In the United States District Court
for the
District of Kansas

Scott Johnson; **Harlene Hoyt;** **Covey Find Kennel, LLC.** Plaintiffs, v. **Justin Smith, D.V.M.,** in his official capacity as Animal Health Commissioner at the Kansas Department of Agriculture. Defendant.	Civil Action No. Complaint for Declaratory Judgment and Injunctive Relief; Designation of Place of Trial; Exhibits 1-4.

Complaint for Declaratory Judgment and Injunctive Relief

Scott Johnson, Harlene Hoyt, and Covey Find Kennel, LLC file this civil rights lawsuit for non-monetary, prospective relief against Justin Smith, D.V.M., in his official capacity as Animal Health Commissioner at the Kansas Department of Agriculture.

Introduction

1. This is a civil rights lawsuit seeking relief from an onerous, unreasonable, and unconstitutional licensing and warrantless search regime that empowers Kansas government officials to enter, access, and search homes, private property, private land, buildings, records, and other effects of *law-abiding* Kansans—without prior notice, without a warrant, without probable cause, without reasonable suspicion, and without proper consent. The licensing and warrantless search regime ignores basic and fundamental property and privacy rights.

2. The licensing and warrantless search regime forces law-abiding Kansans to waive their constitutional rights in exchange for a government-mandated license—an

unconstitutional condition—and it penalizes law-abiding Kansans if they or their government mandated "designated representative" is more than thirty minutes away from their property when the government inspector shows up for the surprise search.

3. Scott Johnson and his wife Harlene Hoyt know all about the unreasonable and unconstitutional licensing and warrantless search regime firsthand. Scott trains and handles bird dogs for a living. He built the training and handling business from the ground up, and he runs it from the homestead he shares with Harlene.

4. Scott's good at training and handling too—award-winning and nationally recognized good. People from all around the country send their dogs to Scott. He's a second-generation trainer and handler who treats dogs right. His livelihood depends on it *and* it's the right thing to do.

5. For years, Scott tolerated the licensing and warrantless search regime. The regime's inspectors were respectful, generally polite, and importantly, sometimes called ahead when they were in the area; but if they didn't call ahead, and Scott was busy, with a client, or not around, they'd come back sometime else. But that all changed.

6. There's more on this later, but in January 2020, Scott was away from the homestead working. The government inspector called *Harlene* and told her *she* needed to get back to the homestead, otherwise they'd begin initiating a fine. Harlene—the government mandated "designated representative"—was forced to leave her job and return to the homestead. Eventually, after the warrantless search ended, she went back to work to make up for the lost time. She wasn't happy about it then, she's not happy about it now, and neither is Scott.

7. The licensing and warrantless search regime is unreasonable and unconstitutional in a number of ways. Scott and Harlene's homestead is subject to surprise, nonconsensual, warrantless searches. Moreover, instead of targeting problematic places and their law-breaking operators, the regime mandates that dog trainers and handlers like Scott—*law abiding Kansans*—can't be more than thirty minutes away from their home without risking government penalties. This means Scott can't go on vacations with Harlene—not even to Wichita—and he can't even leave his homestead for more than thirty minutes at a time,

without risking fines. But even if Scott's at the homestead during the unannounced search, and he asks the inspector to come back at a more convenient time, he risks being fined. Scott can't even tell the inspector to get a warrant, without risking penalties.

8. The licensing and warrantless search regime is a major ongoing and repetitive problem—a constitutional one—that ignores the very reasons our Founders insisted on the Fourth Amendment to begin with: that a "man's house is his castle," and among "the most essential branches of English liberty" is the "freedom of one's house," *Paxton's Case* (Mass. 1761) (argument by James Otis); that property rights are sacred, natural rights, *Entick v. Carrington*, 19 How. St. Tr. 1001 (C.P. 1765); that the "power" to conduct general searches is "dangerous to freedom, and expressly contrary to the common law, which ever regarded a man's house, as his castle, or a place of perfect security," John Dickinson, *Letters from a Farmer in Pennsylvania*, Letter No. 9, 86 (1768); and that the people have both a right to privacy, and the right to be left alone. The licensing and warrantless search regime violates each of these fundamental principles, and more.

9. Scott Johnson, Harlene Hoyt, and Covey Find Kennel, LLC are challenging the constitutionality of the Kansas Pet Animal Act's ("Act") licensing and warrantless search regime, including the Act's statutes, regulations, rules, and policies. The Act is found at KSA § 47-1701, *et seq*. Plaintiffs are *not* challenging the Act as it relates to breeders, pounds, shelters, animal rescues, animal foster homes, pet shops, research facilities, or distributors.

10. To protect the rights of Plaintiffs and others similarly situated, this Court should declare the Act's statutes, regulations, rules, and policies unconstitutional and permanently enjoin their enforcement.

Parties

11. Scott Johnson owns and operates Covey Find Kennel, LLC, d/b/a Covey Find Kennel from the resident property ("homestead") he jointly owns with his wife, in Cowley County, Kansas. Mr. Johnson is a training kennel operator as the term is used in KSA § 47-1701(p), and he holds a current kennel operator license issued by Defendant Justin Smith, D.V.M. Exhibit 1.

12. Harlene Hoyt is married to Mr. Johnson, lives with him on the homestead, assists Mr. Johnson with Covey Find Kennel's operations from time to time, and along with Mr. Johnson, owns the homestead on which Covey Find Kennel operates. Ms. Hoyt is a "designated representative" as the term is used in KAR § 9-18-9(e).

13. Covey Find Kennel, LLC, d/b/a Covey Find Kennel, is a Kansas limited liability company in good standing. According to its annual report, Mr. Johnson owns Covey Find Kennel, LLC. Defendant Justin Smith, D.V.M. issued the training kennel operator license in the names of Mr. Johnson and Covey Find Kennel. Exhibit 1. Covey Find Kennel operates on Mr. Johnson and Ms. Hoyt's homestead.

14. Defendant Justin Smith, D.V.M. is the Animal Health Commissioner ("Defendant-Commissioner") at the Kansas Department of Agriculture. The Animal Health Commissioner is the Chief Administrative Officer of the Division of Animal Health, which oversees, implements, and enforces the Animal Facilities Inspection Program (AFI Program).[1] The AFI Program's field staff inspects the facilities that are required to be licensed under the Kansas Pet Animal Act.[2] The AFI Program's office staff maintains the licenses, health papers, and correspondence for those facilities that are required to be licensed under the Act.[3] Defendant-Commissioner Smith oversees, implements, and enforces the licensing and warrantless search regime at issue in this case. *E.g.*, KSA §§ 47-1701(i), 1706, 1707, 1709, 1712, 1715, 1721, 1723, 1726, 1727; KAR §§ 9-18-7, 18-8, 18-9.

15. Defendant-Commissioner Smith is sued in his official capacity for prospective, non-monetary relief, for ongoing, continuing, and repetitive violations of federal law. At all times, Defendant-Commissioner was acting under color of state law which caused the deprivation of Plaintiffs' rights, protected by the United States Constitution, and is not immune from this lawsuit. *Ex parte Young*, 209 U.S. 123 (1908).

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[1] "[The Division of Animal Health] is divided into three programs, disease control, animal facilities inspections and brands." Accessible at https://agriculture.ks.gov/docs/default-source/documents---office-of-the-secretary/kda-divisions-amp-programs.pdf?sfvrsn=68b4c1_8 (last accessed Oct. 20, 2022).

[2] Accessible at https://agriculture.ks.gov/divisions-programs/division-of-animal-health/animal-facilities-inspections (last accessed Oct. 20, 2022).

[3] Accessible at https://agriculture.ks.gov/divisions-programs/division-of-animal-health/animal-facilities-inspections (last accessed Oct. 20, 2022).

16. Defendant-Commissioner may be served by serving the Kansas Attorney General or an Assistant Attorney General at Memorial Hall, 2nd Floor, 120 SW 10th Avenue, Topeka, Kansas 66612.

17. The Attorney General will be served with a copy of the proceedings pursuant to KSA § 75-764.

Jurisdiction and Venue

18. Plaintiffs seek to vindicate their rights under the United States Constitution, pursuant to 42 U.S.C. § 1983, the Declaratory Judgments Act, 28 U.S.C. § 2201, 28 U.S.C. § 2202, and under 42 U.S.C. § 1988 to award attorney fees.

19. Plaintiffs seek prospective injunctive relief and a declaratory judgment arising from the Act's statutes, regulations, rules, and policies involving the licensing and warrantless search regime. As more fully developed below, the licensing and warrantless regime 1) authorizes and implements an unconstitutional and unreasonable warrantless search regime in violation of the Fourth Amendment; 2) forces law-abiding Kansans to waive their constitutional rights in exchange for a government-mandated license, in violation of the unconstitutional conditions doctrine; and 3) unconstitutionally inhibits, burdens, and violates the fundamental and natural right to travel and freely move about. Again, as more fully developed below, Plaintiffs seek 1) a judgment declaring this licensing and warrantless search regime unconstitutional; and 2) permanent prospective injunctive relief prohibiting enforcement of the licensing and warrantless search regime.

20. This Court has jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 42 U.S.C. § 1983.

21. Venue is proper under 28 U.S.C. § 1391 because, among other things, the searches occur in Cowley County, Kansas.

Facts

Scott Johnson, Harlene Hoyt, and Their Homestead

22. Scott Johnson is an award-winning and nationally respected dog trainer and handler.

23. Mr. Johnson was the winner of the 2022 Garmin Shooting Dog Award,[4] the winner of the 2021 Garmin Shooting Dog Award,[5] the winner of the 2021 United States Open Brittany Championship,[6] the Champion of the 2021 American Brittany Club National Gun Dog Championship,[7] the Champion of the 2020 American Brittany Club National Gun Dog Championship,[8] among other awards and accolades, as a handler; and Mr. Johnson trained and handled Poki-Dot, a 2015 inductee of the Brittany Field Trial Hall of Fame.

