



Legislature Vindicates KJI's Call to Action

May 3, 2021 – Douglas County business owner, Peach Madl, dismissed her lawsuit advocating for business owners' right to an immediate due process hearing when impacted by a local health order.

The Douglas County Health Officer previously created a bar curfew regime that forced businesses to close earlier than state law permitted regardless of a bar's COVID-19 mitigation protocols. Peach dismissed her lawsuit after that order was lifted and with the passage of SB 40.

Kansas Justice Institute and Peach Madl partnered to file their federal lawsuit in October, arguing, among other things, they were entitled to a due process hearing in instances where a local health order impacted a business operation, such as a reduction in a bar's operation of hours. The legislature responded by enacting Senate Bill 40, ensuring businesses in Kansas have due process rights, even during a pandemic.

Sam MacRoberts of Kansas Justice Institute, who represented Peach and The Sandbar, said, "The bar curfew was arbitrary and unreasonable, especially considering the safety measures Peach enacted. Now that there's a hearing process, I predict we'll see less and less arbitrary health orders around the state."

Peach Madl is the owner of the downtown Lawrence institution, The Sandbar, and was suing for her right to lawfully operate her business while keeping her customers safe during the COVID-19 pandemic.

"We continue to take measures to keep our friends and staff healthy and are just so pleased that we now have a right to be heard," said Peach Madl. "We wanted to make our case that we were taking the necessary steps to keep folks safe, and that is now part of state law. We couldn't be happier and look forward to welcoming Kansans for a safe drink anytime!"

"We have been adamant since day one: a local health officer can't order The Sandbar to close early without a due process hearing. The Kansas Legislature responded by creating the very process for which we were advocating," said MacRoberts.

SB 40 opens the doors for everyday Kansans to challenge a local health order. After filing a civil action, they will receive a hearing within 72 hours. The burden is on the government to prove that their action is justified and appropriate.

MacRoberts continued, "I'm proud of Peach for taking a stand. She filed this lawsuit for all of the bar owners in Lawrence impacted by the various health orders. We are grateful to Douglas County, who remained professional and courteous throughout the lawsuit."

Kansas Justice Institute is the litigation arm of the Kansas Policy Institute. KJI's Fourth Amendment lawsuit protected Linn County residents from warrantless searches and seizures. It directly led to passage of the COVID-19 Contact Tracing Privacy Act, as their action with The Sandbar prompted

legislative action on SB 40, ensuring Kansans have due process rights. KJI won its first suit in 2019 to protect the First Amendment rights of raw milk dairies in Kansas.