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UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

CASE NO.

6:09-cv-340-021-28 KRS

NAIA TRUST, a non-profit corporation,
GALE M PARR, individually and on
behalf of all persons similarly situated,
and PAMELA A. GRAY, individually and
on behalf of all persons similarly situated

Plaintiffs,

v.

VOLUSIA COUNTY, FLORIDA, a
political subdivision of the State of
Florida,

Defendant.

_____ /

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, NAIA TRUST (hereinafter referred to as "NAIAT"), GALE M. PARR (hereinafter referred to as "Parr"), and PAMELA A. GRAY (hereinafter referred to as "Gray"), by and through undersigned counsel, hereby sue the Defendant, VOLUSIA COUNTY, FLORIDA, (hereinafter referred to as "County") for declaratory and injunctive relief, attorneys' fees and costs, and bring this action.

JURISDICTION, VENUE, PARTIES, and CLASS

1. This action arises under the Fourteenth Amendment to the United States Constitution, 28 U.S.C. §§1331, 1367, and 2201; 42 U.S.C. §1983; and Article I, §§9 and 12 of the Florida Constitution. Jurisdiction supporting Plaintiffs' claims for attorneys' fees is conferred by 42 U.S.C. §1988.

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2. Venue is properly in this District pursuant to 28 U.S.C. §1391(b) on the grounds that a substantial part of the events or omissions giving rise to the claims alleged herein occurred, and will continue to occur, in this District.

3. Plaintiff NAIAT is a nonprofit corporation, pursuant to Section 501(c)(4) of the Internal Revenue Code, established to promote responsible animal care and ownership, and the enactment of reasonable laws, policies and regulations to protect animals and the people who care for them.

4. NAIAT comprises among its members persons other than pet dealers who shelter, breed, and/or train a single breed of dog or cat in order to conform to an approved standard of competition. NAIAT also has members who shelter, breed, and/or train more than one (1) breed of dog or cat.

5. Plaintiff Parr is an individual and a resident of the State of Florida, and resides in unincorporated Volusia County, Florida.

6. Parr is a member of NAIAT, and currently owns three (3) dogs in unincorporated Volusia County, Florida.

7. Parr is a person other than a pet dealer who shelters, breeds, and/or trains a single breed of dog or cat in order to conform to an approved standard of competition.

8. Plaintiff Gray is an individual and a resident of the State of Florida, and owns property in unincorporated Volusia County, Florida.

9. Gray is a member of NAIAT, and purchased property in unincorporated Volusia County, Florida with the intention of operating a rescue shelter for Doberman Pinschers and other working dogs.

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10. Gray is a person other than a pet dealer who shelters, breeds, and/or trains a single breed of dog or cat in order to conform to an approved standard of competition.

11. Defendant Volusia County is a political subdivision of the State of Florida, and is a “municipality” for purposes of liability under 42 U.S.C. §1983.

FACTUAL ALLEGATIONS

12. On August 21, 2008, the County Council of Volusia County, Florida, enacted Ordinance No. 2008-18, amending Section 14-31 and Section 14-56 of the Code of Ordinances of Volusia County, Florida (hereinafter referred to as the “**Ordinance**”). A copy of the Ordinance is attached hereto and incorporated herein as Exhibit “A”.

13. Section 14-31 of the Ordinance defines “Hobby Breeders” as follows:

Hobby breeder means a person other than a pet dealer who shelters, breeds or trains a single breed of dog or cat, to conform to an approved standard of competition. The owner of a hobby breeder facility must be in good standing and have registration privileges intact with the appropriate national animal registry. The owner must have three years’ documented experience in show clubs and participation in show trials.

14. Section 14-31 of the Ordinance defines “Hobby Breeder Facility” as follows:

Hobby breeder facility means kennels or catteries operated by a hobby breeder that conform to the standards set out in this article under section 14-56.

15. Section 14-31 of the Ordinance defines “Pet Dealer” as follows:

Pet dealer means any person who in the ordinary course of business engages in the sale of more than two litters, or 20 dogs or 20 cats, per year, whichever is greater, to the public. Such definition includes breeders of animals who sell such animals directly to a consumer.

