EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MISSOURI PET BREEDERS ASSOCIATION, *et al.*, **Plaintiffs,** **v.** **COUNTY OF COOK, *et al.*,** **Defendants.**	**Case No. 14 CV 6930** **The Honorable Matthew Kennelly**

MEMORANDUM OF LAW OF THE HUMANE SOCIETY OF THE UNITED STATES, AS *AMICUS CURIAE*, IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Respectfully submitted,

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NOW COMES the Humane Society of the United States ("HSUS") and respectfully files this, its Memorandum of Law as *Amicus Curiae* in support of the Motion to Dismiss the Amended Complaint filed by Defendants County of Cook, *et al.* ("Defendants").

INTRODUCTION

This case implicates issues of vital importance to Cook County residents—the inhumane treatment of animals in commercial breeding facilities, the extensive costs—economic and otherwise—to the consumers who purchase, care for, and grow to love those animals. This case also involves the promotion of the adoption of shelter animals, thus reducing the burden on localities to care for and euthanize homeless animals. The ordinance at issue in this case—the Cook County Companion Animal and Consumer Protection Ordinance ("Ordinance")—limits the breeders from whom pet shops in Cook County can purchase dogs, cats or rabbits, to licensed breeders who own no more than five (5) breeding females, by which the Ordinance excludes mass breeding facilities ("puppy mills") as a source of supply for pet stores located in Cook County.[1]

This Ordinance is not unique. Similar legislation has been adopted in over forty (40) other municipalities. In 2014 alone, similar legislation dealing with commercial breeding and retail pet sales has been enacted in multiple cities and municipalities in, among others, Florida, California, New Jersey, and even Canada. This trend is occurring for good reason: there are an estimated 10,000 large-scale, commercial breeding facilities, many of them puppy mills, operating in the United States today, and pet stores are a major distribution channel for animals bred in these inhumane conditions.

The Ordinance indisputably has societal benefits. More importantly, it is constitutional,

[1] Pet stores can also source these animals from government-run animal control and care facilities, humane societies, and rescue organizations.

and the Amended Complaint fails to state a claim to the contrary. The Ordinance does not treat out-of-state businesses differently than it treats businesses located in Cook County and has no constitutionally cognizable effect on interstate or foreign commerce. Nor is the Ordinance preempted, in light of the provisions of the Animal Welfare Act that contemplate the passage of local laws like the Ordinance. And, perhaps most importantly, it cannot be disputed that the passage of the Ordinance is nothing more than an exercise of local police power, recognized as such by the United States Supreme Court since 1897, immune to a Contract Clause challenge and entitled to deference from this Court.

At its core, the Amended Complaint is nothing more than a futile challenge to a policy decision Plaintiffs do not like. However, because the Ordinance was duly enacted and reflects important and permissible social goals within Cook County's authority, Plaintiffs do not, and never will be able to, state a claim that the Ordinance violates the United States Constitution.

BACKGROUND

I. INTEREST OF THE *AMICUS CURIAE*

A more detailed description of *Amicus Curiae* HSUS and its interests in this litigation is set forth in its Motion for Leave to File an *Amicus Curiae* pleading. As detailed in that Motion and summarized below, HSUS has a significant interest in the outcome of this case.

HSUS is the nation's largest non-profit animal protection organization, with millions of members and constituents, more than 375,000 of whom reside in Illinois.[2] Since its founding in 1954, HSUS has worked to promote the humane treatment of all animals, including through,

[2] 2013 Annual Report, Humane Society of The United States (Jan. 2, 2015, 11:03 AM), http://www.humanesociety.org/assets/pdfs/about/2013-annual-report.pdf.

among other things, assisting states and municipalities to identify and pass legislation.[3] One of HSUS' core campaigns is the elimination of the deplorable conditions in which breeding dogs are kept in large-scale breeding facilities commonly known as "puppy mills."[4]

