id.* at 21; Hannah Ritchie & Fiona Spooner, *How Have Crime Rates in the United States Changed over the Last 50 Years?*, OUR WORLD IN DATA (Jan. 19, 2026), <https://ourworldindata.org/us-crime-rates> [<https://perma.cc/A6E5-74ZV>]. The increase could be driven in part by the inclusion of “justifiable” homicides within the statistics. Cheng & Hoekstra, *supra* note 285, at 21. Successful instances of SYGI decisions, particularly when a prosecutor declines to press charges, are quite obviously difficult to track. *Id.*

Additionally, SYGI claims are disproportionately more likely to be successful when the victim is a person of color. Statistics show that 73 percent of people who killed a black person successfully invoked SYGI immunity, compared to only 59 percent of those who killed a white person.²⁸⁷ An analysis of FBI data found that cases involving a white accused against a black victim are 10 times more likely to be “justified,” compared to cases when the accused is black and the victim is white.²⁸⁸ Similarly, in cases when a white person killed a black person, the killing was 281 percent more likely to be justified than when a white person killed another white person.²⁸⁹ Although there are many potentially relevant factors, one study showed: “Black people are more likely to be misperceived as a threat than white people.”²⁹⁰

But this Article does not argue the merits of SYGI laws. Despite these statistics and issues, they are firmly entrenched legal regimes, as evidenced in part by the fact that following in Florida’s footsteps, 33 other states have passed some form of stand your ground laws since 2005.²⁹¹

We are a society that approves of using deadly force against human beings we perceive as a threat, even if we sometimes do so erroneously.²⁹² Given that Part III of this Article demonstrated dogs are entitled to significantly less legal protection than humans, SYGI laws should be applied even more liberally to situations where humans are defending themselves against lethal-capacity canines, given the law’s unassailable hierarchy in terms of human life being at the apex of its protection.²⁹³

Hence, we suggest that in SYGI jurisdictions, a human being should be immune from prosecution if they fatally shoot a lethal-capacity canine that attacks them or approaches them ambiguously in a public place where the human being

287. Nicole Ackermann et al., *Race, Law, and Health: Examination of ‘Stand Your Ground’ and Defendant Convictions in Florida*, 142 SOC. SCI. & MED. 194, 196 (2015). These statistics were deemed not statistically significant, however. *See id.*

288. *Id.*

289. JOHN K. ROMAN, URB. INST., RACE, JUSTIFIABLE HOMICIDE, AND STAND YOUR GROUND LAWS: ANALYSIS OF FBI SUPPLEMENTARY HOMICIDE REPORT DATA 9 (2013), <https://www.urban.org/sites/default/files/publication/23856/412873-Race-Justifiable-Homicide-and-Stand-Your-Ground-Laws.PDF> [<https://perma.cc/7H6A-GYUU>].

290. Ruben, *supra* note 197, at 543.

291. Ackermann et al., *supra* note 287, at 196. The NRA had a significant role in shaping legislation in Florida and other states. Ruben, *supra* note 197, at 516.

292. *See, e.g.,* *Graham v. Connor*, 490 U.S. 386, 396 (1989) (“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable [person], rather than with the 20/20 vision of hindsight.”).

293. *See supra* Part III.

has a right to be.²⁹⁴ Remember that if a person were running toward me and I could not tell what their intention was, I could say “stop” or gesture and expect that my request was communicated. With dogs, we have no such luxury.²⁹⁵

Repurposing the doctrine of assumption of the risk to be predictive rather than allocative, we propose the same should be true even in non-SYGI jurisdictions. By framing the human–lethal capacity canine interaction in terms of assumption of the risk, it becomes clear that in a public space, a human that fatally wounds an attacking lethal-capacity canine should generally bear no responsibility for the animal’s demise.²⁹⁶

V. REPURPOSING ASSUMPTION OF THE RISK IN NON-SYGI JURISDICTIONS

The doctrine of secondary implied assumption of the risk, or *volenti non fit injuria*, translates as “to a willing person, no injury is done.”²⁹⁷ The phrase provides that a person who willingly exposes themselves to a known risk cannot be compensated for any harm that occurred as a result of the risk materializing and causing them harm.²⁹⁸

To assert implied assumption of the risk, the following elements are required:

- (1) There must be a risk of harm to plaintiff caused by defendant’s conduct or by the condition of the defendant’s land or chattels;
- (2) Plaintiff must have actual knowledge of the particular risk and appreciate its magnitude; and,
- (3) The plaintiff must voluntarily [encounter the risk].²⁹⁹

294. See *infra* Part V.

295. See Arun B. & Anne Nithiya G., *The Communicative Relationship Between Humans and Canines in Bruce Cameron’s A Dog’s Way Home*, 17 J. LANGUAGE & LINGUISTIC STUD. 2548, 2551 (2021) (“Animals have restrictions and cannot communicate in the same manner as people do.”).

296. See *infra* Part V.

297. *Volenti Non Fit Injuria Definition*, NOLO, <https://dictionary.nolo.com/volenti-non-fit-injuria-term.html> [<https://perma.cc/S2ZZ-F9PS>] (last visited Mar. 30, 2026); *Volenti Non Fit Injuria*, CORNELL L. SCH.: LEGAL INFO. INST. (Aug. 2021), https://www.law.cornell.edu/wex/volenti_non_fit_injuria [<https://perma.cc/CV4W-88T8>] (presenting the alternative translation: “to a willing person, it is not a wrong”).