24. Mr. Johnson is President of the Southern Kansas Brittany Club and serves as a Director of the Brittany Field Trial Hall of Fame in Grand Junction, Tennessee.

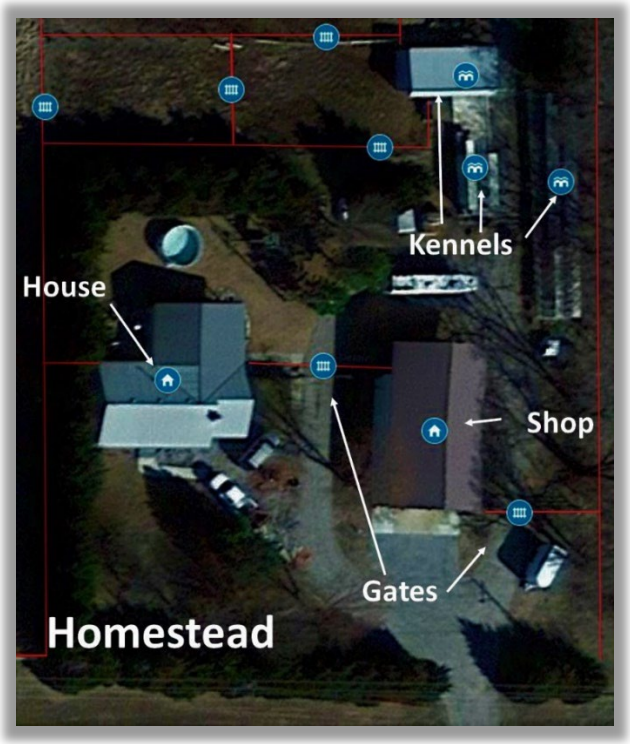
25. Mr. Johnson has cared for, housed, trained, and handled dogs his entire life; has been a professional dog trainer and handler for most of his adult life; and training and handling dogs is how he earns a living.

26. Mr. Johnson's kennel, Covey Find Kennel, is located on the homestead. The homestead sits on one of two parcels of property that Mr. Johnson jointly owns with his wife, Harlene Hoyt.

27. Ms. Hoyt is a clinic manager at William Newton Hospital, a 25-bed critical access hospital located in Winfield. As clinic manager, Ms. Hoyt manages six practices and supervises approximately 30 people. From time to time though, Ms. Hoyt helps Mr. Johnson with Covey Find Kennel.

28. With exception of the pool, which isn't there anymore, the following is a true and accurate depiction of the homestead, with the red lines denoting fencing:

[4] http://www.theamericanbrittanyclub.org/Awards/ShootingDog/2022.htm (last accessed Oct. 20, 2022).
[5] http://www.theamericanbrittanyclub.org/Awards/ShootingDog/2021.htm (last accessed Oct. 20, 2022).
[6] http://www.usopenbrittany.org/results.html (last accessed Oct. 20, 2022).
[7] http://www.theamericanbrittanyclub.org/2021/ABCNationalGunDogChampionships.htm (last accessed Oct. 20, 2022).
[8] http://www.theamericanbrittanyclub.org/2020/ABCNationalGunDogChampionships.htm (last accessed Oct. 20, 2022).



29. Mr. Johnson and Ms. Hoyt live in the building marked as "house." To the right of the house is another building that contains tools, tables, work items, personal items, recliners, a bar, a refrigerator, posters, a nice collection of old Budweiser signs, a television, an upstairs loft for work and relaxation, and so on. Mr. Johnson refers to this building as the "shop." Ms. Hoyt refers to the building as her "home away from home." Mr. Johnson and Ms. Hoyt routinely socialize with one another in the shop. Both consider and treat the shop as part of their home.

30. In between the house and the shop, slightly to the north, sits a playground set for their grandkids, a bench, and a firepit—all of which are behind fencing.

31. The training kennels are to the north and east of the shop, and they too sit within the fenced boundary, on the homestead, within a short distance from the house and shop. Tall pampas grass and large trees partially obscure and shade the eastern-most kennels; the west-side kennels also have pampas grass in various areas.

32. Accessing the training kennels requires either entering and passing through the shop, entering and passing through the house, or entering and passing through gated fences.

33. The entire property surrounding the kennels is fenced to prevent unwanted visitors or intrusions, and for containment of the dogs, all of which are crucial to the enjoyment of their property and the safe training and handling of the dogs. *E.g.*, Exhibit 2.

34. The following accurately depicts a portion of the shop, the gated fence to the east of the shop, and some of the kennels beyond the fence:

35. The following accurately depicts a portion of the house to the left of the shop, and a portion of the shop to the right:

Mr. Johnson's Training Program

36. Mr. Johnson prepares, develops, and implements a multi-phase bird-dog training program in consultation with the dogs' owners. The amount and duration of the

training program is a collaborative decision and Mr. Johnson provides updates as appropriate or as requested. Some owners send multiple dogs to Mr. Johnson's training program; some owners send their dogs to the training program for weeks, months, or years on end—and some are trained and handled at the kennel for nearly their entire lives.

37. During the training program, and also while they're at the homestead, Mr. Johnson cares for, houses, feeds, trains, and works with the dogs. The health and safety of each dog is his primary concern. If the dog gets injured, or becomes sick, Mr. Johnson sees to it the dog is treated or taken to a veterinarian. Of course, Mr. Johnson receives compensation for the housing, training, and handling, and where necessary, reimbursement for medical expenses.

38. During off-homestead training sessions, Mr. Johnson carefully transports some, but not all, of the dogs to that location.

39. Mr. Johnson's training program accepts puppies as young as six months old and trains the dogs on—among other things—basic gun dog obedience commands such as "whoa" and "here."

40. Mr. Johnson trains dogs to develop their association skills for birds by sight, scent, and gun fire, and also works with the dogs to develop their pointing and retrieving abilities. The goal is to get the dogs ready for their first bird hunting season.

41. After a season of bird hunting and gaining practical experience in the field, Mr. Johnson usually begins the second training phase. While at the kennel, Mr. Johnson trains and handles dogs to develop advanced skills, including steadiness on point, backing, and retrieving. Mr. Johnson also corrects problems that the typical bird hunter may be experiencing with their dog, such as a reluctance to honor, hold point, or where the dog exhibits gun-shy tendencies.

42. For second-year retrievers, Mr. Johnson provides more extensive training that includes both water work and upland discipline.

43. Mr. Johnson's gun dog training program usually begins in May, where as many as 16 dogs are accepted for a 6–8-week program.

44. Mr. Johnson's field trial training and conditioning program is usually from June through August for field trial dogs.

45. Mr. Johnson usually spends December and January working with dogs hunting wild birds in the Flint Hills. Mr. Johnson carefully transports some of the dogs during this training, while leaving others at the homestead.

46. Although Mr. Johnson specializes in the training and campaigning of Brittanys, he also works with other field dogs from all sporting breeds.

47. Mr. Johnson's primary business purpose is to train, show, and handle dogs in field trials, which are essentially competitive events for dogs. The field-trial seasons run from February through April and September through mid-December. The field-trials are all around the country and Mr. Johnson can't participate in them unless he leaves the homestead. So, he does leave the homestead. During the seasons, Mr. Johnson travels extensively throughout the Midwest, and sometimes beyond, for competitions. For these competitions, Mr. Johnson carefully transports some of the dogs while leaving others at the homestead. Sometimes Ms. Hoyt accompanies him on these trips; other times she meets Mr. Johnson to visit or help him.

48. Where necessary or appropriate—like when Mr. Johnson and Ms. Hoyt are both gone at the same time, for example—Mr. Johnson has someone assist with the caretaking responsibilities back at the homestead.

49. Mr. Johnson's been around dogs his entire life, he earns his living by training and handling dogs, and he's got no incentive or desire to mistreat them. If he doesn't treat the dogs right, or doesn't keep the kennels in proper shape, he wouldn't be able to secure new clients, he'd lose the trust of his current clients, and he'd lose all of their business. If Mr. Johnson didn't do right by the dogs, he'd suffer the consequences, including the potential loss of his livelihood. Mr. Johnson is accountable to the dogs' owners.

The Licensing and Warrantless Search regime

Overview

50. The Pet Animal Act[9] is a licensing and warrantless search regime involving the licensing, permitting, and regulation of the condition of certain premises and facilities where

[9] Plaintiffs are challenging the constitutionality of the Pet Animal Act's ("Act") licensing and warrantless search regime, including the Act's statutes, regulations, rules, and policies as specified throughout. Unless otherwise noted, Plaintiffs use the term "Act" interchangeably with "licensing and warrantless search regime" and interchangeably with "regime," as a shorthand reference to that which is being challenged.

certain animals are maintained, KSA § 47-1726—and pertinent here, applies to training kennel operators and their operations, KSA §§ 47-1723, 1701(p),(q).

The Act Criminalizes Operating a Training Kennel Without a Government-Issued License

51. State law prohibits operating a training kennel unless the person holds a valid training kennel operator's license. KSA § 47-1723.

52. A training kennel operator means "any person who operates an establishment where four or more dogs or cats, or both, are maintained in any one week during the license year for boarding, training or similar purposes for a fee or compensation." KSA § 47-1701(p). The term "establishment" is not defined by statute, regulation, or rule.

