



through counsel, BRIAN M. BARNARD of the Utah Legal Clinic, Cooperating Attorney for the UTAH CIVIL RIGHTS & LIBERTIES FOUNDATION, INC. as a complaint and causes of action against the defendants state and allege as follows:

### **PRELIMINARY STATEMENT**

1. This 42 U.S.C. § 1983 action seeks declaratory and injunctive relief and monetary damages for improper interference with the constitutional rights of the plaintiffs. Plaintiffs also seek attorney fees and costs under 42 U.S.C. §§ 1983 and 1988.

### **JURISDICTION & VENUE**

2. Jurisdiction is proper in this Court under 42 U.S.C. §§ 1983 and 1988 as well as 28 U.S.C. § 1343, and arises in order to enforce provisions of the United States Constitution. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure. This Court has supplemental jurisdiction to hear plaintiffs' state constitutional claims arising from the same factual situation.

3. Venue is proper in the Northern Division of the United States District Court for the District of Utah because the misconduct complained of occurred and will occur in Morgan County, State of Utah and in the Northern Division of this Court. Defendants' places of business are in Morgan County, State of Utah and in the Northern Division of this Court.

## **PARTIES**

4. **SALT LAKE ANIMAL ADVOCACY MOVEMENT (“SLAAM”)** is an unincorporated association headquartered in Salt Lake City, Utah. Founded in 2007, SLAAM is an animal rights organization. SLAAM operates under the simple principle that animals are not ours to eat, wear, experiment on or use for entertainment. SLAAM is dedicated to establishing and protecting the rights of all animals. SLAAM works through public education, research, cruelty investigations, animal rescue, legislation, special events, celebrity involvement and direct action to accomplish its goals. SLAAM provides information and educates people with regard to the ethical treatment of animals; among other methods it does so through the distribution of flyers and literature and by public demonstrations. As a non-profit entity SLAAM has no stockholders or owners; it has members.

5. **JEREMY BECKHAM** is an adult citizen and resident of Salt Lake County and the State of Utah. He is a member of SLAAM and has acted in a coordinator role for SLAAM. He supports the purposes, ideals and goals of SLAAM. For more than eight (8) years, he has participated in public education and outreach activities in support of animal rights. He has participated in various activities, free speech and public demonstrations sponsored by SLAAM and other animal rights organization. He plans to continue to do so in the future.

6. **COLLEEN HATFIELD** is a member of SLAAM. She has acted in a coordinator role for SLAAM. She supports the purposes, ideals and goals of SLAAM. For more than eight (8) years, she has participated in public education and outreach activities in support of animal rights. She has participated in various activities, free speech and public demonstrations

sponsored by SLAAM and other animal rights organization. She plans to continue to do so in the future.

7. **MORGAN COUNTY** (hereinafter the “County”) is a government entity created pursuant to Utah statute which governs the geographic area known as Morgan County, Utah. The County is a governmental subdivision of the State of Utah. The County is the principal and/or employer of the individual defendants. The County has delegated to the individual defendants administrative and/or legislative power to enact and/or enforce ordinances regulating free speech activities within the County.

8. **TINA KELLY, KAREN SUNDAY, HOWARD HANSEN, RODNEY HASLAM, DAVID GARDINER, ALVIN LUNDGREN and SID CREAGER** are the current members of the Morgan County Council. As members of the Morgan County Council of, they enacted County Ordinance CO-09-06, a copy of which is attached as Exhibit “A.” They are sued solely in their official capacities.

9. **SHERIFF GENE ERCANBRACK** is the duly elected sheriff of Morgan County, Utah and is charged with supervision of Sheriff’s Department Officers and enforcing County ordinances. Sheriff Ercanbrack is sued solely in his official capacity.

10. **JAN L. FARRIS** (“FARRIS”) is the current Morgan County Attorney and is charged with prosecuting on behalf of the County in all criminal prosecutions and enforcing all county ordinances. Farris is sued solely in his official capacity.

#### **OPERATIVE FACTS**

11. SLAAM has in the past conducted public demonstrations and protests with regard

to animal rights issues in Utah. SLAAM has done so on or adjacent to public streets and highways and on public sidewalks.

12. SLAAM plans to conduct demonstrations, parades and/or other activities in Morgan County, Utah on Saturday, November 28, 2009. These activities may include picketing, marching, singing, carrying signs, chanting, handing out literature, leaflets, flyers and stickers, circulating petitions and a peaceful vigil at or near the site of a fur farm.

13. BECKHAM and HATFIELD plan to join with other members and supporters of SLAAM on Saturday, November 28, 2009 and participate in the above described activities.

14. SLAAM intends to conduct the planned November 28, 2009 public demonstrations and protests on the public sidewalks and alongside public streets in areas which are part of the public rights-of-way in Morgan County, Utah.

