

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

ROADS, INC., RICHARD VENABLE,
DARIUS SIMS, MIKE KIERRY
and PHILLIP MCCORMICK

PLAINTIFFS

VS. NO. _____

THE CITIES OF JACKSONVILLE, LONOKE
NORTH LITTLE ROCK AND BEEBE, ARKANSAS

DEFENDANTS

**COMPLAINT FOR DECLARATORY JUDGMENT AND
FOR MONETARY DAMAGES**

Come now the Plaintiffs, by their attorney and for their cause of action state:

I. PARTIES

1. Plaintiff ROADS, Inc. is an Arkansas non-profit corporation doing business in this judicial district. Plaintiff Venable is an individual residing in Lonoke, Arkansas; Plaintiff Sims is an individual residing in Jacksonville, Arkansas, Plaintiff Mike Kierry is an individual residing in North Little Rock, Arkansas and Plaintiff Phillip McCormick is an individual residing in Beebe, Arkansas.

2. The defendants are cities of the first class existing under the authority of the Constitution and Statutes of the State of Arkansas.

II. JURISDICTION

3. Jurisdiction is asserted pursuant to 28 U.S.C. §1343, which authorizes jurisdiction over claims brought under 42 U.S.C. §1983 and 42 U.S.C. §1988 to enforce rights guaranteed by the United States Constitution and by virtue of 28 U.S.C. §1331.

III. NATURE OF ACTION

4. This is an action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202

and for monetary compensation for losses and damages suffered by the individual Plaintiffs as a result of breaches by Defendants of the rights and protections guaranteed Plaintiffs by the United States Constitution.

5. Plaintiffs seek a declaratory judgment that City Codes and Ordinances of the cities of Jacksonville, (JMC 6.04.045) Beebe, (Ordinance No. 2007-17) North Little Rock (Ordinance No. ___) and Lonoke, (Ordinance No. 551 amended to Ordinance 498) violate the United States Constitution under the 5th and 14th Amendments and the Commerce Clause because the ordinances seek to prohibit Plaintiffs from possessing, owning or selling certain dog breeds named in the ordinances. The ordinances further seek to prohibit Plaintiffs from residing in the Defendant cities without facing the unconstitutional restrictions contained in the ordinances.

III. FACTUAL BACKGROUND

6. The City of Jacksonville adopted ordinance number 6.04.045(D) which states, in part, “[I]t shall hereafter be unlawful for any person, firm or corporation to keep, own, or harbor within the City limits and of the following breed dogs:... .”

7. The City of Beebe adopted the Ordinance No. 2007-17 which states in part, “[I]t shall hereafter be unlawful for any person to own, possess, keep, or harbor within the corporate limits of the City of Beebe, Arkansas, any banned breed dog as defined herein.”

8. The City Council of Lonoke adopted Lonoke Ordinance No. 551 which reads in part, “[I]t shall be hereafter be unlawful for any owner to keep within the corporate limits of the City of Lonoke, Arkansas, any banned breeds of dogs as defined herein.”

9. The City of North Little Rock adopted Ordinance No. _____, which reads in part, “Banned pit bull breeds of dogs are banned entirely and may not be owned or kept within the city.”

10. Each of the Plaintiffs have been the subject of enforcement action by officials of the cities in which they reside. Such actions include, but are not limited to, receiving a criminal and/or civil citation and/or summons to appear in court; being charged in court with a criminal violation of the ordinances in question; being fined; being required to give up their dogs or move out of the city limits; having their dogs seized by city officials and destroyed.

IV. CAUSES OF ACTION

A. THE DEFINITION AND IDENTIFICATION OF PROHIBITED BREEDS IN THE ORDINANCES ARE UNCONSTITUTIONALLY VAGUE AND OVERBROAD.

11. Jacksonville's definition of banned breeds of dogs is over broad and vague resulting in animal control or law enforcement being unable to properly identify the banned breeds. The definition includes the (a) actual specific breed; (b) a mixture of the breed; or (c) even those animals who have the appearance or characteristics of one of the regulated breeds. The definition includes: "Staffordshire Bull Terrier, American Pit Bull Terrier, American Bull Dog, Dogs of mixed breeds whose breed is known as Pit Bull, Bull Dogs, or Pit Bull Terrier. Any breed being a predominate breed of Bull Terrier, a Stafford Terrier, an American Pit Bull Terrier, Bull Dog , or any mixed breed. Any dog whose sire or dam is a dog of a breed which is defined as a banned breed of dog under this Ordinance.

