

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

_____)
AMERICAN AMUSEMENT MACHINE)
ASSOCIATION, et al.,)
	Plaintiffs,)
)
	v.)
)
TERI KENDRICK, et al.,)
	Defendants.)
_____)

Case No. 1POO-1321 C H/G

**APPLICATION FOR CONVERSION OF PRELIMINARY
INJUNCTION TO PERMANENT INJUNCTION**

Plaintiffs American Amusement Machine Association, et al., by counsel, respectfully move the Court under Federal Rule of Civil Procedure 65(a)(2), and in accordance with the mandate of United States Court of Appeals for Seventh Circuit issued June 4, 2001, for entry of a permanent injunction on Counts I through IV of Plaintiffs' Complaint. In support of this motion, Plaintiffs state as follows:

1. At the hearing on Plaintiffs' motion for a preliminary injunction before this Court, Deputy Mayor David Harris, as the designated witness for the City of Indianapolis, testified that all of the studies and information relied upon by the City in enacting the provisions of the Ordinance at issue here are contained in the record of this case. Specifically, Harris testified that all of the material relied upon by the City was contained in (1) the City's Appendices filed with the Court in opposition to Plaintiffs' motion for a preliminary injunction, and (2) in Exhibit 14 to Harris' deposition. See Exhibit A, attached hereto (Harris Dep. Tr. at 13). As such, these studies were made part of the record in this case, as well as part of the record on appeal.

2. On appeal from denial of Plaintiffs' application for a preliminary injunction, the United States Court of Appeals for the Seventh Circuit held that the studies upon which the City relies ...do not support the ordinance." *AAMA v. Kendrick*, 244 F.3d 572, 578-60 (7th Cir. 2001). Furthermore, the Seventh Circuit held that if the Defendants could not present evidence demonstrating that the Ordinance could survive strict scrutiny, "a permanent injunction should promptly be entered." *Id.* at 579. Plaintiffs maintain that no such evidence exists.

3. Under Rule 65(a)(2) of the Federal Rules of Civil Procedure, the Court may consolidate the preliminary injunction hearing with a trial on the merits, either before or after the preliminary injunction hearing. In light of Deputy Mayor Harris' testimony as to the completeness of the record in this case and the ruling of the Seventh Circuit, Plaintiffs contend that consolidation is appropriate here.

4. Accordingly, Plaintiffs request that the Court issue an order providing the City 10 days in which to make a detailed proffer of what additional evidence, if any, they intend to present to meet the burden of proof explicated by the Seventh Circuit. *Cf. Fed. R. Civ. P. 56.*

5. Should the City's proffer fail to meet that burden, Plaintiffs request that the Court reconvene the hearing on the Plaintiffs' application for preliminary injunction and enter of a permanent injunction as to Counts I, II, III and IV of their Complaint, and request that Plaintiffs' claims under the Indiana Constitution and any claims for attorneys' fees be resolved at a later date.

Respectfully submitted,

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