

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Case No.

**SONYA DIAS,
HILLARY ENGEL
SHERYL WHITE,
individually and on behalf of all persons similarly situated,**

Plaintiffs,

v.

**THE CITY AND COUNTY OF DENVER, COLORADO,
JOHN W. HICKENLOOPER, in his official and individual capacity;
NANCY SEVERSON, in her official and individual capacity;
DOUG KELLY, in his official and individual capacity;
JUAN ZALASAR, in his official and individual capacity,**

Defendants.

COMPLAINT

Plaintiffs Sonya Dias, Hillary Engel and Sheryl White, by and through counsel David A. Lane, of Killmer, Lane & Newman, LLP and Karen Breslin, of the Progressive Law Center, LLC, hereby file their Complaint and Jury Demand and respectfully allege as follows:

INTRODUCTION

1. This is a civil rights action for declaratory and injunctive relief, damages and attorneys fees arising under 42 U.S.C. §§ 1983, 1988 and 28 U.S.C. Section 2201 stemming from Defendants' violations of Plaintiffs' rights guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

2. This case arises out of Denver's ordinance that outlaws pit bull dogs and dogs that the city deems to possess "the majority of physical traits" associated with pit bull dogs. Denver enacted the ordinance in 1989. The ordinance makes it unlawful to own, possess, keep, exercise control over, maintain, harbor, transport, or sell any pit bull dog within the city. DENVER, COLO. REV. MUNI. CODE §. 8-55

3. The ordinance was challenged in Denver District Court in 1989 as violative of plaintiffs' Fourteenth Amendment rights to equal protection and procedural and substantive due process. The ordinance was ultimately upheld by the Colorado Supreme Court. *Colorado Dog Fanciers, Inc. v. City and County of Denver*, 820 P.2d 644 (Colo. 1991).

4. The ordinance remained in effect until April 21, 2004, when Gov. Bill Owens signed HB 04-1279, which prohibited Colorado municipalities and counties from enacting breed-specific legislation.

5. After enactment of the state law, Denver suspended enforcement of the ban and filed suit in Denver District Court seeking a declaratory judgment that the new state law violated home rule provisions of the Colorado Constitution. *City and County of Denver v. State of Colorado*, No. 04-CV-3756.

6. Denver's right to retain its anti-pit bull ordinance was affirmed on April 7, 2005 by Denver District Court Judge Martin Egelhoff. Judge Egelhoff held that Colorado failed to prove beyond a reasonable doubt that new evidence controverted the Colorado Supreme Court's finding in 1991 that the ordinance had a rational relationship to public safety.

7. On April 8, 2005 the city announced that it would resume enforcement of the ban on May 9, 2005. Since then, and as a consequence of its pit bull ordinance, the city has killed at least 1,100 dogs.

8. Defendants' regulation and seizure of Plaintiffs' dogs violates the Fourteenth Amendment, including Plaintiffs' privilege against self-incrimination and Plaintiffs' right to due process of law with respect to the taking of property, and constitutes a substantive violation of Plaintiffs' liberty and property interests.

PARTIES

9. Plaintiff SONYA DIAS is an individual and a resident of the state of Colorado. Ms. Dias is a former resident of Denver who fled the city to escape the Pit Bull Ordinance which threatened her dog, Gryffindor.

10. Plaintiff HILLARY ENGEL is an individual and a resident of the state of Colorado and a former resident of Denver who fled the city to escape the Pit Bull Ordinance which threatened her dog, Cysco.

11. Plaintiff SHERYL WHITE is an individual and a resident of the state of Colorado and a resident of Denver whose dog, Sherman, was seized under the Pit Bull Ordinance.

12. Defendant CITY AND COUNTY OF DENVER is a municipality for purposes of liability under 42 U.S.C. § 1983.

13. Defendant JOHN HICKENLOOPER is Mayor of Denver.

14. Defendant NANCY SEVERSON is Manager of the Denver Department of Environmental Health, which oversees the Division of Animal Care and Control.

15. Defendant DOUG KELLEY is Director of the Division of Animal Control

of the Denver Department of Environmental Health.