53. The license application process is three-fold. First, the aspiring training kennel operator applies for the training kennel operator license using an application form developed by Defendant-Commissioner, KSA § 47-1723(a), and pays a fee, KSA 47-1721; KAR § 9-18-6. Second, Defendant-Commissioner or his "authorized, trained representative" "make[s] an inspection of the premises for which an application … is made." KSA 47-1709(a). Third, Defendant-Commissioner issues or rejects the application for the license. *See* KSA 47-1723(a); KSA § 47-1709(a).

54. Operating a training kennel without a government-issued license is a Class A nonperson misdemeanor, among other penalties and potential consequences. KSA § 47-1715(a).

But Defendant-Commissioner Won't Issue the Initial Training Kennel Operator License Unless the Aspiring Training Kennel Operator "Consents" to Warrantless Searches

55. Even though the regime *requires* a training kennel operator's license—and operating a training kennel without a license is a crime—the regime *also* requires aspiring training kennel operators to "consent" to the "right of entry and inspection" of the "premises" sought to be licensed or permitted. KSA § 47-1709(a).

56. Notice of the search "need not be given" to the aspiring training kennel operator "prior to the inspection." KSA § 47-1709(a).

57. The Act states that the "application for a license shall conclusively be deemed to be the consent of the applicant to the right of entry and inspection of the premises sought to be licensed or permitted by the commissioner or the commissioner's authorized, trained representatives at reasonable times with the owner or owner's representative present." KSA 47-1709(a).

a. The term "premises" is not defined by statute, regulation, or rule, but the term "'[b]oarding or training kennel operator premises' means the facility of a boarding or training kennel operator.'" KSA § 47-1701(q). The term "facility" is not defined by statute, regulation, or rule, but the term "'[h]ousing facility' means any room, building or area used to contain a primary enclosure or enclosures," KSA § 47-1701(o), and includes "any land or area housing or intended to house animals," KAR § 9-18-4(c).

58. The applicant's "refusal of such entry and inspection shall be grounds for denial of the license or permit." KSA § 47-1709(a).

59. The application for the training kennel operator's license is developed by Defendant-Commissioner, KSA § 47-1723(a). Exhibit 3.[10]

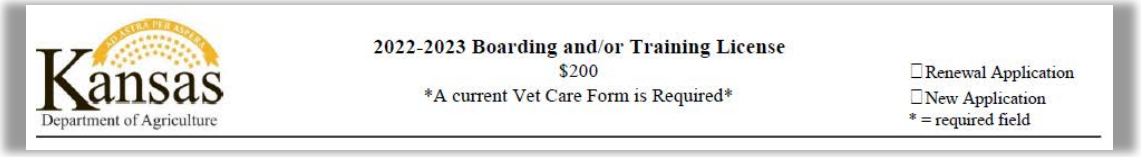
60. In other words, the regime conditions the issuance of the *initial* training kennel operator's license on a training kennel operator's "consent" to an initial warrantless search.

The Regime Requires Law-Abiding Training Kennel Operators to "Consent" to Warrantless Searches Year-After-Year-After-Year as a Condition of Continued-Licensure

61. The licensing and warrantless search regime requires training kennel operators to renew their license every year, KSA §§ 47-1701(r), 1721, 1723, and pay a license renewal fee, KSA § 47-1721.

[10] Also accessible at: https://agriculture.ks.gov/docs/default-source/rc-ah-afi-documents/ah---boarding-or-training-kennel.pdf?sfvrsn=2a91951_62 (last accessed Oct. 20, 2022).

62. Defendant-Commissioner's training kennel licensing renewal form is the same as the initial training kennel licensing form, which includes a checkbox for "renewal application" or "new application:"[11]

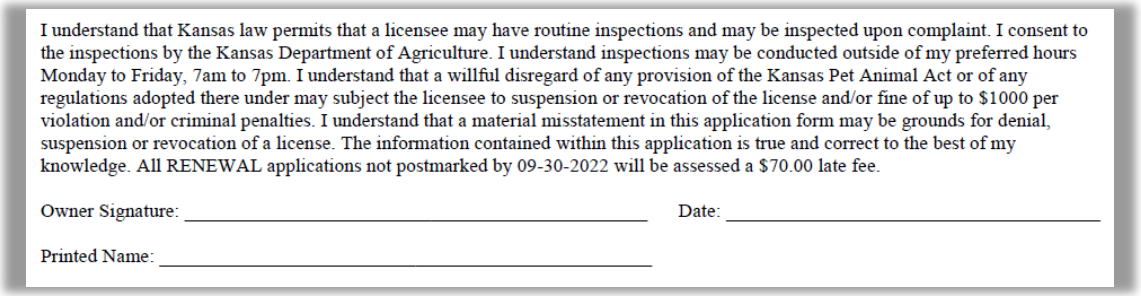


Kansas
Department of Agriculture

2022-2023 Boarding and/or Training License
$200
A current Vet Care Form is Required

☐Renewal Application
☐New Application
* = required field

63. Defendant-Commissioner's training kennel licensing renewal form requires law-abiding training kennel operators to *again* "consent" to warrantless searches during that applicable licensing year:[12]



I understand that Kansas law permits that a licensee may have routine inspections and may be inspected upon complaint. I consent to the inspections by the Kansas Department of Agriculture. I understand inspections may be conducted outside of my preferred hours Monday to Friday, 7am to 7pm. I understand that a willful disregard of any provision of the Kansas Pet Animal Act or of any regulations adopted there under may subject the licensee to suspension or revocation of the license and/or fine of up to $1000 per violation and/or criminal penalties. I understand that a material misstatement in this application form may be grounds for denial, suspension or revocation of a license. The information contained within this application is true and correct to the best of my knowledge. All RENEWAL applications not postmarked by 09-30-2022 will be assessed a $70.00 late fee.

Owner Signature: _____ Date: _____

Printed Name: _____

64. The Act deems the "acceptance of a license"—which must be renewed every year—as "consent of the licensee or permittee to the right of entry and inspection of the licensed or permitted premises by the commissioner or the commissioner's authorized, trained representative[.]" KSA § 47-1709(b).

65. In other words, Defendant-Commissioner and the regime conditions the *renewal* of the training kennel operator's license on a training kennel operator's "consent" to warrantless searches.

66. Year-after-year-after-year, law-abiding training kennel operators are required to "consent" to warrantless searches as a condition of continued-licensure.

[11] Exhibit 3.
[12] Exhibit 3.

The Regime Authorizes Continued Unannounced and Surprise Warrantless Entries and Searches, and Penalizes Invoking Ones' Constitutional Rights

67. The regime authorizes Defendant-Commissioner or his "authorized, trained representative" to conduct "inspection[ions]" of "each premises for which a license" has been issued, KSA 47-1709(b), and authorizes Defendant-Commissioner or his authorized representative the "right of entry and inspection of the licensed or permitted premises," *id.*

68. The regime authorizes Defendant-Commissioner or his "authorized representative" to conduct "routine inspections" to "determine compliance with the act and all applicable regulations." KAR § 9-18-9(a).

69. The regime compels licensed training kennel operators to maintain and store records for each animal purchased, acquired, held, transported, sold, or disposed of in any manner, KAR 9-18-7(a), "on the premises where the animals are located," KAR § 9-18-7(b). These records "shall" be made available to the government inspector. KAR § 9-18-7(b).

70. The Act compels licensed training kennel operators to develop and document a written "contingency plan" for emergencies or natural disasters. KAR § 9-18-18. The contingency plan must identify the individuals "responsible for carrying out the plan, along with contact information for each individual." KAR § 9-18-18(c). This record must be made available to Defendant-Commissioner or his "authorized representative." KAR § 9-18-9(a); KSA § 47-1709(b).

71. The Act compels licensed training kennel operators to establish and maintain an "adequate veterinary medical care" program. KSA § 47-1701(dd). The "adequate veterinary medical care" program mandates documentation, which "shall be made available to the commissioner or the commissioner's authorized representative for inspection or copying upon request[.]" KSA § 47-1701(dd)(1)(C). Refusing warrantless searches of this documentation constitutes grounds for a license suspension or revocation, KSA § 47-1706(a)(11), among other potential penalties and consequences.

72. The licensed training kennel operator "shall provide" warrantless access to the training kennel operator's "premises" to take "any one of the following" actions:

a. Enter the licensee's place of business. KAR § 9-18-8(a).

b. Examine records required to be kept under KAR § 9-18-7. KAR § 9-18-8(b).

c. Make copies of records. KAR § 9-18-8(c).

d. Inspect the premises and animals as the commissioner or the commissioner's representatives consider necessary to enforce the provisions of the act and this article of the department's regulations. KAR § 9-18-8(d).

e. Document, by the taking of photographs and other means, any conditions and areas of noncompliance. KAR § 9-18-8(e).

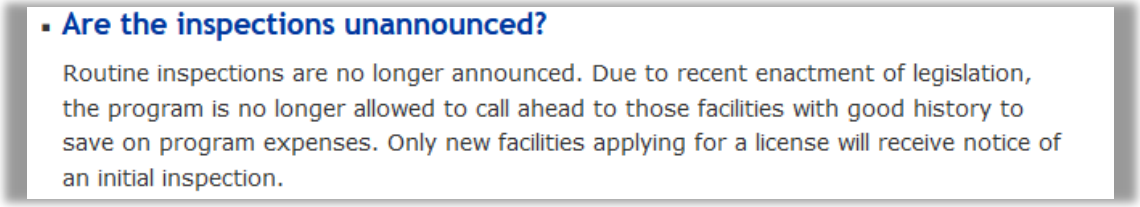
f. Use a room, table, or other facilities necessary for the examination of the records and inspection. KAR § 9-18-8(f).