298. *Id.*

299. *Hildebrand v. Minyard*, 494 P.2d 1328, 1330 (Ariz. Ct. App. 1972) (internal citations omitted).

Implied assumption of the risk has generally been regarded as a defense in tort law and allocates liability between the parties after harm to the plaintiff occurs.³⁰⁰ A classic case illustrating the mechanics of the doctrine is *Murphy v. Steeplechase Amusement Co.*³⁰¹ The plaintiff in that case was a “vigorous young man”³⁰² who was visiting the Steeplechase Amusement Company in Coney Island, New York with his wife.³⁰³ The plaintiff and his wife decided to ride an attraction called the Flopper which was described as:

a moving belt, running upward on an inclined plane, on which passengers sit or stand. Many of them are unable to keep their feet because of the movement of the belt, and are thrown backward or aside. The belt runs in a groove, with padded walls on either side to a height of four feet, and with padded flooring beyond the walls at the same angle as the belt. An electric motor, driven by current furnished by the Brooklyn Edison Company, supplies the needed power.³⁰⁴

His wife stepped on the ride and he then followed his wife.³⁰⁵ “As he did so, he felt what he describes as a sudden jerk, and was thrown to the floor. His wife in front and also friends behind him were thrown at the same time.”³⁰⁶ The plaintiff suffered a fractured kneecap due to the sudden stop and fall.³⁰⁷

As a result, he filed a negligence claim against the Steeplechase Amusement Company alleging: “the belt was dangerous to life and limb, in that it stopped and started violently and suddenly and was not properly equipped to prevent injuries to persons who were using it without knowledge of its dangers”³⁰⁸

The court ruled that the plaintiff could not recover because the plaintiff knew of the risks associated with the ride and voluntarily decided to get on the belt anyway.³⁰⁹ The court explained:

Something more was here, as every one understood, than the slowly moving escalator that is common in [sic] shops and public places. A fall was foreseen as one of the risks of the adventure. There would have been no point to the

300. See *Volenti Non Fit Injuria*, *supra* note 297.

301. 166 N.E. 173 (N.Y. 1929).

302. *Id.* at 174.

303. *Id.* at 173–74.

304. *Id.*

305. *Id.* at 174.

306. *Id.*

307. *Id.*

308. *Id.*

309. *Id.*

whole thing, no adventure about it, if the risk had not been there. The very name, above the gate, ‘the Flopper,’ was warning to the timid. If the name was not enough, there was warning more distinct in the experience of others.³¹⁰

Perhaps dispositive to the court’s conclusion that the plaintiff was not entitled to recover was the wife’s statement that she “took a chance”³¹¹ to ride the Flopper and the court’s conclusion that the plaintiff “took the chance with her[.]”³¹² Finally, the court provided that the harm suffered by the plaintiff was “the very hazard that was invited and foreseen” by riding the Flopper.³¹³

Implied assumption of the risk is perhaps best understood as identical to express assumption of the risk, except that there is no tangible and documentable declaration that the participant in the activity is engaging in the risk.³¹⁴ Apart from the lack of tangible expression, the doctrine’s result is indistinguishable from the waivers that people sign before engaging in bungee jumping, sky diving, scuba diving, or allowing their young children to participate in climbing gym facilities, for example.³¹⁵

These waivers all generally inform participants that they are about to participate in something that can very likely cause them harm, and they agree to waive their right to sue the provider of the activity if the harm materializes.³¹⁶ But in the case of implied assumption of the risk, there is no executed and tangible proof that the plaintiff assumed the risk, but the court looks at the evidence to determine if the plaintiff assumed the risk.³¹⁷ Fundamentally, as *Murphy* explains, “One who takes part in such a sport accepts the dangers that inhere in it so far as they are obvious and necessary, just as a fencer accepts the risk of a thrust by his antagonist or a spectator at a ball game the chance of contact with the ball.”³¹⁸

The gist of the doctrine is that when a party voluntarily and knowingly decides to engage in an activity that they know creates a risk of harm to themselves,

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. *See Assumption of Risk*, SPENCER L. GRP. (Nov. 4, 2019), <https://www.spencerlawgroup.com/blog/assumption-risk/> [<https://perma.cc/2K4K-8FMK>].

315. *See* Douglas Leslie, *Sports Liability Waivers and Transactional Unconscionability*, 14 SETON HALL J. SPORTS & ENT. L. 341, 341 (2004).

316. *See* Keith N. Hylton, *Waivers*, 102 NEB. L. REV. 171, 172–73 (2023).

317. *See Assumption of Risk*, *supra* note 314.

