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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

EDWARD MAHONEY, an individual,  
and RACHEL PERRY, an individual,

Plaintiffs,

v.

CITY OF PASCO, a Municipality; TRI  
CITIES ANIMAL SHELTER AND  
CONTROL SERVICES, a Department of  
the City of Pasco; TRI CITIES ANIMAL  
SHELTER AND CONTROL SERVICES  
DIRECTOR ANGELA ZILAR in her  
official capacity as well as her individual  
capacity and her spouse, JOHN DOE  
ZILAR individually; TRI CITIES  
ANIMAL SHELTER AND CONTROL  
SERVICES OFFICER WILLIAM SUHR  
in his official capacity as well as his  
individual capacity and his spouse JANE  
DOE SUHR individually; and TRI CITIES  
ANIMAL SHELTER AND CONTROL  
SERVICES OFFICER REBECCA  
HOWARD in her official capacity as well  
as her individual capacity and her spouse  
JOHN DOE HOWARD individually; and  
Does 1-10.

Defendants.

No. 4:16-cv-05101-SAB

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS; REMANDING CASE  
TO FRANKLIN COUNTY  
SUPERIOR COURT**

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS;  
REMANDING CASE TO FRANKLIN COUNTY SUPERIOR COURT ~ 1**

1 Before the Court is Defendants' Motion to Dismiss for Failure to State a  
2 Claim, ECF No. 6. The motion was heard without oral argument. Plaintiffs are  
3 represented by Jeffrey Johnson. Defendants Tri Cities Animal Shelter and Control  
4 Services ("TCAS") and its employees are represented by Eron Zachary Cannon.  
5 Defendant City of Pasco is represented by Kenneth Harper.

6 The following facts are taken from Plaintiff's Complaint:

7 In 2014, Defendant City of Pasco's Municipal Code made it unlawful for  
8 any person to knowingly refuse to redeem an animal. Pasco Municipal Codes §  
9 8.02.130(2). A violation of this provision was a gross misdemeanor crime  
10 punishable up to one year in jail and/or a \$5,000 fine.<sup>1</sup> The Code directs TCAS  
11 Officers, when impounding an animal, to identify the animal's owner and provide  
12 written notice of impound to such owner when feasible. PMC 8.02.060. Once the  
13 animal's owner is determined, there is a time period upon which the determined  
14 owner must redeem the dog. If not redeemed, the determined owner is charged  
15 criminally. PMC 8.02.010; 8.02.060-080.

16 Plaintiff Edward Mahoney and Plaintiff Rachel Perry were criminally  
17 charged by the City of Pasco under these provisions. Plaintiff Edward Mahoney  
18 was contacted about a dog that was located by TCAS. He told the TCAS officer  
19 that his family gave the dog away about four years prior. Regardless, Defendant  
20 TCAS Officer William Suhr served Plaintiff Mahoney an impound notice  
21 declaring him the owner and stating if the dog was not redeemed in three days, it  
22 would be sold, adopted or destroyed. The notice did not provide any process for  
23 contesting the declaration nor did it provide any warning of criminal prosecution  
24 for failure to redeem.

25  
26 \_\_\_\_\_  
27 <sup>1</sup> This provision was amended in January, 2016. The amendment made a first  
28 offense violation a civil infraction and subsequent offense remains criminal.

1 Plaintiff Mahoney did not redeem the animal and he was criminally charged  
2 by Defendant City of Pasco. His case was set for trial. The City offered to settle by  
3 having him enter into a contract where he would pay TCAS restitution—the  
4 amount determined by TCAS—and the charge would eventually be dismissed.  
5 Plaintiff Mahoney rejected the offer. On the eve of trial, the City dismissed the  
6 charge without explanation.

7 Similar events happened to Rachel Perry. There was a problem with a dog in  
8 her neighborhood and TCAS officers were called. Plaintiff Perry told the TCAS  
9 officer that she was not the owner of the dog, but she was watching the dog for a  
10 few hours while her friend was in school, and she also explained that her friend  
11 found the sick dog in a ditch and was making efforts to find the owner. That said,  
12 the TCAS served Plaintiff Perry with a notice of impound declaring her the owner  
13 and stating if the dog was not redeemed within six days, it would be sold, adopted  
14 or destroyed. Again, the notice did not provide any process for contesting the  
15 declaration nor did it provide any warning of criminal prosecution for failure to  
16 redeem.