12. The Beebe ordinance includes, "American Pit Bull Terrier, Staffordshire Bull Terrier, American Staffordshire Terrier. Any dog whose owner registers, defines, admits, or otherwise identifies said dog as being a banned breed. Any dog conforming , or substantially conforming to the breed of American Bull Terrier, American Staffordshire Terrier, or Staffordshire Terrier as defined by the American Kennel Club or the United Kennel Club. Any dog which is of a breed commonly referred to as "pit bull" and commonly recognized and

identifiable as such.

13. The North Little Rock ordinance includes, “(1) American Pit Bull Terrier (2) Staffordshire Bull Terrier, unless they meet the requirements of section 10-46(b) (3) American Staffordshire Terrier, unless they meet the requirement of section 10-46(b). (4) American Bull Dog. (5) Any dog whose sire or dam is a dog of a breed which is defined as a banned breed of dog under this section. (6) Any dog whose owner registers, defines, admits or otherwise identifies the dog as being of a banned breed. (7) Any dog conforming or substantially conforming to the breed of American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier or American Bull Dog as defined by the United Kennel Club or American Kennel Club. (8) Any dog which is of the breed commonly referred to as "pit bull" and commonly recognizable and identifiable as such.

(b) *Exemption for registered AKC show dogs.* An AKC American Staffordshire Terrier or Staffordshire Bull Terrier may be exempted from the ban in subsection (a) provided that the owner produces documentation showing that the dog is a registered AKC American Staffordshire Terrier or Staffordshire Bull Terrier show/performance dog.

14. The Lonoke ordinance includes, “American Pit Bull Terrier, Staffordshire Bull Terrier, American Staffordshire Terrier; any dog whose owner registers, defines, admits, or otherwise identifies said dog as being a banned breed; any dog conforming , or substantially conforming to the breed of American Bull Terrier; American Staffordshire Terrier, or Staffordshire Terrier as defined by the American Kennel Club or the United Kennel Club; Any dog which is of a breed commonly referred to as “pit bull” and commonly recognized and identifiable as such.”

15. The application of these overly broad definitions in the enforcement of the

Ordinances has and will result in arbitrary arrests of citizens and seizures of dogs that have no relation to American Pit Bull Terriers or American Staffordshire Terriers or other named breeds of dogs. While some breeds of dogs are easy to identify, there are a significant number of dog breeds that have the characteristics of the named dog breeds but have no relation to the breeds named in the ordinances.

16. It is scientifically impossible to determine the breed of a mixed breed dog or its origin. Purebred dogs can only be positively identified by DNA from the parents if the dogs have pedigrees of at least seven generations from nationally recognized dog registries.

17. The Ordinances place an undue burden on the owners to prove the breed of their dog when the burden should lie on the law enforcement agency to positively prove that the dog in question is one of the banned breeds.

B. THE ORDINANCES VIOLATE THE FEDERAL COMMERCE CLAUSE BY RESTRICTING THE SALE OF AMERICAN PIT BULL TERRIERS, AMERICAN STAFFORDSHIRE TERRIERS AND OTHER RESTRICTED BREEDS.

18. Each of the Ordinances prohibit the sale of any of the restricted breeds within city limits. This prohibition is an unconstitutional restriction of the freedom trade found in Art. I, §8 (the Commerce Clause) of the United States constitution. This places an unnecessary burden and restriction on interstate and intrastate commerce that outweighs any legitimate local benefits produced by the ordinances. The Ordinances further restrict the commerce clause by prohibiting the hobby breeding of specific banned breeds of dogs within city limits. In Jacksonville it is “unlawful for any person, firm, or corporation to keep, own, or harbor within the City limits any of the breeds of dogs.” In Lonoke, “It shall hereafter be unlawful for any owner to keep within the corporate limits of the City of Lonoke any banned breeds of dogs.” In North Little Rock,

“Banned pit bull breeds of dogs are banned entirely and may not be owned or kept within the city”. In Beebe, “It shall hereafter be unlawful for any owner to keep within the corporate limits of the City of Beebe any banned breeds of dogs as defined herein.”

