



Court: Shawnee County District Court
Case Number: 2019-CV-000785
Case Title: Mark Bunner, et al. vs. Mike Beam - Secretary of
the Kansas Dept of Ag
Type: Judgment by Consent and Permanent Injunction

SO ORDERED.

A handwritten signature in black ink that reads "Richard D. Anderson". The signature is written in a cursive style with a long, sweeping tail.

/s/ Honorable Richard Anderson, District Judge

In the District
Court of
Shawnee County, Kansas

**Mark Bunner,
Coraleen Bunner,**

Plaintiffs,

v.

Mike Beam, in his official capacity as
Secretary of the Kansas Department of
Agriculture,

Defendant.

Civil Action No. 2019-CV-000785

Judgment by Consent and Permanent
Injunction

Judgment by Consent and Permanent Injunction

This Judgment by Consent and Permanent Injunction is made and agreed upon, and stipulated to, by and between Mark Bunner, Coraleen Bunner and Defendant Mike Beam, the Secretary of the Kansas Department of Agriculture, through their respective attorneys.

Recitals

Whereas Plaintiffs Mark Bunner and Coraleen Bunner filed a Verified Petition for Declaratory Judgment, Preliminary and Permanent Prospective Injunctive Relief, Attorney Fees and Costs of Suit against Defendant Mike Beam in his official capacity as Secretary of the Kansas Department of Agriculture;

Whereas Plaintiffs seek to vindicate their rights under the First and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983, the Kansas Constitution Bill of Rights § 11, the Kansas Declaratory Judgment Act, KSA § 60-1701, et seq. and the Kansas Injunctive Relief Act, KSA § 60-901 et seq.;

Whereas Plaintiffs seek declaratory judgment and injunctive relief from Kansas' ban against off-premises advertising of raw milk and/or raw milk products (hereafter "Raw Milk Advertising Ban"), which is set forth in KSA § 65-771(cc), specifically the phrase: "so long as

the person making such sales does not promote the sale of milk or milk products to the public in any manner other than by the erection of a sign upon the premises of the dairy farm.”

Whereas Defendant Mike Beam is the Secretary of the Kansas Department of Agriculture which is charged with enforcing “Raw Milk Advertising Ban”;

Whereas this Court has subject matter jurisdiction;

Whereas venue is proper in this court;

Whereas the Defendant agreed to waive service of the Verified Petition for Declaratory Judgment, Preliminary and Permanent Prospective Injunctive Relief, Attorney Fees and Costs of Suit, as well as the Judgment by Consent and Permanent Injunction;

Whereas the Defendant voluntarily agrees to the Judgment by Consent and Permanent Injunction rendered herein, on the grounds that the Raw Milk Advertising Ban violates the First and Fourteenth Amendments to the United States Constitution, Kansas Constitution Bill of Rights § 11, and because this Judgment by Consent and Permanent Injunction serves the public interest;

Whereas the Defendant agrees this Judgment by Consent and Permanent Injunction applies statewide;

Whereas the Defendant agrees that the terms of this Judgment by Consent and Permanent Injunction apply to Defendant and to his successors, agents, servants, employees and attorneys and upon those acting in concert or participation with such agents, servants, employees and attorneys; and agrees the scope of this Judgment by Consent and Permanent Injunction order concerning its application will be as broad as permitted under law to effectuate its purpose and intent, to wit: relief from the Raw Milk Advertising Ban;

Whereas the Defendant agrees to waive any right it might have to appeal from this Judgment by Consent and Permanent Injunction;

Whereas the Plaintiffs agreed to forego any claim it might have to attorney fees and/or costs it might have as the prevailing party in this action; but reserves the right to seek all remedies available regarding subsequent enforcement of this Judgment by Consent and Permanent Injunction;

Whereas the Parties agree to waive the posting of a bond in the interests of justice and fairness;

JUDGMENT AND PERMANENT INJUNCTION

**The Court Hereby FINDS, DECLARES, ENTERS JUDGMENT and ORDERS
as**

follows:

1. **The Raw Milk Advertising Ban is unconstitutional.** Specifically, that the language in KSA § 65-771(cc) “so long as the person making such sales does not promote the sale of milk or milk products to the public in any manner other than by the erection of a sign upon the premises of the dairy farm.” is unconstitutional in that it violates the First and Fourteenth Amendments to the United States Constitution and Kansas Constitution Bill of Rights § 11.
2. The Court hereby **IMMEDIATELY** and **PERMANENTLY ENJOINS** the Defendant and his successors, agents, servants, employees and attorneys, and upon those persons acting in concert or participation with such agents, servants, employees and attorneys, from enforcing or directing enforcement of the Raw Milk Advertising Ban in KSA § 65-771(cc).
3. The Court hereby **IMMEDIATELY** and **PERMANENTLY ENJOINS** the Defendant and his successors, agents, servants, employees and attorneys, and upon those persons acting in concert or participation with such agents, servants, employees and attorneys from enforcing or directing the enforcement of the Raw Milk Advertising Ban in KSA § 65-771(cc) or any provision related to the enforcement of said ban.
4. The Defendant shall give prompt notice of this Judgment and Permanent Injunction to each of its officers, and any agents, servants, employees, assigns, all those acting for, with, or in concert with them, attorneys or otherwise. Defendant will immediately post this Judgment by Consent and Permanent Injunction at the website of the Kansas Department of Agriculture and disseminate the Judgment and

Permanent Injunction to all employees of the Kansas Department of Agriculture who are involved with enforcement of the Raw Milk Advertising Ban.

5. Defendant waives notice and service of entry of the Judgment and Permanent Injunction and agrees that violation of the Judgment and Permanent Injunction will expose Defendant to all penalties or remedies provided by law.
6. Plaintiffs are authorized to enforce the terms of this Judgment and Permanent Injunction and to seek all available remedies for such enforcement action, based upon the Defendant, his successors, agents, servants, employees and attorneys and upon those acting in concert or participation with such agents, servants, employees and attorneys failure to comply, in any way, with its obligations set forth herein.

It is Adjudged and Ordered. This Judgment and Order is effective as of the date and time of the electronic file stamp.

Dated: _____, 2019.

Honorable _____
District Court Judge, Shawnee County,
Kansas

Respectfully Submitted and Approved:

Kansas Justice Institute
By: Samuel G. MacRoberts, 22781

Mike Beam, in his Official Capacity as
Secretary of the Kansas Department of
Agriculture, by and through Office of
Attorney General Derek Schmidt

/s/ Samuel G. MacRoberts
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