

**STATE OF VERMONT
WASHINGTON SUPERIOR COURT**

Christopher Hagan,
Plaintiff

v.

Docket No.

City of Barre,
Defendant

COMPLAINT

Introduction

This suit challenges a Vermont municipality's ability to regulate the domicile of an individual man who has done nothing to bother, inconvenience, or threaten the municipality or its residents. By enacting an ordinance that purports to restrict who may live within the municipality's borders, the defendant has exceeded its lawful authority.

Jurisdiction and Venue

1. The jurisdiction of this Court is invoked pursuant to Vt. Stat. Ann. tit. 4, § 113.
2. Venue is proper in this Court as the plaintiff, defendant, and all relevant actions are and were located in Washington County.

Parties

3. Christopher Hagan is a resident of the City of Barre, Vermont.
4. The City of Barre is a Vermont incorporated municipality located in Washington County.

Facts

Christopher Hagan and His Family

5. Christopher Hagan, his wife Amy, their two sons, and the family dog moved to Barre in April 2009.
6. In 2001, Mr. Hagan was charged with sexual assault, Vt. Stat. Ann. tit. 13, § 3252.
7. The charge arose from a sexual encounter that occurred in 1998 between Mr. Hagan, who was then eighteen, and a woman who was fifteen.
8. Mr. Hagan chose to plead guilty to a single count of lewd and lascivious conduct, Vt. Stat. Ann. tit. 13, § 2601.
9. Mr. Hagan was imprisoned from 2001 to 2005.
10. Once imprisoned, Mr. Hagan decided to take responsibility for his actions, to actively seek sex offender treatment, and to educate himself.
11. As such, Mr. Hagan completed Vermont's sex offender treatment program while at the Southern State Correctional Facility.
12. Following his successful completion of sex offender treatment, the Vermont Department of Corrections classified Mr. Hagan as a low risk to re-offend.
13. Mr. Hagan's classification as low risk means that the State considers him the pose the lowest chance of re-offense.
14. Mr. Hagan was discharged from prison in 2005, and is not now on probation, parole, community release, or any other form of Department of Corrections supervision.
15. Following his release from prison, Mr. Hagan attended Iowa Lakes Community College.
16. In 2006, Mr. Hagan moved back to Vermont and settled in Burlington.
17. In Burlington, Mr. Hagan began his own contracting business and began dating Amy, now his spouse.

18. Christopher and Amy Hagan were married in October 2007, and Mrs. Hagan gave birth to the couple's son in 2008.
19. Mr. Hagan's business slowed down, and the couple began receiving Section 8 rental assistance vouchers from the Burlington Housing Authority and later, the Vermont State Housing Authority ("VSHA").
20. Although the United States Department of Housing and Urban Development now encourages state and local housing authorities to bar convicted sex offenders from housing assistance programs, 24 C.F.R. § 982.553(a)(2)(2), Mr. Hagan obtained the assistance of VSHA prior to any such requirement taking effect and is thus grandfathered into the housing assistance program.
21. The VSHA has told Mr. Hagan that if he were to now forfeit his Section 8 assistance by moving out of his family's apartment, he would be presumptively barred from later receiving assistance because of his criminal record.
22. In November 2007, the family began renting a dwelling in Richmond, using the rental assistance voucher from VSHA.
23. In 2009, the family's landlord in Richmond was unable to meet her financial obligations on the property, forcing Mr. Hagan and his family to find new housing through no fault of their own.
24. After a long housing search, the family located a clean, spacious apartment in Barre City.
25. The apartment is privately owned.
26. During lease negotiations, Mr. Hagan informed his landlord of his conviction.
27. The landlord decided that Mr. Hagan did not pose a risk to the community and therefore did not tell Mr. Hagan about the Exclusion Ordinance.
28. Mr. Hagan and his family are conscientious neighbors, and have not caused any problems

in the neighborhood since moving into Barre.

29. The family's landlord has not received any complaints about the family since they moved into Barre.
30. Mr. Hagan has not been arrested since moving into Barre.
31. In fact, the family's landlord has hired Mr. Hagan to perform improvements on an adjacent property.

