UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

NAIA TRUST, GALE M. PARR, and PAMELA A. GRAY,

Plaintiffs,

-vs- **Case No. 6:09-cv-340-Orl-KRS**

VOLUSIA COUNTY, FLORIDA,

Defendant.

ORDER

This cause came on for consideration without oral argument on the following motion filed herein:

MOTION:	**MOTION FOR SUMMARY JUDGMENT (Doc. No. 36)**
FILED:	**May 14, 2010**

I. PROCEDURAL HISTORY.

Plaintiffs NAIA Trust ("NAIAT"), Gale M. Parr and Pamela A. Gray filed an amended complaint against Defendant Volusia County alleging that sections 14-31 and 14-56 of Chapter 14, Article II of the Code of Ordinances of Volusia County, Florida, as amended by Ordinance number 2008-18, Doc. No. 21-1, violate their rights under the United States and Florida Constitutions, and that part of the Ordinance is preempted by Florida law. Doc. No. 21.

Volusia County filed a motion for summary judgment. Doc. No. 36. In support of the motion, Volusia County filed the deposition transcripts of Parr, Gray and Patti Strand, testifying as

the representative of NAIAT, and Plaintiffs' responses to Defendant's first set of interrogatories. Doc. Nos. 36-1 to 36-7. Plaintiffs responded to the motion but did not file any affidavits or evidence in support of their response. Doc. No. 47. The Humane Society of the United States filed an *amicus curiae* brief in support of Defendant's motion for summary judgment, which the Court has considered. Doc. No. 62. The Humane Society attached a United States Department of Agriculture report from Animal and Plant Health Inspection Services, Animal Care Program entitled, "Inspection of Problematic Dealers." Doc. Nos. 62-1, 62-2. The Humane Society also attached an article from the Animal and Plant Health Inspection Services entitled, "Licensing and Regulation under the Animal Welfare Act." Doc. No. 62-3.

The motion for summary judgment is before me pursuant to the consent of the parties. Doc. Nos. 48, 51.

II. STATEMENT OF FACTS.

A. The Ordinance.

The parties agree that on August 21, 2008, the County Council of Volusia County, Florida enacted Ordinance 2008-18 (the "Ordinance"), amending sections 14-31 and 14-56 of Chapter 14, Article II of the Volusia County Code of Ordinances (hereinafter referred to as "Article II"), a copy of which is attached to the amended complaint, Doc. No. 21-2. Doc. No. 1 ¶ 12; Doc. No. 45 ¶ 12. The Ordinance was discussed at public meetings. *See* Doc. No. 24-5 at 33; Doc. No. 24-3 at 26. Article II is entitled "Animal Control." The Ordinance imposes a maximum civil penalty of $500.00 for violation of any of the provisions of Article II. Doc. No. 21-2 § 14-32.

The Ordinance addresses three general categories of individuals and entities who own dogs and cats: Personal Pet Owners; Hobby Breeders; and, Pet Dealers.[1]

As for personal pet owners, the Ordinance provides that the owner of the dog or cat shall have the animal vaccinated against rabies as required by state law. Doc. No. 21-2 § 14-42. The owners must cause the dog or cat to be licensed annually unless exempt. *Id.* § 14-43. The owner of the dog or cat must restrain the animal. *Id.* §§ 14-45, 14-46. The owner must spay or neuter the dog or cat or obtain an unaltered animal permit if the animal meets the requirements for issuance of the permit. *Id.* § 14-58. As a condition of obtaining an unaltered animal permit, an eligible dog or cat must be implanted with an identifying microchip, and the owner must provide the microchip number to the animal control division. *Id.* § 14-58(b)(2)(c).

Article II defines a "hobby breeder" of dogs or cats 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.