318. *Murphy*, 166 N.E. at 174.

they are prohibited from recovering when the very risk they were aware of materialized to cause them harm.³¹⁹

As described above, the doctrine of assumption of the risk has traditionally been used to allocate liability *after* harm occurs.³²⁰ But its underlying principle—that people who voluntarily and knowingly take a risk have no right to recover when the risk materializes—could also mean that the owner of a lethal-capacity canine should be the only person deemed at fault when the dog is harmed by a human defending themselves against the animal in a place where the human has the right to be.³²¹ Consider, when a person introduces a known risk into public space (such as a 130-pound lethal-capacity canine) that person should bear responsibility for any harm caused by the risk.³²² When a person defends themselves against a lethal-capacity canine in a place they have a legal right to be, the dog’s owner—not the person—must bear sole legal responsibility for any harm, including harm to the dog.³²³

If the amusement ride operator bore no liability for a foreseeable risk voluntarily assumed, why should a dog owner fare better for introducing to a public space a 130-pound domesticated wolf whose jaws are evolutionarily engineered to sever meat and tendons?³²⁴

This determination or presumption of responsibility even before harm materializes is a hallmark of SYGI jurisprudence.³²⁵ The harm this Article refers to and suggests as “justified”³²⁶ is the use of “deadly force”³²⁷ by a person against a lethal-capacity canine “if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm” by the lethal-capacity breed.³²⁸ Further, the person should be “presumed to have a reasonable belief that deadly force is necessary to prevent imminent death or great bodily

319. See RESTATEMENT (SECOND) OF TORTS § 496C (A.L.I. 1965).

320. See *Murphy*, 166 N.E. at 174 (determining liability after the injury has already occurred).

321. See RESTATEMENT (SECOND) OF TORTS § 496C (A.L.I. 1965) (“[A] plaintiff who fully understands a risk of harm to . . . his things caused by the defendant’s conduct . . . , and who nevertheless voluntarily chooses to . . . permit his things to . . . remain within the area of that risk, under circumstances that manifest his willingness to accept it, is not entitled to recover for harm within that risk.”).

322. See *id.*

323. See *id.*

324. See *Murphy*, 166 N.E. at 174; *supra* Part III.

325. See, e.g., KAN. STAT. ANN. § 21-5222(b) (2025).

326. *Id.*

327. *Id.*

328. *Id.*

harm[.]”³²⁹ when the interaction with the capacity breed occurs “where such person has a right to be[.]”³³⁰

Framing the issue in terms of assumption of the risk generates a result that is consistent with the result we propose for SYGI jurisdictions and generates two broad questions. Initially, does a person, legally in a public place they have a right to be, assume the risk of being harmed by a lethal-capacity canine by merely venturing into the public? Or alternatively, does the owner of a lethal-capacity canine assume the risk of harm to the dog by introducing it into a public space where other humans have a right to be?

Assumption of the risk provides an efficient analytical fulcrum for answering these questions because the doctrine traditionally assigns liability entirely on the party who is deemed to have assumed the risk.³³¹ So, much like the presumptions against arrest and investigation created by SYGI laws, it promotes judicial efficiency and clear resolution of where liability should fall if a lethal-capacity canine is killed by someone in self-defense. Ultimately, we conclude that societal realities mandate that the owner of a lethal-capacity canine in a public space should assume the risk of harm to the animal.

Consider that if a human being approaches a victim with a knife, the victim does not have to wait for the attacker to try to stab them before they can defend themselves.³³² At some point, the proximity of the knife-wielding threat is such that self-defense becomes impossible, and for self-defense to be meaningful, the threat must be neutralized before that proximity is achieved.³³³ Similarly, at some point when a lethal-capacity canine approaches close enough to a person, preventing a bite is beyond the capacity of the human neuromotor system because of the animal’s speed.³³⁴

329. *Id.* § 21-5224(a).

330. *Id.* § 21-5230.

331. *See, e.g.,* *Abernathy v. Eline Oil Field Servs., Inc.*, 650 P.2d 772, 774–75 (Mont. 1982) (explaining the “harsh ‘all or nothing’ effect of assumption of the risk” (citations omitted)).

332. *See, e.g.,* *Sneed v. State*, 580 So. 2d 169, 170–71 (Fla. Dist. Ct. App. 1991) (*per curiam*); *Quinlivan v. State*, 555 So. 2d 802, 804 (Ala. Crim. App. 1989); *Garcia v. State*, 492 S.W.2d 592, 595–96 (Tex. Crim. App. 1973).

333. *See* Ben Findley, *What Is Your Safe Distance to Engage the Threat: The 21-Foot Rule*, USA CARRY (Jan. 17, 2022), <https://www.usacarry.com/safe-distance-engage-threat-21-foot-rule/> [https://perma.cc/L7YW-ZLHL].

334. *See* Elisabeth Geier, *How Fast Can Dogs Run? Running Speeds by Breed*, ROVER, <https://www.rover.com/blog/how-fast-can-a-dog-run/> [https://perma.cc/LRG7-5M29] (noting that the average running speed for humans is 5–6 miles per hour while most dogs can run up to 15–20 miles per hour).

