

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

ANIMAL LEGAL DEFENSE)	
FUND, <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 18-2657-KHV-JPO
)	
LAURA KELLY, <i>et al.</i>,)	
)	
Defendants.)	
)	

**PLAINTIFFS’ MOTION TO AMEND THE MEMORANDUM AND ORDER AND
JUDGMENT AND FOR ENTRY OF A PERMANENT INJUNCTION**

Pursuant to Fed. R. Civ. P. 59(e) and Fed. R. Civ. P. 65, Plaintiffs Animal Legal Defense Fund (“ALDF”), Center for Food Safety (“CFS”), Shy 38, Inc. (“Shy”), and Hope Sanctuary (“Hope”) hereby move to amend the order and judgment in this case to include a permanent injunction prohibiting Defendants and their officers, agents, employees, attorneys, and all other persons who are in active concert or participation with them from enforcing, through any action or omission or otherwise, K.S.A. § 47-1827(b), K.S.A. § 47-1827(c), and K.S.A. § 47-1827(d).

1. On January 22, 2020, this Court issued a Memorandum and Order (Doc. #63) sustaining, in part, Defendants’ Motion for Summary Judgment (Doc. #46) and Plaintiffs’ Motion for Summary Judgment (Doc. #53). The Court subsequently entered a final judgment in the case. (Doc. #64).

2. In its order, the Court granted in part Defendants’ Motion for Summary Judgment on the ground that Plaintiffs did not have standing to challenge the constitutionality of K.S.A. § 47-1827(a) and K.S.A. § 47-1828. The Court then granted in part Plaintiffs’ Motion for Summary Judgment on the grounds that Plaintiffs had standing to challenge the constitutionality

of K.S.A. § 47-1827(b), K.S.A. § 47-1827(c), and K.S.A. § 47-1827(d), and further, that those provisions violate the First Amendment.

3. While the Memorandum and Order observed that the Plaintiffs sought a declaratory judgment as relief (Doc. #63, at 1), it did not discuss the Plaintiffs' request for injunctive relief. Complaint, at ¶17, ¶106, ¶111 (Doc. #1).

4. Because the Court has already ruled that K.S.A. § 47-1827(b), K.S.A. § 47-1827(c), and K.S.A. § 47-1827(d) violate the First Amendment, Plaintiffs have met the requirements for a permanent injunction. Plaintiffs have achieved "actual success on the merits," the violation of First Amendment rights constitutes "irreparable harm unless the injunction is issued," "the threatened injury outweighs the harm that the injunction may cause the opposing party," particularly in light of the Court's conclusion that the Defendants could not assert sufficient interests to overcome the Plaintiffs' First Amendment rights (Doc. #1, at 37-38), and "the injunction, if issued, will not adversely affect the public interest." See *Prairie Band Potawatomi Nation v. Wagon*, 476 F.3d 818, 822 (10th Cir. 2007).

For the reasons set forth herein, Plaintiffs respectfully request the Court, pursuant to Fed. R. Civ. P. 59(e), to grant their motion to amend the Memorandum and Order (Doc. #63) and Judgment (Doc. #64) previously entered in this case and, pursuant to Fed. R. Civ. P. 65, to issue a permanent injunction as proposed in this motion. A proposed order and permanent injunction are attached to this motion.¹

¹ Consistent with Fed. R. Civ. P. 54(d)(2)(B)(i) and 42 U.S.C. § 1988(b), Plaintiffs intend to file a motion for an award of attorneys' fees and costs within 14 days of this Court's judgment and will thereafter "promptly initiate consultation with" the Defendants pursuant to Local Rule 54.2(a).

Dated this 24th day of January, 2020

/s/ Michael D. Moss

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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2020, I electronically filed the foregoing document with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing on the following:

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