

IV. ***Furry Babies, Inc. v. Illinois: A Dispute in Finance and Animal Rights***

A. **Introduction**

At the intersection of consumer protection and animal welfare protection, Illinois recently passed legislation that prevents commercial retailers of dogs and cats from selling these animals via payment plans or other financing.<sup>1</sup> From municipal bans<sup>2</sup> to state-wide legislation,<sup>3</sup> there has been a growing legal movement against commercial sales of dogs and cats due to concerns over inhumane breeding practices. A pet store chain, Furry Babies, Inc. sued the state of Illinois to challenge the constitutionality of this new ban on the financing of companion animals.<sup>4</sup> This legislation and litigation raises questions beyond the mainstream concerns over the morality of companion animal sales and the prevalence of puppy mills. Is there a place in financial regulation for legislatures to target particular industries via bans on lending?

B. **Background**

Furry Babies, Inc. is a pet store chain with four locations in Illinois and Indiana.<sup>5</sup> Across the locations, over 45 breeds are sold,

---

<sup>1</sup> Ill. S. Democrats *Holmes law ends predatory contract loan practice in pet stores*, (July 26, 2021, 10:10 AM), <https://www.illinoissenatedemocrats.com/caucus-news/51-senator-linda-holmes-news/2829-holmes-law-ends-predatory-contract-loan-practice-in-pet-stores>[<https://perma.cc/5CRH-T8CE>].

<sup>2</sup> Judy Sutton Taylor, *Anti-puppy mill legislation across the country is dogging pet stores*, ABA J. (Dec. 1, 2015, 4:10 AM), [https://www.abajournal.com/magazine/article/anti\\_puppy\\_mill\\_legislation\\_across\\_the\\_country\\_is\\_dogging\\_pet\\_stores](https://www.abajournal.com/magazine/article/anti_puppy_mill_legislation_across_the_country_is_dogging_pet_stores)[<https://perma.cc/NN4U-G45C>].

<sup>3</sup> Helaine Olen, *We all hate puppy mills. States are finally taking action*, WASH. POST (Feb. 13, 2020), <https://www.washingtonpost.com/opinions/2020/02/13/we-all-hate-puppy-mills-states-are-finally-taking-action/>.

<sup>4</sup> Celeste Bott, *Pet Store Chain Challenges Illinois Animal Purchase Law*, LAW360 (Dec. 22, 2021, 4:01 PM), <https://www.law360.com/articles/1450929/pet-store-chain-challenges-illinois-animal-purchase-law>[<https://perma.cc/U7XY-U52M>].

<sup>5</sup> FURRY BABIES, INC., <https://furrybabiesinc.com/>[<https://perma.cc/WLQ9-PCKX>].

including “designer” mixes, such as the “Cavapoo.”<sup>6</sup> Three of the four Furry Babies stores are within shopping malls, and the store is known for the unconventional display of their puppies in cribs intended for human babies, as opposed to kennels or other traditional methods for housing companion animals.<sup>7</sup> They are among the 17 pet stores in Illinois<sup>8</sup> that offer payment plans for the purchase of their puppies.<sup>9</sup> Furry Babies says that at least 50% and up to 80% of their sales include some form of consumer financing, from credit card transactions to their own payment plan system.<sup>10</sup>

The store has received criticism from customers and activists, and it has been the target of media investigation as a result. *Yelp* reviews for the chain vary, but several contain serious allegations, including that puppies are “too crammed and miserable in those little cribs,” the staff are “undereducated when it comes to animals, behavior, and they are just looking to close a sale,” and one of the stores withheld American Kennel Club registration papers from a buyer for over 3 years.<sup>11</sup> After reports of sick and dying puppies being sold by these retail stores, a local news channel performed an investigation and found that the breeders that the store was sourcing the puppies from often had inspection reports that indicated sick animals, animals with clear growths or masses, and unclean facilities.<sup>12</sup>

These allegations suggest that Furry Babies may be purchasing from breeders who may operate “puppy mills.” The Humane Society of the United States defines puppy mills as “inhumane, commercial dog breeding facilit[ies] in which the health of the dogs is disregarded in

---

<sup>6</sup> DOG BREED INFO, Furry Babies, Inc., <https://furrybabiesinc.com/dog-breed-info/>[<https://perma.cc/BF2F-24S5>].

