

22 City L. 8

CITYLAW
January/February, 2016

Decisions of Interest

Health

Pet Shops

NEW PET SHOP LAWS UPHELD

Copyright (c) 2016 by Center for New York City Law

Pet shops challenged new City laws designed to protect animals and reduce deceptive practices. In January 2015 the City Council enacted Local Laws 5 and 7 of 2015, referred to as the “Pet Shop Laws.” The laws sought to curb the sale of dogs and cats bred and kept inhumanely, prohibit deceptive trade practices by the offending stores and breeders, and to reduce the excess of unwanted dogs and cats in New York City. The laws require pet stores to have an operating permit, buy animals only from sellers with USDA Class A licenses, and to sterilize any dog or cat above a certain age and weight before releasing it to the purchaser. Shelters and retail rescue organizations were exempted from the Class A purchasing and the sterilization requirements.

On June 1, 2015 the New York Pet Welfare Association, a pet store and breeder trade association, sued to strike down the laws. The Association argued that the laws were preempted by the federal Animal Welfare Act and by state laws regulating veterinarian practices. The association argued that the laws deprived its members of equal protection by restricting pet shops' conduct but not retail rescues or shelters. They also claimed that the laws violated due process by infringing on their members' licensure rights and terminating those rights without notice or a hearing. The City moved to dismiss all claims for failure to state a cause of action.

On November 27, 2015 U.S. District Judge John Gleeson of the Eastern District of New York granted the City's motion and dismissed the case. Judge Gleeson ruled that there were no federal preemption issues because the Animal Welfare Act specifically permits state and municipal authorities to promulgate standards above those set in the federal law. The judge found no state preemption issues because the City laws do not force veterinarians to act in violation of applicable state regulation. The judge rejected the Association's equal protection argument, agreeing with the City that for-profit pet shops are not similar to nonprofit shelters for equal protection purposes. The remaining claims were dismissed for lack of facts sufficient to give rise to any violation under substantive due process, procedural due process, or §1985.

New York Pet Welfare Ass'n v. City of New York, 2015 WL 7017388 (E.D.N.Y. Nov. 27, 2015) (Attorneys: **Jeffrey M. Pollock**, James M. Lemonedes, Nancy E. Halpern, for Association; Zachary W. Carter, Sheryl Neufeld, Mark W. Muschenheim, Anna I. Kurtz, Aaron S. Rogoff, for City).

23 City L. 51

CITYLAW
May/June, 2017

Decisions of Interest

Animals

Pet Sales

CITY LAWS ON SALE OF PETS UPHELD

Copyright (c) 2017 by Center for New York City Law

Local laws required pet stores to purchase animals only from distributors holding a federal license, and that the animals be sterilized before being released to a customer. In 2015 New York City enacted the Sourcing Law and the “Spay/Neuter law. These laws sought to reduce the irresponsible breeding of animals sold to New York City pet stores and the sale of these animals to unknowing customers, and, ultimately, to decrease the overall population of unwanted dogs and cats. The New York Pet Welfare Association sued to enjoin the enforcement of the two laws. The Association claimed that the Sourcing Law was an obstacle to the enforcement of the federal Animal Welfare Act, and that it violated the Dormant Commerce Clause by creating restrictions that favored in-state breeders. The Association also claimed that New York State Law preempted the Spay/Neuter Law.

Brooklyn federal Judge John Gleeson, rejected the Association's arguments, and the U.S. Court of Appeals for the Second Circuit affirmed.

The Second Circuit ruled that the Sourcing Law's limitation did not impede the federal Animal Welfare Act by requiring pet stores to purchase animals from breeders holding one type of federal license. As to the Dormant Commerce Clause, the court ruled that the Sourcing Law did not unduly burden out-of-state breeders. The court held that merely because the local law favored out-of-state breeders who could make direct sales to New York City pet stores was not sufficient discrimination to violate the Dormant Commerce Clause.

The Second Circuit also rejected the Association's argument that State law preempted the Spay/Neuter Law. The Spay/Neuter Law required sterilization of an animal meeting the minimum age and weight requirements for the procedure (8 weeks old, 2 lbs) before the pet store could release the animal to a customer. The Spay/Neuter Law did not interfere with a veterinarian's professional obligations because the veterinarian could simply refuse to perform the surgery if performing the surgery would violate these obligations.

The Spay/Neuter Law also did not violate [§ 753-d of New York's General Business Law](#), which expressly prohibits any local law that “result[s] in essentially banning all sales of dogs or cats raised and maintained in a healthy and safe manner.” Customers may prefer animals younger than twelve weeks old, but there is no evidence that customers will stop buying kittens and puppies if none are available before this age. The Spay/Neuter Law merely restricted the sale of animals that a veterinarian has not deemed ready to go through sterilization surgery.

New York Pet Welfare Association v. City of New York, 850 F.3d 79 (2d Cir. 2017) (Attorneys: Jeffrey M. Pollock, Nancy Elizabeth Halpern, James M. Lemonedes, for Association; Zachary W. Carter, Richard Dearing, Devin Slack, for City).

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.