

IN THE CIRCUIT COURT OF WHITE COUNTY, ARKANSAS

JERRY L. MYERS

PLAINTIFF

VS.

NO. CV2009-617

STATE OF ARKANSAS

DEFENDANT

PETITION FOR DECLARATORY JUDGMENT DECLARING
ARK. CODE ANN. §5-62-120 UNCONSTITUTIONAL

Comes the plaintiff, Jerry L. Myers, and for his petition, states:

1. That plaintiff has in his possession chickens that are genetically born to fight. Plaintiff has had these chickens several years. Plaintiff has standing to bring this action. Jurisdiction and venue are proper. Plaintiff is a resident of White County, Arkansas.

2. That Ark. Code Ann. §5-62-120 as amended was put in effect by the 2009 legislature of Arkansas by Act 33. See Exhibit A.

3. That plaintiff has standing because litigation is pending or threatened. This new law applies to plaintiff.

4. That Article 2, Section 2 of the Arkansas Constitution and Arkansas Rules of Criminal Procedure recognize a right of privacy for a citizen of the State of Arkansas.

5. That the statute is overbroad and violates the equal protection laws of the state and country.

6. That it is fundamentally unfair to plaintiff to be punished for raising chickens that are genetically born to fight.

7. That the statute is vague.

8. That the statute specifically addresses roosters and birds (chickens) of which plaintiff

has possession of. Plaintiff does not train the chickens because it would be like herding cats. It would be impossible. The chickens are genetically born to fight and there is nothing plaintiff can do to prevent the chickens from fighting.

9. Plaintiff requests this Court rule that Ark. Code Ann. §5-62-120 is unconstitutional, overbroad, violates his right to privacy and violates the equal protections clause. The plaintiff has inherent and inalienable rights including the enjoyment of life, liberty and the pursuit of happiness. Sections 8 and 21 of Article 2 of the Arkansas Constitution ensure plaintiff's due process rights.

WHEREFORE, plaintiff, Jerry L. Myers, requests this Court declare Ark. Code Ann. §5-62-120 unconstitutional for the above reasons and for all other proper relief.

VERIFICATION

STATE OF ARKANSAS)
COUNTY OF PULASKI)

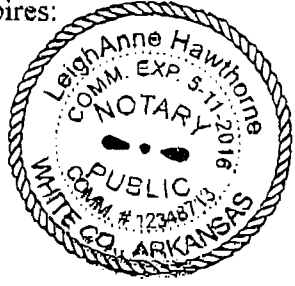
I, Jerry L. Myers, plaintiff herein, state on oath that the information contained in the foregoing Petition is true and correct to the best of my knowledge, information and belief.

Jerry L. Myers
Jerry L. Myers

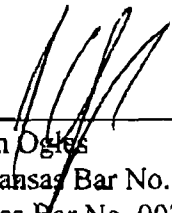
Subscribed and sworn to before me this 31st day of July, 2009.

Leigh Anne Hawthorne
Notary Public

My Commission Expires:



Respectfully submitted,



John Ogles
Arkansas Bar No. 89003
Texas Bar No. 00797922
OGLES LAW FIRM, P.A.
200 S. Jeff Davis
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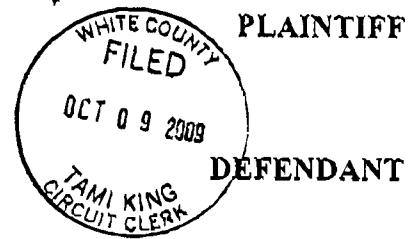
**IN THE CIRCUIT COURT OF WHITE COUNTY, ARKANSAS
FIRST DIVISION**

JERRY L. MYERS

v.

STATE OF ARKANSAS

NO. CV-2009-617



ANSWER

Pursuant to Rules 8 and 12 of the Arkansas Rules of Civil Procedure, defendant the State of Arkansas submits the following answer to the petition for declaratory judgment/complaint of plaintiff Jerry L. Myers, and states:

1. The defendant is without sufficient information to admit or deny the allegations in paragraph 1 of the petition/complaint and therefore denies them.
2. The defendant admits that the Arkansas General Assembly, during the 2009 Regular Session, passed Arkansas Act 33 of 2009. The defendant further admits that Act 33 of 2009 amended Ark. Code Ann. § 5-62-120. The defendant denies that a copy of any document marked as "Exhibit A" was served on the defendant with the petition/complaint.
3. The defendant admits that Act 33 of 2009 applies to the plaintiff, as it does to everyone within the borders of the State of Arkansas. The defendant is without sufficient information to admit or deny whether any litigation related to Act 33 has been threatened against the plaintiff and therefore denies that allegation. The defendant denies the remaining allegations of paragraph 3 of the petition/complaint, including but not limited to the allegations that litigation under Act 33 is pending against the plaintiff and that the plaintiff has standing to bring this action.

4. The defendant admits that the Arkansas Supreme Court has recognized that a right to privacy is implicit in the Arkansas Constitution and in the Arkansas Rules of Criminal Procedure. However, the defendant denies that this privacy right encompasses the conduct prohibited by the challenged statute, and the defendant denies that this privacy right has any application to the plaintiff's petition/complaint. The defendant denies the remaining allegations of paragraph 4 of the petition/complaint.

5. The defendant denies the allegations in paragraph 5 of the petition/complaint.

6. The defendant denies the allegations in paragraph 6 of the petition/complaint.

7. The defendant denies the allegations in paragraph 7 of the petition/complaint.

8. The defendant is without sufficient information to admit or deny the allegations in paragraph 8 of the petition/complaint and therefore denies them.

9. The defendant acknowledges that the Arkansas Constitution provides the plaintiff with certain constitutional rights. The defendant, however, denies that it has in any way violated the plaintiff's rights. The defendant denies the remaining allegations of paragraph 9 of the petition/complaint.

10. The defendant denies that Arkansas Act 33 of 2009 is unconstitutional or that it in any way violates any constitutional right held by the plaintiff.

11. The defendant denies any liability whatsoever to the plaintiff.

12. Pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure, the defendant denies that the plaintiff has stated facts upon which relief can be granted against the defendant.

13. The defendant states that, even if the plaintiff had otherwise stated facts upon which relief might be granted, the State of Arkansas is an improper defendant in the plaintiff's constitutional challenge to a criminal statute.

14. Pursuant to Rule 12(b)(7) of the Arkansas Rules of Civil Procedure, the defendant states that the plaintiff has failed to join all necessary parties under Rule 19.

15. The defendant states that the plaintiff lacks standing to bring this action.

16. Pursuant to Rule 12(b)(3) of the Arkansas Rules of Civil Procedure, the defendant states that even if it were a proper defendant and the plaintiff otherwise had standing, venue in this Court is improper.

17. Pursuant to Rule 12(b)(5) of the Arkansas Rules of Civil Procedure, the defendant states that the plaintiff has failed to perfect service of process on the defendant because the copy of the petition/complaint delivered to the defendant did not include the referenced "Exhibit A."

WHEREFORE, the State of Arkansas respectfully requests the Court to dismiss the petition/complaint of plaintiff Jerry L. Myers and to grant the State of Arkansas all other appropriate relief.