73. Refusing warrantless entry and searches constitutes grounds for a license suspension or revocation, KSA § 47-1709(b), punishable by a civil penalty, KSA 47-1707(a), constitutes a class A nonperson misdemeanor, KSA 47-1715(a), is considered a violation of the regime, Exhibit 4, page 40 of 111, "may subject [the licensee] to legal action, Exhibit 4, page 41 of 111, and considered unlawful interference, *see* KSA § 47-1735.

The Act Penalizes Law-Abiding Kansans from Leaving their Property: Thirty-Minute Travel Restriction, Designated Representative Mandate, and Automatic "No-Contact" Penalties and Consequences

74. Once licensed, notice of the warrantless searches "shall not be given to any person prior to inspection." KSA § 47-1709(b); KAR § 9-18-9(g) ("Prior notice of inspection dates shall not be provided to the owner or operator of any licensed premises.").

75. The Kansas Department of Agriculture's website emphasizes that the warrantless searches are unannounced:[13]



[13] https://agriculture.ks.gov/divisions-programs/division-of-animal-health/animal-facilities-inspections/frequently-asked-questions (last accessed Oct. 20, 2022).

76. If a licensed training kennel operator or their designated representative is not at the property within thirty minutes from when the inspector arrives for the surprise warrantless search, the regime mandates a $200 "no-contact" fee against the "owner of a premises," the licensee, or the permittee. KSA § 47-1721(d)(1).

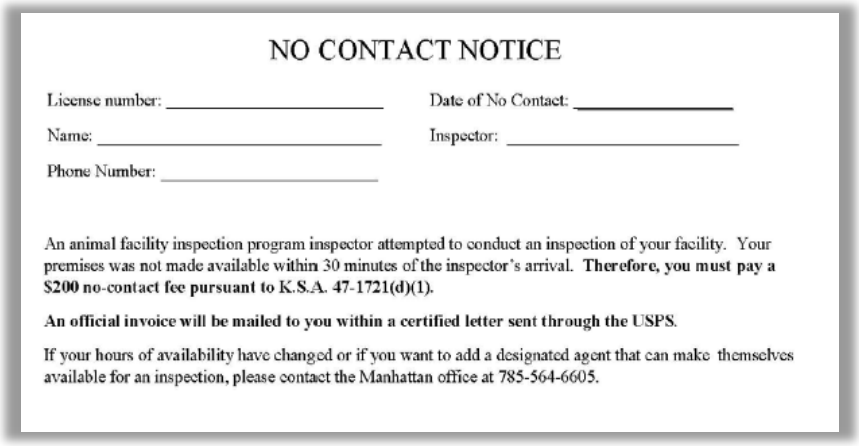
77. In addition to the $200 "no-contact" fee, Defendant-Commissioner or his "authorized representative" "shall" then attempt to conduct another surprise warrantless search. KSA § 47-1721(d)(1).

78. Each "no-contact" inspection "shall result in a $200 no-contact fee." KSA 47-1721(d); KAR § 9-18-6(p). Each reinspection fee is $200. KAR 9-18-6(q).

79. According to the Act's handbook, a no-contact event includes demanding the government obtain a warrant, *see* Exhibit 4, pages 40, 41 of 111, and also includes a licensee requesting a more convenient search time:[14]

> If the licensee or applicant asks for the inspector to come back at a time more convenient, explain the $200 no-contact fee.
>
> a. If they still choose not to have the inspection completed at that time, issue a 1st, 2nd, or 3rd No-Contact and send to Program Administrative Assistant for invoicing.

80. When there's a "no-contact" event, the inspector issues a "No Contact Notice" which emphasizes the fee is mandatory.[15]



NO CONTACT NOTICE

License number: _____ Date of No Contact: _____

Name: _____ Inspector: _____

Phone Number: _____

An animal facility inspection program inspector attempted to conduct an inspection of your facility. Your premises was not made available within 30 minutes of the inspector's arrival. **Therefore, you must pay a $200 no-contact fee pursuant to K.S.A. 47-1721(d)(1).**

An official invoice will be mailed to you within a certified letter sent through the USPS.

If your hours of availability have changed or if you want to add a designated agent that can make themselves available for an inspection, please contact the Manhattan office at 785-564-6605.

[14] Exhibit 4, page 36 of 111.
[15] Exhibit 4, page 23 of 111.

81. Once the $200 no-contact penalty is assessed, Defendant-Commissioner's staff sends an invoice for payment,[16] and non-payment of the no contact penalty automatically flags the licensee(s)' account to "ensure the account cannot renew online due to the outstanding charge."[17] Defendant-Commissioner's staff then begins a debt collection process:[18]

No Contact Policy

- Owners of a premise that has received a No Contact Fee pursuant to K.S.A. 47-1721(d)(1) will be sent an invoice for payment by Program.
- Following non-payment by the owner of the premise, Program will flag the account to ensure the account cannot renew online due to the outstanding charge.
- Program will complete and submit a Legal Transfer Form to the Legal Division for processing of Debt Collection.

82. If there are three "no contacts," Defendant-Commissioner's staff sends the "facility" to their legal division for "processing of a Refusal of Entry."[19] A "Refusal of Entry" is grounds for a license suspension or revocation.[20]

- After a 3rd No Contact, Program should transfer the facility to the Legal Division for processing of a Refusal of Entry.

83. Again, if the licensed training kennel operator or their "designated representative" isn't at the property within thirty minutes from when the inspector arrives for the surprise warrantless search, the regime imposes a $200 "no-contact" fee against the "owner of a premises," the licensee, or the permittee. KSA § 47-1721(d)(1).

84. The Act's statutes neither define "designated representative" nor require a licensee to have a "designated representative."

85. But one of the Act's regulations *mandates* that training kennel operators "designate a representative who will be present while the inspection is conducted and shall notify the commissioner in writing of the name of the designated representative." KAR § 9-

[16] Exhibit 4, page 76 of 111.
[17] Exhibit 4, page 76 of 111.
[18] Exhibit 4, page 76 of 111.
[19] Exhibit 4, page 77 of 111.
[20] Exhibit 4, pages 76, 77 of 111.

18-9(e). The designated representative "shall be 18 years of age or older and mentally and physically capable of representing the licensee in the inspection process." KAR § 9-18-9(e).

86. The regime's mandatory "designated representative" provision *requires* license holders to provide non-license holders a right to access their property, their records, their animals, the animals under their care, custody, and control, their effects, and so on.

87. The regime's mandatory "designated representative" provision grants non-license holders a right to access a licensee's property, their records, their animals, the animals under their care, custody, and control, their effects, and so on.

88. The regime's mandatory "designated representative" and "capable of representing" provision also *requires* licensees to cede control of, and decision-making powers involving, the licensee's property, their records, their animals, their effects, and so on, during the search process.

89. The Kansas Department of Agriculture's website warns licensees that they *must* designate a representative, *must* disclose the designated representative's name, and that the designated representative *must* be present while the warrantless search is conducted:[21]

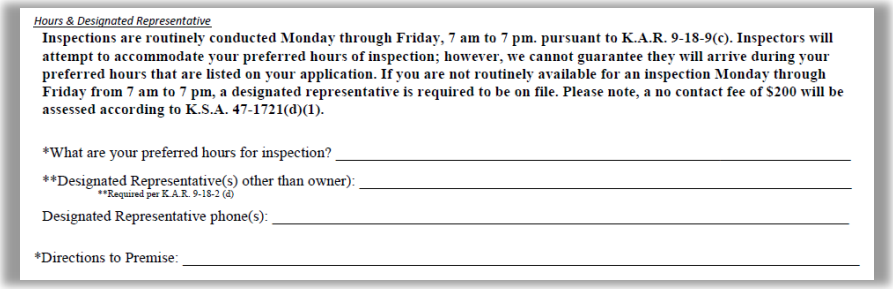
- **What if I am not available when an inspector arrives for my inspection?**

  Under K.A.R. 9-18-2 (d), if the owner or operator of the premises is not routinely available between the hours of 7:00 a.m. and 7:00 p.m., the owner or operator shall designate a representative who will be present while the inspection is conducted and shall notify the commissioner in writing of the name of the designated representative. The designated representative shall be 18 years of age or older. The owner or operator shall notify the commissioner in writing of any new representative who is designated to be present during inspections.

  Should you not have a designated representative or be present within 30 minutes of an inspector's arrival, under K.S.A. 47-1721 (d)(1), Failure by the owner of a premises, a licensee or a permittee, or their designated representative, to make a premises available for inspection within 30 minutes of the arrival of the inspector or the inspector's authorized representative shall be considered a no-contact inspection. Each no-contact inspection shall result in a $200 no-contact fee against the owner of the premises, the licensee or the permittee. The commissioner or the commissioner's authorized representative shall make a second or subsequent attempt to inspect the premises.

[21] https://agriculture.ks.gov/divisions-programs/division-of-animal-health/animal-facilities-inspections/frequently-asked-questions (last accessed Oct. 20, 2022).

90. Likewise, the license renewal form forces licensees to name a designated representative and provide the designated representative's phone number:[22]



Hours & Designated Representative

Inspections are routinely conducted Monday through Friday, 7 am to 7 pm. pursuant to K.A.R. 9-18-9(c). Inspectors will attempt to accommodate your preferred hours of inspection; however, we cannot guarantee they will arrive during your preferred hours that are listed on your application. If you are not routinely available for an inspection Monday through Friday from 7 am to 7 pm, a designated representative is required to be on file. Please note, a no contact fee of $200 will be assessed according to K.S.A. 47-1721(d)(1).