15. BECKHAM, HATFIELD and other members of SLAAM desire to exercise their rights to free expression and to peacefully assemble in a meaningful way, at meaningful times and places and to a meaningful audience on November 28, 2009.

16. On July 28, 2009 SLAAM wrote the Morgan City Council to inform the Council of its intention to hold a protest and a demonstration in Morgan City on Saturday, November 28, 2009. A copy of that letter is attached as Exhibit "B."

17. In response to their July 28, 2009 letter to the Morgan Council, SLAAM received a letter from Mayor H. Dean Pace, the mayor of Morgan City, Utah, dated August 25, 2009. In that letter, Mayor Pace stated that SLAAM would need to obtain a mass gathering permit from Morgan County, issued by the Morgan County Sheriff, prior to the event. The mass gathering

permit is required pursuant to Morgan County Ordinance CO-09-05. A copy of the August 25, 2009 letter from Mayor Pace to SLAAM is attached as Exhibit "C."

18. On September 22, 2009 the Morgan County Council held a meeting to discuss, among other things, a draft of a proposed anti-picketing ordinance. At that meeting, the Morgan County Attorney, Defendant FARRIS, was asked to give a brief history of the proposed ordinance. FARRIS stated that the ordinance was specifically drafted in anticipation of SLAAM's planned free expression activities and "the threats for picketing of the mink farms" and recommended approval of the ordinance so that "picketers would have to move away from the residences of the mink farmers." *See* Morgan County Council Minutes, September 22, 2009, a copy of which is attached as Exhibit "D."

19. The intent of the Morgan County Council was that the anti-picketing ordinance prohibit the picketing of a residence even if it is the sole place of business. Morgan County Council Minutes, September 22, 2009, attached as Exhibit "D."

20. The County Council voted unanimously on September 22, 2009 to approve the anti-picketing ordinance, Morgan County Ordinance CO-09-06. The ordinance prohibits picketing within one-thousand feet (1,000') of the property line of a targeted residence and was specifically passed in anticipation of SLAMM's November 28, 2009 free speech event. *See* Morgan County Ordinance CO-09-06, attached as Exhibit "A."; Morgan County Council Minutes, September 22, 2009, attached as Exhibit "D."

21. On September 28, 2009 SLAAM submitted an application for a mass gathering permit to the Morgan County Sheriff's office. That permit must be approved by defendant

SHERIFF GENE ERCANBRACK or his agent prior to being issued. A copy of SLAAM's Morgan County permit application is attached as Exhibit "E."

22. In the Morgan County permit application, SLAAM sought permission to hold a parade on the public sidewalks along a route beginning at 100 West and 200 North and ending at 650 West Young Street in Morgan City, Utah. *See* SLAAM's Morgan County permit application, attached as Exhibit "E." A map of SLAAM's proposed parade route is attached as Exhibit "F."

23. On October 27, 2009 HATFIELD received a telephone call from Chief Deputy Kevin Edwards ("Deputy Edwards") of the Morgan County Sheriff's department informing her that the Sheriff's department would not approve a permit for the proposed route because it runs within one-thousand feet (1000') of fur farms located in Morgan County (which also have residences on site) and persons protesting along that route would be in violation of Morgan County Ordinance CO-09-06.

24. On October 27, 2009 HATFIELD received a fax from Deputy Edwards of the Morgan County Sheriff's department confirming the contents of their earlier phone conversation. In that fax, Deputy Edwards stated that the original route proposed by SLAAM would not be approved because it would place participants within one-thousand feet (1000') of certain fur farms located in Morgan County and would place them in violation of Morgan County Ordinance CO-09-06. Rather, a route approximately half the size of that originally proposed by SLAAM would be approved. Deputy Edwards also stated that SLAAM would be required to pay approximately four-hundred dollars (\$400.00) to cover the cost of law enforcement

personnel to provide security for the event in order for the permit to be issued. A copy of Deputy Edwards' October 27, 2009 fax to HATFIELD is attached as Exhibit "G."

25. The mass gathering permit ordinance Morgan County Ordinance CO-09-05 provides no exception for events (a) protected by the first amendment of a political and free speech nature and/or (b) staged by indigent groups or organizations lacking in funds or resources.

26. The mass gathering permit ordinance Morgan County Ordinance CO-09-05 grants unbridled discretion to the Morgan County Sheriff to grant or deny permits for mass gathering providing no objective criteria or guidelines.

27. SLAAM has limited financial resources and cannot afford to pay four-hundred dollars (\$400.00) for law enforcement personnel to provide security as required by the Morgan County Sheriff's department and defendant SHERIFF GENE ERCANBRACK as a precondition for the issuance of a permit for the planned free speech event.