16. Section 14-31 of the Ordinance defines “Impounding or holding facility” as follows:

Impounding or holding facility means any one or combination of a pet shop, kennel, cattery, or humane society facility or any facility or place the county or city may so designate.

17. A person may be a Pet Dealer, or operate an Impounding or Holding Facility, but not a Hobby Breeder, nor operate a Hobby Breeder Facility, and therefore not be subject to the standards set out under Section 14-56 of the Ordinance.

18. Section 14-56(a)(3) of the Ordinance prohibits more than one (1) breed of either dog or cat within an individually licensed Hobby Breeder Facility, and that all such dogs or cats be “identifiable by either a tattoo or implant device.”

19. Section 14-56(a)(4) of the Ordinance requires a Hobby Breeder who has sold a dog or cat to accept return of such animal by its new owner if the new owner “becomes unable or unwilling to continue ownership and responsibility for [the] dog or cat” without any time limitations whatsoever as to when said dog or cat may be returned to the Hobby Breeder.

20. Section 14-56(b) of the Ordinance regulates Hobby Breeder Facilities with specific requirements and conditions, including but not limited to:

- a. requiring food receptacles be accessible to all animals at all times;
- b. requiring the dogs or cats in the Hobby Breeder Facility be kept dry at all times;
- c. requiring that water be available at all times;
- d. requiring that the owner of a Hobby Breeder Facility with indoor facilities must live on the premises; and
- e. requiring that an indoor facility have lighting providing “uniformly distributed illumination of sufficient intensity to permit routine inspection, cleaning, and provide for the well being of the animals [and that the] animals shall be protected from excessive illumination.”

21. Section 14-56(c) of the Ordinance provides that a Hobby Breeder must, as a condition of issuance of a license to operate as a Hobby Breeder in unincorporated Volusia County, Florida, consent to an inspection by the Animal Control Division, at any reasonable time and without notice, of all domestic animals and all premises where animals are kept.

22. Section 14-56(c) of the Ordinance further provides that the Animal Control Division has the authority to issue a notice of revocation of a Hobby Breeder license upon receipt of information of a violation of the Ordinance without the necessity of an inspection. No standards are provided for revocation, and there is no due process afforded to purported violators, either before or after revocation.

23. Plaintiff is a Hobby Breeder as defined in the Ordinance and is subject to the Ordinance's requirements and regulations for Hobby Breeders and Hobby Breeder Facilities. Plaintiff faces a real and immediate threat of prosecution and/or license revocation.

24. The Ordinance impermissibly targets Plaintiff and members of NAIAT Hobby Breeders for regulation with the improper motive of driving them out of the County, thereby interfering with their legitimate exercise of constitutional rights, while not imposing similar requirements and regulations for Pet Dealers, Impounding or Holding Facilities, or individual pet owners within the County.

25. The Ordinance is regulatory, proscriptive and compulsory in nature, and Plaintiffs are presently and prospectively subject to its regulations, proscriptions, or compulsions. Unless enforcement of the Ordinance is enjoined, Plaintiffs will suffer irreparable injury including, but not limited to, the closure of their facilities, the loss of their dogs or cats, the revocation of their licenses, the loss of use of their property, and unlawful prosecution.

26. Plaintiffs have retained the undersigned law firm to represent them in this action and are obligated to pay them a reasonable fee for their services.

27. Pursuant to 42 U.S.C. §1988(b), in proceedings to enforce §1983 the court may, in its discretion, allow the prevailing party reasonable attorneys' fees as part of the costs.

COUNT I
EQUAL PROTECTION VIOLATION

28. Plaintiffs adopt and re-allege each and every allegation contained in paragraphs 1 through 23 above.

29. Defendant's policy and practice of requiring Hobby Breeders to keep only one (1) species or one (1) breed of either dog or cat bred or kept at any individual licensed Hobby Breeder facility while similarly situated Pet Dealers in the County are not subject to said restrictions, and are not threatened with prosecution and revocation of licensure, constitutes disparate treatment in violation of Plaintiffs' right to equal protection.