Puppy mills[5] are high-volume breeding facilities, cutting corners wherever possible in the care of the animals being bred in order to produce their "product" at the cheapest possible cost. Dogs in puppy mills typically receive meager veterinary care, and are kept confined in overcrowded, stacked, wire-bottom cages day in and day out with little to no opportunity for exercise, companionship or socialization. The female breeding dogs which spend their lives in these facilities are intensively bred, often with no rest between litters, and when they can no longer breed, they are often simply discarded or killed.[6] And while the majority of breeders who sell to pet stores must be licensed by the United States Department of Agriculture (USDA) pursuant to the Animal Welfare Act ("AWA"), there is no prohibition under the AWA and its regulations from keeping breeding dogs confined in stacked, wire bottom cages.[7] Moreover, for a number of reasons, the USDA does not comprehensively enforce what extremely minimal standards do exist under the AWA, with many breeders allowed to be in ongoing violation of the

[3] Id.; About Us: Overview, Humane Society of the United States (Jan. 8, 2015, 5:14 PM), http://www.humanesociety.org/about/overview/?credit=web_id518362020.

[4] Stop Puppy Mills, Humane Society of the United States (Jan. 8, 2015, 5:14 PM), http://www.humanesociety.org/issues/campaigns/stop_puppy_mills/?credit=web_id275813364.

[5] The Ordinance covers not only dogs, but also cats and rabbits. The concept of a "puppy mill" applies to each of these categories of animals.

[6] Puppy-Mill Fact Sheet, Humane Society of Utah (Dec. 30, 2014, 12:14 PM), http://www.utahhumane.org/shelter/education-center/dogs/puppy-mill-fact-sheet; Puppy Mill FAQ, ASPCA (Dec. 29, 2014, 2:00 PM), https://www.aspca.org/fight-cruelty/puppy-mills/puppy-mill-faq (hereinafter "Puppy Mill FAQ").

[7] See 9 C.F.R. § 3.6.

statute and regulations without consequence, or with only minimal fines.[8]

Puppies emerging from these facilities are often sick, riddled with various genetic deficiencies as well as conditions such as intestinal parasites, mites, and respiratory infections.[9] Indeed, HSUS regularly receives complaints from members of the public who have purchased a sick puppy from a pet store.[10]

Puppy mills provide a ready supply of cheaply produced specialty-bred puppies to pet stores throughout the country, including in Cook County. HSUS has conducted numerous investigations connecting pet stores to puppy mills.[11] The consumers who see an adorable puppy for sale in a pet store window have no real understanding of where that puppy came from, and pet stores frequently misrepresent the puppies' origins.

The problems created by puppy mills and the pet stores who buy from them include substantial societal harms. Many people who purchase from a pet store find themselves faced with increased veterinary costs, significant out-of-pocket expenses, and an emotional trauma that arises from investing one's time and passion into a companion animal who turns out to be very different from what was anticipated. The veterinary costs may be calculated, but the emotional

[8] See Animal and Plant Health Inspection Service Animal Care Program Inspections of Problematic Dealers, U.S. Department of Agriculture (Jan. 8, 2015, 11:10 AM), http://www.usda.gov/oig/webdocs/33002-4-SF.pdf.

[9] See Husbandry and Medical Concerns in Puppy Mills, Humane Society Veterinary Medical Association (Dec. 29, 2014, 2:50 PM), http://www.hsvma.org/husbandry_medical_concerns_puppy_mills.

[10] See Puppy Buyer Complaints: A Five Year Summary, 2007-2011, Humane Society of The United States (Jan. 8, 2015, 11:13 AM), http://www.humanesociety.org/assets/pdfs/pets/puppy_mills/puppy_mill_buyer_complaints.pdf.

[11] See, e.g., The HSUS Investigates: Chicagoland Pet Stores, Humane Society of The United States (Jan. 8, 2015, 5:21 PM), http://www.humanesociety.org/assets/pdfs/pets/puppy_mills/report-hsus-chicago-pet-stores-2012investigates.pdf (Chicago pet store investigation).

trauma involved in watching a beloved animal suffer is immeasurable.[12]

Given the dire nature of the situation, local governments across the United States have exercised their police power to enact ordinances banning or restricting pet store sales of companion animals bred in these puppy mills. These ordinances—including the Ordinance—directly reduce the demand for puppy mill animals and increase the likelihood that shelter animals will be adopted, in turn reducing the burden on localities to care for and euthanize homeless animals. They are also expressly designed to protect the humans involved at the end of the purchase cycle.

HSUS is deeply invested in the outcome of this litigation. Any finding in this case, and on Defendants' pending Motion to Dismiss, will be viewed not only through the lens of Cook County, but also through the eyes of the many municipalities who have passed, or want to pass, similar ordinances. HSUS' interests are real, and they are significant.

