

No. 20-1776 (L)

---

---

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*

---

On Appeal from the United States District Court for the Middle District of North  
Carolina

---

**BRIEF OF AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-  
APPELLEES AND IN SUPPORT OF AFFIRMATION IN PART AND  
REVERSAL IN PART**

---

*(Counsel listed on inside cover)*

Clare R. Norins  
FIRST AMENDMENT CLINIC  
University of Georgia School of Law  
P.O. Box 388  
Athens, Georgia 30603  
Telephone: (706) 542-1419  
Email: [cnorins@uga.edu](mailto:cnorins@uga.edu)

*Counsel for Amici Curiae\**

\*Counsel would like to thank law students Mark Bailey and Michael Sloman for their significant contributions to this brief.

## TABLE OF CONTENTS

	<b>Page</b>
TABLE OF AUTHORITIES .....	iii
INTEREST OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	1
ARGUMENT .....	7
I.    “ <i>No Set of Circumstances</i> ” Describes an Outcome, Not a Test .....	7
A. The Supreme Court eschews “no set of circumstances” when adjudicating facial challenges .....	8
B. A statute’s failure to survive the appropriate constitutional standard means there are “no set of circumstances” under which the statute can constitutionally be applied .....	12
II.   Sections (b)(1), (b)(2), (b)(3) & (b)(5) Fail Strict and Intermediate Scrutiny and Therefore are All Facially Invalid.....	14
A. Sections (b)(1), (b)(2) & (b)(5) fail strict scrutiny for lack of compelling interest .....	15
B. Sections (b)(1), (b)(2), (b)(3) & (b)(5) fail intermediate scrutiny for lack of narrow tailoring .....	19
III.  Section 99A-2 is Unconstitutionally Overbroad.....	21
A. It is dubious whether 99A-2 has a plainly legitimate sweep.....	23
B. In an overbreadth challenge, the court may properly consider the potential unlawful applications of the statute to parties not currently before it .....	24
C. Section 99A-2 penalizes a wealth of protected speech .....	25
1. Undercover investigations and dissemination of their findings will be squelched by 99A-2 .....	25
2. Undermining state and federal regulatory schemes, 99A-2 creates civil liability for whistleblowing and speech pursuant to government reporting statutes.....	28
3. Section 99A-2 burdens individuals seeking to protect their rights through petitioning the government or the courts for grievances ...	30

CONCLUSION .....32  
APPENDIX A .....34  
CERTIFICATE OF COMPLIANCE .....36  
CERTIFICATE OF FILING AND SERVICE .....37

## TABLE OF AUTHORITIES

Cases	Page
<i>ACLU v. Alvarez</i> , 679 F.3d 583 (7th Cir. 2012) .....	27
<i>Animal Legal Defense Fund v. Herbert</i> , 263 F.Supp.3d 1193 (D. Utah 2017) .....	22
<i>Animal Legal Defense Fund v. Kelly</i> , 434 F.Supp.3d 974 (D. Kan. 2020) .....	17
<i>Animal Legal Defense Fund v. Otter</i> , 44 F.Supp.3d 109 (D. Idaho 2014) .....	4, 27
<i>Animal Legal Def. Fund v. Reynolds</i> , 353 F.Supp.3d 812 (S.D. Iowa 2019) .....	22
<i>Animal Legal Defense Fund v. Reynolds</i> , 297 F.Supp.3d 901 (S.D. Iowa 2018) .....	4, 27
<i>Animal Legal Defense Fund v. Wasden</i> , 878 F.3d 1184 (9th Cir. 2018) .....	<i>passim</i>
<i>Billups v. City of Charleston</i> , 961 F.3d 673 (4th Cir. 2020) .....	11, 20
<i>Brown v. Entertainment Merchants Association</i> , 564 U.S. 786 (2011) .....	10
<i>Bruni v. City of Pittsburgh</i> , 824 F.3d 353 (3d Cir. 2016) .....	13
<i>Buehrle v. City of Key West</i> , 813 F.3d 973 (11th Cir. 2015) .....	28

# 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.