<sup>7</sup> See AURORA, Furry Babies, Inc., <https://furrybabiesinc.com/auroralocation/>[<https://perma.cc/5ZR6-QZBL>]; see also ROCKFORD, Furry Babies, Inc., <https://furrybabiesinc.com/rockfordlocation/>[<https://perma.cc/3WU9-Z85W>]; see also LOMBARD, Furry Babies, Inc., <https://furrybabiesinc.com/lombardlocation/>[<https://perma.cc/H55N-Z5TG>].

<sup>8</sup> Ill. S. Democrats, *supra* note 1.

<sup>9</sup> MONTHLY PAYMENTS, Furry Babies, Inc., <https://furrybabiesinc.com/financing/>[<https://perma.cc/DR8P-32A5>].

<sup>10</sup> Bott, *supra* note 4.

<sup>11</sup> FURRY BABIES FOX VALLEY, YELP, <https://www.yelp.com/biz/furry-babies-aurora-aurora-2>[<https://perma.cc/7HNL-KE3U>].

<sup>12</sup> Jason Knowles, *Sick puppy complaints*, ABC 7 CHI. (Apr. 23, 2015), <https://abc7chicago.com/sick-puppies-furry-babies-bloomingtondale-pet-store-complaints/679150/>[<https://perma.cc/5SDW-3GXE>].

order to maintain a low overhead and maximize profits.”<sup>13</sup> The Humane Society suggests that “[a]lmost all pet store puppies come from puppy mills” because “responsible breeders do not sell their puppies to pet stores; they want to meet their puppy buyers in person and do not sell their puppies to the first person who shows up with cash in hand.”<sup>14</sup>

Legislation attempting to reduce these inhumane companion animal breeding practices dates back to 1966 when Congress passed the Animal Welfare Act (AWA).<sup>15</sup> The AWA set a minimum standard for the care of commercial sale animals, including those who breed puppies for later commercial sale.<sup>16</sup> The United States Department of Agriculture (USDA) enforces these standards through both licensure and inspections.<sup>17</sup> Despite the licensure system that was meant to weed out breeders who could not meet even the most minimal animal husbandry standards, puppy mills still prevail.<sup>18</sup> Many breeders who are licensed by the USDA repeatedly violate the minimum standards and face little to no consequences, often even being allowed to renew their licenses.<sup>19</sup> As a result of these federal inefficiencies, as of March 2020, seventeen states have enacted their own statutes that require state licensing and inspection, and seventeen more states require state licensure, although no regular inspection.<sup>20</sup> This state action not only indicates the widespread belief among many states that puppy mills and other inhumane breeding practices are a legislative priority but also provides further evidence that the federal legislation has been deemed inadequate.

Animal advocacy organizations like the Animal Legal Defense Fund (ALDF) bring lawsuits on behalf of these commercial companion

---

<sup>13</sup> *Puppy mills FAQ*, THE HUMANE SOCIETY OF THE U. S., [https://www.humanesociety.org/resources/puppy-mills-faq#:~:text=Back%20to%20top-,Are%20there%20any%20laws%20that%20regulate%20puppy%20mills%3F,United%20States%20Department%20of%20Agriculture\[https://perma.cc/3MGG-USTQ\]](https://www.humanesociety.org/resources/puppy-mills-faq#:~:text=Back%20to%20top-,Are%20there%20any%20laws%20that%20regulate%20puppy%20mills%3F,United%20States%20Department%20of%20Agriculture[https://perma.cc/3MGG-USTQ]).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *State puppy mill laws in the U.S.*, THE HUMANE SOCIETY OF THE U. S. (Mar. 2020), [https://www.humanesociety.org/sites/default/files/docs/state-puppy-mill-laws-0320.pdf\[https://perma.cc/N7JQ-FQEM\]](https://www.humanesociety.org/sites/default/files/docs/state-puppy-mill-laws-0320.pdf[https://perma.cc/N7JQ-FQEM]).

