

**In the United States Court of Appeals
for the Fourth Circuit**

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.;
CENTER FOR FOOD SAFETY; ANIMAL
LEGAL DEFENSE FUND; FARM
SANCTUARY; FOOD & WATER
WATCH; GOVERNMENT
ACCOUNTABILITY PROJECT; FARM
FORWARD; and AMERICAN SOCIETY
FOR THE PREVENTION OF CRUELTY
TO ANIMALS,

Plaintiffs-Appellees, Cross-Appellants,

v.

No. 20-1776

JOSH STEIN, in his official capacity as
Attorney General of North Carolina, and
DR. KEVIN GUSKIEWICZ, in his official
capacity as Chancellor of the University of
North Carolina-Chapel Hill,

Defendants-Appellants, Cross-Appellees,

And

NORTH CAROLINA FARM BUREAU
FEDERATION, INC.,

*Intervenor-Defendant-Appellants, Cross-
Appellees.*

Reply In Support of Plaintiffs' Motion To Dismiss Intervenor's Appeal

The Farm Bureau's ("Intervenor's") response to Plaintiffs' motion to dismiss proves Plaintiffs' contentions. The footnote that supposedly salvages the Farm Bureau's appeal, an appeal it filed independently from the named State Defendants, repeats the standard Plaintiffs articulated: On appeal, an intervening-defendant "must independently demonstrate Article III standing," or establish that it is relying on another party with standing and limit its relief to requests no "broader than or different from the party invoking a court's jurisdiction." *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2379 n.6 (2020). Here, however, the Farm Bureau effectively concedes it lacks standing, that it has already sought relief distinct from that of the State Defendants, and that it will likely do so again. Thus, its action, No. 20-1776, cannot proceed.

Indeed, the Farm Bureau entirely abandons its argument that it has standing to represent its own organizational interests; even though this was its lead standing argument before the district court. Dkt. No. 83, at 7 n.2.

Instead, it relies on a theory that because Plaintiffs might "target[]" "farms" with their advocacy that the challenged law seeks to stifle, and Intervenor calls itself the "North Carolina Farm Bureau," there must be a "substantial likelihood that if the district court's judgement is upheld ... [Intervenor's] members will suffer"; namely, they will lose a tool to retaliate against groups that investigate and advocate against abusive farm practices. Int. Resp. 1-2; *see also id.* at 7. Plaintiffs

would welcome a world in which such labels establish standing. People for the Ethical Treatment of Animals (“PETA”) would be able to challenge any law that restricted the ability to protect animals—be it through limiting one’s ability to house them on one’s property, narrowly defining abuse, or limiting medical malpractice claims—because its name suggests it represents “people” likely to have an interest in those laws. Unfortunately, that is not the world we live in.¹

For an organization to have standing on behalf of its members, it must produce evidence that “its members would otherwise have standing to sue.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977). To prove the injury-in-fact element of standing, the party with the burden “must show ... ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

The two member declarations the Farm Bureau produced to support its membership standing fail that test. As the Farm Bureau admits, Plaintiffs stated

¹ Plaintiffs also dispute that the Farm Bureau’s primary function is to represent farmers. It is largely a conglomeration of insurance companies, *e.g.* “State Farm,” and thus engages in advocacy in a variety of issue areas to protect its for-profit businesses, not farmers. *See, e.g.*, Mike Wallace, *The Farm Bureau’s Big Business*, CBS News (April 6, 2000), <https://www.cbsnews.com/news/the-farm-bureaus-big-business/>. But, the Court need not delve into the Farm Bureau’s spin to resolve this matter.

they are interested in advocating against certain “animal facilities in North Carolina.” Int. Resp. 7-8. Yet, one of the Farm Bureau’s declarants explains her farm only raises “cotton, soybeans, wheat, and sweet potatoes.” Dkt. No. 83-3 ¶ 1. As a result, she does not fear any advocacy by Plaintiffs, but an unidentified person who would, for unknown reasons, “create bogus problems that would seriously interfere with [her] sweet potato harvest and sales.” *Id.* ¶ 4. The Farm Bureau’s other member declarant at least claims to engage in animal agriculture, but he does not identify any facts that suggest *he* would be subject to Plaintiffs or even anyone else’s advocacy. He solely states he believes this is “possibl[e]” because he purports to “know farm families who have been” investigated by advocacy groups. Dkt. No. 83-2 ¶¶ 5-6. The Farm Bureau’s evidence that its members currently or imminently need to use the challenged law, and thus would lose something if Plaintiffs prevail in striking it down, is nonexistent. “Someday” allegations do not establish an injury-in-fact, and the Farm Bureau’s evidence is, at best, that its members might someday be injured, somehow, by someone if the challenged law is struck down. *Lujan*, 504 U.S. at 564.