16. Defendant MAJOR JUAN ZALASAR is the Supervisor of the Animal Control investigators for the Denver Division of Animal Care and Control (“hereinafter Animal Control.”)

JURISDICTION AND VENUE

17. This action arises under the Constitution and laws of the United States including Article III, Section 1 of the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has authority to grant the declaratory relief requested herein pursuant to 28 U.S.C. § 2201(a). Jurisdiction supporting Plaintiffs’ claims for attorneys fees is conferred by 42 U.S.C. § 1988.

18. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391.

CLASS

19. Plaintiffs bring this action under the Fourteenth Amendment on behalf of themselves and all other persons similarly situated, pursuant to Rule 23(b)(2) and/or (b)(3), and 23(c) of the Federal Rules of Civil Procedure. The class that Plaintiffs represent is composed of persons whose animals were seized by Defendants under the Pit Bull Ordinance after April 8, 2005 and persons who removed their animals from Animal Control after April 8, 2005 and signed self-incriminating statements and/or due process waivers. There are common questions of law and fact affecting the class represented by the Plaintiffs regarding the seizure of animals under the Pit Bull Ordinance and the procedures the city employs in releasing animals from Animal Control.

FACTUAL ALLEGATIONS

Sonya Dias

20. Sonya Dias owns a 3-year-old male dog named Gryffindor who she believes could be considered a prohibited animal under Denver's Pit Bull Ordinance. Ms. Dias rescued Gryffindor in Griffin, Georgia, after finding him chained and bearing signs of abuse, including possible use as a "bait" animal by dogfighters.

21. Ms. Dias brought Gryffindor to her home in Denver on January 19, 2005. Before bringing Gryffindor to Denver, Ms. Dias contacted Denver Dumb Friends League and another organization, possibly Animal Control, to inquire about the existence of a ban on pit bull dogs. She recalls being told that no ban was in existence. She learned of Denver's pit bull ban when Denver's right to enforce it was upheld by Judge Egelhoff on April 7, 2005 and reported in local news media.

22. From May 9, 2005 until January 15, 2006, Ms. Dias began efforts to move from Denver so that she could retain ownership of Gryffindor. She ultimately sold her urban loft-style home to move into a rented apartment in Littleton. As a consequence of that move, she has incurred considerable expenses and suffered a financial loss.

23. Ms. Dias's experience with the ordinance prompted her to join with other dog owners to form The Pit Bull BAND (an acronym for Breed Awareness, Not Discrimination). She has played an active role in the organization and has assisted other dog owners whose animals have been seized by Animal Control.

Hillary Engel

24. Ms. Engel owns Cysco, an 8-year-old, female dog with whom she lived in Denver from January 2005 to July 2005. On or about May 5, 2005, Ms. Engel's then-boyfriend, with whom she lived, was walking Cysco and was stopped by an unknown Animal Control officer who said he would return and seize Cysco when the Pit Bull

Ordinance was reinstated.

25. Ms. Engel immediately contacted Animal Control and was advised to submit Cysco to an evaluation if she had any doubts about whether Cysco was prohibited under the Pit Bull Ordinance.

26. On May 9, 2005, Ms. Engel took Cysco to Animal Control for the evaluation. The evaluation was conducted by three individuals who an unknown Animal Control employee indicated were “experts” in identifying animals prohibited under the Pit Bull Ordinance.

27. Following the evaluation, Ms. Engel was informed by an unknown Animal Control official that although Cysco was beautiful and friendly, she looked too much like a Pit Bull to remain in Denver. However, the official gave Ms. Engel 48 hours to remove Cysco from Denver.

28. With the assistance of Ms. Dias, Ms. Engel placed Cysco at Mariah’s Promise, a shelter facility that has accepted other dogs like Cysco needing refuge from Denver’s Pit Bull Ordinance. Cysco remained at Mariah’s Promise for two months.

29. Ms. Engel moved to Lakewood in July 2005 so that she could regain custody of Cysco. The move required Ms. Engel to break a lease on her Denver apartment which cost her at least \$5,000 and required her to forfeit the security deposit on the apartment.