The law does not demand that parties wait for a blade to pierce their skin before acting against a knife wielding assailant.³³⁵ It should not demand that a person wait to be punctured by canine fangs before shooting a fast-approaching animal whose intent they cannot read—and whose speed will outpace their neuromuscular response—after a certain proximity is achieved. In this regard, both an assumption of the risk framing and SYGI laws increase the clarity of the rights of the person threatened with a forceful attack.³³⁶

To illustrate, consider a situation in which a prankster walks into the bank, whips out a precise replica of a shotgun, and screams, “I’m gonna kill you all.” In this situation, a person would be entitled to use deadly force to prevent the threat, and a person would be entirely within their Second Amendment and SYGI rights to shoot the prankster.³³⁷ This type of mistake is also possible with lethal-capacity canines. In the introductory hypothetical, Grandpa had no way of knowing whether the dog was going to lick them or bite them.³³⁸ If it turns out that after Grandpa shot the dog there was some hypothetical way to establish that the dog would not have harmed them, should Grandpa be liable for making this mistake? *Of course not!*

And a Florida appeals court recently confirmed that SYGI is properly invoked when a person uses deadly force against an attacking dog.³³⁹ Cassanova Gabriel was walking his small Chihuahua near an apartment building in Palm Beach, Florida, when a large pit bull came around the corner, alone and off leash, making threatening sounds, and moving toward Gabriel and his Chihuahua.³⁴⁰ Gabriel tried to kick the pit bull away and then fired warning shots, but the dog “became more aggressive” and pinned Gabriel and his Chihuahua in a corner.³⁴¹

335. See, e.g., *Sneed*, 580 So. 2d at 170–71; *Quinlivan*, 555 So. 2d at 804; *Garcia*, 492 S.W.2d at 595–96.

336. See Santa Cruz, *supra* note 224, at 158.

337. See U.S. CONST. amend. II; *State v. Dickey*, 716 S.E.2d 97, 102 (S.C. 2011) (“A person has the right to act on appearances, even if the person’s belief is ultimately mistaken.”); *Self-Defense and ‘Stand Your Ground’*, *supra* note 209 (noting that a required element of justified use of deadly force in self-defense is a “reasonable belief that such force is necessary to defend against deadly force”).

338. See *supra* Part I.

339. *Gabriel v. State*, 396 So. 3d 17, 21 (Fla. Dist. Ct. App. 2024); Jim Saunders, *Court Rules ‘Stand Your Ground’ Law Applies to Cases Involving Animals After Florida Man Said He Felt Threatened, Killed Pitbull*, WCTV (Oct. 16, 2024, at 16:43 CDT), <https://www.wctv.tv/2024/10/16/court-rules-stand-your-ground-law-applies-cases-involving-animals-after-florida-man-said-he-felt-threatened-killed-pitbull/> [https://perma.cc/STB6-6QN6].

340. *Gabriel*, 396 So. 3d at 18; Saunders, *supra* note 339.

341. *Gabriel*, 396 So. 3d at 18; Saunders, *supra* note 339.

Gabriel shot and killed the pit bull.³⁴² Then, the pit bull's owner came around the corner.³⁴³

A few months later, Gabriel was charged with "cruelty to animals while in possession of a firearm, discharging a firearm in public, and discharging a firearm in a residential area."³⁴⁴ Gabriel filed a motion to dismiss, asserting SYGI under Fla. Stat. §§ 776.012 and 776.032.³⁴⁵ The prosecution argued that section 776.032 does not apply to dog attacks, only to attacks by persons against other persons.³⁴⁶ The trial court accepted this argument, denied Gabriel a hearing, and entered an order striking Gabriel's motion to dismiss.³⁴⁷ On appeal, the Fourth District Court of Appeal of Florida quashed the trial court's order and remanded for further proceedings.³⁴⁸ The court's statutory construction analysis compared section 776.012's subsections on nondeadly and deadly force used in defense of a person.³⁴⁹

Section 776.012(1) authorizes nondeadly force against "another" to defend "against the other's imminent use of unlawful force."³⁵⁰ Section 776.012(2) authorizes deadly force "to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony."³⁵¹ The latter "does not include language that the force must always be used against a person."³⁵² The court of appeals concluded that section 776.012(2)'s plain language does not require the use of force be against a person and declined to read it into the statute.³⁵³ The court of appeals' statutory construction accords with the common sense understanding that if the law authorizes deadly force against a person under the circumstances, then it should authorize deadly force against an animal (and lesser nondeadly force).³⁵⁴

But even this reasoning by the appellate court seems unnecessarily burdensome given the obviousness of the normative conclusion when framed

342. *Gabriel*, 396 So. 3d at 18.

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.*

347. *Id.* at 19.

348. *Id.* at 21.

349. *Id.* at 19–20.

350. FLA. STAT. § 776.012(1) (2025).

351. *Id.* § 776.012(2).

352. *Gabriel*, 396 So. 3d at 20.

353. *Id.*

354. *Id.*

through an assumption of the risk lens. It is beyond debate that many breeds of dogs are specifically bred to be capable of inflicting deadly force or force designed to inflict grievous bodily harm on animals that are more powerful and durable than human beings.³⁵⁵ These species of dogs can inflict the same, and as demonstrated, do inflict the same on human beings.³⁵⁶ A human attacking another human with a knife, in many cases, may pose less of a threat to the victim than if the victim is being attacked by a Dogo Argentino, American bully, or Boerbel.³⁵⁷

In the prankster example above, there is no question that the person who shot the prankster would not be liable if it was impossible to tell whether the replica shotgun was harmful or not.³⁵⁸ Most would agree that the prankster brought harm upon himself, or the prankster assumed the risk of being shot, if he decided to behave the way he did in the bank while wielding the perfect replica of a shotgun.