animals and customers who have purchased sick animals.<sup>21</sup> For example, ALDF brought a class action lawsuit against California pet store chain Barkworks in 2014 on behalf of consumers who purchased sick puppies from the stores that they suspected were sourced from puppy mills.<sup>22</sup> Although the parties settled in 2018, by that time Barkworks had closed four of their six locations and California passed one of the strongest state anti-puppy mill laws in the country, which banned the sale of dogs from commercial breeders as of January 1, 2019.<sup>23</sup> Litigation and legislation have worked simultaneously to create an inhospitable environment for inhumane commercial dog breeders.

Despite this trend in legislation and litigation, even California's expansive ban has faced circumvention attempts by commercial animal sellers. On December 16, 2021, ALDF filed another class action suit against both individuals and businesses who attempted to circumvent the ban on sale of puppies from commercial breeders by representing puppy mill dogs as "rescues."<sup>24</sup> Litigation over anti-puppy mill legislation and commercial pet sales continues to occur at the intersection of animal welfare and consumer protection concerns.

Furry Babies was sued in 2013 by the Humane Society of the United States on behalf of five customers who allege that they were sold sick puppies, one of which passed away shortly after, based on violating consumer protection laws.<sup>25</sup> After the court denied two attempts by Furry Babies to dismiss the lawsuit, Furry Babies agreed to settle.<sup>26</sup> The parties reached a settlement in 2016 in which the store signed a binding agreement that states they will not sell puppies in their stores that are sourced from breeders who fall below USDA minimum standards.<sup>27</sup> They also agreed to supply each customer with a copy of their puppy's

---

<sup>21</sup> *Challenging the Sale of Puppy Mill Dogs – Barkworks Class Action*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/case/challenging-the-sale-of-puppy-mill-dogs-barkworks-class-action/>[<https://perma.cc/D3DK-S2HG>].

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Circumventing California Puppy Mill Ban*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/case/challenging-multistate-puppy-laundering-scheme-circumventing-california-puppy-mill-ban/>

<sup>25</sup> *Furry Babies settles lawsuit*, THE PUPPY MILL PROJECT (Sept. 12, 2016), <https://www.thepupmymillproject.org/2016/09/>[<https://perma.cc/ZQ38-RX8W>].

<sup>26</sup> *Id.*

<sup>27</sup> Jason Knowles, *Pet store accused of selling sick puppies settles lawsuit*, ABC 7 CHI. (Sept. 21, 2016), <https://abc7chicago.com/sick-puppies-furry-babies-bloomington-pet-store-complaints/1521172/>[<https://perma.cc/5XF3-RDXV>].

breeder's most recent USDA inspection reports.<sup>28</sup> They settled with some of the individual customers in the lawsuit.<sup>29</sup> Whether Furry Babies complied with the settlement agreement since 2016 is unknown.

### C. Illinois H.B. 572

Furry Babies was the plaintiff in a new lawsuit against the State of Illinois filed in December 2021 challenging a new law prohibiting the use of financing to purchase cats and dogs.<sup>30</sup> House Bill 572 was signed into law by Illinois governor JB Pritzker on July, 23, 2021 and took effect on January 1, 2022.<sup>31</sup> The addition to the Illinois Sales Finance Agency Act states that “[a] licensee shall not finance, enter into a retail installment contract, or make a loan for the purchase of a canine or feline.”<sup>32</sup> If the seller violates this regulation, “the financing, retail installment contract, or loan shall be null and void and the licensee shall have no right to collect, receive, or retain any principal, interest, or charges related to the loan, retail installment contract, or financing.”<sup>33</sup> This bill was enacted not only to protect animal welfare and discourage poor breeding practices, but also consumer welfare. Senator Linda Holmes, the sponsor of the bill, states that pet stores have “been getting away with predatory lending interest rates anywhere from 30 to 150% and higher,” and banning this practice “can keep pet stores in business but avoid ridiculous prices and financing for what may be poorly bred animals.”<sup>34</sup>

### D. *Furry Babies, Inc. v. Illinois*

In their December 21, 2021, complaint, Furry Babies alleged that this new legislation is unconstitutional and will effectively destroy their business because between fifty and eighty percent of their customers who purchase puppies use their financing plans or other commercial lending.<sup>35</sup> The complaint stated four claims under which the legislation is unconstitutional. First, they alleged it is a violation of their

---

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Bott, *supra* note 4.