Sheryl White

30. Ms. White owns Sherman, a two-year old dog who was seized on December 15, 2005 by an unknown Animal Control officer who was responding to a neighbor’s report that a pit bull dog could be found at Ms. White’s residence. Ms.

White's husband, Dana, was named in the summons.

31. During Sherman's impoundment at the Denver Municipal Animal Shelter ("hereinafter DMAS") from December 15 through December 23, 2005, Ms. White sought to locate shelter for Sherman and herself outside the city of Denver, or in the alternative, a safe place for Sherman. Through her internet searches, she learned of Sonya Dias's efforts in assisting dog owners and contacted Ms. Dias for assistance.

32. Ms. White attempted to see Sherman at DMAS but was denied access because the summons was made out to Mr. White. On December 23, 2005, Mr. White and Ms. White arrived at Animal Control in hopes of removing Sherman from DMAS.

33. Under an unwritten policy not authorized in the ordinance, Animal Control requires individuals who seek to remove their animal from DMAS to bring a third individual who agrees to take possession of the animal and remove it from Denver. On December 23, 2005, Ms. Lauren Krieger signed a form attesting to her willingness to remove Sherman from Denver.

34. Under an unwritten policy not authorized in the ordinance, Mr. White was also required to sign a form stating: "I, Dana White, in consideration for the release of my pitbull dog from the Division of Animal Control do hereby agree to immediately remove the pit bull dog from the city and county of Denver."

35. Mr. White was also required to sign a second form stating that "I, Dana White, . . . agree that Sherman, black-white, male, is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or exhibits the majority of physical traits of any (1) or more of the above breeds." After the signature block, the form states, "Note: signing this document waives your right under D.R.M.C. §(f) to

contest the determination that this animal is a pit bull.”

36. Before removing Sherman from DMAS, and at the suggestion of Ms. Dias, Mr. White requested a hearing to challenge Denver’s determination that Sherman was a prohibited animal under the Pit Bull Ordinance.

37. From December 23, 2005 to January 1, 2006, Ms. White lived with Sherman at her employer’s office in Littleton.

38. On January 1, 2006, Ms. White and three of her children drove to Raton, New Mexico to meet her ex-husband who had agreed to take possession of Sherman until she could locate a safe place for them to live.

39. On January 23, 2006, Mr. White and Ms. White appeared in county court on the Pit Bull Ordinance violation. Although the summons was made out to Mr. White, Mr. White did not want to answer the charges related to Sherman. Ms. White requested that the magistrate change the name on the summons to her name. The magistrate did so.

40. The hearing requested by Mr. White pursuant to D.R.M.C. 8-55 §(f) was set for February 23, 2006. Ms. White did not receive notice of the hearing date and learned of the date only after it had passed and only after a phone call to Animal Control. After Ms. White spoke with Major John Zalaras at Animal Control, the hearing was rescheduled to March 3, 2006.

41. Based on evaluations by three Animal Control employees, the hearing officer determined Sherman to be a prohibited animal under the Pit Bull Ordinance. Ms. White requested copies of the evaluations. The hearing officer referred her to Animal Control. An Animal Control representative whose identity is not known told Ms. White that the evaluations were internal information and not releasable.

42. On March 7, 2006, on her trial date, the city dismissed its charges against Ms. White. After her charges were dismissed, Ms. White brought Sherman back to the Denver metro area.

FIRST CLAIM FOR RELIEF
42 U.S.C. § 1983 – Fourteenth Amendment and Fifth Amendment Procedural Due Process Violations

43. Plaintiffs incorporate by reference all other paragraphs of this Complaint and Jury Demand as if fully set forth herein.

44. Defendants' policy and practice of seizing animals in non-exigent circumstances without a prior hearing violates Plaintiffs' right to due process.

45. Defendants' unwritten policy and practice of summarily executing dogs whose owners have a previous Pit Bull Ordinance violation is not authorized by the ordinance and violates Plaintiffs' right to due process.