Self-defense does not only entail mitigating harm already inflicted, but it also includes the right to prevent harm.³⁵⁹ As mentioned above, when a dog gets within a certain proximity of a human, it becomes impossible to prevent harm if that dog decides to attack you from that distance.³⁶⁰ The speed with which that dog will move before it can connect its teeth means there is not time to begin to prevent the dog from inflicting harm.³⁶¹ Additionally, apart from death and other physical injury associated with a canine attack, the sheer emotional trauma and potential for disease and infection must also be considered in assessing the risk posed by potential canine attacks.³⁶²

The relevant questions that need to be considered for assumption of the risk involve the complex juxtaposition of recognized rights. Some authors acknowledge that dogs in public spaces invoke constitutional rights, but greatly oversimplify the tension involved in the rights-based approach.³⁶³ For example,

355. See *supra* Part II.B.1 (explaining the breeding of the Dogo Argentino, Great Dane, and Rhodesian ridgeback).

356. See *supra* Part II.B.1.

357. See *supra* Part II.B.

358. See *State v. Dickey*, 716 S.E.2d 97, 102 (S.C. 2011).

359. See, e.g., *Evans v. United States*, 304 A.3d 211, 227–28 (D.C. 2023) (noting that one does not need to wait for an intruder to breach your front door before you may reach for a firearm in self-defense).

360. See *supra* Part II.B.

361. See *supra* Part II.B.

362. See *Medina v. Chile Commc'ns, Inc.*, 832 N.Y.S.2d 750, 753, 754–55 (Sup. Ct. 2006) (discussing the emotional effects and dangers of infections in a dog-bite case).

363. See, e.g., Schiavone, *Rational Basis in Dog Law*, *supra* note 67, at 109–11 (highlighting the overlapping constitutional property and privacy interests implicated by canine seizure).

Professor Ann L. Schiavone suggests breed-specific laws impinge constitutional rights involving property ownership and privacy.³⁶⁴

According to Schiavone, “Breed-specific laws involve classification of a group of people, those who own banned or restricted breeds of canines. Such laws burden that one group over others similarly situated by preventing the enjoyment of property, and in some cases seizing and destroying such property.”³⁶⁵ She also suggests that breed-specific bans implicate privacy rights, specifically “the right to be let alone.”³⁶⁶ She premises this argument on the fact that this particular right prohibits the government from being able to interfere in those most private rights and decisions that essentially define us as human beings.³⁶⁷ Schiavone suggests that the established 15,000 year relationship between dogs and humans, the fact that this relationship impacted both human evolution and the evolution of dogs from wolves, and the reality that some humans consider their pets as part of their family, means that dogs are part of the essentially private ways we define who we are.³⁶⁸ Because of this, statutes that facilitate bans or seizures of dogs based on their breed violate essential rights of privacy.³⁶⁹

Schiavone’s rights discussion, however, omits the rights guaranteed by the Second and Fourteenth Amendments,³⁷⁰ which this Article includes. This Article does not deny the existence or implication of the rights Schiavone discusses regarding animals, but those rights exist in tandem with the reality “that the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.”³⁷¹ These rights are at the “core” of the Second Amendment.³⁷²

Schiavone may be correct about an individual’s right to own whatever breed of dog they choose, and for the purposes of this Article, it can be conceded that breed bans are unconstitutional.³⁷³ However, those realities do not impact one’s

364. *Id.*

365. *Id.* at 110.

366. *Id.* (citation omitted).

367. *See id.* at 110–11.

368. *See id.* at 111.

369. *Id.*

370. *See id.* at 109 (“[T]hese laws impinge upon not only one, but two fundamental rights: property and privacy.”).

371. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 10 (2022).

372. *Id.* at 18 (“[T]he Amendment’s core generally covers carrying in public for self defense[.]” (alteration in original) (quoting *Wrenn v. District of Columbia*, 864 F.3d 650, 659 (D.C. Cir. 2017))).

373. *See Schiavone, Rational Basis in Dog Law*, *supra* note 67, at 110–11.

Second Amendment rights to shoot and kill a lethal-capacity canine if the animal poses a threat.³⁷⁴ This is true even if a dog is emotionally considered a family member.³⁷⁵ In other words, you are free to own whatever breed of dog you choose wherever you live, but others are also free to use lethal force against that dog if it poses a threat of bodily harm to them in a public space.³⁷⁶ As the Supreme Court explained, “Many Americans hazard greater danger outside the home than in it.”³⁷⁷ “The text of the Second Amendment reflects that reality.”³⁷⁸

The Second Amendment and the established precedent regarding SYGI laws make it clear that if a human being acts in a public space in a way that threatens serious harm to other human beings, the use of lethal force to neutralize the human being is presumptively permissible.³⁷⁹ Furthermore, in such a situation, the user of lethal force is presumed to be immune from arrest or prosecution.³⁸⁰

So even acknowledging the constitutional right to own a lethal-capacity canine, consider that no amount of caution or due diligence will absolutely prevent situations where the lethal-capacity canine will threaten humans in the public.³⁸¹ Anyone who has ever walked a dog knows that sometimes you accidentally drop the leash or fail to secure the leash properly.³⁸² Locks on fences and enclosures sometimes fail or are accidentally improperly secured despite our due diligence.³⁸³ What if a human walking a lethal-capacity canine in a populated area loses

374. See, e.g., *Gabriel v. State*, 396 So. 3d 17, 19–20 (Fla. Dist. Ct. App. 2024) (recognizing the justified use of deadly force against a dog posing an imminent threat of serious harm).