*What are your preferred hours for inspection? _____

**Designated Representative(s) other than owner): _____
**Required per K.A.R. 9-18-2 (d)

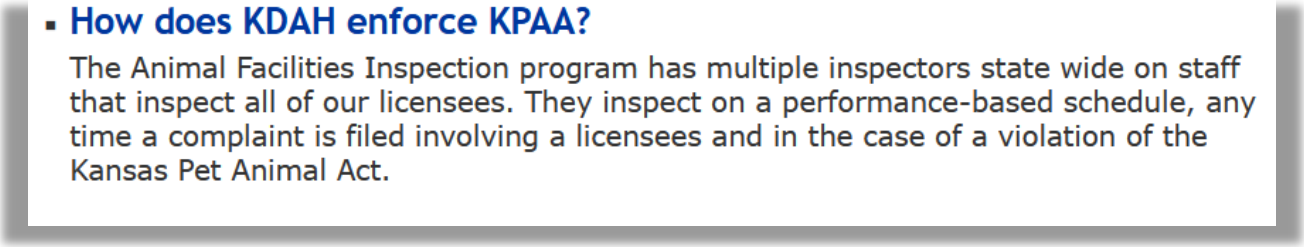
Designated Representative phone(s): _____

*Directions to Premise: _____

The Regime's Ongoing and Continuous Warrantless Searches and Penalties

91. The Act's statutes don't establish the number, frequency, and/or regularity of the warrantless searches conducted by Defendant-Commissioner's authorized representatives.

92. According to the Kansas Department of Agriculture's website though, the warrantless searches aren't certain or regular, but are instead conducted "on a performance-based schedule:"[23]



- **How does KDAH enforce KPAA?**

The Animal Facilities Inspection program has multiple inspectors state wide on staff that inspect all of our licensees. They inspect on a performance-based schedule, any time a complaint is filed involving a licensees and in the case of a violation of the Kansas Pet Animal Act.

93. That performance-based search schedule is periodic, sporadic, irregular, and not certain. For some, searches occur once every 3 to 12 months. For others, the searches occur once every 9 to 18 months; and still for others, the searches occur once every 15 to 24 months. KAR § 9-18-9(b)(1-3).

[22] Exhibit 3.

[23] https://agriculture.ks.gov/divisions-programs/division-of-animal-health/animal-facilities-inspections/frequently-asked-questions (last accessed Oct. 20, 2022).

94. Even during the periodic schedule though, inspectors are free to decide whether the warrantless searches occur every 9 months or every 15 months, for example:[24]

> Inspectors may use discretion regarding the elapsed time before they return to a facility within the correlating rating inspection range schedule. Recommended return dates are generated on master lists that are sent via email every Monday at 7 am.

95. Defendant-Commissioner enforces the licensing and warrantless search regime through the training kennel license application and renewal form, through the Department of Agriculture's website, through the warrantless searches conducted by his authorized representatives, and through the threat of administrative, civil, and criminal penalties.

96. *Any* violation of—or failure to comply with—*any* provision of the Act, its rules, or regulations, "shall constitute a Class A nonperson misdemeanor," KSA § 47-1715, among other potential penalties and consequences.

97. Other potential penalties and consequences include suspending or revoking a license, KSA § 47-1706(a); refusing to renew a license, KSA § 47-1706(a); if the license is denied, suspended, or revoked, seizure or impoundment of animals, KSA § 47-1706(e); imposition of civil penalties, KSA § 47-1707(a); and enjoining or restraining continuing violations of the Act, KSA § 47-1727.

98. On information and belief, Defendant-Commissioner has in fact issued fines and other penalties for violations of the Act, including violations of the thirty-minute requirement.

99. Even though the Act's statutes authorize administrative search warrants, KSA 47-1709(k), the Act's handbook does not describe, detail, or otherwise mention how, when, or why an administrative search warrant is, or should be, obtained, and so on. *See* Exhibit 4.

[24] Exhibit 4, page 32 of 111.

Licensing and Warrantless Searches involving
Mr. Johnson, Ms. Hoyt, and Their Homestead

100. Sometime around 1999, an inspector told Mr. Johnson he needed to get a training kennel license. Mr. Johnson was already operating a training kennel and didn't have any other option but to get a license—so he did.

101. The government's warrantless searches involving Mr. Johnson and the kennels he operates began around 1999 or 2000 and have continued throughout the years since.

102. Around August 2014, Mr. Johnson began listing Ms. Hoyt as the "designated representative."

103. For most of his professional career, Mr. Johnson tolerated the search regime. As stated in the introduction above, the regime's inspectors were flexible. Sometimes they called ahead when they were in the area. But if they didn't call ahead, and Mr. Johnson was busy, with a client, or not around, they'd come back another time. Mr. Johnson believed he had the right to have the inspector come back later. But again, all that changed.

104. On or about January 7, 2020, Ms. Hoyt was working at William Newton Hospital in Winfield. She received a telephone call from Defendant-Commissioner's inspector. The inspector explained he was at the homestead for an inspection. To the best of Ms. Hoyt's recollection, the following occurred: Ms. Hoyt explained that Mr. Johnson was training the dogs off-property, Mr. Johnson had limited cellular service there, and she probably wouldn't be able to get in touch with Mr. Johnson. Defendant's inspector told Ms. Hoyt that if Ms. Hoyt couldn't be at the property in 15 to 20 minutes that Mr. Johnson would have to pay a fine. Ms. Hoyt explained she couldn't just leave work. Defendant-Commissioner's inspector responded that if that was the case, they'd have to initiate a fine. After some back and forth, Ms. Hoyt made arrangements to leave work and returned to the property for the warrantless search. Ms. Hoyt later went back to the office to make up for her lost time.

105. Although there have been many warrantless searches over the years, in the last few years alone, Defendant-Commissioner's authorized inspectors have conducted warrantless searches at the homestead on or about the following: February 12, 2018, January 7, 2020, and August 30, 2021.

Property and Privacy Interests

106. Mr. Johnson and Ms. Hoyt assert property and privacy interests in their home and their curtilage, their shop, the dogs, the kennels, their jointly held property, the private, non-public areas of their personal property, the private, non-public areas of their property used for the business, their papers, the records used in the training kennel business operations, their effects, and all of the areas—and things—within the fenced boundaries. Mr. Johnson and Ms. Hoyt desire and expect privacy from unwanted visitors or intrusions, desire and expect personal dignity from unwanted visitors or intrusions, desire and expect to be able to exclude unwanted visitors or intrusions, all of which are crucial and necessary to both the enjoyment of their property and the safe training and handling of the dogs. Mr. Johnson and Ms. Hoyt do not permit unfettered public access to their house, their shop, and the areas or things within the fenced boundaries, without permission or invitation. Mr. Johnson even requires his clients to make appointments beforehand.

107. Covey Find Kennel, LLC asserts property and privacy interests in the areas of the home and curtilage used for the business, the shop, the dogs, the kennels, jointly held property used for the business, the private, non-public areas of the personal property used for the business, the private, non-public areas of the business property, the papers, effects, and all of the areas—and things—within the fenced boundaries, associated with and in connection with the Covey Find Kennel, LLC.

108. Plaintiffs retain an established and legally settled property and privacy interest in the private, non-public areas of the business operations.

The Licensing and Warrantless Search Regime Injures Plaintiffs

109. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

110. Plaintiffs have been and will continue to be injured by the licensing and warrantless search regime.

111. All of the previously mentioned searches were without a warrant, and all occurred within the fenced boundaries as illustrated above. These warrantless searches will continue into the future.

112. The licensing and warrantless search regime invades Plaintiffs' property and privacy rights and interests, the right to be secure, the right and ability to use and enjoy their land in peace, the right to exclude unwanted persons, all of which are protected by the Fourth Amendment, by creating, authorizing, implementing, and actually conducting warrantless searches within the fenced areas.

113. The licensing and warrantless search regime does not contain a legitimate precompliance review process at all, for records or otherwise, and does not prevent Defendant-Commissioner or his authorized representatives from conducting warrantless searches multiple times throughout the day, for months on end. Plaintiffs cannot even request reasonable limitations on the timing, frequency, duration, and/or scope of the warrantless searches.

114. The licensing and warrantless search regime authorizes warrantless, non-consensual searches at/in the "premises"—which includes the home and its curtilage—and criminalizes noncompliance with the warrantless searches.

115. The licensing and warrantless search regime's requirement that one waive their Fourth Amendment rights in exchange for a license-renewal is a constitutional injury in and of itself; and Mr. Johnson opposes, objects, and is injured and will be continued to be injured in the future by the requirement that one waive their Fourth Amendment rights in exchange for a license-renewal.

116. As currently fashioned, the licensing and warrantless search regime and the warrantless searches themselves causes Mr. Johnson and Ms. Hoyt anxiety and frustration, and subjects them to financial penalties.

117. Mr. Johnson holds a current training kennel operator's license issued by Defendant-Commissioner, which, according to the license, expires on September 30, 2023. Exhibit 1. Mr. Johnson earns his living by training and handling dogs from the homestead. He will continue training and handling dogs from the homestead, and continue operating Covey Find Kennel from the homestead, beyond September 30, 2023, absent unforeseen circumstances. Operating the training kennel from the homestead, without a license, subjects

Mr. Johnson to civil and criminal prosecution. He has no choice and must comply with the licensing and warrantless search regime.

118. Mr. Johnson opposes, objects, and is injured by the thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences, as they are currently mandated and enforced; and he opposes, objects, and is injured by being forced under penalty to have *anyone* "represent" him in the "inspection process," as it is currently mandated and enforced. Mr. Johnson doesn't want the people who help him with the dogs to interact with government inspectors on his behalf, on his homestead. However, because he is forced to have a "designated representative," he has deemed, and will continue to deem, Ms. Hoyt as such, absent unforeseen circumstances or a Court ruling.