30. Defendant's policy and practice of requiring Hobby Breeders to mark all dogs and cats bred or kept at any individually licensed Hobby Breeder Facility with a tattoo or implant device while similarly situated Pet Dealers in the County are not subject to said requirements and regulations, and are not threatened with prosecution and revocation of licensure, constitutes disparate treatment in violation of Plaintiffs' right to equal protection.

31. Defendant's policy and practice of requiring Hobby Breeders to accept those dogs or cats returned by new owners who are unable or unwilling to continue ownership and responsibility for such dog or cat while similarly situated Pet Dealers in the County are not subject to such requirements and regulations, and are not threatened with prosecution and revocation of licensure for violations thereof, constitutes disparate treatment in violation of Plaintiffs' right to equal protection.

32. Defendant's policy and practice of requiring Hobby Breeders to comply with specific and onerous methods for the transportation, handling, and storage of food and water while similarly situated Pet Dealers and Impounding or Holding Facilities in the County are not subject to such requirements and regulations, and are not threatened with prosecution and revocation of licensure for violations thereof, constitutes disparate treatment in violation of Plaintiffs' right to equal protection.

33. Defendant's policy and practice of requiring owners of Hobby Breeder Facilities to live on the premises while similarly situated Pet Dealers and Impounding or Holding Facilities in the County are not subject to said requirements and regulations, and are not threatened with prosecution and revocation of licensure for violations thereof, constitutes disparate treatment in violation of Plaintiffs' right to equal protection.

34. Defendant's policy and practice of compelling Hobby Breeders to consent to inspections of their real and personal property without notice or probable cause as a condition to obtaining a Hobby Breeder license while similarly situated Pet Dealers and Impounding or Holding Facilities are not subject to said requirements and regulations, and are not threatened with prosecution and revocation of licensure for violations thereof, constitutes disparate treatment in violation of Plaintiffs' right to equal protection.

35. Defendant's policies and practices regulating hobby breeders and hobby breeder facilities are wholly arbitrary and bear no rational relationship to the health, safety, or welfare of the citizens of the County, and are, therefore not a permissible exercise of the County's police powers.

36. Unless Defendant's unlawful policies and practices, as described above, are not enjoined by this Court, Plaintiffs will suffer irreparable injury. Accordingly, Plaintiffs are entitled to both declaratory and injunctive relief.

WHEREFORE, Plaintiffs respectfully request this Court to enter a judgment in their favor and against Defendant: (A) declaring that the Ordinance violates Plaintiffs' Fourteenth Amendment rights to equal protection; (B) permanently enjoining Defendant from enforcing the Ordinance; (C) awarding attorneys' fees and costs, including expert witness fees, on all claims allowed by law; and (D) any further relief that this Court deems just and proper, and any other relief as allowed by law.

COUNT II
PROCEDURAL DUE PROCESS VIOLATION

37. Plaintiffs adopt and re-allege each and every allegation contained in paragraphs 1 through 24 above.

38. Defendant's policy and practice of placing a condition on the issuance of a Hobby Breeder license that a Hobby Breeder shall be subject to warrantless inspections of his or her real and personal property, including his or her residence, without notice, probable cause, or a prior hearing violates Plaintiffs' rights to due process.

39. Defendant's policy and practice of coercing consent to warrantless inspection of a Hobby Breeder's personal residence by County, as well as the Volusia County Sheriff's Office, without notice, probable cause, or a prior hearing, because of the Ordinance's requirement that Hobby Breeder Facility owners must live on the premises violates Plaintiffs' rights to due process.

40. Defendant's policy and practice of revoking a Hobby Breeder license upon receipt of information of a violation of the Ordinance without a prior hearing or a post-revocation remedy and based on no articulate standards, violates Plaintiff's right to due process.

