No. 20-1776

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

NORTH CAROLINA FARM BUREAU FEDERATION, INC.'S RESPONSE TO PLAINTIFFS' MOTION TO DISMISS INTERVENOR'S APPEAL FOR LACK OF JURISDICTION

INTRODUCTION

This Court should deny the motion to dismiss Defendant/Appellant North Carolina Farm Bureau Federation, Inc.'s ("NCFB") appeal filed by Plaintiffs/Appellees-Cross-Appellants People for the Ethical Treatment of Animals *et al*. ("PETA" or "Plaintiffs"). The basis for Plaintiffs' motion is that NCFB lacks standing to pursue the appeal, but the law is clear that NCFB need not establish its independent standing to do so. In any event, NCFB has standing in its own right.

This case concerns the constitutionality of the North Carolina Property Protection Act, N.C. Gen. Stat. § 99A-2 (2016). Plaintiffs contend that NCFB lacks standing to appeal from the district court's judgment enjoining enforcement of the Act. But as Plaintiffs admit, intervenors do not need to show standing to appeal when "proceed[ing] with a party who ha[s] standing." Mot. 9 (emphasis omitted). Here, Defendants/Appellants-Cross-Appellees Josh Stein and Kevin Guskiewicz (the "State Defendants") have also appealed from the same district court judgment, and this Court has consolidated both appeals and Plaintiffs' cross-appeal into a single proceeding. Plaintiffs' motion thus fails at the threshold.

Setting aside the presence of the State Defendants, NCFB has standing to appeal in its own right. When this case was last before the Court, Plaintiffs argued successfully that they had standing to challenge the Property Protection Act because they had "targeted" a "comprehensive list of animal facilities" in North Carolina for investigation—"*including* farms"—but were dissuaded from doing so because of the civil liability protections the Property Protection Act affords property owners. *People*

for Ethical Treatment of Animals, Inc. v. Stein, 737 F. App'x 122, 127 (4th Cir. 2018) ("*Stein I*") (emphasis added). There is thus a substantial likelihood that if the district court's judgment is upheld, NCFB and its members will suffer the very harms the Property Protection Act is designed to prevent. Put another way, NCFB's interest in this lawsuit is simply the flip side of Plaintiffs' claimed "invasion of legally protected interest" in engaging in conduct that they claim is protected by the First Amendment. *Id*. at 128.

Plaintiffs' real concern in seeking to dismiss NCFB's appeal appears to be that they were hoping to settle the case with the State, but that NCFB filing a notice of appeal "disrupted" that hope in some way. *See* Mot. 10. That Plaintiffs' hopes of settlement were disappointed has nothing to do with NCFB's right to file a notice of appeal. The State Defendants filed their own notice of appeal to defend the Property Protection Act; as a co-appellant NCFB does not need to establish standing; and in any event NCFB has shown it has standing. Plaintiffs cannot explain how their dashed settlement hopes affect the parties' rights to appeal.

I. NCFB DOES NOT NEED INDEPENDENT STANDING.

Chief Judge Schroeder allowed NCFB permissive intervention in the district court in May 2019. *See* Dkt. 92. As Intervenor, NCFB filed joint briefs with the State Defendants to defend the Property Protection Act's constitutionality and orally argued the cross-motions to dismiss alongside the State Defendants at the motion hearing. After the district court denied NCFB and the State Defendants' motions for summary judgment and granted Plaintiffs' cross-motion in substantial part, NCFB and the State

Defendants both filed timely notices of appeal and Plaintiffs filed a cross-appeal. Dkt. 143, 145, Dkt. 149. The Court consolidated the appeals on August 4, 2020. The Court's order stated that "[t]he appellant(s) in Case No. 20-1776 [NCFB] and Case No. 20-1777 [the State Defendants] shall be considered the appellants for purposes of the consolidated appeals and shall proceed first at briefing and at oral argument."

Plaintiffs concede that an intervenor does not need to establish independent standing if it "proceed[s] *with* a party who ha[s] standing." Mot. 9. The Supreme Court confirmed that proposition recently in *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019), where it examined a state court case in which a party "intervened in support of defendants in the trial court," and concluded that the intervenor there was required to "independently demonstrate standing" only because the "primary party" did not file an appeal. *Id*. at 1951; *see also Texas v. United States*, 945 F.3d 355, 375 (5th Cir. 2019) ("Even if only one of these parties had standing to appeal, that would be enough to sustain the court's jurisdiction. An intervenor needs standing only 'in the absence of the party on whose side the intervenor intervened.'").

Plaintiffs do not—and cannot—dispute the State Defendants' standing to appeal. However, Plaintiffs assert that NCFB lacks standing because it filed an "independent" appeal and "strategically chose not to join the State Defendants' separate appeal." Mot. 8. That argument is contrary to Supreme Court authority and mischaracterizes NCFB's actions.

1. Just last month, the Supreme Court held in *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), that that the fact that

an intervenor files an "independent" appeal is not grounds for dismissal where another party to the consolidated appeals has standing and seeks the same relief. *Little Sisters* addressed appeals from a preliminary injunction against the implementation of government regulations that exempted certain employees from the Affordable Care Act's contraceptive mandate. The Little Sisters of the Poor intervened and appealed from the district court's preliminary injunction, as did the federal government. *Id.* at 2379. The two appeals were then consolidated. *Id*. Because the Little Sisters sought relief no "broader than or different from" the federal government, the Supreme Court held that the Third Circuit "erred" by questioning the intervenors' independent standing on appeal. *Id*. at 2379 n.6 (citing *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017)).

Little Sisters applies here with full force. The State Defendants "clearly ha[ve] standing" to invoke this Court's "appellate jurisdiction," *id*. and both the State Defendants and NCFB ask the court to reverse the judgment below and enter judgment in their favor. It is therefore improper to "inquir[e] into" NCFB's "independent Article III standing," as Plaintiffs' motion requests. *Id*.

2. Even if *Little Sisters* were not dispositive, the argument that NCFB acted "strategically" by not joining the State Defendants' appeal is mere rhetoric—and unmerited at that. There was no need for NCFB to join the State Defendants' appeal because NCFB had already filed its own notice of appeal, seeking the same relief. NCFB identified the State's related appeal in its docketing statement, and fully

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