

COMMONWEALTH COURT OF PENNSYLVANIA

JAMES LANDIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Commonwealth Court
	)	
	)	Docket No:
DENNIS WOLFF, SECRETARY	)	
PENNSYLVANIA DEPARTMENT OF	)	
AGRICULTURE,	)	
	)	
Defendant.	)	

21 JUN 2007 19:55  
 COMMONWEALTH COURT OF PENNSYLVANIA  
 JAMES LANDIS v. DENNIS WOLFF, SECRETARY  
 PENNSYLVANIA DEPARTMENT OF AGRICULTURE

**COMPLAINT**

Plaintiff, by and through his undersigned attorneys, brings this complaint against the above-named Defendant, his employees, agents, and successors in office to safeguard plaintiff's rights under the Pennsylvania Constitution and 71 Pa. C.S.A. §2401 *et seq.*, and in support thereof alleges the following:

**PRELIMINARY STATEMENT**

1. This is an action under 71 Pa. C.S.A. § 2401 *et seq.* and the Pennsylvania Constitution challenging the demand by the Pennsylvania Department of Agriculture ("PaDA") that James Landis ("Mr. Landis") apply for a federal premises identification number. The demand of the PaDA substantially burdens the free exercise of Mr. Landis' religion and such a requirement is not in furtherance of a compelling interest of the agency and is by no

means the least restrictive means that may be used to accomplish any such interest the PaDA may have. Furthermore, such demand by the PaDA is *ultra vires*.

2. Plaintiff seeks an expedited preliminary injunction, permanent injunctive relief and other relief as set forth in the prayer for relief.

### **JURISDICTION**

3. This court has jurisdiction under 71 Pa. C.S.A. § 2405 and 42 Pa. C.S.A. § 7531 *et seq.*

### **PARTIES**

#### **Plaintiff**

4. Plaintiff James Landis is an adult individual residing in Lebanon County, Pennsylvania.

#### **Defendant**

5. Defendant Dennis Wolff is the Secretary of the PaDA. He is being sued in his capacity as Secretary.

### **FACTUAL ALLEGATIONS**

#### ***James Landis Farming Background***

6. Mr. Landis is a conservative Mennonite farmer who, for the past 20 years, has raised muscovy ducks for export to live bird markets in New York City.
7. Mr. Landis receives 2000 - 24000 ducks from a hatchery and keeps them for 12-14 weeks finishing them for market. The ducks are shipped out over a period of weeks to the bird markets in New

York.

8. For the past 20 years Mr. Landis has voluntarily participated in avian influenza monitoring by the PaDA. The program requires a 30-day monitoring of the ducks prior to shipment wherein a lab technician pulls samples from Mr. Landis' flock and sends them for testing.
9. Only participants in the PaDA's monitoring program are eligible for moving their flocks into the live bird market system.
10. This year, the PaDA notified Mr. Landis that "federal premise ID numbers are required for enrollment" into the monitoring plan.

See Exhibit 1 attached hereto. The PaDA goes on to declare:

The deadline for enrollment for this program is June 30, 2007. **On July 1, 2007, a list of PA monitored flocks will be sent to the NY and NY Departments [sic] of Agriculture.** This list will include only those flocks which have been enrolled with the new form, with a flock owner signature and a federal premise ID included.

*Id.* (Emphasis in the original).

11. The federal program referenced by PaDA is not presently mandatory.
12. As a conservative Mennonite, Mr. Landis has a religious objection to registering his farm with the federal government. He and his church, along with the large Amish populations in the area, believe any numbering system that requires participation in order to buy and sell is a direct violation of Revelation Chapters 13 and 14 of the Bible. See Aff. James Landis ¶¶ 8-10 attached hereto as

Exhibit 8.

***National Animal Identification System***

13. In the late 1990's, a private trade organization, the National Institute for Animal Agriculture (NIAA), began to promote the concept of a National Animal Identification System (NAIS) in the United States.<sup>1</sup> The NIAA is controlled by the biggest players in industrial agriculture and its mission is to advance the economic and political interests of those agribusiness giants. For example, firms and organizations such as Cargill, Monsanto, and the National Pork Producers are members of the NIAA. (<http://animalagriculture.org/aboutNIAA/members/memberdirectory.asp>.) In addition, in the last decade, the economically powerful marketers of electronic animal ID systems and equipment, such as Digital Angel, Cattle-Traq, HerdStar LLC, Allflex, etc., have joined the NIAA in increasing numbers.
14. By 2003, the NIAA, assisted by some animal-identification personnel then recently added to the staff of the USDA's Animal and Plant Health Inspection Service (USDA/APHIS), had drafted a United States Animal Identification Plan (USAIP). Attached hereto as Exhibit 3. The USAIP contained the basic elements that later