41. Plaintiffs face threatened or actual injury in the present case as the Ordinance is aimed directly at Hobby Breeders, who will have to take significant and costly compliance measures, risk having their license revoked, or face possible criminal prosecution, unless enforcement of the Ordinance is enjoined. Accordingly, Plaintiffs are entitled to both declaratory and injunctive relief.

WHEREFORE, Plaintiffs respectfully request this Court to enter a judgment in their favor and against Defendant: (A) declaring the Ordinance violates Plaintiffs' Fourteenth Amendment rights to procedural due process; (B) permanently enjoining Defendant from enforcing the Ordinance; (C) awarding attorneys' fees and costs, including expert witness fees, on all claims allowed by law; and (D) any further relief that this Court deems just and proper, and any other relief as allowed by law.

COUNT III
PROCEDURAL DUE PROCESS VIOLATION – VAGUENESS

42. Plaintiffs adopt and re-allege each and every allegation contained in paragraphs 1 through 24 above.

43. Defendant's enforcement of the Ordinance requiring a Hobby Breeder Facility owner to have "intact privileges with the appropriate national animal registry" without providing any standards or guidelines for what constitutes an "appropriate national animal registry" deprives Plaintiffs' of fair warning of prohibited conduct.

44. The term "appropriate national animal registry," as provided in the Ordinance with no qualifying or defining terms, allows County enforcement officials to determine which

registries and breeds are acceptable or not, even though there are numerous registries which may be deemed as “appropriate” in the breeding business but not have been registered with an organization such as the American Kennel Club.

45. The term “appropriate national animal registry,” without any further qualifying or defining terms, is so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application, thereby making the Ordinance unconstitutionally vague.

46. Defendant’s enforcement of the Ordinance, by requiring a Hobby Breeder who has sold an animal to accept return of it by its new owner if the new owner becomes unable or unwilling to continue ownership and the breeder is unable to find a suitable replacement for the animal, deprives Plaintiffs of fair warning of prohibited conduct.

47. Requiring Hobby Breeders to accept animals from new owners who become unable or unwilling, at any time subsequent to the purchase of the animal, to continue ownership could place the Hobby Breeder in the conflicting position of having to either maintain a dog or cat in excess of the maximum number enumerated in the Ordinance or violating the Ordinance’s requirement of accepting an unwanted dog or cat from a new owner at any time subsequent to the purchase without any reasonable time restrictions.

48. The provision of the Ordinance requiring the return of animals by new owners without any reasonable time limitations allows County enforcement officials to determine whether six (6) months or two (2) years is an appropriate or reasonable time for a new owner to return an unwanted dog or cat to a Hobby Breeder, as well as depriving Plaintiffs’ of fair warning of prohibited conduct, thereby making the Ordinance unconstitutionally vague.

WHEREFORE, Plaintiffs respectfully request this Court to enter a judgment in their favor and against Defendant: (A) declaring the Ordinance void for vagueness; (B) permanently

enjoining Defendant from enforcing the Ordinance; (C) awarding attorneys' fees and costs, including expert witness fees, on all claims allowed by law; and (D) any further relief that this Court deems just and proper, and any other relief as allowed by law.

COUNT IV
PROCEDURAL DUE PROCESS VIOLATION – FLORIDA CONSTITUTION

49. Plaintiffs adopt and re-allege each and every allegation contained in paragraphs 1 through 24 above.

50. Article 1, Section 9 of the Florida Constitution, provides that, "No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself."

WHEREFORE, Plaintiffs respectfully request this Court to enter a judgment in their favor and against Defendant: (A) declaring the Ordinance violates Plaintiffs' rights to procedural due process secured by Article 1, Section 9 of the Florida Constitution; (B) permanently enjoining Defendant from enforcing the Ordinance; (C) awarding attorneys' fees and costs, including expert witness fees, on all claims allowed by law; and (D) any further relief that this Court deems just and proper, and any other relief as allowed by law.

COUNT V
**UNREASONABLE SEARCH AND SEIZURE VIOLATION – FLORIDA
CONSTITUTION**

51. Plaintiffs adopt and re-allege each and every allegation contained in paragraphs 1 through 24 above.

52. Article 1, Section 12 of the Florida Constitution provides in pertinent part as follows:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No

warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained.