375. See *id.* (concluding that statutory justification for deadly force turns on necessity and threat).

376. See *id.*

377. *Bruen*, 597 U.S. at 33.

378. *Id.*

379. See U.S. CONST. amend. II; *Boston v. State*, 326 So. 3d 673, 675 (Fla. 2021).

380. See *supra* Part IV.

381. See U.S. DOG BITE FATALITIES, *supra* note 25, at 3 (observing that, over a 13-year period, 107 fatal dog attacks took place off the dog owner’s property).

382. See, e.g., *Pit Bull Escapes Leash, Attacks 2*, VA. DOG BITE LAW. (Apr. 20, 2020), <https://viriniadogbitelawyer.com/pit-bull-escapes-leash-attacks-2/> [https://perma.cc/Y46K-CD77].

383. See, e.g., Josh Gauntt & Andrew McMunn, *Woman Killed by Multiple Dogs After They Escape from Neighbor’s Yard, Police Say*, KKTv (May 24, 2022, at 13:26 CDT), <https://www.kktv.com/2022/05/24/woman-killed-by-multiple-dogs-after-they-escape-neighbors-yard-police-say/> [https://perma.cc/69V9-ZUKC] (reporting that the dog’s owner had no idea how his dogs escaped his fenced in yard).

consciousness? Even responsible dog ownership does not ensure against dog attacks.³⁸⁴

But there is also some irresponsible human behavior that increases the likelihood of dog attacks in public spaces. For example, when you are in a public park and a 90-pound human is walking a 100-pound dog on a leash, the laws of physics place beyond debate the reality that if that dog went after someone or something, the walker would be unable to stop them.³⁸⁵ Similarly, dog owners who believe they have a right to walk their lethal-capacity canines off leash in a public area cannot legitimately express surprise if the dog attacks another dog or human being.³⁸⁶ No amount of imagining that you are Cesar Millan actually results in you being Cesar Millan.

There simply is no question that the presence of a lethal-capacity canine in a public space creates risks of harm that no amount of care can prevent.³⁸⁷ Even though there is arguably a right to own these canines and introduce them to public spaces, it is undeniable that doing so presents unavoidable risks to people and property as described above.³⁸⁸ As a result of this reality, a person owning a lethal-capacity canine and introducing that dog into public spaces assumes the risk of the harm that the dog might attack another human being, and therefore that owner also assumes the risk that the attacked person will exercise their right to defend themselves.³⁸⁹ The ultimate result then is that the owner of a lethal-capacity canine has assumed the risk of harm to their dog if it attacks or ambiguously approaches another human being in public space.³⁹⁰

384. See Ahmed, *supra* note 103 (describing a fatal dog attack in which the owners stated that the dog had never exhibited signs of aggression).

385. See *People v. Knoller*, 158 P.3d 731, 734 (Cal. 2007) (noting that a dog owner had conceded she lacked adequate physical strength to restrain and control two dogs involved in a fatal dog attack).

386. See, e.g., Toria Sheffield, *2 Dogs Dead, 2 People Injured After Off-Leash Pets Attacked During a Routine Evening Walk: 'It Happened So Quickly'*, PEOPLE (Jan. 24, 2026, at 17:17 EST), <https://people.com/2-dogs-dead-2-people-injured-after-off-leash-pit-bulls-attack-in-florida-11892020/> [<https://perma.cc/B8GW-9HE6>].

387. See *supra* Part II.B.

388. See *supra* Part II.B.

389. See, e.g., *Gabriel v. State*, 396 So. 3d 17, 18–20 (Fla. Dist. Ct. App. 2024).

390. See *id.* at 21 (“We conclude as a matter of law, [that] a person is immune from criminal prosecution for the use of deadly force against an animal where the person has a reasonable belief that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.”).

This is consistent with *volenti non fit injuria* and the premise of assumption of risk.³⁹¹ You cannot introduce a lethal-capacity canine into a public space, knowing full well that the animal poses a risk to other humans rightfully present in that space, and then seek redress or to hold humans criminally liable when they defend themselves against the risk you knowingly created.³⁹² You have a right to own these dogs, but they do not have a right to attack or threaten another human in the public space.³⁹³

Consider the absurdity of the contrary. If humans have to wait to use force until after they are bitten by the animal, then human beings now live in a society where taking a stroll in a public place means they are assuming the risk of being bitten by a lethal-capacity canine and being defenseless against the animal. In this world, preemptive action to prevent harm in an ambiguous dog encounter is prohibited, and the right to self-defense no longer includes the right to prevent harm, but only the right to mitigate harm after some harm has already occurred.³⁹⁴

Normatively, it makes much more sense to place the risk of harm to the animal on the animal's owner.³⁹⁵ Again, an animal owner assumes the risk that they are exposing their animal to the risk of harm from a human defending themselves when they bring that animal into a public area.³⁹⁶ Stated another way, a lethal-capacity canine owner assumes the risk of harm to their animal when they permit that animal to be in a public place if the animal's conduct justifies a human being defending themselves pursuant to their express Second Amendment constitutional rights and the norms of self-defense.³⁹⁷

This should be relatively uncontroversial in light of the wide latitude regarding the permissible use of deadly force and presumptions against arrest or prosecution when a human being uses deadly defensive force against another

391. See *Volenti Non Fit Injuria*, *supra* note 297.

392. See, e.g., *Gabriel*, 396 So. 3d at 18–20.

393. See *id.*

394. See, e.g., *Blanco*, *supra* note 108 (noting that city authorities were not allowed to remove dogs from the owner's residence despite complaints and warnings from neighbors because the dogs had not yet attacked a human).