II. THE ORDINANCE

At issue in this lawsuit is the Cook County Companion Animal and Consumer Protection Ordinance. More particularly, it is the recent amendment to the Ordinance which added the language at issue.[13] The Ordinance prohibits pet stores located in Cook County from offering for sale dogs, cats or rabbits sourced from a breeder who owns more than five such animals capable of breeding at any one time. Plaintiffs allege that restriction creates an unconstitutional burden on both breeders and pet stores. Plaintiffs are wrong.

[12] These problems impact government services and the community at large as many of these purebred animals, because of their debilitated state, end up being abandoned to shelters or the streets. This, in turn, creates a financial burden on the taxpayers at large.

[13] A copy of the Ordinance was submitted to the Court as an Exhibit to Plaintiffs' Motion for a Temporary Restraining Order, Docket Number 7, Ex. A and the Appendix to the Motion to Dismiss.

ARGUMENT AND CITATION OF AUTHORITY

I. THERE IS NO INTERPRETATION OF THE ORDINANCE WHICH RESULTS IN A VIOLATION OF THE COMMERCE CLAUSE.

A. The Ordinance is Valid under a Traditional Dormant Commerce Clause Analysis.

Plaintiffs' First Amended Complaint fails to state a claim under the Dormant Commerce Clause ("DCC").[14] "The modern law of what has come to be called the dormant Commerce Clause is driven by concern about economic protectionism, that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." Dep't of Revenue of Ky. v. Davis, 553 U.S. 328, 337-38 (2008) (citations and quotations omitted). "Under the resulting protocol for dormant Commerce Clause analysis, we ask whether a challenged law discriminates against interstate commerce. A discriminatory law is virtually *per se* invalid and will survive only if it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." Id. at 338 (internal citations and quotations omitted). "Absent discrimination for the forbidden purpose, however, the law 'will be upheld unless the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits.'" Id. at 338-39 (quoting Pike v. Bruce Church, Inc., 297 U.S. 137, 142 (1970)). This analysis has been concisely summed up by the Seventh Circuit: "[n]o disparate treatment, no disparate impact, no problem under the dormant commerce clause." Nat'l Paint & Coatings Ass'n v. City of Chi., 45 F.3d 1124, 1132 (7th Cir. 1995).[15]

Under this analysis, the Ordinance does not, as a matter of law, violate the Commerce Clause. The regulation is not facially discriminatory as it treats all pet stores and breeders the

[14] The "dormant" Commerce Clause has been interpreted to limit the ability of the States to burden or discriminate against interstate commerce. Friedman et al. v. The City of Chi. Dep't of Bus. and Consumer Prot. et al., 2014 WL 2619494, at *4, ___ F. Supp. 2d ___ (N.D. Ill. 2014) (quoting Alliant Energy Corp. v. Bie, 330 F.3d 904 (7th Cir. 2003)).

[15] The Court's opinion in Nat'l Paint was unanimous on the issue of the Commerce Clause, but was a plurality on the issue of equal protection. 45 F.3d at 1133-34 (Rovner, J, concurring).

same. It does not directly (or even indirectly) regulate the conduct of out-of-state breeders and as a consequence does not discriminate against them.[16] Moreover, the Ordinance does not make any special provision for pet stores or suppliers either in Cook County or outside the State of Illinois. Thus, it cannot be legitimately pled that the Ordinance discriminates on its face.

Nor may the Ordinance be said to favor in-state economic interests such that it amounts to discrimination in effect.[17] Indeed, the Amended Complaint is brought by pet stores located in both Cook County and the State of Illinois claiming to be harmed by the Ordinance. Amended Complaint, ¶65 (the Ordinance "will force the Pet Shops out of business . . ."). And the direct effect of the regulation is limited to pet stores in Cook County. In addition, it is admitted in the Amended Complaint that Illinois breeders will suffer from the same economic harm the breeders represented by MPBA claim they will incur. Amended Complaint, ¶¶ 44, 45 (alleging a total of twenty five (25) USDA licensed breeders in Illinois, only three (3) of whom will meet the Ordinance's criteria).