Doc. No. 21-2 § 14-31. Article II sets forth requirements for hobby breeders and hobby breeder facilities, including the following: that an annual license is required for establishment or maintenance of a hobby breeder facility; that such license "shall be issued only after an inspection that determines that the minimum requirements and standards, as set forth herein, have been met," § 14-56(a)(1); that only one breed of dog or cat may be kept at any hobby breeder facility in a

[1] Other provisions of the Ordinance are not relevant to the matters presently at issue.

number not exceeding the limitations in section 14-56(a)(3); that all dogs or cats at a facility must be identifiable by either tattoo or implantable device but they need not be individually licensed, *id*.; that, if a new owner of a dog or cat becomes unable or unwilling to care for it, the hobby breeder must assist in placing the animal, and if a placement cannot be found within six months, the hobby breeder must accept the return of the animal and be responsible for its care, § 14-56(a)(4); that an owner of a hobby breeder facility with indoor facilities must live on the premises, § 14-56(b)(4)(b); that as a condition of issuance of a license as a hobby breeder, a hobby breeder must consent to an inspection of the animals and the premises where they are kept "at any reasonable time," § 14-56(c); and, that "[u]pon receipt of information of violation of this section, the animal control division may issue a notice of revocation to a license holder." *Id*. The dogs or cats must also be vaccinated against rabies. *Id.* § 14-42. A hobby breeder may have up to four dogs or cats as personal pets in addition to the number of animals permitted as a hobby breeder. *Id.*§ 14-56(a)(5). Article II provides for notice of proposed revocation of a hobby breeder license and an opportunity for a hearing. *Id.* §§ 14-56, 14-57.

Article II defines a "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 cats, per year, whichever is greater, to the public. Such definition includes breeders of animals who sell such animals directly to a consumer.[2]

Id. § 14-31. The Ordinance does not establish licensing and inspection requirements for pet

[2] The definition of "pet dealer" under Florida law is the same as the definition of "pet dealer" in the Ordinance. *See* § 829.29(13), Fla. Stat.

dealers. Nevertheless, Florida statutes require a pet dealer to administer specified tests, vaccines and anthelmintics to dogs and cats offered for sale in Florida and provide a veterinary certificate of compliance. *See* § 828.29, Fla. Stat.

B. The Parties.

Plaintiff NAIA Trust for the Protection of Animals, Animal Owners and Animal Enterprises is a § 501(c)(4) trust with a mailing address in Portland, Oregon. Doc. No. 36-7 at 18 (NAIAT answers to interrogatories); Doc. No. 36-5 at 4 (NAIAT deposition). Its mission "is to promote responsible pet ownership, preserve the human-animal bond and protect responsible animal owners from things that would mitigate against those things." Doc. No. 36-5 at 21. It has a State of Florida committee called "NAIA Trust of Florida." *Id.* at 20. NAIAT does not own property in Volusia County. Doc. No. 36-7 at 18. NAIAT has not been cited for violation of the Ordinance or otherwise warned, threatened or accused of violating the Ordinance. *Id.* at 32. NAIAT has members who own dogs and reside or propose to reside in Volusia County, specifically Plaintiffs Pamela Gray and Gale Parr, who NAIAT submits have been harmed by the Ordinance. *Id.* at 33-39, 59. NAIAT does not allege an injury to itself independent of injury to its members. *Id.* at 41-42.

Plaintiff Pamela Gray is a member of NAIAT. Doc. No. 36-3 at 11 (Gray deposition). She owns two different breeds of dogs. *Id.* at 29. Before the Ordinance was amended, and after its amendment, she had not sought a license to be a hobby breeder in Volusia County. Gray had not operated as a hobby breeder, but she testified that she was looking "at a show prospect" dog, which she would have to breed at least twice. *Id.* at 49-50, 52. She also wanted to have a disaster relief shelter for dogs on her property. *Id.* at 53. Gray and her husband purchased 25 acres of

property in Volusia County, Florida in 2005. *Id.* at 9, 70. The property is split zoned RC (Resource Corridor) and FR (Forestry Reserve). *Id.* at 63. Gray was preparing to build a home on that property with hobby breeding and animal rescue capabilities. *Id.* at 44-45, 53; Doc. No. 28-2 ¶ 4. She stopped construction on the home due to new ordinances passed by the county. Doc. No. 36-7 at 12; Doc. No. 36-3 at 65-67, 72. She objected to the provisions of Article II requiring her to allow inspectors to enter her property, Doc. No. 36-3 at 28, the limitation to only one breed of dog, *id.* at 29, and language she found to be unclear, *id*. at 30-31, among other things. Gray did not attend Volusia County Council meetings at which the Ordinance was discussed. *Id.* at 32-33. Gray never applied to be a hobby breeder in Volusia County, *id.* at 54-55, 65, but she averred that she would apply for a hobby breeder license but for the provisions of the Ordinance, Doc. No. 28-2 ¶ 11. Volusia County has not enforced or threatened to enforce the Ordinance against Gray. Doc. No. 36-3 at 26, 33-34.