53. Defendant's policy and practice of placing a condition on the issuance of a Hobby Breeder license that a Hobby Breeder shall be subject to warrantless inspections of his or her real and personal property, including his or her residence, without notice, probable cause, or a prior hearing violates Plaintiffs' rights to due process secured by Article I, Section 12 of the Florida Constitution.

54. Defendant's unwritten policy and practice of coercing consent to warrantless inspection of a Hobby Breeder's personal residence by County, as well as the Volusia County Sheriff's Office, without notice, probable cause, or a prior hearing, because of the Ordinance's requirement that Hobby Breeder Facility owners must live on the premises violates Plaintiffs' rights to due process secured by Article I, Section 12 of the Florida Constitution.

WHEREFORE, Plaintiffs respectfully request this Court to enter a judgment in their favor and against Defendant: (A) declaring the Ordinance violates Plaintiffs' rights to be secure in their persons, houses, papers and effects against unreasonable searches and seizures secured by Article I, Section 12 of the Florida Constitution; (B) permanently enjoining Defendant from enforcing the Ordinance; (C) awarding attorneys' fees and costs, including expert witness fees, on all claims allowed by law; and (D) any further relief that this Court deems just and proper, and any other relief as allowed by law.

COUNT VI
IMPLIED PREEMPTION

55. Plaintiffs adopt and re-allege each and every allegation contained in paragraphs 1 through 24 above.

56. The matter of the return of animals by new owners has been preempted by implication by State Legislature.

57. The Legislature has comprehensively legislated the particular field of commercial transactions relating to dogs and cats pursuant to Section 828.29, Florida Statutes. The offering for sale of dogs and cats and consumer guarantees for such offers of sale is a narrowly defined field limited to a specific area where the Legislature has expressed its will to be the sole regulator.

58. Section 828.29(5), Florida Statutes, provides that an owner of a dog or cat may, within one (1) year following the sale, return the dog or cat if a licensed veterinarian certifies that the dog or cat is unfit for purchase due to a congenital or hereditary disorder which adversely affects the health of the dog or cat, or if the breed of the dog or cat was misrepresented to the consumer.

59. Section 14-56(a)(4) of the Ordinance provides that an owner of a dog or cat may, with no time restrictions, return the dog or cat if the new owner unilaterally determines that he or she is no longer able or willing to continue ownership, care, or responsibility for the dog or cat.

60. Defendant's enforcement of the Ordinance allowing consumers to return dog or cats for no specific reason other than their own unwillingness or inability to care for such animal without any medical precondition, and for an undisclosed time period, would result in chaos and confusion due to the creation of a two-tiered regulatory process that would result if the Ordinance were not preempted by state law.

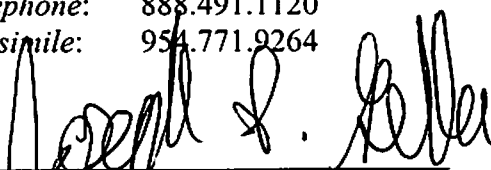
WHEREFORE, Plaintiffs respectfully request this Court to enter a judgment in their favor and against Defendant: (A) declaring that Section 828.29, Florida Statutes, implicitly preempts Section 14-56(a)(4) of the Ordinance relating to the sale of dogs or cats by Hobby

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Breeders and those consumer guarantees provided by law; (B) permanently enjoining Defendant from enforcing the Ordinance; (C) awarding attorneys' fees and costs, including expert witness fees, on all claims allowed by law; and (D) any further relief that this Court deems just and proper, and any other relief as allowed by law.

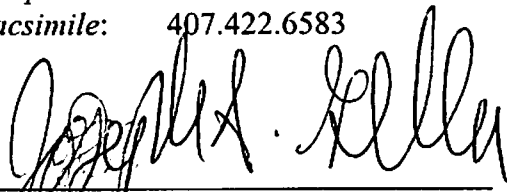
Respectfully submitted this 20 day of February, 2009.

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