

A Win for Plaintiffs in Recent NC Ag-Gag Ruling

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Much of a 2015 North Carolina law that was meant to stop activists from posing as farm workers in order to gain access to footage and information about conditions on farms has been deemed unconstitutional on Friday, June 12, 2020. Various parties, including People for the Ethical Treatment of Animals, Center for Food Safety, and Animal Legal Defense Fund (with others, the “Plaintiffs”) filed the lawsuit, claiming that journalists are unable to do their jobs and whistleblowers are punished for exposing dangerous, illegal, or unethical activity.

On June 3, 2015, over then-Governor Patrick McCrory’s veto, the North Carolina General Assembly passed the North Carolina Property Protection Act (the “Act”). The Act amended current law that provides a civil remedy for interference with certain property rights by creating a civil cause of action for the owner or operator of a premises as follows:

(a) Any person who intentionally gains access to the nonpublic areas of another’s premises and engages in an act that exceeds the person’s authority to enter those areas is liable to the owner or operator of the premises for any damages sustained. For the purposes of this section, “nonpublic areas” shall mean those areas not accessible to or not intended to be accessed by the general public.

N.C. Gen. Stat. § 99A-2(a).

Under the law, “an act that exceeds the person’s authority” within the meaning of section (a) “is any of the following”:

1. An employee who enters the nonpublic areas of an employer’s premises for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and thereafter without authorization captures or removes the employer’s data, paper, records, or any other documents and uses the information to breach the person’s duty of loyalty to the employer [;]
2. An employee who intentionally enters the nonpublic areas of an employer’s premises for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and thereafter without authorization records images or sound occurring

within an employer's premises and uses the recording to breach the person's duty of loyalty to the employer[;]

3. Knowingly or intentionally placing on the employer's premises an unattended camera or electronic surveillance device and using that device to record images or data [;]
4. Conspiring in organized retail theft, as defined in Article 16A of Chapter 14 of the General Statutes [;or,]
5. An act that substantially interferes with the ownership or possession of real property.

Id. § 99A-2(b).

Further, "[a]ny person who intentionally directs, assists, compensates, or induces another person to violate this section" can be held jointly liable with the employee or actor. Id. § 99A-2(c).

The Plaintiffs' First Amendment challenge was granted and portions of the Act, including §§ 99A-2(b)(1), (b)(2), (b)(3), and (b)(5), were declared unconstitutional by United States District Court Judge Thomas D. Schroeder either on their face, or as applied to the investigative work performed by the Plaintiffs. Defendants, including North Carolina Attorney General, Josh Stein, and University of North Carolina-Chapel Hill Chancellor, Dr. Kevin Guskiewicz, are now permanently enjoined from attempting to enforce subsections (b)(1) and (b)(5) against Plaintiffs, and subsections (b)(2) and (b)(3) are struck down as unconstitutional.

While this may be a "win" for the Plaintiffs, similar "Ag-Gag laws" are still in effect across the nation.

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