

No. 21-760

IN THE

Supreme Court of the United States

LAURA KELLY, in her official capacity as Governor of
Kansas; DEREK SCHMIDT, in his official capacity as
Attorney General of Kansas,

Petitioners,

v.

ANIMAL LEGAL DEFENSE FUND; CENTER FOR FOOD
SAFETY; SHY 38, INC.; HOPE SANCTUARY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Kansas’s “Ag-Gag” law, Kan. Stat. Ann §§ 47-1825 *et seq.*, criminalizes accessing an animal facility by deception and with “the intent to damage the enterprise conducted at the animal facility.” Under this provision, an undercover investigator who enters an animal facility with the intent to expose food safety and animal welfare violations is guilty of a crime. Any person who lies about her identity and enters the same facility with the intent to laud its practices is not. Nor is a person who obtains access to the facility by deception but has no intent one way or the other to help or hurt the enterprise, say an undercover reporter who plans to write an article comparing different animal facilities. The Tenth Circuit held in this case that the statute thus “places pro-animal facility viewpoints above anti-animal facility viewpoints,” Pet. App. 27, and is subject to strict scrutiny under the First Amendment. Because Kansas made no effort to justify its Ag-Gag law under that standard, the court held the statute unconstitutional.

The question presented is:

Whether the Tenth Circuit correctly held that Kan. Stat. Ann. §§ 47-1827(b), (c), and (d) violate the First Amendment because they criminalize speech on the basis of viewpoint?

CORPORATE DISCLOSURE STATEMENT

In accordance with United States Supreme Court Rule 29.6, Respondents Animal Legal Defense Fund, Center for Food Safety, Shy 38, Inc., and Hope Sanctuary hereby certify that they have no parent corporations, and that no publicly-held company owns ten percent or more of the stock of any Respondent.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
STATEMENT OF THE CASE.....	2
Undercover investigations at animal facilities reveal important matters of public concern.....	2
Kansas enacts its Ag-Gag law to chill speech ...	4
The district court strikes Kansas’s Ag-Gag law under the First Amendment.....	5
The Tenth Circuit affirms based on viewpoint discrimination	6
REASONS FOR DENYING CERTIORARI	7
I. The Tenth Circuit’s Opinion Does Not Conflict With Any Other Circuit Precedent.	7
II. This Case Is An Unsuitable Vehicle And Offers No Opportunity To Clarify <i>Alvarez</i>	17
III. This Court’s Review Would Be Premature.....	19
IV. The Tenth Circuit’s Decision Is Correct.	21
CONCLUSION.....	28

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