---

<sup>1</sup> The first widespread, uniform, government-imposed animal identification system was adopted in the European Union in the early 1990's as a reaction (some would say over-reaction) to mad-cow disease (bovine spongiform encephalopathy, or BSE) and foot-and-mouth disease (FMD) outbreaks principally in Great Britain. However, the EU system has always been, and remains, far more limited than NAIS; for example, the EU system covers only cattle, sheep, and to a limited extent, swine. (From Farm to Fork: Safe Food for Europe's Consumers, [http://ec.europa.eu/publications/booklets/move/46/index\\_en.htm](http://ec.europa.eu/publications/booklets/move/46/index_en.htm).)

would be fully developed in NAIS, i.e., premises registration, individual animal identification, and animal tracking. The USAIP also frankly admitted the economic and trade motives behind its creation: “The US Animal Identification Plan . . . is needed to maintain the economic viability of American animal agriculture . . . . [The Plan] is essential to preserve the domestic and international marketability our nation’s animals and animal products.” (USAIP, January 2004, p. 1; emphasis added.)

15. The NIAA continued to work on the USAIP during 2003, but most livestock owners remained unaware that industrial agriculture was promoting such a system to USDA/APHIS.
16. By 2004, USDA/APHIS had assumed a central role in the development of NAIS. USDA/APHIS began offering substantial funding to state agriculture departments for field trials and early implementation of NAIS.
17. By April 2005, USDA/APHIS had completed a Draft Strategic Plan for NAIS. This Plan was published in the Federal Register on April 25, 2005, along with two ancillary documents, the NAIS Draft Program Standards and NAIS Technical Supplement. Although USDA/APHIS did not contemplate any NAIS rulemaking before mid-2006, the agency requested public comment on the April 2005 NAIS draft documents. The Draft Strategic Plan revealed an onerous, complex, burdensome system far beyond what had been

suggested in the USAIP. The three elements of NAIS were developed in elaborate detail in the 2005 Draft Strategic Plan and Draft Program Standards:

- a. Premises ID. Anyone owning even one horse, cow, pig, chicken, sheep, pigeon, or virtually any livestock animal, would be subject to mandatory premises ID, i.e., registration of their home, including owner's name, address, and telephone number, and keyed to Global Positioning System coordinates, in an enormous federal database under a 7-digit "premises ID number." (April 2005 NAIS Draft Program Standards, pp. 3-4, 10-12; 2005 NAIS Draft Strategic Plan, p. 12.)
- b. Animal ID. Every animal would have to be assigned a unique 15-digit ID number, also to be kept in a huge federal database. The required form of ID usually would be a tag or microchip containing a Radio Frequency Identification Device (RFID), designed to be read from a distance. (Plan, pp. 10-12; Standards, pp. 6, 12, 20, 27-28.) Possible additional forms of required identification would entail collecting the DNA of every animal and/or a retinal scan of every animal. (Plan, p.13.)
- c. Animal Tracking. The animal owner would be required to report: the birthdate of an animal, the application of every

animal's ID tag, every time an animal leaves or enters the property, every time an animal loses a tag, every time a tag is replaced, the slaughter or death of an animal, or if any animal is missing. Such events would have to be reported within 24 hours.

Standards, pp. 12-13, 17-21, attached hereto as Exhibit 2.

18. USDA/APHIS stated in the 2005 Plan that it would conduct rulemaking on NAIS in the summer of 2006 and would make premises ID and individual animal ID mandatory by January 2008; animal tracking would be mandatory by January 2009. (Ex. 3, 2005 Plan, p. 10 attached hereto).
19. Farmers, ranchers, and non-commercial animal owners reacted with outrage to the draconian terms of the Draft Strategic Plan.<sup>2</sup>
20. During 2005 and early 2006, the USDA was urging some state agriculture departments to pursue enabling legislation and/or rulemaking for mandatory premises ID at the state level. However, due to citizen objections, mandatory premises ID legislation was blocked in Vermont and Maine in early 2006. (See, e.g., County Courier (Northwest Vermont), "Livestock Registry Hearings Bring out Critics; Many Vow to Defy Rules," August 3, 2006; The

---

<sup>2</sup> On the widespread negative reactions to NAIS, see The New York Times, "Plan for Tracking Animals Meets Farmers' Resistance," December 13, 2006, A23, [www.nytimes.com/2006/12/13/us/13animals.html](http://www.nytimes.com/2006/12/13/us/13animals.html); USA Today, "Animal ID Plan Angers Some Farmers," October 27, 2006, [www.usatoday.com/printedition/news/20061027/a\\_animals27.art.htm](http://www.usatoday.com/printedition/news/20061027/a_animals27.art.htm).

Ellsworth (Maine) American, "Ag Committee Concedes; Animal ID Plan on Hold," March 16, 2006.)