<sup>31</sup> 205 ILL. COMP. STAT. 660/10.6(2022)

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> ILL. S. DEMOCRATS, *supra* note 1.

<sup>35</sup> Complaint, at 9, *Furry Babies, Inc. v. The State of Illinois*, N.D. Ill. (2021) (No. (1:21-cv-06789) [hereinafter *Furry Babies Complaint*]).

due process rights due to the lack of administrative process or hearing.<sup>36</sup> Second, they alleged that the statute is unconstitutionally vague because there is no preamble explaining its purpose or section addressing current financing contracts.<sup>37</sup> Third, it stated that the law is an equal protection violation because it creates a suspect class of businesses selling companion animals on credit.<sup>38</sup> Finally, they alleged a violation of the Contracts Clause because it will impede contractual relationships with breeders, vendors, and employees.<sup>39</sup>

In addition to the complaint, Furry Babies also filed a motion for a temporary restraining order on December 27, 2021, to effectively request that they be blocked from being sued under the new legislation upon its effective date of January 1, 2022.<sup>40</sup> On December 29, 2021, the court denied this motion.<sup>41</sup>

#### E. Is H.B. 572 a Valid Use of Legislative Power?

Beyond the specific claims and quandaries of *Furry Babies, Inc. v. Illinois*, the litigation brings attention to broader questions. Is HB 572 an attempt to target pet stores selling companion animals disguised as consumer protection and financial legislation? If so, should a legislature be permitted to utilize its power to pass financial regulations that seem to target a particular industry or businesses based on morality concerns?

As the sponsor of the bill, Senator Holmes states that the statute has the dual goals of (1) discouraging inhumane companion animal breeding practices and (2) preventing predatory lending practices that are common in the commercial animal sales business.<sup>42</sup> Whether or not this legislation is intended to achieve the second hinges on the question of whether predatory lending is indeed a pervasive problem in the commercial pet industry.<sup>43</sup>

---

<sup>36</sup> *Id.* at 10-12.

<sup>37</sup> *Id.* at 12-13.

<sup>38</sup> *Id.* at 13-14.

<sup>39</sup> *Id.* at 14-15.

<sup>40</sup> Plaintiffs' Emergency Motion for Temporary Restraining Order and Memorandum of Law, *Furry Babies, Inc. v. The State of Illinois*, No. 1:21-cv-06789 N.D. Ill. (Dec. 2021) [hereinafter *Furry Babies Motion for Temporary Restraining Order*]

<sup>41</sup> Notification of Docket Entry, *Furry Babies, Inc. v. The State of Illinois*, No. 1:21-cv-06789 (N.D. Ill. Dec 29, 2021).

<sup>42</sup> ILL. S. DEMOCRATS (July 26, 2021, 10:10 AM) *supra* note 1.

<sup>43</sup> *See id.*

There is evidence that suggests that predatory lending, high interest rates, and other unsavory financing practices exist within the sale of companion animals. One offender is EasyPay Finance, which has offered loans for pets with annual interest rates of 130% to 189%.<sup>44</sup> Although these exorbitant rates are illegal in most states for non-bank lenders, EasyPay issues loans through Transportation Alliance Bank (TAB Bank).<sup>45</sup> This allows them to “rent-a-bank” and skirt the state laws for non-bank lenders.<sup>46</sup> The National Consumer Law Center (NCLC) is petitioning for an end to this practice as a consumer lending violation.

