

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

CLIMBING KITES, LLC and FIELD DAY )  
BREWING COMPANY, LLC, )

Plaintiffs, )

v. )

THE STATE OF IOWA; KELLY GARCIA, )  
in her official capacity as Director of the )  
Iowa Department of Health and Human )  
Services; and IOWA DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES, )

Defendants. )

Case No. 4:24-cv-202

**BRIEF IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND RENEWED MOTION  
FOR PRELIMINARY INJUNCTION**

**ARGUMENT**

Plaintiffs moved for preliminary injunctive relief in this matter on or about June 17, 2024. *See* ECF No. 2; ECF No. 3-1. Plaintiffs’ motion was filed by sworn statements by Scott Selix and Dan Caraher, acting on behalf of the Plaintiffs, identifying the specific facts showing the immediate and irreparable injury, loss, or damage that will result from the enforcement of House File 2605. *See* ECF No. 2-1; ECF No. 2-2. Defendants filed a resistance to the Plaintiffs’ motion on June 26, 2024. *See* ECF No. 17-1. Plaintiffs replied to the Defendant’s resistance on June 27, 2024. *See* ECF No. 20-1. Following a hearing on Plaintiffs’ motion with this Court on June 28, 2024, Plaintiffs filed an Amended Complaint as a matter of right. Fed. R. Civ. P. 15(b). The Complaint included a void-for-vagueness claim as to the Potency Limits contained within HF2605, facially and as-applied, in violation of the Fourteenth Amendment to the United States Constitution. In all other material respects, the Amended Complaint is identical to the initial Complaint filed on June 17, 2024.

For the reasons demonstrated at the hearing on June 28, 2024, the Potency Limits within HF2605, as applied to the Plaintiffs and more generally as interpreted by the Department of Health and Human Services are vague beyond comprehension and provide no fair notice of criminal offenses. Plaintiffs continue to have no understanding what constitutes lawful business and what constitutes criminal conduct as of Monday, July 1, 2024. The statute most certainly violates the Due Process Clause of the Fourteenth Amendment. *See Kolender v. Lawson*, 461 U.S. 352, 356–57 (1983); *Smith v. Goguen*, 415 U.S. 566, 572–73 (1974). Those Potency Limits take effect in three days. In order to fully and fairly consider the question of whether those Limits may be enforced by the Defendants on Monday, July 1, this Court should consider entry of a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b). The facts giving rise to the immediate and irreparable injury, loss, or damage as a result of the vagueness of the criminal statute are contained within the sworn statements of Dan Caraher and Scott Selix filed on or about June 17, 2024 and June 27, 2024. *See Fed. R. Civ. P. 65(b)*. Alternatively, and for the reasons stated in support of the Complaint but as renewed as relating to the Amended Complaint filed today, this Court should enter a preliminary injunction pursuant to Federal Rule of Civil Procedure 65(a) for the reasons previously stated in Plaintiffs’ briefing to this Court on the issues raised therein.

### **CONCLUSION**

Beginning July 1, 2024, the Department is set to interpret, enforce, and otherwise administer Iowa’s consumable hemp laws to include a Potency Limit as enacted in Section 2 of House File 2605, to be codified at Iowa Code § 204.2(2)(c)(2)(b), and Packaging and Labeling Authority as enacted in Section 4 of House File 2605, to be codified at Iowa Code § 204.7(8)(a)(3). Both provisions violate the Supremacy Clause of the United States Constitution, or otherwise conflict with an area of federal regulation in which the FDA should

decide—as a matter of first impression—the technical or specialized components of such regulation prior to judicial intervention. The Potency Limits are a clear violation of the Due Process Clause of the United States Constitution as the limits are void for vagueness. The statute, as written and interpreted by the Department, will irreparably harm Plaintiffs.

Accordingly, Plaintiffs respectfully request the Court issue a temporary restraining order and/or preliminary injunction striking down the identified provisions of House 2605, or alternatively, preventing the Department from interpreting, enforcing, or otherwise administering Iowa’s consumable hemp laws to include a Potency Limit or Packaging and Labeling Authority not identical to federal requirements or otherwise consistent with the plain language of House File 2605.

BELIN McCORMICK, P.C.

*/s/ Michael R. Reck*

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