

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

ANIMAL LEGAL DEFENSE FUND, <i>et al.</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
LAURA KELLY, in her official	)	
Capacity as Governor of Kansas, and	)	
DEREK SCHMIDT, in his official	)	
Capacity as Attorney General of Kansas,	)	
	)	
Defendants.	)	
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Case No. 18-2657-KHV-JPO

**DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, defendants Laura Kelly and Derek Schmidt, who have been sued in their official capacities only, move the Court for an order entering judgment against plaintiffs’ claims.

Plaintiffs’ lawsuit challenges the constitutionality of the Kansas farm animal and field crop and research facilities protect act, codified at K.S.A. 2018 Supp. § 47-1825 *et seq.* as amended, (“KFAFCRF”). Under plaintiffs’ logic, a person’s First Amendment rights are infringed if the person is prohibited by criminal statute from entering private property (say the bedroom of a star quarterback) with the intent of causing damage to the private property’s owner (the quarterback) so long as either the access to the private property was secured by the person’s lie or the person wants to take some pictures.

Plaintiffs call the entry, lying and recording “undercover investigations.” But, to be fair, plaintiffs might also require that the person’s intent to cause damage be pure-of-heart.

In any event, defendants are entitled to summary judgment against all of plaintiffs’ claims under the uncontroverted facts. A Memorandum in Support of Defendants’ Motion for Summary Judgment is filed contemporaneously with this motion. It is incorporated by reference. It shows:

1. Plaintiffs lack standing to prosecute all or some of their claims:
  - a. The [plaintiffs’] sponsored undercover investigations are not facial violations of subsections (a) or (b) in K.S.A. 47-1827.
  - b. Similarly, plaintiffs lack standing to challenge the private cause of action codified in K.S.A. 47-1828.
  - c. Plaintiffs make only speculative claims concerning possible violations of subsections (c) or (d) in K.S.A. 47-1827 and fail to challenge a separately enforceable legal obstacle to their demanded relief.
  - d. Plaintiffs do not rescue standing by alleging that they are required to divert resources.
  - e. Additionally, plaintiffs suffer no redressable injury from an alleged denial of receipt of speech.
  - f. Even if plaintiffs’ claims satisfy the standing concerns discussed, the governor should be dismissed.

However, if the Court can reach the merits of plaintiffs’ claims, the memorandum also demonstrates the multiple flaws with plaintiffs’ logic. It shows defendants are entitled to summary judgment on the merits as follows:

2. Assuming standing, summary judgment against plaintiffs’ claims is proper because the KFAFCRF does not regulate constitutionally protected activity.
3. Even assuming KFAFCRF restricts some expressive activity, it does not impermissibly infringe First Amendment rights:
  - a. A lie to damage the enterprise conducted at an animal facility is “proscribeable speech.”

- b. Reasonable regulation prohibiting photographing, filming, or otherwise recording on nonpublic governmental and private property does not abridge the First Amendment.
  - c. The KFAFCRF is viewpoint neutral.
4. Finally, plaintiffs' overbreadth challenge must be rejected.

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL  
DEREK SCHMIDT

s/ Arthur S. Chalmers

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**CERTIFICATE OF SERVICE**

This is to certify that on this 25<sup>th</sup> day of July, 2019, I electronically filed the above and foregoing with the Clerk of the Court using the Court's Electronic Filing System, which will send a notice of electronic filing to all counsel of record:

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