17 Neither Plaintiff Perry nor her friend redeemed the dog. Plaintiff Perry was  
18 criminally charged by Defendant City of Pasco. She rejected Defendant's offer to  
19 enter into a contract where she would pay TCAS restitution—the amount to be  
20 determined by TCAS—and the charge would eventually be dismissed. On the eve  
21 of trial, the City dismissed the charge without explanation.

22 Plaintiffs brought suit in Franklin County Superior Court alleging  
23 (1) Procedural Due Process Violations; (2) PDP/Void for Vagueness doctrine; (3)  
24 Abuse of Criminal Process; and (4) violation of Substantive Due Process.  
25 Plaintiffs are seeking economic and noneconomic damages, including damage to  
26 reputation and are also seeking injunctive and declaratory relief. Defendants  
27 removed the action to the Eastern District of Washington and are asking the Court  
28 to dismiss the action.

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1 **MOTION STANDARD**

2 Rule 12(b)(6) of the Federal Rules of Civil Procedure permits a defendant to  
3 seek dismissal of a complaint that “fail[s] to state a claim upon which relief can be  
4 granted.” Fed. R. Civ. P. 12(b)(6). The court should not dismiss the complaint if  
5 the plaintiff has stated “enough facts to state a claim to relief that is plausible on  
6 its face.” *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007). A claim has facial  
7 plausibility when the plaintiff pleads factual content that allows the court to draw  
8 reasonable inferences that the defendant is liable for the misconduct alleged.  
9 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). The court accepts all factual  
10 allegations in the complaint as true and construes them in the light most favorable  
11 to the nonmoving party, except the court is not required to accept legal  
12 conclusions cast in the form of factual allegations if those conclusions cannot be  
13 reasonably drawn from the facts alleged. *Id.*

14 The court must consider the complaint in its entirety, as well as other  
15 sources courts ordinarily examine when ruling on a 12(b)(6) motion to dismiss, i.e.  
16 documents incorporated into the complaint by reference, and matters of which a  
17 court may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551  
18 U.S. 308, 322 (2007).

19 **42 U.S.C. § 1983**

20 To state a claim under section 1983, Plaintiffs must establish two essential  
21 elements: (1) that a right secured by the Constitution or laws of the United States  
22 was violated; and (2) that the alleged violation was committed by a person acting  
23 under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frey*,  
24 789 F.3d 1030, 1035 (9th Cir. 2015). Section 1983 “is not itself a source of  
25 substantive rights,” but merely provides “a method for vindicating federal rights  
26 elsewhere conferred.” *Baker v. McCollan*, 443 U.S. 137, 144, n. 3 (1979). The  
27 first step in any such claim, then, is to identify the specific constitutional right  
28 allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

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REMANDING CASE TO FRANKLIN COUNTY SUPERIOR COURT ~ 4**

1 **Analysis**

2 Plaintiff is asserting federal causes of actions rooted in the due process  
3 clause of the Fourteenth Amendment. The Due Process provides “a guarantee of  
4 fair procedure in connection with any deprivation of life, liberty, or property” by  
5 the government. *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992).

6 At the heart of Plaintiffs’ procedural due process claim is that there are no  
7 procedures for challenging the ownership of the dog prior to being criminally  
8 charged for failure to redeem the dog. In order to succeed with their procedural  
9 due process claim, Plaintiffs must allege two elements: (1) a protectable liberty or  
10 property interest; and (2) a denial of adequate procedural protections. *Thornton v.*  
11 *City of St. Helens*, 425 F.3d 1158, 1164 (9th Cir. 2005). There is a strong  
12 presumption that an individual is entitled to notice and an opportunity to be heard  
13 at a meaningful time and in a meaningful manner before being deprived of a  
14 liberty or property interest. *Orloff v. Cleland*, 708 F.2d 372, 379 (9th Cir. 1983);  
15 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