21. On September 21, 2005, during the 2005 session of the Pennsylvania General Assembly, 13 senators introduced a bill, Senate Bill 865, that would have required premise registration. See SB 865 attached hereto as Exhibit 6. This bill never became law.
22. In some states, the USDA had gone so far as to suggest that state agriculture departments could datamine existing state livestock-related programs (e.g., dairy licensing, calfhood vaccination, avian-influenza monitoring, etc.) for farmers' personal information to send to the USDA/APHIS National Premises Information Repository, without informing farmers/animal owners that this was being done.<sup>3</sup> The USDA clearly understood that farmers would object to such secret datamining if they learned of it; as USDA warned the states, "This 'pulling' of data from existing databases . . . seems to be . . . cost effective [but] States must carefully consider whether this type of data integration to register livestock premises under NAIS would be interpreted as 'voluntary' and if this would create any problems for premises registration in

---

<sup>3</sup>. The Commonwealth of Massachusetts undertook such datamining in the spring of 2006, but, due to widespread complaints of citizens who received unasked-for and unwanted NAIS premises ID numbers by mail, Massachusetts had to suspend its use of this tactic by August 2006. (The Boston Globe, "Fur Flies over IDs: Small Farmers Say USDA Plan is Ineffective and Too Costly," December 17, 2006.)



the long term.” USDA/APHIS/Veterinary Services Initial Announcement of Cooperative Agreements for Implementation of NAIS (FY 2007), released Nov. 22, 2006, attached hereto as Exhibit 7.

23. In April 2006 the USDA released a new NAIS Implementation Plan (IP) that stated NAIS would be “voluntary” for the present but that the USDA considered it “necessary to reach full participation” by early 2009. (April 2006 IP, pp. 1-2 attached hereto as Exhibit 4.)
24. This Implementation Plan set rigid numerical targets for premises ID, individual animal ID, and animal tracking. (*Id.*, pp. 3-9.) Secretary Johanns also threatened that the USDA had the power to make NAIS mandatory “today” if farmers and animal owners did not “volunteer” in sufficient numbers to meet the USDA guidelines. (Transcript of news conference, April 6, 2006, USDA Release No. 0121.06.)
25. In late October 2006 the USDA released another Implementation Plan that differed from the April 2006 Implementation Plan only in omitting the threat of a possible mandatory program. (*See* April 2006 IP, p. 3, and Oct. 2006 IP, p. 3.)
26. On November 22, 2006, the USDA released the NAIS User Guide. Simultaneous with the release of the User Guide, the USDA expunged all copies of and references to the unpopular 2005 Draft Strategic Plan from the USDA website. The User Guide stated that

it “replaces all previously published [NAIS] program documents, including the 2005 Draft Strategic Plan and Draft Program Standards and the 2006 Implementation Strategies.” (User Guide, Preface, attached hereto as Exhibit 5.)

27. The User Guide also carefully avoided mention of the international-trade rationale that actually underlies NAIS. In its place, the User Guide emphasizes the “animal health” rationale for NAIS and tries to portray any opponents of NAIS as uncooperative and unreasonable.
28. The User Guide stresses that good “neighbors” and people who want to “protect their animals” will feel compelled to “volunteer” for NAIS out of some sense of duty to others. (See User Guide, pp. 2-3.)

***Pennsylvania Department of Agriculture Authority***

29. The PaDA has no authority to demand that citizens of the Commonwealth register for a federal premise identification number.
30. No enabling legislation, statutory authority or provisions of the administrative code allow the PaDA to demand that Mr. Landis register for a federal premise identification number.

**ALLEGATIONS OF LAW**

31. The denial of the free exercise rights of Mr. Landis is immanent as defined in 71 Pa. C.S.A. § 7405.

32. Despite the immanence of the denial, the PaDA was notified by facsimile and registered mail return receipt requested on June 12, 2007, of the impending denial of Mr. Landis' rights.
33. The PaDA has failed to remedy the substantial burden imposed upon Mr. Landis's free exercise rights.
34. The PaDA's demand that Mr. Landis register his premise, knowing that its enabling legislation to make such demands had never become law, is dilatory, obdurate and vexatious.

**FIRST CAUSE OF ACTION**

**Declaratory Judgment**

42 Pa. C.S.A. § 7531 *et seq.*

35. Plaintiff hereby realleges and incorporates by reference the above paragraphs.
36. By demanding that Mr. Landis, and other like-minded Amish and Mennonite citizens of the Commonwealth, register with the federal government in order to conduct business, the Commonwealth is seeking to compel conduct that violates specific tenants of their faith.
37. Without the grant of statutory authority to demand that Mr. Landis, and other like-minded Amish and Mennonite citizens of the Commonwealth, register with the federal government in order to conduct business, the PaDA is acting in an *ultra vires* manner.
38. Defendant's demand substantially burdens the right of Mr. Landis' free exercise of his religious faith.