Because the law is not discriminatory, Plaintiffs must plead and prove that any interstate, economic impact is "clearly excessive in relation to the putative local benefits."[18] Pike, 297 U.S. at 142. In so doing, the Court must look not at the impact on the Plaintiffs, but instead on the *market as a whole*. Exxon Corp. v. Governor of Md., 437 U.S. 117, 127 (1978) (the Commerce Clause "protects the interstate market, not particular interstate firms, from prohibitive or

[16] See Nat'l. Paint, 45 F.3d at 1132 ("In sum, the ordinance affects interstate shipments, but it does not discriminate against interstate commerce in either terms or effect. No disparate treatment, no disparate impact, no problem under the dormant commerce clause.").

[17] See Id. at 1131.

[18] Under Nat'l Paint, once the court finds that there is no discrimination against interstate commerce present in the ordinance, it need not reach *Pike* balancing at all. See id. at 1134 (Rovner, J., concurring) (noting that, because there was no discrimination, "the district court erred in deciding that *Pike* applies to Chicago's ordinance in the first place"). In any event, the Amended Complaint should be dismissed even under *Pike.*

burdensome regulations").

Plaintiffs have failed to meet their pleading burden under this analysis. Initially, the local benefits are stated on the face of the Ordinance. The Ordinance is designed to, among other things, (i) protect animals from "abuse, neglect and inhumane treatment," (ii) encourage "responsible pet ownership" and (iii) "[p]romote community and consumer awareness of animal control and welfare." Ordinance, Ch. 10, §§ 10-1(1), (2), (4) and (5). These are all legitimate local interests within the jurisdiction of local police power.[19] The importance of animal protection in American society and a locality's authority to legislate on the issue cannot be disputed.[20]

In contrast, Plaintiffs have failed to plead what, if any, impact this Ordinance will have on the *market* for interstate sales of animals. It is nowhere stated in the Amended Complaint that any breeder outside the State of Illinois is prohibited by the Ordinance from selling their animals in Cook County.[21] Indeed, the Amended Complaint recognizes that out-of-state breeders can even be qualified under the Ordinance to supply pet stores in Cook County. Amended Complaint, ¶ 42. Moreover, Plaintiffs recognize that breeders may still sell their animals directly to consumers in Cook County. Amended Complaint, ¶ 48.[22] Nor is there any sufficient allegation that there is a national market of puppy mills or breeders, and that, even if there were,

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[19] See DeHart v. Town of Austin, Ind., 39 F.3d 718, 721-22 (7th Cir. 1994) (citations omitted) (noting that "[t]he regulation of animals has long been recognized as part of the historic police power of the States").

[20] See Cavel Int'l. Inc. v. Madigan, 500 F.3d 551, 557 (7th Cir. 2007) (noting that local governments are permitted to balance interests of animal welfare against societal interests).

[21] The Ordinance specifically states that "this Ordinance . . . will not affect a consumer's ability to obtain a dog or cat of his or her choice directly from a breeder . . ." DN 7, Ex. A.

[22] For this reason, Plaintiffs' arguments as to Class B licensed breeders must also fail. The Ordinance does not prevent those entities from selling, in Cook County to the ultimate consumer.

that market is being significantly impacted by the Ordinance. The best Plaintiffs can do in this regard is plead that it is "not likely" that consumers will travel out-of-state to purchase dogs bred by non-parties to this litigation. Amended Complaint, ¶ 50.[23] Pleading in such hypothetical generalities is insufficient to state a claim under the Commerce Clause, where the plaintiff must prove an effect on the national market so great that it outweighs the putative local benefits.[24]

Ultimately, Plaintiffs allege individual, and not market, harm. They cannot show, and certainly have not pled, any economic protectionism of any kind as a result of the Ordinance. They cannot reasonably refute the local benefits of the Ordinance. The DCC claim must therefore be dismissed as a matter of law.[25]

B. As Federal Law Expressly Contemplates Local Legislation, the Commerce Clause is Not Applicable.

The United States Supreme Court has repeatedly stated that where a local law is expressly contemplated by a federal law, the local law does not implicate the DCC.[26] Here, the

[23] Plaintiffs also allege the Ordinance is unconstitutional as it bans pet shops from sourcing animals from 98% of American breeders (Amended Complaint, ¶ 76, 78). This is nothing more than an effort to sensationalize an unremarkable fact. Again, Plaintiffs do not allege that the 98% of out-of-state breeders are unable to sell their products to Cook County consumers. Nor do they quantify what percentage of breeders chooses to not participate in the Cook County market regardless of the Ordinance.