28. SLAAM has always conducted its activities in a lawful manner, seeking permits, informing the appropriate government officials, etc. Absent injunctive relief enjoining enforcement of the Morgan County anti-picketing ordinance, SLAAM will not be able to conduct its planned free expression activities on November 28, 2009.

29. Planning for and staging large demonstrations and protests such as that planned for November 28, 2009 requires substantial coordination and organization. BECKHAM, HATFIELD and members of SLAAM need to know immediately if they will be barred from engaging in their planned activities by the Morgan County anti-picketing ordinance. Unless SLAAM learns immediately whether a permit will be issued, SLAAM will suffer serious harm

because they will be unable to plan, organize, coordinate their activities, demonstrations, protests and other free speech and association activities.

30. BECKHAM, HATFIELD and other members of SLAAM are fearful that if they attend and participate in the SLAAM events as currently planned in Morgan, Utah on Saturday, November 28, 2009 that they will be arrested and/or criminally charged for violations of the Morgan County anti-picketing ordinance. That fear is real and has a chilling effect on the civil rights of BECKHAM, HATFIELD and other members of SLAAM.

#### **FIRST CAUSE OF ACTION**

31. Morgan County Ordinance CO-09-06 is not a valid time place and manner restriction because it is unconstitutionally over broad and does not leave open ample alternative channels of communication.

32. Morgan County Ordinance CO-09-06 places an unconstitutional burden on plaintiffs' right to free expression and assembly as protected by the First Amendment to the United States Constitution.

33. The plaintiffs are entitled to equitable relief in the nature of a preliminary injunction/temporary restraining order and a permanent injunction against defendants from enforcing Morgan County Ordinance CO-09-06 and thereby restricting plaintiffs' expressive rights as protected by the United States Constitution.

34. Plaintiffs are entitled to monetary damages for the harm they have suffered to the enjoyment of their rights as protected by the United States Constitution.

## **SECOND CAUSE OF ACTION**

35. Morgan County Ordinance CO-09-06 places an unconstitutional burden on plaintiffs' rights to peaceful assembly and free expression as protected by Article I § 1 and Article I § 15 of the Utah Constitution.

36. The plaintiffs are entitled to equitable relief in the nature of a preliminary injunction/temporary restraining order and a permanent injunction against defendants from enforcing Morgan County Ordinance CO-09-06 and thereby restricting plaintiffs' rights to free expression and peaceful assembly as protected by Article I § 1 and Article I § 15 of the Utah Constitution.

37. Plaintiffs are entitled to monetary damages for the harm they have suffered to the enjoyment of their rights as protected by the Utah Constitution.

## **THIRD CAUSE OF ACTION**

38. The defendants cannot condition the issuance of a permit for the exercise of free speech on an applicant of limited financial means paying for law enforcement personnel to provide security.

39. The conduct of the defendants as set forth above constitutes an infringement of plaintiffs' rights to free expression and peacefully assembly as protected by the First Amendment to the United States Constitution.

40. The plaintiffs are entitled to equitable relief in the nature of a preliminary injunction/temporary restraining order and a permanent injunction against defendants enjoining them from restricting plaintiffs' rights to free expression and peaceful assembly as protected by the United States Constitution.

41. Plaintiffs are entitled to monetary damages for the harm they have suffered to the enjoyment of their rights as protected by the United States Constitution.

#### **FOURTH CAUSE OF ACTION**

42. The defendants cannot condition the issuance of a permit for the exercise of free speech on an applicant of limited financial means paying for law enforcement personnel to provide security.

43. The conduct of the defendants as set forth above constitutes an unconstitutional infringement of plaintiffs' rights to free expression and peaceful assembly as protected by Article I § 1 and Article I § 15 of the Utah Constitution.

44. The plaintiffs are entitled to equitable relief in the nature of a preliminary injunction/temporary restraining order and a permanent injunction against defendants enjoining them from restricting plaintiffs' rights to free expression and peaceful assembly as protected Article I § 1 and Article I § 15 of the Utah Constitution..

45. Plaintiffs are entitled to monetary damages for the harm they have suffered to the enjoyment of their rights as protected by Article I § 1 and Article I § 15 of the Utah Constitution.

#### **FIFTH CAUSE OF ACTION**

46. The Morgan County mass gather permit ordinance (CO-09-05) is unconstitutional in that it provides unbridled discretion to the Morgan County Sheriff without objective criteria to grant or deny a permit.

47. The Morgan County mass gather permit ordinance (CO-09-05) is unconstitutional

in that it provides no exception for free speech activities protected by the First Amendment and Article I § 1 and Article I § 15 of the Utah Constitution.

48. The Morgan County mass gather permit ordinance (CO-09-05) is unconstitutional in that it provides no exception for free speech activities of indigent individuals or groups protected by the First Amendment and Article I § 1 and Article I § 15 of the Utah Constitution.