C. THE ORDINANCES VIOLATE THE EQUAL PROTECTION CLAUSE AND IMPEDE SUBSTANTIVE DUE PROCESS BY DISCRIMINATING AGAINST DIFFERENT CLASSES OF INDIVIDUALS WITHOUT A RATIONAL GOVERNMENT INTEREST

19. The ordinances violate the Equal Protection clause of the Fourteenth Amendment in that they create a class of people (persons owning, harboring, keeping the regulated breeds) and discriminates against the class. Those persons in the class are the owners of certain breeds of dogs which each city has determined are dangerous or potentially dangerous.

20. The determinations have been made without sufficient facts or evidence that dogs of the prohibited breeds are dangerous or potentially dangerous. Moreover, the actions taken against the Plaintiffs were done without sufficient facts or evidence to show that Plaintiffs’ dogs were dangerous, potentially dangerous or that Plaintiff’s dogs have or would ever be aggressive.

21. As a result of improper classification the ordinances cause owners of the banned dogs to face criminal charges, have their property seized and destroyed with no rational basis or justification while other citizens may own, breed, sell, travel with and possess dogs which may have the same propensities as the banned breeds, but first have to attack before the owner can be charged with a criminal offense and have their animals seized.

22. The ordinances violate the Equal Protection Clause and deny Plaintiffs substantive due process by forcing Plaintiffs to obtain a computer chip to be implanted in their dog and/or to have their dog sterilized at Plaintiff’s expense. Plaintiffs are also prohibited from buying and selling dogs of the banned breeds. These prohibitions unfairly discriminate against a class of

dog owners because owners who own other breeds do not have to comply with the restrictions. Substantive due process has been impaired because the Plaintiffs have been denied the freedom to own a dog of their choosing without being subjected to governmental scrutiny and unequal treatment.

23. The ordinances in question unduly restrict free trade among dog owners since they may not buy or sell certain breeds of dogs. There is no rational basis or justification for the restriction which imposes an unconstitutional restriction on the interstate commerce of certain dogs.

E. THE ORDINANCES VIOLATE THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION BECAUSE PRIVATE PROPERTY MAY BE SEIZED WITHOUT NOTICE OR A PRE-SEIZURE HEARING AND WITHOUT JUST COMPENSATION.

24. Anyone passing through or residing in the Defendant cities may be subjected to immediate seizure of their property. The Ordinances provide for a determination to be made by a city official without a hearing to prove the identification of the breeds banned and directs the city official to summarily seize the dog. This taking of private property fails to provide substantive and procedural due process protections which are guaranteed by the due process clause of the Fourteenth Amendment of the United State Constitution.

F. THE INDIVIDUAL PLAINTIFFS HAVE BEEN DAMAGED AS A DIRECT AND PROXIMATE RESULT OF THE DEFENDANT'S ACTIONS.

25. Richard Venable was required by the City of Lonoke to remove his dogs from the city limits. Having no place to keep the dogs, he paid a third party \$436.00 to board his dogs until he was able to find a place for them.

26. Darius Sims' owned two American Staffordshire Terriers. The city of Jacksonville seized his two dogs simply because they were inside the city limits. Sims agreed to sterilization and micro-chip implants. After these procedures were performed, Jacksonville required that Sims remove the dogs from the city. The dogs were removed from his home before he could find a place for them and were euthanized. Sims' expenses including the cost of purchasing one of the dogs was \$595.48.

27. In July, 2007, Phillip McCormick was required to remove his dogs from the city limits of Beebe. Since he had no place to keep them, he now pays an individual to board his dogs at a cost of \$250.00 per week. So far, McCormick has paid in excess of \$3,000.00.

28. Mike Kierry has been damaged by the city of North Little Rock —

WHEREFORE, the Plaintiffs pray for the following relief:

1. A judgment of this court declaring the four ordinances violate the 5th and 14th amendments to the United States Constitution as well as the Commerce Clause found in Article 1, §8; and,

2. For damages in an amount equal to the losses incurred by each Plaintiff; and,

3. For a reasonable attorney' fee; their costs expended and all other proper relief to which they may be entitled.

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