IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

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. KIMBERLY REYNOLDS, GOVERNOR; TOM MILLER, ATTORNEY GENERAL OF IOWA; and DREW B. SWANSON, MONTGOMERY COUNTY ATTORNEY, Defendants.	**4:17-cv-00362–JEG-HCA** **REPLY TO MOTION FOR ENTRY OF FINAL JUDGMENT & PERMANENT INJUNCTION**

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 submit this reply brief on Plaintiffs' Motion for Entry of Final Judgment & Permanent Injunction. In support thereof, Plaintiffs state as follows:

I. The Entire Ag-Gag Law Is Unconstitutional

The State's only objection to Plaintiffs' proposed injunction is "to the extent it goes beyond the scope of the Court's Order." Resistance Br. at ¶ 3. The State argues that Court should sever any part of the Ag-Gag Law that was not found unconstitutional under the Court's order granting Plaintiffs' motion for summary judgment. *Id*.

The State does not even attempt to explain its position as to what portion of the Ag-Gag law is even arguably severable. The State leave Plaintiffs and the Court entirely in the dark about the nature of its objection and what it believes should be severed. At the very least, the State should be made to provide some articulation of what words, provisions, or subsections of the law it believes should survive.

Plaintiffs challenged the entire law. *See, e.g.*, Complaint, ECF No. 1, at Prayer for Relief. And in the order granting Plaintiffs' Motion for Summary Judgment and denying Defendant's Motion for Summary Judgment, this Court ruled that "Iowa Code § 717A.3A fails to survive judicial scrutiny," not that some portion or subsection of the law failed to survive judicial scrutiny. Order, ECF No. 79, at 19. The entire law is unconstitutional. The entire law should be declared unconstitutional and enjoined.

The Court should enter Plaintiffs' proposed injunction.

II. The Potential for a Stay Request in the Event of a Potential Appeal is No Reason to Delay Judgment or Injunctive Relief

As part of its resistance to Plaintiffs' motion for permanent injunction, the state asserts that it "do[es] not object to the entry of injunctive relief that is properly tailored" but that it "anticipate[s] seeking a stay of the imposition of the injunctive relief pending any appeal in this matter." Resistance Br. ¶ 4. If those contingencies come to pass—the State takes an appeal and the State seeks a stay—the parties and the Court can address it at that time. That either or both contingencies might come to pass is not a basis to delay enjoining the law and entering judgment now.

III. Judgment Is Appropriate Once the Injunction is Entered

Summary judgment anticipates judgment. Having granted Plaintiffs' motion for summary judgment, the Court should summarily enter judgment for Plaintiffs.

The State asks the Court to hold off entering judgment until the resolution of post-judgment matters like determining an award of attorney's fees and costs. This proposal is counter to the normal course, the statutory scheme, and the Federal Rules of Civil Procedure.

First, only prevailing plaintiffs are entitled to an award of attorney's fees under 42 U.S.C. § 1988(b). "To qualify as a prevailing party under section 1988, a plaintiff must obtain relief on

the merits that directly benefits him or her *through an enforceable judgment*, or a plaintiff must obtain comparable relief through a consent decree or settlement." *Pedigo v. P.A.M. Transp*., 98 F.3d 396, 397-98 (8th Cir. 1996) (citing *Farrar v. Hobby*, 506 U.S. 103, 111 (1992)) (emphasis added). *See also Advantage Media, LLC v. City of Hopkins*, 511 F.3d 833, 837 (8th Cir. 2008) ("enforceable judgments on the merits and consent decrees create the requisite material alteration in the parties' legal relationship to achieve prevailing party status") (citing *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Res*., 532 U.S. 598, 602 (2001)); *Weitz Co. v. MH Wash*., 631 F.3d 510, 529-30 (8th Cir. 2011) ("the party in whose favor the verdict compels a judgment is the prevailing party"). Given that precedent requires judgment before awarding attorney's fees, it follows that judgment should precede any award (or even any motion for an award) of attorney's fees.

Second, the deadline for a prevailing party to move for an award of attorney's fees is triggered by the entry of judgment. Fed. R. Civ. P. 54(d)(2)(b)(i) (requiring a motion for attorney's fees to "be filed no later than 14 days after the entry of judgment"). This deadline would be nonsensical if judgment was intended to await an award of attorney's fees.

The State suggests that upending precedent and the structure of the federal rules would conserve judicial resources because it may appeal this Court's orders on both the merits and any award of attorney's fees. Resistence Br. at ¶ 5. Eight Circuit precedent is clear that "[f]rom both a policy and a legal standpoint, … a claim for attorney's fees should be treated as a matter collateral to and independent of the merits of the litigation. Accordingly, the timeliness of a claim for fees should be governed by procedural rules that reflect the collateral and independent nature of the claim rather than by rules … that relate to the merits of the action." *Obin v. Int'l Ass'n of Machinists & Aerospace Workers*, 651 F.2d 574, 583 (8th Cir. 1981). Due to the statutory scheme and the structure of the federal rules, the Circuit Courts frequently see appeals

from losing parties on both the merits and collateral, post-judgment matters like an award of attorney's fees. There is no reason to think that a related appeal on a fee award would "potentially complicat[e] any proceeding in the Eighth Circuit." Resistance Br. at ¶ 5. The Eighth Circuit is capable of handling such a routine matter without complication.

IV. Plaintiffs Suffer Prejudice Every Day that the Unconstitutional Law Is Not Enjoined or that Judgment Is Delayed

The State claims that the delay it requests would neither harm nor prejudice Plaintiffs. Resistance Br. at ¶ 6. Not so. Each day that Iowa Code § 717A.3A is not enjoined is an additional injury to Plaintiffs and whistleblowers generally. And each day that judgment is delayed drags out the final resolution of this matter. The state has 30 days from entry of final judgment to take an appeal to the Eighth Circuit, Fed. R. App. P. 4(a)(1)(A), but signals it is undecided on whether it will take an appeal on the merits, Resistance Br. ¶ 4, and seems to want to buy itself the additional time it will take to resolve the attorney's fees to make the determination.

If the state is to appeal, it should do so. It has already been more than 30 days since this Court's ruling on the merits. There is no reason to continue to stall out the clock.

Conclusion

Plaintiffs request that the Court enter the Proposed Final Judgment and Permanent Injunction without further delay.

Dated this 7th day of February, 2019

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Certificate of Service

I hereby certify 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 served by the CM/ECF system.

Date: February 7, 2019

/s/ Matthew Strugar
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