395. See *Volenti Non Fit Injuria*, *supra* note 297; IOWA CODE § 351.28 (2025) (placing liability for dog bites on the dog's owner).

396. See *Volenti Non Fit Injuria*, *supra* note 297.

397. See RESTATEMENT (SECOND) OF TORTS § 496C (A.L.I. 1965); *Gabriel*, 396 So. 3d at 18–20.

human being.³⁹⁸ It would be anomalous to afford dogs more latitude to threaten or attack people before deadly force is permissible than we afford human beings.³⁹⁹

As a result, the same presumptions that apply in SYGI jurisdictions should apply such that a person using deadly force against an attacking or ambiguously approaching lethal-capacity canine should be presumed to be immune from prosecution or civil liability.⁴⁰⁰ Of course, this presumption must be limited to situations where the owner has introduced a dog into a public space and where the animal behaves in an ambiguous or threatening manner such that a reasonable person fears imminent harm.⁴⁰¹

When the question “*Who assumed the risk?*” is asked, the answer must be clear. It is not Grandpa. It is not the child. It is not the jogger, the postal worker, or the neighbor with groceries. It is the person who, through entitlement or negligence, brought a lethal-capacity canine into a public space.⁴⁰² And just like the thrill-seeker on the Flopper, that person must be told by the law: You took the chance.⁴⁰³ You don’t get to sue when the ride flips back.⁴⁰⁴

This does not mean that every canine death in public should go unquestioned. But a properly invoked self-defense claim—especially when supported by ambiguous or threatening behavior—should create a presumption of non-prosecution, rebuttable only by clear evidence to the contrary.⁴⁰⁵

VI. CONCLUSION

The legal system must reconcile three intersecting realities to account for the increase in lethal-capacity canines in public spaces: (1) lethal-capacity canines exist and their presence in public spaces creates an inherent, sometimes uncontrollable risk of grievous harm; (2) despite cultural anthropomorphism and affection for dogs, they are not entitled to the same legal protections as human beings; and (3) human beings possess a constitutional right to self-defense, including the right to prevent and not merely react to harm, especially in

398. See, e.g., Lee, *supra* note 274 (describing the wide range of factual scenarios in which courts, prosecutors, and juries have treated deadly force against other persons as legally justified under stand your ground laws).

399. See *id.*

400. See *supra* Part IV.

401. See RESTATEMENT (SECOND) OF TORTS § 496C (A.L.I. 1965); *Gabriel*, 396 So. 3d at 18–20.

402. See RESTATEMENT (SECOND) OF TORTS § 496C (A.L.I. 1965).

403. See *Murphy v. Steeplechase Amusement Co.*, 166 N.E. 173, 173–74 (N.Y. 1929).

404. See *id.*

405. See *Gabriel*, 396 So. 3d at 18–20.

jurisdictions governed by SYGI laws. This Article suggests that the convergence of these three realities compels a legal regime that permits, without prosecution or civil penalty, the use of deadly force against a lethal-capacity canine that attacks or ambiguously approaches a human being in a public space where the human has a lawful right to be.

This Article has shown that the law already permits broad use of deadly force against humans in SYGI jurisdictions, even in controversial or factually ambiguous scenarios.⁴⁰⁶ It would be perverse and legally incoherent to allow greater use of lethal force against human beings than against lethal-capacity animals that are capable of similar or greater harm.

This Article introduced a predictive application of the doctrine of assumption of risk as a doctrinal tool that aligns with the core logic of SYGI: clear rules, prospective determinations of blame, and rapid resolution of liability.⁴⁰⁷ Just as a thrill-seeker cannot sue a rollercoaster operator for a foreseeable fall, a person who brings a lethal-capacity canine into a public space assumes the risk that if the dog behaves ambiguously or aggressively, a human being may lawfully defend themselves with lethal force.⁴⁰⁸ Not only is this risk allocation doctrinally sound; it is normatively essential.

Opponents may argue that this approach is too harsh, that it disregards the sanctity of animal life, or that it encourages unjustified violence against dogs. But, this argument forgets what the data shows: the overwhelming majority of dog attacks occur in contexts of unpredictability, often involving family pets, off-leash animals, or scenarios in which the owner exercised less-than-absolute control.⁴⁰⁹ It is not unjust to hold owners accountable for that unpredictability, especially when the cost of delaying self-defense for the human target can be disfigurement or death.

Furthermore, moral intuitions that place emotional weight on canine lives often rest on a fallacy: the belief that empathy alone ought to shape legal principles.⁴¹⁰ Empathy for animals is understandable and often admirable, but the law must translate affection into boundaries that reflect proportional risk. No matter how deeply loved a dog may be, its status in law remains either that of a chattel or between a chattel and a human being, and that distinction must mean

406. *See supra* Part IV.

407. *See supra* Part IV.

408. *See supra* Part V.