49. The plaintiffs are entitled to equitable relief in the nature of a preliminary injunction/temporary restraining order and a permanent injunction against defendants enjoining them from restricting plaintiffs' rights to free expression and peaceful assembly as protected by the First Amendment and Article I § 1 and Article I § 15 of the Utah Constitution..

50. Plaintiffs are entitled to monetary damages for the harm they have suffered to the enjoyment of their rights as protected by the First Amendment and Article I § 1 and Article I § 15 of the Utah Constitution.

#### **IMMEDIATE INJUNCTIVE RELIEF**

51. The defendants' current, threatened, imminent continuing and pending violations of plaintiffs' rights as described above are real and substantial.

52. Plaintiffs anticipate that there will be a significant number of protestors and demonstrators from their organization and from other organizations participating in the planned free speech event in Morgan City, Utah on Saturday, November 28, 2009.

53. Planning for and staging large demonstrations and protests requires substantial coordination and organization. Plaintiffs need to know their rights immediately in order to orchestrate the protest and demonstration.

54. Absent immediate injunctive relief, further harm will be suffered by plaintiffs in not being allowed to plan, organize, coordinate, etc. their activities, demonstrations, protests, etc.

55. Plaintiffs BECKHAM and HATFIELD and other members of SLAAM are fearful that if they exercise their constitutional rights to free expression and peaceful assembly by attending and participating in the planned events in Morgan, Utah on November 28, 2009, including participating in activities within one-thousand feet (1000') of fur farm businesses which also contain residences, that they will be arrested and/or criminally charged for alleged violations of County Ordinance CO-09-06. That fear is real and has a chilling effect on their rights.

56. Plaintiffs BECKHAM and HATFIELD and other members of SLAAM are fearful that if they exercise their constitutional rights to free expression and peaceful assembly by attending and participating in the planned events in Morgan, Utah on November 28, 2009, including participating in free expression activities outside of the geographic area dictated by the Morgan County Sheriff's office, that they will be arrested and/or criminally charged for alleged violations of the requirements imposed on them by defendant SHERIFF GENE ERCANBRACK in order to obtain a mass gathering permit. That fear is real and has a chilling effect on their rights.

57. Absent immediate injunctive relief, harm will be suffered by plaintiffs in not being allowed to engage in the constitutionally protected expressive and political activity described above, peacefully assembling, parading, circulating petitions, carrying signs, gathering signatures, engaging in conversation and discussions, demonstrating, picketing, leafleting, etc.

58. The harm being suffered by plaintiffs is immediate and irreparable in nature. That harm outweighs any harm that would be suffered by defendants if immediate injunctive relief is granted and justifies and warrants the issuance of a preliminary injunction/temporary restraining order against defendants ordering them to allow plaintiffs to engage in the planned expressive and political activity as described above.

### **ATTORNEY FEES and COURT COSTS**

59. Plaintiffs have incurred attorney fees and court costs in pursuit of this matter.

60. Plaintiffs will incur additional attorney fees and costs in pursuit of this matter.

61. Plaintiffs are entitled to and seek reimbursement of their attorney fees and court costs pursuant to 42 U.S.C. §§ 1983 and 1988.

### **RELIEF REQUESTED**

WHEREFORE, plaintiffs demand the following relief:

1. For declaratory relief that Morgan County Ordinances CO-09-05 and CO-09-06 violates the constitutional rights of plaintiffs as protected by the United States and Utah constitutions.

2. For a preliminary injunction/temporary restraining order enjoining defendants from enforcing Morgan County Ordinance CO-09-05 and CO-09-06 restricting plaintiffs' expressive rights as protected by the United States and Utah Constitutions.

3. For a permanent injunction enjoining defendants from enforcing Morgan County Ordinance CO-09-05 and CO-09-06 restricting plaintiffs' expressive rights as protected by the United States and Utah Constitutions.

4. For declaratory relief that the restrictions imposed on plaintiffs by defendant SHERIFF GENE ERCANBRACK as preconditions for the issuance of a mass gathering permit are not valid time, place and manner restrictions and violate the constitutional rights of plaintiffs as protected by the United States and Utah constitutions.

5. For a preliminary injunction ordering defendants to issue plaintiffs a mass gathering permit allowing plaintiffs to engage in their planned expressive and political activity as described above in the public right-of-way and on public sidewalks of Morgan City, Utah on Saturday November 28, 2009.

6. For monetary damages (at least nominal) in an amount to be determined at trial.

7. For an award of attorney fees and costs under 42 U.S.C. §§ 1983 and 1988.

8. For such other and further relief as the court deems just and proper in the premises.

DATED this 29<sup>th</sup> day of October 2009.

UTAH LEGAL CLINIC

*/s/ Brian M. Barnard*

by \_\_\_\_\_  
BRIAN M. BARNARD  
Attorney for Plaintiffs