Individual complaints have been filed with the Consumer Financial Protection Bureau and Better Business Bureau alleging these predatory lending rates for purchases of puppies led to them paying nearly double the original cost by the end of their contract.<sup>47</sup> John Goodwin, the Humane Society of the United States’ senior director of Stop the Puppy Mills campaign, states that “pushing financed purchases is just another way puppy mills and their pet store sales outlets get away with selling puppies for thousands of dollars to unsuspecting consumers” and that “[s]ome pet stores have reported that 80% of the puppies they sell are financed, indicating that these predatory loans are a key part of the puppy mill to pet store pipeline.”<sup>48</sup> Versions of these lending practices have been deemed “pet leasing,”<sup>49</sup> in which the buyer is essentially “leasing” the pet while making payments. Customers will be required to pay a large sum at the end of the contract term and risk repossession of the pet in the case of nonpayment.<sup>50</sup>

Based on the consumer reports and outrage over the financing options provided by commercial pet retailers, it seems reasonable that this issue could be cause for concern for a legislator. Senator Holmes likely has a compelling reason for passing legislation based on

---

<sup>44</sup> Kate Gibson, *Lenders push “predatory” puppy loans at pet stores across the U.S., group says*, CBS NEWS (Feb. 17, 2022, 7:00 AM) [https://www.cbsnews.com/news/puppies-predatory-loans-pet-stores-puppy-mills-easypay-tab-bank-fdic/\[https://perma.cc/337U-ULN4\]](https://www.cbsnews.com/news/puppies-predatory-loans-pet-stores-puppy-mills-easypay-tab-bank-fdic/[https://perma.cc/337U-ULN4]).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *It’s time to reckon with the unethical practice of “pet leasing,”* TEX.

HUMANE LEGISLATION NETWORK,

[https://www.thln.org/unethical\\_practice\\_of\\_pet\\_leasing\[https://perma.cc/S3TP-JC9X\]](https://www.thln.org/unethical_practice_of_pet_leasing[https://perma.cc/S3TP-JC9X]).

<sup>50</sup> *Customers Shocked by Costs Tied to Pet Financing, Leasing*, CBS DFW (Feb. 3, 2019, 3:42 PM) [https://dfw.cbslocal.com/2019/02/03/customers-shocked-costs-tied-pet-financing-leasing/\[https://perma.cc/3KJ5-MH9P\]](https://dfw.cbslocal.com/2019/02/03/customers-shocked-costs-tied-pet-financing-leasing/[https://perma.cc/3KJ5-MH9P])

consumer protection due to the unique risk to consumers via commercial pet retailers' predatory lending practices. While it is possible that HB 572 was enacted primarily for the purpose of discouraging puppy mills and commercial pet sales, it nonetheless serves a consumer protection interest.

#### F. Voluntary Dismissal

Initially, it seemed likely that Illinois would file a motion to dismiss for failure to state a claim in which they will present their opposing arguments to each of the four claims presented by Furry Babies. Defendants would argue that the court should find that Furry Babies did not effectively plead the facts necessary for claims of due process, vagueness, equal protection, or Contract Clause violations. Their arguments would've likely included that a legislature can prohibit private conduct through general rules, the minimum standard for vagueness was met, pet stores that sell dogs on credit are not a valid suspect class and the statute would survive rational basis review if they were, and that the legislation is only one among many acceptable pieces of legislation that limits contractual relationships for a public interest.

However, the state of Illinois did not file a motion to dismiss or an answer to Furry Babies' complaint; on February 28, 2022, Furry Babies voluntarily dismissed the suit.<sup>51</sup> The dismissal was pursuant to 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, which allows a plaintiff to dismiss an action without a court order by filing a notice of dismissal prior to the defendants' filing an answer or motion for summary judgment.<sup>52</sup> The notice of the voluntary dismissal states that it is dismissed without prejudice against the defendants, but it does not specify what caused Furry Babies to make the decision to drop the lawsuit.<sup>53</sup> The judge officially dismissed the case on March 1, 2022.<sup>54</sup>

Voluntary dismissal is a technique that plaintiffs can use strategically, such as dismissing if the case appears weaker after

---

<sup>51</sup> Notice of Voluntary Dismissal Pursuant to F.R.C.P. 41(a)(1)(A)(i), *Furry Babies, Inc v. The State of Illinois*, No. 1:21-cv-06789 N.D. Ill. (2022) [hereinafter Notice of Voluntary Dismissal]

<sup>52</sup> FED. R. CIV. P. 41(a)(1)(A)(i).