Plaintiff Gale Parr resides in Volusia County, Florida. Doc. No. 36-1 at 9 (Parr deposition). She is a member of NAIAT. *Id.* at 11. Parr's property is zoned R3 (Urban Single-Family Residential), which does not permit hobby breeding as an activity on the property. *Id.* at 22. She further testified that this zoning was "not going to change." *Id.* at 56. She averred that she was looking for another residence in Volusia County zoned to permit her to operate as a hobby breeder. Doc. No. 28-1 ¶ 11. She called Volusia County animal control to get information about obtaining a hobby breeder's license. Doc. No. 36-1 at 7. She was told that if she did not comply with all of the requirements for the license, she need not apply because there were no exceptions. *Id*. at 16. She received a copy of the hobby breeder's license application but she did not submit it. *Id.* at 19-20. Parr attended hearings before the Volusia County Council on the Ordinance and was

allowed to speak. *Id.* at 26. Gray has not been cited or threatened with enforcement of the Ordinance by any County agent, employee or representative. *Id.* at 29-30. Parr took five puppies to another county and had someone sell them for her because she understood that she could not sell them in Volusia County without a hobby breeder's license. *Id.* at 38-39. Parr testified that she wished that the County "would take the time to look at my facilities . . . ," but she also objected to the provision in Article II permitting inspectors to come into her home at any time as part of the hobby breeder's license. *Id.* at 62, 66.

III. STANDARD OF REVIEW.

Under Federal Rule of Civil Procedure 56(a), the Court shall grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The Supreme Court explained the rule as follows:

> [T]he plain language of Rule 56[a] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). "The Court must consider all inferences drawn from the underlying facts in a light most favorable to the party opposing the motion, and resolve all reasonable doubts against the moving party. . . . If material issues of fact exist, the Court must not decide them, but rather, must deny the motion and proceed to trial." *Kitchings v.*

Fl. United Methodist Children's Home, Inc., 393 F. Supp. 2d 1282, 1291 (M.D. Fla. 2005) (internal citations omitted).

"'Genuine disputes are those in which the evidence is such that a reasonable jury could return a verdict for the non-movant. For factual issues to be considered genuine, they must have a real basis in the record.' . . . For instance, mere conclusions and unsupported factual allegations are legally insufficient to defeat a summary judgment motion." *Ellis v. England*, 432 F.3d 1321, 1325-26 (11th Cir. 2005)(quoting *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 742 (11th Cir. 1996)).

IV. ANALYSIS.

Plaintiffs allege that sections14-31 and 14-56 of Article II violate the equal protection clause of the United States Constitution[3], deprive them of procedural due process in violation of the United States and Florida Constitutions; and infringe their protection against unreasonable searches and seizures under Article II, Section 12 of the Florida Constitution.[4] They contend that these sections of Article II are unconstitutional both facially and as applied to them. Doc. No. 47 at 3-4.

[3] In Count I, Plaintiffs do not identify whether they are proceeding under the United States or Florida Constitutions, but they request a determination that Article II violates Plaintiffs' "Fourteenth Amendment rights to equal protection," which references the United States Constitution. Doc. No. 21 at 10-11. Because the cause of action pleaded is based on the United States Constitution, the Court will consider the equal protection challenge only on that basis.

[4] In response to the motion for summary judgment, Plaintiffs imply that they also made a claim in Count II for infringement of their rights under the Fourth Amendment to the Constitution. Doc. No. 47 at 13. However, Count II alleges only violation of due process under the Fourteenth Amendment to the United States Constitution. Doc. No. 21 at 11-12.

"[A] facial challenge will succeed only if the statute 'could never be applied in a constitutional manner.'" *Harris v. Mexican Specialty Foods, Inc*., 564 F.3d 1301, 1308 (11th Cir. 2009) (quoting *DA Mortg., Inc. v. City of Miami Beach*, 486 F.3d 1254, 1262 (11th Cir. 2007)). Federal courts "will uphold a state statute against a facial challenge if the statute is readily susceptible to a narrowing construction that avoids constitutional infirmities . . . [but] will not . . . rewrite the clear terms of a statute. . . ." *Florida Right to Life, Inc. v. Lamar*, 273 F.3d 1318, 1325 (11th Cir. 2001) (citing *Dimmitt v. City of Clearwater*, 985 F.2d 1565, 1572 (11th Cir. 1993)). "Where plaintiffs challenge the validity of a statute because they seek to vindicate their own rights, however, the challenge is 'as-applied'" *DA Mortg.*, 486 F.3d at 1262 (citing *Jacobs v. The Florida Bar*, 50 F.3d 901, 906 (11th Cir. 1995)).