[24] See McCauley v. City of Chi., 671 F.3d 611, 616-18 (7th Cir. 2011).

[25] The "same analytical framework applies to the dormant Foreign Commerce Clause as is used for the dormant Interstate Commerce Clause, except that state restrictions that burden foreign commerce are subjected to a more rigorous and searching scrutiny." Hartford Enters., Inc. v. Coty, 529 F. Supp. 2d 95, 104 (D. Me. 2008) (citing Antilles Cement Corp. v. Acevedo Vila, 408 F.3d 41, 46(1st Cir. 2005) and South-Cent. Timber Dev., Inc. v. Wunnicke, 467 U.S. 82, 100 (1984)) (internal quotations omitted). It remains true that (i) the Ordinance is facially neutral, (ii) is an exercise of Cook County's police powers, and (iii) Plaintiffs have failed to plead how the Ordinance impacts the foreign market. Indeed, there is no factual allegation in the Amended Complaint as to how the Ordinance impacts foreign commerce. The Amended Complaint fails to state a claim under the Foreign Commerce Clause.

[26] See, e.g., Northeast Bancorp., Inc. v. Bd. of Governors, 472 U.S. 159, 174 (1985) ("state actions which [Congress] plainly authorizes are invulnerable to constitutional attack under the Commerce Clause."); White v. Mass. Council of Constr. Employers, Inc., 460 U.S. 204, 213 (1983) ("Where state or local

Animal Welfare Act authorizes the Secretary of Agriculture to "promulgate standards" related to, among other things, the "humane handling, care, [and] treatment . . . of animals . . ." 7 U.S.C. § 2143(a)(1). However, the Act's savings clause also provides that the law "shall not prohibit any state (or a political subdivision of such state) from promulgating standards in addition to those [in the AWA]." 7 U.S.C. § 2143(a)(8). As the Ordinance is permitted by the AWA, there is no DCC claim in this case.

Zimmerman v. Wolff, 622 F. Supp. 2d 240 (E.D. Pa. 2008), is on point. There, the court found no Commerce Clause violation in the Pennsylvania Dog Law ("PDL"). Id. at 246. The Zimmerman court held that the AWA, and particularly its savings clause, preserved Pennsylvania's right to exercise its traditional police power, exercised through the PDL. Id. at 245. Here, the Ordinance also "is an exercise of the state's traditional police power in relation to domestic animals." Id.[27] The Ordinance is also aimed at the "humane treatment" of animals and cannot, as a matter of law, violate the Commerce Clause.

II. AS THERE IS NO SUSPECT CLASS OR FUNDAMENTAL RIGHT, THERE IS NO EQUAL PROTECTION CLAIM.

Plaintiffs have not alleged—and they could not do so truthfully—that that any "fundamental right" or "suspect class" is affected by the Ordinance. In that case, in order to uphold the Ordinance, this Court need only find that "the challenged classification is rationally related to a legitimate governmental purpose." Kadarmas v. Dickinson Pub. Schs., 487 U.S. 450, 458 (1988) (citations and quotations omitted). The cited bases for the Ordinance—including the

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government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce.").

[27] The stated purposes of the Ordinance are to (i) protect animals from "abuse, neglect and inhumane treatment," (ii) encourage "responsible pet ownership" and (iii) "[p]romote community and consumer awareness of animal control and welfare." Ordinance, Ch. 10, §§ 10-1(1), (2), (4) and (5).

humane treatment of animals and the protection of consumers—are indisputably "legitimate" and important goals for Cook County, and thus defeat Plaintiffs' claim. See Goodpaster v. City of Indianapolis, 736 F.3d 1060, 1071 (7th Cir. 2013) (upon identification of legitimate basis, court's "inquiry is at its end"). Plaintiffs' self-serving and baseless opinions about the stated goals or the policy behind the Ordinance do not change this conclusion. And a "rational-basis review in equal protection analysis 'is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.'" Nat'l Paint, 45 F.3d at 1127 (7th Cir. 1995) (quoting Heller v. Doe, 509 U.S. 312, 319 (1993)).