<sup>53</sup> Notice of Voluntary Dismissal *supra* note 51.

<sup>54</sup> Notification of Docket Entry, *Furry Babies, Inc. v. The State of Illinois*, No. 1:21-cv-06789 N.D. Ill. (2022).



filing or the forum becomes less favorable to their ideal outcome and then refile the lawsuit with different arguments or a different forum.<sup>55</sup> A plaintiff might decide to file for voluntary dismissal after an unsuccessful motion early in the litigation process,<sup>56</sup> perhaps in anticipation of a failed outcome in the litigation as a whole. Data from the federal courts does not differentiate between voluntary dismissal and involuntary dismissals<sup>57</sup>, but some research on the federal courts and individual states suggests that voluntary dismissals occur frequently.<sup>58</sup> This practice has been criticized as “an anachronism in an age of managerial judging . . . and can be considerably inconvenient for defendants,” and suggestions have been made to increase fairness, such as a presumption that the plaintiff will pay the defendants’ attorneys’ fees.<sup>59</sup> However, the Federal Rules of Civil Procedure have not been amended to reflect these changes.<sup>60</sup>

Unless Furry Babies opts to share their motivation for the voluntary dismissal, only speculation exists as to why they decided to end, at least temporarily, their fight against HB 572. It is possible that the pet store chain simply came to believe that their claims were inadequate, perhaps due to insight from new legal professionals. It is possible that the dismissal of Furry Babies’ Motion for a Temporary

---

<sup>55</sup> Michael E. Solimine & Amy E Lippert, *Deregulating Voluntary Dismissals*, 36 U. . MICH. J. L. REFORM 367, 369 (2003) (“This is not surprising, because plaintiffs can use the option strategically. If the case appears weak after filing, or for other reasons the forum is not favorable, the plaintiff can dismiss and possibly refile elsewhere.”).

<sup>56</sup> *Id.* at 370 (“Early in a suit, for example, a plaintiff might be on the losing end of a court decision, such as the denial of a motion for a preliminary injunction.”).

<sup>57</sup> *Id.* at 382 (“Official statistics kept for the federal court keep track of dismissals in a generic fashion, and thus do not differentiate between or among dismissals founded on Rules 12 or 41. Likewise, most states do not keep close track of the numbers of dismissals in their courts under their counterparts to Rule 41(a).”).

<sup>58</sup> *Id.* at 383 (“But there is nonetheless some evidence that such dismissals are sought or obtained with some frequency in both federal and state courts. With regard to unilateral voluntary dismissals, attorneys report that such dismissals are not uncommon, especially in a state like Ohio with a plaintiff-friendly rule. A recent study of civil rights actions filed in federal court indicated that up to twelve percent of such cases were voluntarily dismissed (as opposed to other types of terminations and dismissals).”).

<sup>59</sup> *Id.* at 367.

<sup>60</sup> FED. R. CIV. P. 41(a)(1)(A)(i).

Restraining Order by the judge discouraged them from continuing to pursue litigation. External factors, such as financial limitations, could also have produced this outcome.

Regardless of the explanation, this voluntary dismissal leaves many important questions open without a holding or judicial insight. Is this form of financial regulation aimed at one industry valid legislation? Or is this legislation that simply protects vulnerable consumers from predatory lending and receiving low-quality “product” in the form of puppies with medical conditions? The voluntary dismissal was without prejudice, leaving the door open for Furry Babies themselves or their other companion animal retail counterparts to pursue legal action against the state of Illinois in the future.

Meagan Cox<sup>61</sup>

---

<sup>61</sup> Student, Boston University School of Law (J.D. 2023).