

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

ANIMAL LEGAL DEFENSE FUND, IOWA
CITIZENS FOR COMMUNITY
IMPROVEMENT, BAILING OUT BENJI,
PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC., and
CENTER FOR FOOD SAFETY

Plaintiffs,

vs.

KIMBERLEY K. REYNOLDS, in her
official capacity as Governor of Iowa, TOM
MILLER, in his official capacity as
Attorney General of Iowa, and DREW
SWANSON, in his official capacity as
Montgomery County, Iowa County
Attorney,

Defendants.

No. 19-CV-00124-JEG-HCA

**DEFENDANTS' COMBINED
RESISTANCE TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
AND CROSS-MOTION FOR SUMMARY
JUDGMENT**

COMES NOW Defendants Kimberley Reynolds, Tom Miller, and Drew Swanson (hereafter collectively referred to as "Defendants"), pursuant to Federal Rule of Civil Procedure 56(a) and Local Rule 56, and hereby submits this Combined Resistance to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary Judgment ("Motion"), and states as follows:

1. On April 22, 2019, Plaintiffs Animal Legal Defense Fund, Iowa Citizens for Community Improvement, Bailing Out Benji, People for the Ethical Treatment of Animals, and Center for Food Safety (hereafter collectively "Plaintiffs") filed suit challenging Iowa's Ag-Trespass statute, codified in Iowa Code section 717A.3B, under the First and Fourteenth Amendments. (Dkt. #1).

2. On June 21, 2019, Defendants moved to dismiss all claims, arguing Plaintiffs failed to state a claim under the First Amendment or the Fourteenth Amendment. (Dkt. #18 and 24). On December 2, 2019, this Court granted Defendants' Motion to Dismiss Plaintiffs' void-

for-vagueness claim and denied the motion in all other respects. (Dkt. #41).

3. Plaintiffs moved for summary judgment on March 16, 2020, arguing they are entitled to judgment as a matter of law on their First Amendment claims. (Dkt. #55).

4. Defendants are filing this Motion, setting forth why the Plaintiffs' Motion for Summary Judgment should be denied and the Defendants' Motion granted.

5. Iowa's Ag-Trespass statute does not restrict conduct facilitated by deception in violation of the First Amendment. The statute is not facially overbroad under the First Amendment. Finally, Iowa's Ag-Trespass statute creates neither a content-based or viewpoint-based restriction on protected speech because there is no First Amendment protection for the conduct specifically prohibited by Iowa's Ag-Trespass statute, and the statute is narrowly tailored to serve compelling and significant governmental interests.

WHEREFORE, Defendants respectfully request the Court deny Plaintiffs' Motion for Summary Judgment and grant Defendants' Cross-Motion for Summary Judgment, upholding Iowa's Ag-Trespass statute as constitutional and lifting the injunction on its enforcement, and further tax all costs of this action against the Plaintiffs.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

/s/ Jeffrey S. Thompson
JEFFREY S. THOMPSON
Solicitor General
jeffrey.thompson@ag.iowa.gov

/s/ Jacob J. Larson
JACOB J. LARSON
Assistant Attorney General
jacob.larson@ag.iowa.gov

Hoover State Office Building
1305 E. Walnut Street, 2nd Floor
Des Moines, Iowa 50319
Phone: (515) 281-5164
Fax: (515) 281-4209
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, I electronically filed the foregoing paper with the Clerk of Court by using the CM/ECF system. All participants in this case are registered CM/ECF users and will be served by the CM/ECF system.

DATE: April 27, 2020

/s/ Jacob J. Larson
JACOB J. LARSON
Assistant Attorney General
jacob.larson@ag.iowa.gov

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