119. Ms. Hoyt opposes, objects, and is injured by the thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced. The thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced have caused Ms. Hoyt to leave her job, return to the homestead, make up for lost work, and causes her anxiety and frustration. Ms. Hoyt has been deemed and will continue being deemed as the "designated representative," and given Mr. Johnson's significant, repetitive, and continuing time away from the homestead, there is a substantial likelihood Ms. Hoyt will be contacted again by Defendant-Commissioner's authorized representatives.

120. The licensing and warrantless search regime substantially burdens Mr. Johnson and Ms. Hoyt's right to travel and freely move about, as protected by the United States Constitution. Traveling together, more than thirty minutes from their homestead, subjects Mr. Johnson to at least an automatic financial penalty, and it triggers another surprise, warrantless search. The licensing and warrantless search regime's thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced, prevents, in certain instances, Mr. Johnson and Ms. Hoyt's ability to travel to Wichita together (about 50 minutes one-way), Arkansas City (about 25 minutes one-way), and substantially impedes and burdens their ability to do anything together

in Winfield, the town closest to the homestead (about 10 minutes one-way), except under pain of penalty. This automatic penalty is assessed to Mr. Johnson, but as a married couple, financially injures Ms. Hoyt as well.

121. Ms. Hoyt has been forced to leave her employment because of the licensing and warrantless search regime. Ms. Hoyt had to make up for the lost time.

122. If Mr. Johnson is training dogs away from the homestead and the inspector shows up, the licensing and warrantless search regime would force Mr. Johnson to stop his training, gather the dogs, load his horse, and return to the homestead—if he's even reachable—within thirty minutes from when the inspector arrives.

123. But for the licensing and warrantless search regime, Plaintiffs' Fourth Amendment rights would not be violated, Mr. Johnson would not be forced to waive his constitutional rights in exchange for a government-issued training kennel license, Ms. Hoyt would not be the "designated representative" as the term is currently defined by regulation, Ms. Hoyt would not be forced to leave her job, and Mr. Johnson and Ms. Hoyt could freely travel and move about without anxiety, fear, frustration, or being potentially penalized.

124. The same day the licensing and warrantless search regime is enjoined and/or declared unconstitutional, or as soon as reasonably possible thereafter: Mr. Johnson and Ms. Hoyt will freely, without anxiety, fear, or frustration, freely move about and/or travel; Mr. Johnson and Ms. Hoyt will freely, without anxiety, fear, or frustration, enjoy their property and privacy rights in their homestead; Mr. Johnson will freely, without anxiety, fear, or frustration, not be subjected to an unconstitutional condition involving his training kennel license; Mr. Johnson would not suffer any harm, frustration, or anxiety in designating Ms. Hoyt a representative and Ms. Hoyt's would not suffer any harm, frustration, or anxiety in being a designated representative; Ms. Hoyt would not be required to return to the homestead and act as a representative in the search process; and Covey Find Kennel would not be subjected to unreasonable, warrantless searches.

125. But for the licensing and warrantless search regime, Plaintiffs would have suffered none of these harms or injures in the past and would suffer none of them in the future.

126. The licensing and warrantless search regime is ongoing, continuous, and repetitive, as are the violations of federal law, and is an ongoing, continuous, and repetitive violation of Plaintiffs' rights under the United States Constitution.

127. Defendant-Commissioner oversees, implements, and enforces the licensing and warrantless search regime.

128. Absent a judgment declaring the licensing and warrantless search regime unconstitutional, and absent issuing injunctive relief enjoining its enforcement, Plaintiffs will continue to be subjected to unconstitutional searches, Mr. Johnson will be subjected to unconstitutional conditions, and Mr. Johnson and Ms. Hoyt will not be able to freely travel and move about.

129. Plaintiffs have no other adequate remedy at law, other than to file this lawsuit for prospective, non-monetary relief.

Declaratory Judgment and Injunctive Relief

130. Plaintiffs reallege and incorporate by reference all the preceding paragraphs.

131. An actual controversy has arisen and now exists between Plaintiffs and Defendant-Commissioner concerning Plaintiffs' rights under the United States Constitution. A judicial declaration is necessary and appropriate at this time.

132. It's appropriate and proper that a declaratory judgment be issued, pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring unconstitutional all relevant portions of the licensing and warrantless search regime at issue in this case.

133. Pursuant to 28 U.S.C. § 2201, 28 U.S.C. § 2202, and Fed. R. Civ. P. 65, it's appropriate and requested that this Court issue permanent prospective relief prohibiting enforcement of all relevant and unconstitutional portions of the licensing and warrantless search regime at issue in this case.

Constitutional Violations
Claim One: Fourth Amendment Violations
(Property- and Privacy-Based Claim)

134. Plaintiffs reallege and incorporate by reference all the preceding paragraphs.

135. The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

136. The Fourth Amendment is incorporated against the states through the Fourteenth Amendment to the United States Constitution. *Mapp v. Ohio*, 367 U.S. 643 (1961); *Wolf v. Colorado*, 338 U.S. 25 (1949).

137. The Fourth Amendment is individual liberty's cornerstone, *see Byrd v. United States*, 138 S. Ct. 1518, 1526 (2018), was meant to "place obstacles in the way of [the government]," *Carpenter v. United States*, 138 S. Ct. 2206, 2214 (2018), and "gives concrete expression to a right of the people which 'is basic to a free society,'" *Camara v. Mun. Court*, 387 U.S. 523, 528 (1967) (quoting *Wolf v. People of the State of Colorado*, 338 U.S. 25, 27 (1949)). It protects against "unwarranted intrusions," *Winston v. Lee*, 470 U.S. 753, 760 (1985), "arbitrary invasions," *Camara v. Mun. Court*, 387 U.S. 523, 527 (1967), and "all general searches," *Go–Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931), by the government. Its *primary* purpose was to forever stamp out the suspicionless search. *See Boyd v. United States*, 116 U.S. 616, 625-30 (1886).

138. The Fourth Amendment was the Framer's response to the "widespread hostility among the former colonists to the issuance of writs of assistance empowering revenue officers to search suspected places for smuggled goods, and general search warrants[.]" *United States v. Verdugo-Urquidez*, 494 U.S. 259, 266 (1990). General warrants didn't identify the person or place to be searched; writs of assistance gave custom agents "carte blanche" access to homes, warehouses, and all persons, papers, and effects therein, forced individuals to "assist" in the searches, and violated "the oldest of English rights: that of a person to be secure in his home." Laura K. Donohoe, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1242-1244 (2016). It was those warrantless, suspicionless searches that the great patriot James Otis railed against in *Paxton's Case* in 1761, "perhaps the most prominent event which inaugurated the resistance of the colonies to the oppressions of the mother country," *Boyd*, 116

U.S. at 625, and "helped spark the Revolution itself," *Carpenter v.* 138 S. Ct. at 2213 (cleaned up).

139. The Fourth Amendment is a roadblock, not a speedbump, *Taylor v. City of Saginaw*, No. 1:17-CV-11067, 2022 WL 3160734, at *8 (E.D. Mich. Aug. 8, 2022), and was specifically designed to protect the "liberty of every man from the hands of every petty officer," *Boyd*, 116 U.S. at 625 (relying on *Paxton's Case* (Mass. 1761)).

140. The Fourth Amendment's protections apply to—among many other things—homes and their curtilage, *Fla. v. Jardines*, 569 U.S. 1, 6 (2013), commercial premises, *See v. City of Seattle*, 387 U.S. 541 (1967), and business records, *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409 (2015). Of course, "the home is first among equals." *Jardines*, 569 U.S. at 6; *Payton v. New York*, 445 U.S. 573, 590 (1980).

141. The United States Supreme Court takes two approaches to Fourth Amendment claims: a property-based approach, *e.g.*, *United States v. Jones*, 565 U.S. 400 (2012); *Fla. v. Jardines*, 569 U.S. 1 (2013) (collectively referred to as "*Jones-Jardines*"), and a privacy-based approach, *e.g.*, *Katz v. United States*, 389 U.S. 347 (1967). This lawsuit utilizes *both* approaches.

142. Under the property-based approach, a Fourth Amendment search occurs when the government physically intrudes or trespasses upon the property interests implicated by the Fourth Amendment, for the purpose of obtaining information. *Jones*, 565 U.S. 400, 406-09 (2012); *Jardines*, 569 U.S. 1, 10-11 (2013); *Collins v. Virginia*, 138 S. Ct. 1663, 1670 (2018). This includes inspections of business records. *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409 (2015).

143. The warrantless searches permitted, authorized, and conducted pursuant to the licensing and warrantless search regime constitute Fourth Amendment searches under the *Jones-Jardines* property-based approach. Inspectors physically intrude and/or trespass upon the property interests implicated by the Fourth Amendment, for the purpose of obtaining information, by physically entering the homestead's curtilage, physically handling and inspecting papers, physically entering kennels, and so on.

144. Under the privacy-based approach, a Fourth Amendment search also occurs "when the government violates a subjective expectation of privacy that society recognizes as

reasonable." *Kyllo v. United States*, 533 U.S. 27, 33 (2001) (relying on J. Holmes concurrence in *Katz*). This also includes inspections of business records.

145. The warrantless searches permitted, authorized, and conducted pursuant to the licensing and warrantless search regime constitute Fourth Amendment searches under the *Katz* privacy-based approach as well.

146. Under both the property- and privacy-based approaches, warrantless searches are presumptively unreasonable and therefore invalid, subject to a few narrowly established exceptions. *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409 (2015).