39. Defendant's demand is not narrowly tailored to any significant governmental interest.
40. Defendant's demand is not the least restrictive means available to the Department to achieve any interest it may have.
41. Defendant's failure to accommodate the religious faith of Mr. Landis and those similarly situated is dilatory, obdurate and vexatious.

WHEREFORE, plaintiff prays that:

- a. This honorable court declare that the demands of defendant are a violation of Mr. Landis' rights under section 3 of Article I of the Pennsylvania Constitution and violative of 71 Pa. C.S.A. §2401;
- b. Defendant be preliminarily and permanently enjoined from requiring plaintiff's registration for a federal premises identification number;
- c. This court award the costs of this litigation and reasonable attorneys' fees to plaintiff; and,
- d. This court grant such other relief as it deems appropriate.

**SECOND CAUSE OF ACTION**

**Denial of Right to Free Exercise of Religion**

Under 71 Pa. C.S.A. § 2401 *et seq.* and Section 3 of Article I of the  
Pennsylvania Constitution

42. Plaintiff hereby realleges and incorporates by reference the above paragraphs.
43. Mr. Landis is a member of the Mennonite Conference of Eastern Pennsylvania.
44. Mr. Landis and his family are conservative Mennonites who believe and sincerely hold that:
- a. they “are called with a holy calling to a life of separation from the world and its follies, sinful practices and methods.” *Statement of Church Doctrine and Rules of Discipline of the Eastern Pennsylvania Mennonite Church* (2003), Article X., attached hereto as Exhibit 6;
  - b. they are not to be a part of the civil or administrative governments. *See id.* at Article XII;
  - c. Individuals . . . are becoming more and more dependent on financial establishments that are created to ease economic stress when adverse conditions arise. One of the results of such a trend is that we will eventually become subservient to a central government bureaucracy. This type of situation would certainly not be favorable to relaying our faith to the rising generations, but would eventually bring us to bow

down to national leaders, thanking them for our daily bread rather than worshipping the true God.

45. Based on these tenants of his faith, Mr. Landis sincerely believes Revelation 13 and 14 warn of a numbering system that is from the Anti-Christ; the "mark of the beast." It is a system that involves the permanent assignment of numbers which are required to do business. No one can do business without being a part of the system. He sincerely believe that if he, as a Christian, were to participate in such a numbering system, it would result in his eternal damnation.
46. By demanding that Mr. Landis, and other like-minded Amish and Mennonite citizens of the Commonwealth, register with the federal government in order to conduct business, the Commonwealth is seeking to compel conduct that violates specific tenants of their faith.
47. Defendant's demand substantially burdens the right of Mr. Landis' free exercise of his religious faith.
48. Defendant's demand is not narrowly tailored to any significant governmental interest.
49. Defendant's demand is not the least restrictive means available for the Department to achieve any interest it may have.

50. Defendant's failure to accommodate the religious faith of Mr. Landis and those similarly situated is dilatory, obdurate and vexatious.

WHEREFORE, plaintiff prays that:

- a. This honorable court declare that the demands of defendant are a violation of Mr. Landis' rights under section 3 of Article I of the Pennsylvania Constitution and violative of 71 Pa. C.S.A. §2401;
- b. Defendant be preliminarily and permanently enjoined from requiring plaintiff's registration for a federal premises identification number;
- c. This court award the costs of this litigation and reasonable attorneys' fees to plaintiff; and,
- d. This court grant such other relief as it deems appropriate.

**THIRD CAUSE OF ACTION**  
***Ultra Vires***

51. Plaintiff hereby realleges all matters set forth in the preceding paragraphs of this Complaint and incorporates them herein.

52. There is no statutory authority for defendant to demand that Mr. Landis apply for a federal premises identification number.

WHEREFORE, plaintiff prays that:

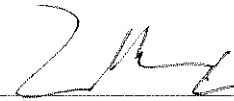
- a. This honorable court declare that the demands of defendant are *ultra vires*;

- b. Defendant be preliminarily and permanently enjoined from requiring plaintiff's registration for a federal premises identification number; and,
- c. That this court grant such other relief as it deems appropriate.

Respectfully submitted,

CLYMER & MUSSER, P.C.

By: \_\_\_\_\_



Leonard G. Brown, III  
Pa. ID No. 83207  
*Clymer & Musser, P.C.*  
408 W. Chestnut St.  
Lancaster, PA 17603  
(717) 299-7101 phone  
(717) 299-5115 fax

Mary-Louise Zanoni, Esq  
Counsel

Dated: June 21, 2007



**VERIFICATION**

I, James Landis, do verify that I am familiar with the facts contained in the above Complaint and that the said facts and statements made therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated:

6-21-07

  
James Landis