

**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 BRUCE E.
SWANSON, in his official capacity as
Montgomery County, Iowa County
Attorney,

Defendants.

No. 17-CV-00362-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 Bruce 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 October 10, 2017, 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-Fraud statute, codified in Iowa Code section 717A.3A, under the First and Fourteenth Amendments. (Dkt. #1).

2. On December 8, 2017, Defendants moved to dismiss all claims, arguing Plaintiffs lacked standing and they failed to state a claim under the First Amendment or the Equal Protection Clause of the Fourteenth Amendment. (Dkt. #18 and 24). On February 27, 2018, this

Court granted Defendants' Motion to Dismiss Plaintiffs' Equal Protection Clause claim and denied the motion in all other respects.

3. Plaintiffs moved for summary judgment on June 22, 2018, arguing they are entitled to judgment as a matter of law on their First Amendment claims. (Dkt. #49).

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

5. First Amendment jurisprudence establishes that there is no First Amendment right to engage in the conduct prohibited by Iowa's Ag-Fraud statute. Nor does Iowa's Ag-Fraud statute create a content-based or viewpoint-based restriction on speech in violation of the First Amendment, and the statute is narrowly tailored to serve a significant governmental interest. Finally, Iowa's Ag-Fraud statute is not unconstitutionally overbroad.

WHEREFORE, Defendant respectfully requests the Court deny Plaintiffs' Motion for Summary Judgment and uphold Iowa's Ag-Fraud statute by granting Defendants' Motion, and further tax all costs of this action against the Plaintiffs.

Respectfully submitted,

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Attorney General of Iowa

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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: July 13, 2018

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