A. Standing and Ripeness.

Before considering the merits of the motion, the Court must assure itself that the present case presents a ripe case or controversy and that the Plaintiffs have standing to bring the causes of action asserted in the amended complaint. Volusia County argues that Plaintiffs do not have standing to proceed in this case. In ruling on a motion to dismiss, the Court held that the amended complaint presented a "justiciable controversy" and that "Plaintiffs have standing to pursue this case at this time." Doc. No. 40 at 3. In reaching this ruling, the Court considered only the allegations of the amended complaint. *Id.* at 3 n.1. Having now considered evidence in connection with the motion for summary judgment, it is appropriate for the Court to revisit the issues of standing and ripeness. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

> The doctrines of standing and ripeness are closely related, and in cases like this one perhaps overlap entirely. Both doctrines stem from Article III's requirement that federal courts have jurisdiction only over "cases and controversies." It is sometimes argued that standing is about who can sue while ripeness is about when they can sue, though it is of course true that if no injury has occurred, the plaintiff can be told either that she cannot sue, or that she cannot sue yet.

Doc. No. 20 at 3 (quoting *Smith v. Wis. Dep't of Agric., Trade & Consumer Prot.*, 23 F.3d 1134, 1141 (7th Cir. 1994)). "A party seeking to invoke federal jurisdiction must demonstrate: 1) injury in fact or an invasion of a legally protected interest; 2) a direct causal relationship between the injury and the challenged action; and 3) a likelihood of redressability." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1223 (11th Cir. 2004)(citing *Lujan*, 504 U.S. at 560-61). "The 'basic rationale [behind the ripeness doctrine] is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.'" Doc. No. 20 at 4 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967)(alteration in original)). "[A] ripeness inquiry is often required when," as here, "a party is seeking pre-enforcement review of a law or regulation." *Id.*

1. Gale Parr.

Based on the evidence now before the Court, Plaintiff Gale Parr has not established a likelihood of redressability. In her deposition, Parr acknowledged that the present zoning of her current residence precludes operation as a hobby breeder.[5] Parr further testified that the zoning of

[5] Parr testified that her property is zoned R3. Under the Volusia County Zoning Ordinance, found online at http://library8.municode.com/default-test/home.htm?infobase=11665&doc_action=whatsnew (last visited Nov. 26, 2010)("Volusia County Zoning Ordinance"), property zoned R-3 (Urban Single-Family Residential Classification) can be used only for specified activities. "Hobby breeder" is not one of the permitted uses. *See id.* at Part II, Chapter 72, Art. II, § 72.241.

that property was not going to change. Thus, even if the provisions of Article II at issue were found to be unconstitutional, Parr could not operate as a hobby breeder at her current residence because it is not zoned for this use. Accordingly, her claims are not redressible because any application for a hobby breeder license for her current residence would not meet the requirements of zoning ordinances that are not challenged in the present case. *See KH Outdoor, L.L.C. v. Clay County, Fla.*, 482 F.3d 1299, 1303 (11th Cir. 2007).

Parr's claim also is not ripe. "[A] 'lack of ripeness inhere(s) in the fact that the need for some further procedure, some further contingency of application or interpretation . . . serve(s) to make remote the issue which was sought to be presented to the Court." *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S.26, 51 (1976)(Brennan, J., concurring). Parr averred that she was looking for another home in Volusia County zoned to permit hobby breeding, but she has not presented any evidence in opposition to the present motion showing that she has acquired new property. Based on the present evidence, Parr would have to acquire property zoned for use as a hobby breeder before she could qualify to apply for a hobby breeder's license. Therefore, there is a contingency that must be occur before Parr's claims would be ripe for adjudication.

Accordingly, the motion for summary judgment is due to be granted as to Parr's challenges to Article II. *See KH Outdoor, L.L.C.*, 482 F.3d at 1305.