147. Under both the property- and privacy-based approaches, Defendant-Commissioner has the high and difficult burden of proving the applicability of one of the specifically recognized warrant exceptions. *E.g.*, *Coolidge v. New Hampshire*, 403 U.S. 443, 454-455 (1971); *Pike v. Gallagher*, 829 F. Supp. 1254, 1262 (D.N.M. 1993). Those exceptions are "few," *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016) (Sotomayor, J., concurring in part and dissenting in part), "specifically established," *id.*, "well-delineated," *id.*, and "jealously and carefully drawn," *Jones v. United States*, 357 U.S. 493, 499 (1958).

148. Defendant-Commissioner can't prove the existence of *any* exception to any of the Fourth Amendment's requirements, under either the *Jones-Jardines* property-based approach or the *Katz* privacy-based approach.

149. Fourth Amendment exceptions premised on alleged reduced expectations of privacy do not or should not apply to *Jones-Jardines* property-based claims.

150. Moreover, there are no special needs justifying the warrantless entries and searches of, in, and around, the homestead, *see Roska ex rel. Roska v. Peterson*, 328 F.3d 1230 1242 (10th Cir. 2003), none of the doctrine's underpinnings apply, and in any event, this exception does not or should not apply to the instant licensing and warrantless search regime at all.

151. Moreover, neither dog training nor dog handling is one of the four "pervasively regulated" industries or "closely regulated" businesses identified by the United States Supreme Court, *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409 (2015), none of the doctrine's

underpinnings apply, and in any event, this exception does not or should not apply to the instant licensing and warrantless search regime at all.

152. Dog training and handling isn't an intrinsically or inherently dangerous activity, it doesn't pose an obvious or inherent risk to the public, it doesn't raise an urgent or even serious risk of illegal activity, and Mr. Johnson and Ms. Hoyt have an *enhanced* expectation of privacy.

153. *Warrantless, nonconsensual,* and *surprise* searches involving Plaintiffs and others similarly situated aren't necessary and don't advance a compelling or sufficient governmental purpose to override the Fourth Amendment's text, history, and purpose for at least the following reasons, considered individually or collectively: structural or physical defects in training kennels cannot be quickly hidden or remedied; mistreatment or maltreatment of dogs cannot be quickly hidden or remedied; training kennels are already inspected by veterinarians "at least once a year," KSA § 47-1701(dd)(1)(A); training kennels and their operations already operate under veterinary medical care, *see* KSA § 47-1701(dd)(1) *et seq*; KAR § 9-18-21; training kennels and their operations are substantially, completely, and markedly different from other animal-related operations like animal breeding, animal distribution, and pet shop sales for a number of reasons, not the least of which is that dog owners already hold trainers and handlers accountable; there is little risk that significant alleged violations could be corrected during the time interval between an inspector's initial request to search and procuring a warrant—a mistreated dog doesn't quickly recover, for example; Kansas courts can issue warrants based on oral or written statements conveyed or received by electronic communications, KSA § 22-2502; the regime itself sets forth an administrative warrant procedure, KSA § 47-1709(k); and the regime authorizes Defendant-Commissioner to seek injunctive relief. Further, there is no evidence that the great majority of dog trainers and handlers wouldn't consent to sensible, reasonable, and mutually agreed-upon pre-scheduled searches without a warrant (and without being coerced through the licensing process). But even if a few dog trainers or handers didn't consent—in the constitutional sense—to pre-scheduled searches, Defendant-Commissioner and his inspectors have options—secure a warrant.

154. Defendant-Commissioner cannot establish constitutionally valid consent for at least all of the following reasons, whether viewed individually or collectively:

a. Refusing to allow a warrantless entry onto the property subjects the license-holder to administrative, civil, and/or criminal penalties.
b. The licensing and warrantless search regime is unconstitutionally coercive.
c. The licensing and warrantless search regime itself is unreasonable.
d. The licensing and warrantless search regime conditions the licensing renewal on waivers of constitutional rights, in violation of the unconstitutional conditions doctrine.
e. The licensing and warrantless search regime's conditioning of the license renewal on waivers of constitutional rights vitiates consent, in violation of the unconstitutional conditions doctrine.
f. By virtue of licensing and warrantless search regime's procedures and protocols, Defendant-Commissioner cannot establish that the so-called consent was voluntary, unequivocal, specific, intelligently given, and uncontaminated by duress or coercion.

155. This licensing and warrantless search regime does not contain any legitimate precompliance review process at all, and is therefore plainly unconstitutional. *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409 (2015).

156. The licensing and warrantless search regime does not prevent Defendant-Commissioner or his inspectors from conducting warrantless searches multiple times throughout the day, for months on end, for any purpose they see fit.

157. The licensing and warrantless search regime is unreasonable in the constitutional sense for at least all of the following reasons, whether viewed individually or collectively:

a. The licensing and warrantless search regime permits, authorizes, and implements unreasonable, nonconsensual, suspicionless, and warrantless

searches of, on, in, and around, Plaintiffs' property, premises, papers, and effects—by and through Defendant-Commissioner's inspectors.

b. The licensing and warrantless search regime criminalizes demanding the government inspector first have a warrant before conducting a search.

c. Demanding the government inspector first have a warrant before conducting a search is grounds to suspend a license-holder's license or otherwise impose penalties.

d. The regime does not contain a legitimate precompliance review process.

e. The licensing and warrantless search regime does not prevent Defendant-Commissioner or his inspectors from conducting warrantless searches multiple times throughout the day, for months on end, for any purpose they see fit.

f. The licensing and warrantless search regime mandates that training kennel license-holders "designate a representative" who must be "present while the inspection is conducted" and *must* represent the licensee during the warrantless search. KAR § 9-18-9(e).

g. The licensing and warrantless search regime automatically penalizes license-holders if they or their mandated-representatives are not able to return to the property within thirty minutes from when the inspector arrives for surprise, warrantless search. KSA § 47-1721(d)(1).

h. The licensing and warrantless search regime conditions the renewal of a license on waivers of constitutional rights.

i. The licensing and warrantless search regime violates basic and fundamental property rights.

j. The licensing and warrantless search regime violates privacy rights.

158. The licensing and warrantless search regime is presumptively and conclusively unreasonable, unconstitutional, and violates the text, structure, history, and purpose of the Fourth Amendment.

159. On its face and as applied, the licensing and warrantless search regime violates the Fourth Amendment's text, structure, history, and purpose.

160. Plaintiffs' Fourth Amendment rights have been and will continue to be violated by the licensing and warrantless search regime.

161. Defendant-Commissioner oversees, implements, and enforces the licensing and warrantless search regime violating Plaintiffs' Fourth Amendment rights and causing Plaintiffs' Fourth Amendment injuries.

162. As a consequence of Defendant-Commissioner's actions or inactions in the implementation and enforcement of the licensing and warrantless search regime, Plaintiffs have been and will continue to be injured, and are therefore entitled to, among other things, declaratory judgment and prospective injunctive relief, and any other equitable or other legal relief as the court deems just or appropriate.

163. Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their Fourth Amendment rights, other than to file this lawsuit for non-monetary, prospective relief.

164. Unless the licensing and warrantless search regime's unconstitutional statutes, regulations, rules, and policies in connection with warrantless searches are declared unconstitutional and their enforcement permanently enjoined, Plaintiffs and others who are similarly situated will continue to suffer great and irreparable harm. Plaintiffs therefore seek such declaratory and injunctive relief.

Claim Two: Violations under the Fourth Amendment to the United States Constitution (Unconstitutional Conditions Doctrine Claim)

165. Plaintiffs realleges and incorporate by reference all the preceding paragraphs.

166. A compelled surrender or coercive "waiver" in exchange for a government benefit violates the unconstitutional conditions doctrine.

167. The unconstitutional conditions doctrine applies to Fourth Amendment claims. *E.g., Chandler v. Miller*, 520 U.S. 305, 317 (1997); *United States v. Scott*, 450 F.3d 863, 866 (9th Cir. 2006); *Bourgeois v. Peters*, 387 F.3d 1303 (11th Cir. 2004); *Herrera v. Santa Fe Pub. Sch.*,

956 F. Supp. 2d 1191 (D.N.M. 2013). In fact, the unconstitutional conditions "doctrine *is especially important in the Fourth Amendment context*." *Scott*, 450 F.3d at 867 (emphasis added).

168. Those subjected to an unconstitutional condition by the government do not need to suffer any additional injury—the government's demand is itself an unconstitutional act. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604-05 (2013).

169. In the Fourth Amendment context, consent cannot be coerced, the government has the burden of proving consent, mere acquiescence to a claim of lawful authority does not discharge the government's burden, and consent must be freely and voluntarily given. Further, consent is involuntary where the alternatives are to consent in advance to a warrantless inspection, or face criminal penalties, or don't consent and not receive a permit. *Dearmore v. City of Garland*, 400 F. Supp. 2d 894, 902–03 (N.D. Tex. 2005).

170. Defendant-Commissioner and the regime coerces Mr. Johnson, and others similarly situated, to waive his Fourth Amendment rights to be free from unreasonable, warrantless searches, in violation of the unconstitutional conditions doctrine, year-after-year-after-year. That's because the regime requires training kennel operators to renew their license every year, KSA §§ 47-1701(r), 1721, 1723, pay a license renewal fee, KSA § 47-1721; KAR § 9-18-6, and the "acceptance of a license" is "deemed to be the consent of the licensee … to the right of entry and inspection[.]" KSA § 47-1709(b).

171. On its face and as applied, the training kennel license's coercive "consent" or "waiver" requirement during the licensing renewal process violates the Fourth Amendment to the United States Constitution under the unconstitutional conditions doctrine.