16 Here, Plaintiffs have not shown they have a property interest at stake. They  
17 deny ownership of the dogs, so there is no protected property at issue. Even if the  
18 dogs were owned by Plaintiffs, however, they have not alleged a procedural due  
19 process violation. Plaintiffs believe they are entitled to notice and opportunity to  
20 be heard after they received the impound notice so they could challenge the  
21 finding that they were the dog owners. However, a person does not have a liberty  
22 interest in not being falsely charged with being a dog owner. The receipt of the  
23 notice and being charged with a crime does not result in any significant pretrial  
24 restraint of liberty, and thus, no procedural due process protections.

25 Additionally, Plaintiffs were afforded the process to which they were due.  
26 They challenged the impound and criminal process by proceeding to trial, which  
27 provided an avenue to litigate all the issues, including the ownership of the dog in  
28

1 question. The fact that the charges were dismissed demonstrates that the process  
2 worked for them.

3 Also, the facts alleged do not suggest the TSCA officers were arbitrarily  
4 enforcing this provision against unsuspecting persons. With respect to Plaintiff  
5 Mahoney, the TSCA officers utilized the information contained in the chip  
6 implanted in the dog, and with respect to Plaintiff Perry, she admitted to temporary  
7 possession of the dog. These facts provided probable cause for TSCA officers to  
8 proceed against Plaintiffs.

9 Plaintiffs have not alleged facts that implicate substantive due process. The  
10 protections of substantive due process have been, for the most part, accorded to  
11 matters relating to marriage, family, procreation, and the right to bodily integrity.  
12 *Albright v. Oliver*, 510 U.S. 266, 272 (1994). The Court declines to extend  
13 substantive due process protections to dog owners against a municipality's  
14 enforcement of its dog impound ordinances. *Id.* (explaining that courts should be  
15 reluctant to expand the concept of substantive due process).

16 Plaintiffs do not have standing to challenge the newly amended ordinance  
17 on the basis that the ordinance is void for vagueness. Article III of the Constitution  
18 limits the exercise of federal judicial power to actual cases and controversies. *Los*  
19 *Angeles v. County of Kern*, 581 F.3d 841, 845 (9th Cir. 2009). Litigants are  
20 required to demonstrate a "personal stake in the outcome" of a case to guarantee  
21 the "concrete adverseness which sharpens the presentation of issues" necessary for  
22 proper resolution of constitutional questions. *Baker v. Carr*, 369 U.S. 186, 204  
23 (1962). To the extent Plaintiffs are bringing a pre-enforcement challenge to the  
24 amended ordinance, they have not alleged sufficient facts for their claim to  
25 proceed. In such a case, the Court needs to consider: (1) whether Plaintiffs have  
26 failed to allege a reasonable likelihood that the Government will enforce the  
27 challenged law against them; (2) whether Plaintiffs have failed to allege, with  
28 some degree of concrete detail, that they intend to violate the challenged law; and

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1 (3) whether the challenged law is inapplicable to Plaintiffs, either by its terms or  
2 as interpreted by the Government. See *Lopez v. Candaele*, 630 F.3d 775, 785 (9th  
3 Cir. 2010). Plaintiffs have not alleged a credible threat of adverse state action  
4 sufficient to establish standing.

5 Plaintiffs have failed to allege sufficient facts showing that their  
6 constitutional rights were violated. As such, all of Plaintiffs' federal claims are  
7 dismissed, and the Court declines to exercise supplemental jurisdiction over the  
8 remaining state law claim. See 28 U.S.C. § 1367(c)(3).

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Defendants' Tri Cities Animal Shelter et al.'s Motion to Dismiss for  
11 Failure to State a Claim, ECF No. 6, is **GRANTED**.

12 2. Plaintiffs' Motion for Summary Judgment, ECF No. 9, is **DENIED**, as  
13 moot.

14 3. The above-captioned case is **remanded** to Franklin County Superior  
15 Court.

16 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order  
17 and forward copies to counsel.

18 **DATED** this 17th day of October, 2016.



22 *Stanley A. Bastian*

23 Stanley A. Bastian

24 United States District Judge