III. FEDERAL LAW CONTEMPLATES BEING SUPPLEMENTED BY LOCAL ORDINANCES, THUS ASSURING THERE IS NO PREEMPTION.

Count Three of the Amended Complaint alleges that the Ordinance is preempted by federal law.[28] This claim can be summarily dismissed, since the main thrust of Plaintiffs' absurd argument seems to be that, because the suffering of puppies in puppy mills is a national problem, only federal laws can govern the issue. Not only would Plaintiffs' argument render most state and local laws preempted, their claim is barred by direct precedent from the Seventh Circuit, which has already held that the purportedly preempting statute, the Animal Welfare Act, *expressly permits* the type of local ordinance at issue herein. DeHart, 39 F.3d at 721-22.

Plaintiffs do not allege express or conflict preemption,[29] but only some distorted version of implied preemption which cannot withstand judicial scrutiny. The only question then is

[28] Count Three also states that the Ordinance is preempted by state law. HSUS agrees with Defendants that the Home Rule law and preemption principles do not support an argument that state law preempts the Ordinance.

[29] The Amended Complaint admits that it is possible to comply with both federal law and the Ordinance. See Amended Complaint, ¶ 42 (noting breeders could be both licensed under federal law and also comply with Ordinance). Likewise, the effort to state a claim through the class B license holders must fail, because Plaintiffs admit that out-of-state breeders can still sell directly to consumers in Cook County. Amended Complaint, ¶ 48. That outcome is in keeping with both the federal law and the Ordinance.

whether the federal statute somehow preempts the Ordinance because the federal statute "occupies the field" of puppy mill regulation. Federal law does nothing of the sort.

"Consideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law." Maryland v. Louisiana, 451 U.S. 725, 746 (1981). And while that presumption against preemption is all that is needed, the Seventh Circuit has addressed the exact issue here and held that it is "clear that the Animal Welfare Act does not evince an intent to preempt state or local regulation of animal or public welfare. Indeed, the Animal Welfare Act expressly contemplates state and local regulation of animals." DeHart, 39 F.3d at 722.[30]

As DeHart held, the AWA expressly contemplates exactly the type of local legislation which is at issue in this case. 7 U.S.C. § 2143(a)(8) states that the AWA "shall not prohibit any State (or a political subdivision of such state) from promulgating standards in addition to those standards promulgated by the Secretary under paragraph (1)." The AWA also explicitly recognizes that the statute is to be read in conjunction with, and not in lieu of, state and local legislation. 7 U.S.C. § 2145(b) ("The Secretary is authorized to cooperate with the officials of the various States or political subdivisions thereof in carrying out the purposes of this chapter **and of any State, local, or municipal legislation or ordinance on the same subject.**") (emphasis added).

Accordingly, it is clear that federal law does not preempt the Ordinance.[31]

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[30] See also 7 U.S.C. §§ 2143(a)(8), 2145(b) (provisions of Animal Welfare Act permitting local ordinances); Zimmerman, 622 F. Supp. 2d at 247-48 (holding that the AWA does not preempt state animal laws).

[31] Plaintiffs' claim that the Ordinance is unconstitutionally vague may be dealt with summarily. The Ordinance very clearly provides a "person of ordinary intelligence fair notice of what is prohibited". F.C.C. v. Fox Television Stations, Inc., ___ U.S. ____, 132 S.Ct. 2307, 2317 (2012). Plaintiffs' absurd

IV. THE ORDINANCE DOES NOT VIOLATE THE CONTRACT CLAUSE.

The Ordinance, duly-enacted by Cook County, does not run afoul of the Contract Clause, U.S. Const. art. I, § 10, cl. 1, because (1) the government had a "significant and legitimate public purpose" in passing the Ordinance and (2) the effect of the Ordinance is reasonable in light of that public purpose. Chicago Bd. Of Realtors, Inc. v. City of Chicago, 819 F.2d 732, 736 (7th Cir. 1987).[32] Additionally, because the Ordinance addresses an already regulated industry, there is an even "lower level of scrutiny" applied. Id. at p. 737. Moreover, because Cook County is not "itself . . . a contracting party, 'as is customary in reviewing economic and social regulation . . .[,] courts properly defer to legislative judgment as to the necessary and reasonable measure of a particular measure.'" Energy Reserves, 459 U.S. at 412-13 (quoting United States Trust Co. v. New Jersey, 431 U.S. 1, 22-23 (1977)). Given this, Plaintiffs' Contract Clause claim fails as a matter of law.

