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.

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

No. 20-1776

Motion To Dismiss Intervenor's Appeal For Lack Of Jurisdiction

"Plaintiffs brought this action, alleging that [N.C. Gen. Stat. § 99A-2] interferes with their plans to conduct undercover investigations of government facilities in North Carolina for the purpose of gathering evidence of unethical and illegal animal practices and to disseminate this information to the public, in violation of the First and Fourteenth Amendments to the United States Constitution … . Plaintiffs sought an order declaring the Act unconstitutional and enjoining [North Carolina governmental] Defendants from enforcing the Act." *People for the Ethical Treatment of Animals, Inc. v. Stein*, 737 Fed. App'x 122, 126 (4th Cir. 2018). This Court held Plaintiffs pled standing against the named State Defendants, the Chancellor of the University of North Carolina—Chapel Hill and the North Carolina Attorney General. *Id.* at 131-132. On remand, the district court held the challenged provisions of N.C. Gen. Stat. § 99A-2 were unconstitutional on their face or as-applied to Plaintiffs, and enjoined the State Defendants from enforcing the law. *People for the Ethical Treatment of Animals, Inc. v. Stein*, --- F. Supp. 3d ---, 2020 WL 3130158, at *25 (M.D.N.C. June 12, 2020) (also attached as Exhibit A pursuant to Federal Rule of Appellate Procedure 27(a)(2)(B)(iii)).

Between this Court's remand for consideration of the merits, and the district court's determination on the merits, the district court exercised its discretion to allow the North Carolina Farm Bureau Federation, Inc. ("Farm Bureau") to

intervene. It explained it was exercising its discretion under Federal Rule of Civil Procedure 24(b) to allow the Farm Bureau to enter the case because the Farm Bureau would assist the State's defense, "arguing the same question[s]" as the State Defendants. Dkt. No. 92, at 7.

The Farm Bureau has now filed the lead notice of appeal in this matter. Dkt. No. 143 (Farm Bureau Notice of Appeal), *appeal docketed* No. 20-1776. The Farm Bureau's appeal is separate and apart from the State Defendants' Notice of Appeal, which the Farm Bureau did not join. Dkt. No. 145 (State Defendants' Notice of Appeal), *appeal docketed* No. 20-1777.

Controlling Supreme Court precedent makes clear the Farm Bureau lacks standing to prosecute an independent appeal of this matter. *See, e.g., Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013). The district court's injunction does not run against the Farm Bureau or any of its members, only the State Defendants. The Farm Bureau's only interest in this matter is its generalized grievance that it believes N.C. Gen. Stat. § 99A-2 should be held constitutional. Such a concern has never provided standing. While the Farm Bureau conceivably could have proceeded *with* the State Defendants, as only one party to an action must have standing, that is not how it or the State Defendants chose to docket their appeals. *See Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006) ("the presence of one party with standing is sufficient to satisfy Article III's

case-or-controversy requirement"). As described below, the Farm Bureau chose to proceed on its own to disrupt Plaintiffs' and Defendants' efforts to resolve this matter without appeal. This Court lacks jurisdiction over that independent action and it should be dismissed.[1]

I. For An Intervenor To Appeal It Must Have Standing.

Article III's standing requirements apply to appellants just as they apply to district court plaintiffs. As the Supreme Court has explained, while "[m]ost standing cases consider whether a plaintiff has satisfied the requirement when filing suit, [] Article III demands that an actual controversy persist throughout all stages of litigation. That means that standing must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Hollingsworth*, 570 U.S. at 705 (internal citations omitted). Thus, where a district court allows individuals who are not the named defendants "to intervene to defend" the challenged law, if those intervenors subsequently appeal, the court of appeals "must decide whether [they] ha[ve] standing to appeal the District Court's order." *Id.* at 702, 705.

[1] Pursuant to Local Rule 27(a), Plaintiffs informed counsel for both the Farm Bureau and State Defendants of their intent to file this motion. The Farm Bureau indicated it will oppose this motion. The State Defendants indicated they did not wish to take a position without seeing and considering the motion.

Indeed, the Supreme Court, sitting as a court of appeals, relied on this principle to dismiss an appeal by state legislators who intervened to defend a law they passed. The Court explained the legislators "carried the laboring oar in urging the constitutionality of the challenge [law] at a bench trial." *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1950 (2019). Nonetheless, "'[m]erely because a party appears in the district court proceedings does not mean that the party automatically has standing to appeal the judgment rendered by that court.'" *Residences at Bay Point Condo. Ass'n, Inc. v. Standard Fire Ins. Co.*, 641 Fed. App'x 181, 183 (3d Cir. 2016) (unpublished) (quoting *Rohm & Hass Tex., Inc. v. Ortiz Bros. Insulation*, 32 F.3d 205, 208 (5th Cir. 1994)). Therefore, when intervenors "seek[] to invoke" a court of appeals' jurisdiction, they must establish they have standing "in [their] own right" to proceed. *Virginia House of Delegates*, 139 S. Ct. at 1951.

II. The Farm Bureau Lacks Standing To Appeal On Its Own.

Supreme Court authority also provides intervenors like the Farm Bureau lack standing to appeal. In *Hollingsworth*, like here, the district court allowed the private "proponent of [an] initiative [] to intervene to defend it" on the merits. *Hollingsworth*, 570 U.S. at 702 (internal citation omitted). There, like here, the plaintiffs prevailed, but the "District Court had not ordered [intervenors] to do or

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