The Exclusion Ordinance

32. On July 29, 2008, the Barre City Council enacted Ordinance 2008-03, now codified at Barre, Vt. Ordinances § 11-36 and attached as Appendix A (hereinafter "Exclusion Ordinance").
33. The Exclusion Ordinance applies to individuals convicted of the crimes listed at Vt. Stat. Ann. tit. 13, § 5401(10), designated as sex offenses. § 11-36(a)(1).
34. Mr. Hagan's offense, lewd and lascivious conduct, is listed at Vt. Stat. Ann. tit. 13, § 5401(10)(A)(3), and thus, brings him within the purview of the Exclusion Ordinance.
35. In relevant part, the Exclusion Ordinance bars individuals convicted of listed crimes from establishing "a residence or any other living accommodations, permanent or temporary, whose property lines [sic] fall within one thousand (1,000) feet of a school or recreation facility in the City of Barre." § 11-36(b).
36. The Exclusion Ordinance prohibits individuals convicted of the listed crimes from establishing a residence anywhere within the one thousand foot exclusion zone, whether the residence is located on public or private property.
37. The Exclusion Ordinance does not distinguish between individuals who re-offend once residing in the exclusion zone and those who do not.

38. The Exclusion Ordinance does not distinguish between individuals who must register their addresses with the Vermont Department of Public Safety (“DPS”) and those who do not.
39. The Exclusion Ordinance applies to individuals convicted of a listed crime regardless of the date of conviction.
40. The Exclusion Ordinance defines the term “school” to include any “licensed or accredited public or private school or church school that offers instruction in pre-school . . . or any of grades K through, and including, 12.” § 11-36(a)(2).
41. The Exclusion Ordinance defines the term “recreation facility” to include any
park, playground, recreation center, bathing beach, swimming pool
or wading pool, gymnasium, sports field, or sports facility,
including the parking area and land surrounding any of the
aforementioned facilities, which is owned by or under the
jurisdiction of any department, agency, or authority of the City of
Barre.
§ 11-36(a)(3).
42. The Exclusion Ordinance mandates that individuals convicted of a listed crime who move into the exclusion zone “shall, within fifteen (15) days of receipt of written notice” move from the exclusion zone to “a new location” that is not within the exclusion zone. § 11-36(e).
43. The Exclusion Ordinance specifies that the “first day following the fifteen day written notice [period] shall be considered the first violation,” and that every day thereafter that the individual resides in the exclusion zone “shall be considered a separate violation.”
§ 11-36(e).
44. The Exclusion Ordinance levies civil fines of not more than \$500 for each violation thereof. § 11-36(h).

The Defendant's Threatened Prosecution of Mr. Hagan

45. After moving to Barre, Mr. Hagan visited the DPS offices in Waterbury to report his new address, as is his duty under the State of Vermont's comprehensive sex offender regulatory system.
46. When speaking with a DPS employee, however, Mr. Hagan learned to his surprise that the Exclusion Ordinance would bar him from living with his family in the Barre apartment.
47. Mr. Hagan returned to Barre and attended the next scheduled City Council meeting.
48. At the meeting, Mr. Hagan identified himself as a convicted sex offender, described the nature of his offense and the State's low classification of his risk to re-offend, and asked the City Council for a waiver from the Exclusion Ordinance.
49. Mr. Hagan's decision to attend a City Council meeting and identify himself as a convicted sex offender is not a decision that someone intent upon hiding from the community or evading responsibility for his actions would take.
50. Despite Mr. Hagan's forthrightness and virtually non-existent risk of reoffense, the City Council would not grant him a waiver.
51. Instead, the Council told Mr. Hagan that he could utilize the normal procedure for putting items on the Council's agenda, a process that takes approximately sixty days.
52. On April 23, 2009, Mr. Hagan received a notice from the Barre police department informing him that he has fifteen days to move outside the exclusion area (attached hereto as Appendix B).
53. Thus, the defendant will treat Mr. Hagan as being in violation of the Exclusion Ordinance beginning on Friday, May 8, 2009, with additional, separate violations accruing for each day that Mr. Hagan resides in the apartment with his family.

Mr. Hagan's Count Against the Defendant

54. Paragraphs 1-53 are incorporated as if set forth at length herein.
55. By enacting and enforcing an ordinance that restricts where an individual may establish a residence solely on the basis of the individual's criminal record, the defendant has exceeded its limited powers under Vermont law.

Request for Relief

56. Wherefore, Mr. Hagan is requests that this Court:
- a. declare that the Exclusion Ordinance violates the laws of the State of Vermont and as such is a nullity;
 - b. enjoin the defendant from enforcing the Exclusion Ordinance, and
 - c. order any other relief as the Court deems just.

Respectfully submitted,

The American Civil Liberties Union Foundation of Vermont

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Dated this 6th day of May, 2009.