The precedent set forth above establishes that the Ordinance is entitled to the lowest level of scrutiny, and therefore the highest level of deference, in reviewing Defendants' Motion to Dismiss. First, it cannot be disputed that the industry involved (animal welfare and sales) is a highly regulated one, and was prior to the passage of the Ordinance. Plaintiffs' Amended Complaint proves this point when it states: "The USDA and Illinois have extensively regulated

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efforts to twist the language of the Ordinance to the contrary are, on their face, mere sophistry and without merit.

[32] The initial question is, of course, "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." Energy Reserves Grp., Inc. v. Kansas Power and Light Co., 459 U.S. 400, 411 (1983). Even accepting the Plaintiffs' allegations as true, however, the Supreme Court "has long recognized that a statute does not violate the Contract Clause simply because it has the effect of restricting, or even barring altogether, the performance of duties created by contracts entered into prior to its enactment." Exxon Corp. v. Eagerton, 462 U.S. 176, 190 (1983) (emphasis added). Instead, as made clear in the Contract Clause jurisprudence from the Seventh Circuit and the Supreme Court, commercial contracts must give way to legislative efforts intended to promote the public good.

the importation and sale of animals in Illinois," Amended Complaint, ¶ 100, and details the state and federal regulation of their businesses. Amended Complaint, ¶¶ 95-97, 101-02. Indeed, Plaintiffs are challenging an amendment of a Cook County Ordinance that has been in place for decades. Nor can there be any claim that Cook County is a contracting party here.

Beginning with the presumption of constitutionality, the Court can see that the fact that the Ordinance was enacted for a "significant and legitimate public purpose" is apparent from its face. The public benefits, addressed above, seek to protect human and animal health and safety. Thus, even accepting, for purposes of this Motion, Plaintiffs' claim that the Ordinance will disrupt their contracts, the Amended Complaint still must be dismissed as the Supreme Court has long recognized that legislation enacted as an operation of the government's police power is not subject to any Contract Clause claim.

> [T]he Contract Clause does not operate to obliterate the police power of the States. [Instead, it] is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as . . . are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected.

Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 503 (1987) (citations and quotations omitted).

The "regulation of animals has long been recognized as part of the historic police power of the States." DeHart, 39 F.3d 718 at 722 (citing Nicchia v. N.Y., 254 U.S. 228, 230-31 (1920); Sentell v. New Orleans & C.R. Co., 166 U.S. 698, 704 (1897)). "Ordinances, including those regulating the ownership, possession and control of dogs are a proper exercise of a municipality's police power if they are designed to secure the safety, health and welfare of the public." Leibowitz v. City of Mineola, Tex., 660 F. Supp. 2d 775, 784 (E.D. Tex. 2009). Since the Ordinance is within the traditional police powers of the County, it does not, as a matter of

law, violate the Contract Clause of the United States Constitution.[33]

In its wisdom, Cook County has decided to stem the problems it has identified through an easily understandable, straightforward prohibition that cuts out the sales of puppy mill puppies to Cook County pet stores. This Court can determine the reasonableness of this decision, based solely on the facts in Plaintiffs' Amended Complaint. In response, Plaintiffs were required to plead *facts* sufficient to overcome the strong presumption of validity and deference to the legislative process that the case law requires. Plaintiffs have failed to do so. Indeed, the Complaint relies solely on legal conclusions, stated without any factual support, that do not refute the salutary benefits of the Ordinance. See Amended Complaint, ¶¶ 121-124. As this Court has held, "conclusory allegations are insufficient to state a claim under the Contracts Clause." Friedman, 2014 WL 2619494, at * 3. This puts the final nail in the coffin of Plaintiffs' Contract Clause argument.

CONCLUSION

Plaintiffs' Amended Complaint should be dismissed for failure to state a claim.

This _____ day of January, 2015

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[33] In the context of a motion to dismiss a claim based on the Contracts Clause, this Court has recently held a complaint fails to state a claim where the plaintiffs fail to cite to any specific contractual provision which is supposedly impaired. Friedman v. City of Chi., ___ F.Supp.2d ___, 2014 WL 2619494, at *3 (June 11, 2014). Plaintiffs have failed to make any specific pleading as to any contract provision. Accordingly, the Motion to Dismiss should be granted on this basis as well.

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