2. Pamela Gray.

Based on the evidence currently before the Court, it appears that there is no future contingency necessary before Gray's claims would be ripe. Although Gray expressed some uncertainly about whether the FR/RC split zoning of her property in Volusia County would permit her to operate as a hobby breeder, review of the Volusia County Zoning Ordinance shows that

"hobby breeder" is a permitted use for property zoned FR and RC. *See* Volusia County Zoning Ordinance.

Gray alleges in Count I of the amended complaint that sections 14-31 and 14-56 of Article II violate the equal protection clause because they require hobby breeders to comply with various requirements that are not required of similarly situated pet dealers, impounding and holding facilities and individual pet owners. Gray presented evidence that she would apply for and operate as a hobby breeder if the challenged provisions of Article II were lifted. This is sufficient to establish standing to challenge Article II as applied and facially as violating the equal protection clause. *See Gratz v. Bollinger*, 539 U.S. 244. 261-63 (2003).

Gray alleges in Counts II through V of the amended complaint that specific provisions of Article II are unconstitutional because they violate her Fourteenth Amendment and Florida constitutional rights to procedural due process and her Florida constitutional right to protection from unreasonable searches and seizures. In Count VI, Gray alleges that the provision in Article II requiring hobby breeders to accept return of animals is preempted by Florida Law. As to these causes of action, Gray has not met her burden of establishing standing to challenge Article II facially or as applied.

A plaintiff may only challenge those portions of a statute or ordinance that personally injured the plaintiff. *See Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla.*, 351 F.3d 1112, 1116-17 (11th Cir. 2003)("*Granite State*"); *accord Tanner Advertising Group, L.L.C. v. Fayette County, Ga.*, 451 F.3d 777, 791 (11th Cir. 2006)("*Tanner*"). For example, in *Granite State* the court found that Plaintiff had standing only to challenge those portions of a city sign ordinance limiting the size of signs because the only harm Plaintiff personally suffered was denial

of its application for sign permits as being in violation of the size limitations. A specially concurring opinion in *Tanner* sets forth the law regarding a plaintiff's lack of standing to bring facial challenges to those portions of ordinances that were not applied to the plaintiff. *Id.* at 792-98.[6] Because Gray has not applied for a hobby breeder's license and has not operated as a hobby breeder in Volusia County, none of the provisions of the Ordinance have caused any personal injury to her. Therefore, she has not established that she has standing to challenge specific provisions of Article II either facially or as applied.

Accordingly, the motion for summary judgment is due to be granted as to Gray's causes of action set forth in Counts II through VI of the amended complaint.

3. NAIAT.

NAIAT cannot establish that it has standing to assert any of the causes of action set forth in the amended complaint based only on its interest in promoting responsible pet ownership. *See Simon*, 426 U.S. at 40. Rather, it has standing only as a representative of its members who have been injured in fact and could have brought suit in their own right. *Id.*

Gray is a member of NAIAT. As such, NAIAT has representational standing to assert the equal protection violation alleged in Count I of the amended complaint. NAIAT has not presented evidence that any of its members operated as hobby breeders in Volusia County before the Ordinance was enacted or that any of its members applied for a license as a hobby breeder in

[6] I note, also, that facial overbreadth challenges have only been permitted when a plaintiff alleges that the ordinance at issue infringes plaintiff's First Amendment rights. *See Tanner*, 451 F.3d at 793. Plaintiffs in the present case do not allege that the Ordinance infringes their First Amendment rights.

Volusia County.[7] Therefore, NAIAT has not established that other individual NAIAT members have suffered injury-in-fact as a result of the provisions of Article II that underlie Counts II through VI of the amended complaint.

Accordingly, the motion for summary judgment is due to be granted as to NAIAT's causes of action set forth in Counts II through VI of the amended complaint.

B. Equal Protection.

In Count I of their amended complaint, Gray and NAIAT (collectively "Plaintiffs") allege that sections 14-31 and 14-56 of Article II treat hobby breeders and pet dealers, impounding and holding facilities and individual pet owners differently, in violation of the equal protection clause of the United States Constitution as applied to the states through the Fourteenth Amendment. Doc. No. 21 at 8-11. Specifically, these sections place the following limitations and requirements on hobby breeders that are not placed on pet dealers, impounding and holding facilities, and individual pet owners: keep only one species or breed of dog or cat[8]; mark dogs or cats with a tattoo or implant; accept returned dogs or cats; comply with regulations for transportation, handling and storage of food and water; live on the premises with the animals; and consent to inspections. *See* Doc. No. 21 ¶¶ 36-41.