172. Mr. Johnson's rights under the Fourth Amendment to the United States Constitution have been and will continue to be violated by the licensing and warrantless search regime's coercive "consent" or "waiver" requirement during the licensing renewal process, under the unconstitutional conditions doctrine.

173. Defendant-Commissioner oversees, implements, and enforces the licensing and warrantless search regime's coercive "consent" or "waiver" requirement, during the licensing renewal process, which violates the Fourth Amendment to the United States Constitution, under the unconstitutional conditions doctrine.

174. As a consequence of Defendant-Commissioner's actions or inactions in the implementation and enforcement of the licensing and warrantless search regime's coercive "consent" or "waiver" requirement during the licensing renewal process—which violates the Fourth Amendment to the United States Constitution, under the unconstitutional conditions doctrine— Mr. Johnson has been and will continue to be injured, and is therefore entitled to, among other things, declaratory judgment and prospective injunctive relief, and any other equitable or other legal relief as the court deems just or appropriate.

175. Mr. Johnson has no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to his Fourth Amendment rights, other than to file this lawsuit for non-monetary, prospective relief.

176. Unless the licensing and warrantless search regime's unconstitutional statutes, regulations, rules, and policies in connection with the coercive "consent" or "waiver" requirement during the licensing renewal process—in violation of the Fourth Amendment to the United States Constitution under the unconstitutional conditions doctrine—are declared unconstitutional and their enforcement permanently enjoined, Mr. Johnson and others who are similarly situated will continue to suffer great and irreparable harm. Mr. Johnson therefore seeks such declaratory and injunctive relief.

Claim Three:
Violation of the Constitutionally Protected Fundamental and Natural Right to Travel and Freely Move About

177. Plaintiffs reallege and incorporate by reference all the preceding paragraphs.

178. The right to travel and freely move about was protected at common law as far back as the Magna Carta.

179. The right to travel and freely move about is a natural and fundamental right, preceding the American union, which America's founders understood.

180. The right to travel and freely move about is objectively and deeply rooted in our Nation's history and tradition, implicit in the concept of ordered liberty, long protected by American courts, and the United States Constitution. *See, e.g., Corfield v. Coryell*, 6 F. Cas. 546, 552 (C.C.E.D. Pa. 1823); *Smith v. Turner* (The Passenger Cases), 48 U.S. 283, 492 (1849);

Crandall v. State of Nevada, 73 U.S. 35 (1867); *William v. Fears*, 179 U.S. 270, 274 (1900); *Kent v. Dulles*, 357 U.S. 116, 126 (1958); *Shapiro v. Thompson*, 394 U.S. 618, 630-31 (1969) (overruled on other grounds); *Mem'l Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 254 (1974); *Saenz v. Roe*, 526 U.S. 489, 498 (1999).

181. In fact, "[f]reedom of movement, at home and abroad, is important for job and business opportunities—for cultural, political, and social activities—for all the commingling which gregarious man enjoys." *Aptheker v. Sec'y of State*, 378 U.S. 500, 519–20 (1964) (Douglas, J., concurring). And the "freedom to leave one's house and move about at will is of the very essence of a scheme of ordered liberty." *Bykofsky v. Boroough of Middletown*, 429 U.S. 964, 965 (1976) (Marshall J., dissenting from denial of certiorari).

182. The right to travel and freely move about includes interstate and intrastate travel and movement. *E.g.*, *Kent*, 357 U.S. at 126 ("Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage."); *but see D.L. v. Unified Sch. Dist. No. 497*, 596 F.3d 768, 776 (10th Cir. 2010); *McCraw v. City of Oklahoma City*, 973 F.3d 1057, 1081 (10th Cir. 2020), *cert. denied sub nom. City of Oklahoma City, Oklahoma v. McCraw*, 141 S. Ct. 1738 (2021).

183. Throughout America's history, Courts have repeatedly affirmed the *existence* of the right to travel and freely move about but have differed on the *source* of the right. *Buchwald v. Univ. of New Mexico Sch. of Med.*, 159 F.3d 487, 497 (10th Cir. 1998) ("Decisions involving the fundamental right to travel have not firmly established its origins or textual bases.") (cleaned up).

184. The First Amendment, Fifth Amendment, Fourteenth Amendment's Due Process of Law Clause, Fourteenth Amendment's Privileges or Immunities Clause, and Article IV Privileges and Immunities Clause have all been considered protective of the right to travel and/or freely move about.

185. On its face and as applied, the licensing and warrantless search regime's thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced, described above and throughout, directly and substantially interferes with, burdens, and is violative of, Mr. Johnson and Ms.

Hoyt's natural and fundamental right to travel and freely move about, which is objectively and deeply rooted in our Nation's history and tradition, implicit in the concept of ordered liberty, and long protected by the United States Constitution.

186. On its face and as applied, the licensing and warrantless search regime's thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced, described above and throughout, directly and substantially interferes with, burdens, and is violative of, Mr. Johnson and Ms. Hoyt's fundamental and natural right to travel and freely move about. The licensing and warrantless search regime's thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced, described above and throughout, are subject to strict scrutiny review. *Maehr v. United States Dep't of State*, 5 F.4th 1100, 1118 (10th Cir. 2021), *cert. denied sub nom. Maehr v. Dep't of State*, 142 S. Ct. 1123 (2022) ("Laws burdening the right of interstate travel are therefore subject to strict scrutiny."). Alternatively, the licensing and warrantless search regime's thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced, described above and throughout, is subject to intermediate scrutiny. *See*, *Maehr*, 5 F.4th at 1116 (Lucero, J., concurring in judgment). Alternatively, the licensing and warrantless search regime's thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced, described above and throughout, does not satisfy any level of scrutiny, including rational basis, and therefore violates Mr. Johnson and Ms. Hoyt's fundamental and natural right to travel and freely move about, as protected by the United States Constitution. Alternatively, the licensing and warrantless search regime's thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced, described above and throughout, are plainly unconstitutional without resorting to a tiered-scrutiny analysis. *See, e.g.*, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (striking down law without utilizing tiered scrutiny); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (same).

187. Mr. Johnson and Ms. Hoyt's constitutional right to travel and freely move about has been and will continue to be violated by the licensing and warrantless search regime's thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced, described above and throughout.

188. Defendant-Commissioner oversees, implements, and enforces the licensing and warrantless search regime's thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced, described above and throughout, causing Mr. Johnson and Ms. Hoyt's constitutional injuries.

189. As a consequence of Defendant-Commissioner's actions or inactions in the implementation and enforcement of the licensing and warrantless search regime's thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced, described above and throughout, Mr. Johnson and Ms. Hoyt have been and will continue to be injured, and are therefore entitled to, among other things, declaratory judgment and prospective injunctive relief, and any other equitable or other legal relief as the court deems just or appropriate.

190. Mr. Johnson and Ms. Hoyt have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional right to travel and freely move about, other than to file this lawsuit for non-monetary, prospective relief.

191. Unless the licensing and warrantless search regime's unconstitutional statutes, regulations, rules, and polices in connection with the thirty-minute travel restriction, designated representative mandate, and no-contact penalties and consequences as they are currently mandated and enforced, described above and throughout, are declared unconstitutional and their enforcement permanently enjoined, Mr. Johnson and Ms. Hoyt and others who are similarly situated will continue to suffer great and irreparable harm. Mr. Johnson and Ms. Hoyt therefore seek such declaratory and injunctive relief.

Request for Relief

Plaintiffs respectfully request the Court grant the following relief:

192. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

193. Declaratory judgment that the Kansas Pet Animal Act's statutes, regulations, rules, and policies that authorize, implement, and enforce unreasonable, warrantless searches, as described throughout and above, are unconstitutional under the Fourth Amendment to the United States Constitution, on their face and as applied to Plaintiffs and others similarly situated.

194. Declaratory judgment that the Kansas Pet Animal Act's statutes, regulations, rules, and policies that authorize, implement, and require a waiver of Fourth Amendment rights in exchange for a benefit—the training kennel license renewal—as described throughout and above, are unconstitutional under the Fourth Amendment as expressed in the unconstitutional conditions doctrine, on their face and as applied to Mr. Johnson and others similarly situated.

195. Declaratory judgment that the Kansas Pet Animal Act's statutes, regulations, rules, and policies that authorize, implement, and enforce restrictions on the right to travel and freely move about, as described throughout and above, violate the right to travel and freely move about, as protected by the Fourteenth Amendment's Due Process of Law Clause, and/or Fourteenth Amendment's Privileges or Immunities Clause, on their face and as applied to Mr. Johnson and Ms. Hoyt and others similarly situated.

196. For entry of preliminary and/or permanent prospective injunctive relief, enjoining Defendant, Defendant's officers, agents, employees, attorneys, servants, assigns, and all those in active concert or participation who receive, through personal service or otherwise, actual notice of this Court's order, from enforcing or directing the enforcement of the portions of the Kansas Pet Animal Act's statutes, regulations, rules, and/or policies that, as described throughout and above, constitute violations of the Fourth Amendment, Fourteenth Amendment's Due Process of Law Clause and/or Fourteenth Amendment's

Privileges or Immunities Clause, on their face and as applied to Plaintiffs and others similarly situated.

197. Reasonable costs and attorney fees under 42 U.S.C. § 1988; and

198. Such other legal or equitable relief as this Court deems appropriate and just.

Designation of Place of Trial

199. Plaintiffs request the trial be held in Wichita, Kansas due to the proximity of the Plaintiffs.

Kansas Justice Institute
By: Samuel G. MacRoberts, 22781

Dated: October 21, 2022

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