

**In The United States District Court
For The Middle District of North Carolina
Greensboro Division**

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

Plaintiffs,

v.

ROY COOPER, in his official capacity as
Attorney General of North Carolina, and
CAROL FOLT, in her official capacity as
Chancellor of the University of North
Carolina-Chapel Hill,

Defendants.

Case No.: 16-cv-25

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CONCERNING THE
CONSTITUTIONALITY OF
A STATE STATUTE**

I. INTRODUCTION.

1. Overriding the Governor's veto, the North Carolina legislature enacted Session Law 2015-50 (codified at N.C. Gen. Stat. § 99A-2), an "Anti-Sunshine Law" designed to deter whistleblowing regarding workplace activities by individuals who seek to inform the public about matters of public concern. The law attacks the core values embodied by the federal and state constitutional protections of speech and the press; it obstructs the federal and state right to petition; it violates the federal and state constitutional guarantees of equal protection and due process of the laws; and it is unconstitutionally vague. The law should be declared unconstitutional under the First

and Fourteenth Amendments of the United States Constitution, and under Article I, Sections 12, 14, and 19 of the North Carolina Constitution, and Defendants should be enjoined from enforcing its provisions.

2. The text of the Anti-Sunshine Law makes clear that the statute's central targets are whistleblowers, such as investigative journalists and activists engaged in undercover investigations, who seek to share information with the public. Unlike a generally applicable statute that would create liability for all employees, the Anti-Sunshine Law only regulates five enumerated acts, which primarily involve the intentional collection of information that employers and property owners wish to keep from public view. The Anti-Sunshine Law is also focused on those who seek to share that information with the public. The law exempts from liability individuals who collect information and provide it to their superiors or government officials under certain state statutes, rather than releasing it to the public. As a result, the Anti-Sunshine Law is directed at those who set out to investigate employers' and property owners' conduct because they believe there is value in exposing employers' and property owners' unethical or illegal behavior to the disinfecting sunlight of public scrutiny.

3. The Anti-Sunshine Law's legislative history confirms that the statute's aim is to keep whistleblowers from exposing employers' and property owners' hidden conduct to the public. In the words of one of the bill's supporters, the law's goal is to allow employers and property owners to engage in activities of public concern without fear of an "exposé."

4. Because the Anti-Sunshine Law targets the gathering of information in order to inform the public, it attacks “the core value” embodied by the federal and state constitutional protections of speech and the press, “[t]he public interest in having free and unhindered debate on matters of public importance.” *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 573 (1968). It is a content-based regulation of speech, which also discriminates based on the viewpoint of the speaker, a particularly “egregious form of content discrimination.” *Rosenberger v. Rectors & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995). It also targets and disproportionately burdens the press. Such infringements on speech or the press are presumptively unconstitutional, requiring the state to carry a significant burden in order to preserve the statute, which it cannot do here. *Minneapolis Star & Tribune Co. v. Minnesota Comm’r of Revenue*, 460 U.S. 575, 585 (1983). Further, the Anti-Sunshine Law is unconstitutionally overbroad. While Plaintiffs contend that the law cannot ever be constitutionally applied, even if it had some constitutional applications—and even if the law could be constitutionally applied to Plaintiffs—the Anti-Sunshine Law’s unconstitutional applications substantially outweigh its constitutional ones and, as a result, the law must be struck down.

5. Further, the Anti-Sunshine Law also interferes with citizens’ ability “to express their ideas . . . and concerns to their government” and thus violates the right to petition afforded by the First Amendment of the United States Constitution, and Article I, Section 12 of the North Carolina Constitution. *Borough of Duryea v. Guarnieri*, 131 S. Ct. 2488, 2495 (2011). In fact, because the statute only carves out

an exception for reporting employers' or property owners' activities under certain state laws, it prohibits citizens reporting to their government through other, statutorily prescribed channels. As a result, the law can only stand in the "most extreme circumstances," a showing the state cannot make here. *McDonald v. Smith*, 472 U.S. 479, 486 (1985) (Brennan, J. concurring).

6. The Anti-Sunshine Law also violates the guarantees of equal protection and due process of laws provided for in the Fourteenth Amendment of the United States Constitution, and Article I, Section 19 of the North Carolina Constitution. The statute's legislative history reveals that the law was motivated by animus towards, and targeted at a particular class of individuals and interferes with their fundamental right of free speech. Therefore, at the least, the law is subject to strict scrutiny, placing the burden on the state to demonstrate the law's constitutionality, which it cannot do. *See Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 & n.3 (1976). Thus, the Anti-Sunshine Law cannot stand.

7. Finally, the Anti-Sunshine Law is unconstitutionally vague under the First and Fourteenth Amendments of the United States Constitution, and Article I, Sections 14 and 19 of the North Carolina Constitution. The Anti-Sunshine Law is a quasi-criminal statute that interferes with speech, yet it fails to define a variety of key terms in § 99A-2(b)(1) and § 99A-2(b)(2). In this manner, the Anti-Sunshine Law fails to provide due process and suppresses a substantial amount of constitutionally protected speech. Accordingly, §§ 99A-2(b)(1)-(b)(2) are unconstitutional.

8. Therefore, Plaintiffs ask the Court to declare the Anti-Sunshine Law unconstitutional under the First and Fourteenth Amendments to the United States Constitution, and Article I, Sections 12, 14, and 19 of the North Carolina Constitution, and to enjoin Defendants from enforcing the statute so that Plaintiffs can continue to engage in their constitutionally protected activities.

II. JURISDICTION AND VENUE.

9. This action arises under the United States Constitution and the laws of the United States, including 42 U.S.C. §§ 1983 and 1988. Therefore, this Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

10. North Carolina law provides a cause of action against state officials for violations of the state constitution. *State v. Petersilie*, 432 S.E.2d 832, 841 (N.C. 1993).

11. Pursuant to 28 U.S.C. § 1367 the Court may exercise supplemental jurisdiction over the claims arising under the North Carolina state constitution.

12. This action also arises under the Court's inherent equitable jurisdiction.

13. This Court has authority to grant the declaratory and injunctive relief requested pursuant to 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure, as well as the Court's inherent equitable powers.

14. Venue is proper in the United States District Court for the Middle District of North Carolina pursuant to 28 U.S.C. § 1391(b)(1) and (2).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.