"The Equal Protection Clause requires the government to treat similarly situated persons in a similar manner." *Leib v. Hillsborough Cnty. Pub. Transp. Comm'n*, 558 F.3d 1301, 1305-06

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[7] The Humane Society asserts that twelve people have registered as hobby breeders in Volusia County, Doc. No. 62 at 16, but there is no evidence supporting this assertion and no showing that any of the registered hobby breeders are members of NAIAT.

[8] The limitation to keeping only one breed of dog was part of the Code before it was amended by the Ordinance. *See* Doc. No. 21-1 (redline version of the Ordinance).

(11th Cir. 2009) (citing *Gary v. City of Warner Robins*, 311 F.3d 1334, 1337 (11th Cir. 2002)). To prevail on this equal protection claim, Plaintiffs must first show that they were treated differently from other similarly situated individuals. *See Campbell v. Rainbow City, Ala.*, 434 F.3d 1306, 1313 (11th Cir. 2006).

Plaintiffs rely solely on the Florida statute defining "pet dealers" to support their argument that hobby breeders are similarly situated to pet dealers.[9] That statute provides that pet dealers are individuals or entities who, in the ordinary course of business, engage in the sale of more than two litters or twenty dogs or cats per year, whichever is greater, to the public and include breeders who sell animals directly to a consumer. § 828.29, Fla. Stat. Volusia County, in turn, relies exclusively on the Ordinance to argue that hobby breeders are not similarly situated to pet dealers by definition because: a hobby breeder is limited to fewer sales of animals; the hobby breeder operates from a residential area not a commercial space; and a hobby dealer is engaged in non-for-profit activity, rather than for-profit activity.

"Equal protection plaintiffs must provide specific details in making this claim so that the court may determine whether the proposed comparator was similarly situated 'in all relevant respects.'" *K&H Dev. Group, Inc. v. Howard*, No. 3:06cv494/MD, 2009 WL 1034997, at * 12 (N.D. Fla. March 27, 2009) (citing *Campbell*, 434 F.3d at 1314) . Merely citing to a definition in Florida law of a pet dealer as including a breeder who sells to consumers is insufficient to sustain this burden. Among other things, this argument does not address the differences between the

[9] Plaintiffs appear to have abandoned their allegations that hobby breeders are similarly situated to impounding and holding facilities and individual pet owners as they have offered no evidence or argument in support of those allegations.

primary purpose of each activity and the number of sales of animals permitted by each classification. By definition, a hobby breeder shelters, breeds or trains cats or dogs "to conform to an approved standard of competition," Doc. No. 21-2 § 14-31 (definition of hobby breeder), and breeds dogs and cats "to enhance or perpetuate a given breed," *id.* § 14-56(a)(2). In contrast, a pet dealer operates primarily as a commercial activity. § 828.29(13), Fla. Stat. ("in the ordinary course of business"). The "hobby breeder" is limited to "*no more than* two litters or 20 puppies or kittens, whichever is greater," *id* § 14-56(a)(3)(emphasis added), while the pet dealer "engages in the sale of *more than* two litters, or 20 dogs or cats, per year, whichever is greater," § 828.29(13), Fla. Stat.(emphasis added). Plaintiffs have not established that a hobby breeder who engages in non-commercial activities from a residence and who may sell a limited number of cats or dogs is similarly situated to a pet dealer who is engaged in commercial activity from a business location and who may sell a greater number of cats and dogs.

At the summary judgment stage, the burden rests with Plaintiffs to present evidence to support each element of their equal protection claim. Because Plaintiffs failed to present the sufficiently detailed evidence necessary to raise a genuine issue of material fact regarding whether hobby breeders and pet dealers are similarly situated, the motion for summary judgment as to Count I is due to be granted.

V. CONCLUSION.

The motion for summary judgment is **GRANTED**. The Clerk of Court is directed to enter judgment in favor of Defendant Volusia County, Florida as to all counts of the amended complaint and, thereafter, to close the file.

DONE and **ORDERED** in Orlando, Florida on December 2, 2010.

Karla R. Spaulding

KARLA R. SPAULDING
UNITED STATES MAGISTRATE JUDGE