409. *See supra* notes 122–23 and accompanying text.

410. *See supra* Part II.A.

something when human safety is at stake.⁴¹¹ Legal frameworks must prioritize the irreplaceability of human life over the irreplaceability of human affection.

Some will also resist the invocation of the Second Amendment in this context, perhaps uneasy with the broader political implications of firearm use. But this Article is not a brief for vigilantism. It is a demand for doctrinal consistency: if we allow deadly force to protect human life from ambiguous threats posed by fellow humans, we must allow the same or even greater latitude when the threat emanates from a lethal-capacity animal.⁴¹²

Moreover, as the analysis of SYGI statutes demonstrates, these laws were designed to prevent victims of legitimate self-defense from being retraumatized by prosecution.⁴¹³ Extending this logic to canine threats not only protects human life and bodily integrity, but also reinforces the clarity and certainty that SYGI laws were meant to provide. We cannot claim to value human safety above all else while simultaneously criminalizing those who take decisive, preventative action when confronted by a credible threat—especially when, as with approaching dogs, the capacity for violence is real and the temporal opportunity for effective action is fleeting.⁴¹⁴

The power of this argument is magnified by the brute reality of time. In many dog-attack scenarios, the victim has mere seconds to respond when a 120-pound dog moving at 25 miles per hour is approaching the human.⁴¹⁵ In such moments, any legal system that mandates measured delay is not a protector of life, but an accomplice to harm because it ignores the limitations of the human neuromotor system.

To deny preemptive defense is to effectively require a citizen to endure trauma, or even an eventually fatal bite as a price for being in the public space. This inversion of moral priority is not only illogical but inhumane and potentially sacrifices lives on the altar of misplaced sentimentality. Just as we legislate against the risks of unsafe vehicles,⁴¹⁶ dangerous products,⁴¹⁷ and hazardous buildings,⁴¹⁸ so too must we legislate against the uncontained threat of lethal-capacity canines.

411. *See supra* Part V.

412. *See supra* Part V.

413. *See supra* Part IV.

414. *See supra* Part II.B.

415. *See* Geier, *supra* note 334.

416. *See, e.g., Park Drives & Regulations, supra* note 62.

417. *See, e.g.,* 15 U.S.C. § 2051 (consumer product safety).

418. *See, e.g.,* 40 U.S.C. § 3312 (building codes).

Finally, this Article insists that to continue treating dog attacks as aberrations rather than a statistically significant public health threat they have become is to ignore reality.⁴¹⁹ Our laws must evolve in response to the data, just as we adapt public policy in response to emerging dangers in other domains. And that evolution must begin by recognizing a foundational truth: the right to walk freely in public without fear of attack is not subordinate to the right to walk a lethal-capacity canine in that same space.

The law should not ask human beings to wait to be bitten. Nor should it render them criminals for choosing self-preservation over blind trust in an animal whose internal state can never truly be discerned. Grandpa, walking with his granddaughter, should be allowed to defend her life in the same way that he would be allowed to defend her from someone with a knife.⁴²⁰ The stakes are too high, and the costs too grave, to demand anything less.

SYGI laws, however imperfect, have been disproportionately applied in favor of white defendants, especially when the person killed is black.⁴²¹ Cases involving black victims are significantly more likely to be deemed justifiable, even when the underlying facts are tenuous.⁴²² If our legal system continues to permit broad lethal defensive force against ambiguous human threats, particularly racialized ones, how can it flinch at protecting human life from a known unpredictable species simply because that species elicits affection? Are we prepared to value canine lives more than the lives of black children and men misperceived as threats in similar moments of ambiguity?

In SYGI jurisdictions, the killing of a lethal-capacity canine in ambiguous or threatening circumstances should presumptively trigger immunity from prosecution or civil liability.⁴²³ Similarly, in non-SYGI jurisdictions, the doctrine of assumption of the risk mandates a similar conclusion.⁴²⁴ All legal responsibility for harm to the animal should be allocated to the animal's owner. This recognizes that public safety requires that the responsibility for danger should lie with those who create it. To do otherwise would be to place greater legal value on the life of a dog than on the right of a human to walk freely and safely in the public square.

419. *See supra* Part II.B.

420. *See supra* Parts IV–V.

421. Ackermann et al., *supra* note 287, at 196; ROMAN, *supra* note 289, at 9.

422. Ackermann et al., *supra* note 287, at 196; ROMAN, *supra* note 289, at 9.

423. *See supra* Part IV.

424. *See supra* Part V.

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Dogs are not people.⁴²⁵ And while many are beloved companions, they remain fundamentally different in law and in risk. A society that elevates canine affection over human safety and autonomy has lost its sense of proportion. We should not apologize for insisting that when forced to choose between a dog and a defenseless human, between uncertainty and security, the law should protect the latter.⁴²⁶

Self-defense is the most basic assertion of one's right to continue living, breathing, and existing unmaimed in public space.⁴²⁷ The law must reflect that assertion—not just in theory, but in every encounter where the stakes are life, limb, or trauma.⁴²⁸ Emily should grow up in a world where walking hand-in-hand with her grandfather is not gambling with fate, but a right safeguarded by law.

425. *See supra* Part III.

426. *See supra* Part V.

427. *See* Santa Cruz, *supra* note 224, at 158.

428. *See supra* Part IV.