46. Defendants' unwritten policy and practice of coercing waivers of due process protections that are set out in its Pit Bull Ordinance is not authorized by the ordinance and violates Plaintiffs' right to due process.

47. Defendants' unwritten policy and practice of coercing waivers of Plaintiffs' privilege against self-incrimination is not authorized by the Pit Bull Ordinance and violates Plaintiffs' right to due process.

48. Defendants' use of coerced, self-incriminating statements to encourage guilty pleas and/or to discourage jury trials is not authorized by the Pit Bull Ordinance and violates Plaintiffs' right to due process.

49. As a direct and proximate cause and consequence of Defendants' unlawful conduct as described above, Plaintiffs have suffered injuries in an amount to be proven at trial and are entitled to declaratory and injunctive relief.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983 – Fourteenth Amendment Procedural Due Process Violations –
Vagueness

50. Plaintiffs incorporate by reference all other paragraphs of this Complaint and Jury Demand as if fully set forth herein.

51. Defendants' enforcement of an ordinance that describes prohibited animals by reference to breed standards written for use by breed aficionados deprives Plaintiffs' of fair warning of prohibited conduct and is unconstitutionally vague.

52. Defendants' enforcement of an ordinance that criminalizes ownership of any dog that possesses a "majority of the physical traits" of a prohibited animal deprives Plaintiffs' of fair warning of prohibited conduct and is unconstitutionally vague.

53. Defendants' failure to publicize the city's methodologies for determining whether a particular dog possesses "a majority of the physical traits" of a prohibited animal deprives Plaintiffs of fair warning of prohibited conduct and is unconstitutionally vague.

54. As a direct and proximate cause and consequence of Defendants' unlawful conduct as described above, Plaintiffs have suffered injuries in an amount to be proven at trial and are entitled to declaratory and injunctive relief.

THIRD CLAIM FOR RELIEF
(Fourteenth Amendment Violation-Equal Protection)

55. Plaintiffs incorporate by reference all other paragraphs of this Complaint and Jury Demand as if fully set forth herein.

56. Defendants' policy and practice of coercing self-incriminating statements from dog owners who do not request an administrative hearing deprived Plaintiffs of equal protection when no such incriminating statements are required of dog owners who

do request an administrative hearing.

57. As a direct and proximate cause and consequence of Defendants' unlawful conduct as described above, Plaintiffs have suffered injuries in an amount to be proven at trial and are entitled to declaratory and injunctive relief.

FOURTH CLAIM FOR RELIEF
(Fourteenth Amendment Violation-Substantive Due Process)

58. Plaintiffs incorporate by reference all other paragraphs of this Complaint and Jury Demand as if fully set forth herein.

59. Defendants' policy of forcing Plaintiffs to surrender their companion animals to the city for destruction or to transfer their dogs to individuals who reside outside of Denver, where there is no evidence that the animals posed a threat to public safety, violates Plaintiffs' liberty and property interests protected under the Fourteenth Amendment.

60. Defendants' practice of destroying Plaintiffs' property, where there is no evidence that the property posed a public nuisance or otherwise threatened public safety, violates Plaintiffs' property interests protected under the Fourteenth Amendment.

61. As a direct and proximate cause and consequence of Defendants' unlawful conduct as described above, Plaintiffs have suffered injuries in an amount to be proven at trial and are entitled to declaratory and injunctive relief.

WHEREFORE Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants, jointly and severally, and grant:

- a.) Appropriate relief at law and equity;
- b.) Compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims

allowed by law in an amount to be determined at trial;

c.) Attorneys fees and the costs of this action, including expert witness fees, on all claims allowed by law;

d.) Pre- and post-judgment interest at the lawful rate; and

e.) Any further relief that this Court deems just and proper, and any other relief as allowed by law.

PLAINTIFFS REQUEST A JURY TRIAL ON ALL MATTERS SO TRIABLE

Respectfully submitted this April 6, 2007.

KILLMER, LANE & NEWMAN, LLP

s/ David A. Lane

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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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and I hereby certify that I have mailed or served the document or paper to the following participants in the manner (mail, hand-delivery, etc.) indicated by the non-participant's name:

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