Regarding its ability to “piggyback” on the State Defendants’ standing, the Farm Bureau concedes it has already violated this principle. The Farm Bureau does not dispute that it understood the State Defendants and Plaintiffs were in discussions to resolve this matter without appeal, and that the Farm Bureau filed its

notice of appeal to upset those discussions. Int. Resp. 2. In other words, the very existence of this matter reflects the Farm Bureau's decision to seek relief distinct from that which was being sought by the defendant with standing.²

Moreover, the Farm Bureau's Response underscores its interests will continue to diverge from the State Defendants, not just in the "arguments" it will raise, but the "relief" it must seek. *See* Int. Resp. 5-6. The Farm Bureau repeatedly states its goal is to protect agribusinesses' ability to use the challenged law against groups like Plaintiffs. *See, e.g., id.* 7-9. As the district court explained, the rationale offered by the State for the challenged law was that "North Carolina employers need stronger measures to protect their data and merchandise against corporate espionage, organized retail theft, and internal data breaches," activities in which Plaintiffs do not engage. *PETA v. Stein*, No. 1:16CV25, --- F.Supp.3d ---, 2020 WL 3130158, at *18 (M.D.N.C. June 12, 2020).³ As a result, assuming the State's contentions were genuine, its interests could be served by attacking the district

² State Defendants' appellate counsel appears to misunderstand the issue and/or be unaware of events occurring at the district court. He represents that "Plaintiffs have no basis for speculating about the reasons the State defendants filed an appeal in this case." Defs. Resp. 3. Why the State Defendants appealed *following* the Farm Bureau's appeal is not relevant. What is relevant is that the Farm Bureau appealed in an effort to force the State Defendants' hand, asserting authority over this litigation it does not possess.

³ The district court found the claim that the State actually needed the law to accomplish these ends was "merely conjectural." *PETA*, 2020 WL 3130158, at *18.

court's holding that certain provision are facially invalid, leaving untouched the ruling that other provisions are invalid as applied to Plaintiffs. The Farm Bureau in contrast requires different relief, that the entire decision be reversed, because it is only concerned with Plaintiffs' activities.

Finally, the Farm Bureau's suggestion that the Court should wait and see what arguments will be raised will prejudice Plaintiffs. Int. Resp. 6. The Farm Bureau is proposing that Plaintiffs litigate an entire appeal against a party who has no basis to raise claims. In other word, through delay it seeks to accomplish the end to which it is not entitled. This is particularly problematic as this constitutional challenge allows for fee shifting against the State Defendants. 42 U.S.C. § 1988. The State Defendants will surely argue, however, that the time spent litigating against Intervenor is not compensable.⁴ Therefore, the Farm Bureau is not only seeking to distract Plaintiffs, but improperly drain their resources.

The State Defendants make clear they are prepared to "vigorously defend[] the challenged legislation" to the extent and in the manner they believe appropriate. Defs. Resp. 3. They are the only defending parties with a cognizable interest that should direct this matter. And, when Plaintiffs prevail, they will properly compensate Plaintiffs for protecting North Carolinians' rights when their

⁴ Plaintiffs reserve the right to argue otherwise.

government failed to do so. Therefore, the Farm Bureau's appeal should be dismissed so the true parties can litigate as civil rights law and Article III intends.

August 27, 2020

Respectfully submitted,

By: /s/ David S. Muraskin
David S. Muraskin
PUBLIC JUSTICE, P.C.
1620 L St. NW, Suite 630
Washington, DC 20036
(202) 861-5245
dmuraskin@publicjustice.net
Counsel for Plaintiffs

Daniel K. Bryson
N.C. Bar Number: 15781
Jeremy Williams
N.C. Bar Number: 48162
Whitfield Bryson & Mason LP
900 W. Morgan Street
Raleigh, NC 27603
(919) 600-5000
dan@wbmlp.com
jeremy@wbmlp.com
Counsel for Plaintiffs

Gabriel Walters
PETA Foundation
1563 16th St. NW
Washington, DC 20036
(202) 483-7382
gabew@peta.org
*Counsel for People for the Ethical
Treatment of Animals, Inc.*

Matthew Strugar
3435 Wilshire Blvd., Suite 2910
Los Angeles, CA 90010
(323) 696-2299
matthew@matthewstrugar.com
*Counsel for People for the Ethical
Treatment of Animals, Inc.*

Cristina Stella
Kelsey Eberly
Animal Legal Defense Fund
525 East Cotati Avenue
Cotati, CA 94931
(707) 795-7533
cstella@aldf.org
keberly@aldf.org
Counsel for Animal Legal Defense Fund

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Date: August 27, 2020

/s/ David S. Muraskin

David S. Muraskin
Public Justice, P.C.
1620 L St. NW, Suite 630
Washington, DC 20036
(202) 861-5245
dmuraskin@publicjustice.net
Counsel for Plaintiffs

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I HEREBY CERTIFY that on the August 27, 2020, the foregoing document was served on all parties or their counsel of record through CM/ECF system.

Dated: August 27, 2020

Respectfully submitted,

/s/ David S. Muraskin

David S. Muraskin

Public Justice, P.C.

1620 L St. NW, Suite 630

Washington, DC 20036

(202) 861-5245

dmuraskin@publicjustice.net

Counsel for Plaintiffs