

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

**MOTION FOR**  
**RESTRAINING ORDER**

Come now the Plaintiffs, by their attorney and for their Motion 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. Temporary Restraining Orders and other injunctive relief is governed by Federal Rule of Civil Procedure 65.

**III. NATURE OF ACTION**

4. This Motion arises from and is directly related to Plaintiffs' action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and for monetary damages for damages suffered by Plaintiffs as a result of breaches by Defendants of the rights and protections guaranteed Plaintiffs by the United States Constitution.

5. In their Complaint, Plaintiffs seek a declaratory judgment that City Codes and Ordinances of the cities of Jacksonville, (JMC 6.04.045) Beebe, (Ordinance No. 2007-17) and Lonoke, (Ordinance No. 551 amended to Ordinance 498) and North Little Rock, Arkansas violate the United States Constitution under the 5<sup>th</sup> and 14<sup>th</sup> Amendments and the Commerce Clause found in Article 1, §8 of the Constitution 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. Plaintiffs also seek money damages for losses they incurred as a result of the cities' unconstitutional taking of their property and other enforcement actions.

6. In this Motion, Plaintiffs seek an order of this court temporarily enjoining and restraining the Defendant cities from enforcing and/or continuing to enforce the various ordinances. As to this cause of action, they have no adequate remedy at law.

### **III. FACTUAL BACKGROUND**

7. All three of the Defendant cities have passed ordinances which make it unlawful for any person, firm or corporation to keep, own, or harbor within the City limits and of the certain breeds of dogs.

8. The named Plaintiffs and other members of ROADS have been the subject of enforcement action by officials of the cities in which they reside. Such actions include, but are

not limited to, criminal and/or civil citations 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. Other dog owners living in the Defendant cities will remain subject to the unconstitutional enforcement actions of the cities unless this court intervenes and prohibits the cities from enforcing the ordinances.

8. In each of the ordinances, the definition of banned breeds of dogs is over broad and vague resulting in animal control officers and/or law enforcement officers being unable to properly identify the banned breeds. The definitions include: (a) the 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. For example, the Lonoke 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”.

9. 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.”

11. 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.

12. 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.

13. 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.

14. 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 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.”

15. 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 discriminate 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.

16. 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 had ever been aggressive or would be aggressive.

17. As a result of improper classification, the ordinances cause owners of the banned dogs to face criminal charges and may 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.

18. 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; 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.

19. The ordinances in question unduly restrict free trade among dog owners in that they

may not buy or sell certain breeds of dogs. There is no rational basis or justification for the restriction which restricts interstate commerce of certain dogs.

20. Anyone passing through or residing in 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.

WHEREFORE, the Plaintiffs pray for an order of this court temporality enjoining and restraining Defendants from enforcing the ordinances in question until this matter can be heard on its merits;

Plaintiffs further pray that after a hearing the restraining order be made permanent;

Plaintiffs further pray for their costs, a reasonable attorney's fee and all other relief to which they may be entitled.

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