

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-Appellant,
Cross-Appellee.*

No. 20-1776 (L)

**DEFENDANTS-APPELLANTS' RESPONSE TO
MOTION TO DISMISS INTERVENOR'S APPEAL FOR
LACK OF JURISDICTION**

Defendants Josh Stein and Kevin Guskiewicz (the “State defendants”) respond to plaintiffs’ motion to dismiss the appeal of intervenor-defendant North Carolina Farm Bureau Federation, Inc. (“Farm Bureau”) as follows:

1. Plaintiffs move to dismiss Farm Bureau’s appeal because Farm Bureau allegedly lacks Article III standing, as an intervenor-defendant, to appeal from the district court’s order granting in part and denying in part the parties’ cross-motions for summary judgment.

2. This Court has consolidated Farm Bureau’s appeal, No. 20-1776; the State defendants’ appeal, No. 20-1777; and plaintiffs’ cross-appeal, No. 20-1807. The State defendants therefore consider the three appeals to be a single, consolidated case.

3. Plaintiffs have not moved to dismiss the State defendants’ appeal. Instead, plaintiffs’ motion is limited to Farm Bureau’s appeal as an intervenor-defendant. As a result, the State defendants take no position on plaintiffs’ motion.

4. However, the State defendants briefly respond to correct several inaccuracies in plaintiffs’ motion.

5. *First*, plaintiffs state that Farm Bureau’s appeal “successfully disrupted” settlement negotiations between plaintiffs and the State defendants. Mot. at 10. That is not an accurate representation. Plaintiffs have no basis for speculating about the reasons the State defendants filed an appeal in this case. In any event, the course of settlement negotiations between plaintiffs and the State defendants is irrelevant to the question whether Farm Bureau’s appeal should be dismissed for lack of jurisdiction.

6. *Second*, plaintiffs argue that Farm Bureau “has sought to direct this litigation” and that the State defendants have not “genuinely prosecute[d]” certain “theories” to support the constitutionality of the statute at issue here. Mot. at 10. Again, that is not an accurate representation. As the State defendants told the district court in their response to Farm Bureau’s motion to intervene, the State defendants “have vigorously defended the challenged legislation in this lawsuit to date and intend to continue to do so as this litigation progresses.” Dkt. 89 at 2.

7. Nothing has changed since that time. Plaintiffs point to one argument that Farm Bureau made in its motion for summary judgment

but that the State defendants allegedly “did not genuinely prosecute.” Mot. at 10 (comparing Dkt. 110 at 19-22, with Dkt. 108 at 26). That is misleading. Plaintiffs cite a portion of the State defendants’ motion for summary judgment in which the State defendants incorporated by reference Farm Bureau’s arguments about why the challenged statute does not violate due process. Dkt. 108 at 26. Farm Bureau, in turn, incorporated by reference the State defendants’ arguments about why the challenged statute does not violate equal protection. Dkt. 110 at 23.

8. It is common—and entirely appropriate—for multiple parties before a district court to incorporate each other’s arguments by reference.¹ The decision to do so here provides no support for plaintiffs’ statement that Farm Bureau is “direct[ing]” the litigation, or that the State defendants are failing to “genuinely prosecute” it. *See* Mot. at 10. And in any event, the “genuineness” of the State defendants’ litigation

¹ *See, e.g., Shore v. Charlotte-Mecklenburg Hosp. Authority*, 412 F. Supp. 3d 568, 571 (M.D.N.C. 2019) (Schroeder, J.) (accepting motion to dismiss by one set of defendants that “adopt[ed] and incorporate[d] by reference the facts, authorities, and arguments” in motion to dismiss by another set of defendants in the same action and granting that motion as to all defendants), *appeal voluntarily dismissed*, No. 19-2086, 2019 WL 8359567, at *1 (4th Cir. Dec. 16, 2019).

conduct is irrelevant to the question whether Farm Bureau's appeal should be dismissed for lack of jurisdiction.

9. The State defendants otherwise take no position on plaintiffs' motion.

Respectfully submitted, this the 24th day of August 2020.

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