CV-20-1538

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

ANIMAL LEGAL DEFENSE FUND; ANIMAL EQUALITY; CENTER FOR BIOLOGICAL DIVERSITY; and FOOD CHAIN WORKERS ALLIANCE — **APPELLANTS**

v.

JONATHAN and DEANN VAUGHT, D/B/A PRAYER CREEK FARM; and PECO FOODS, INC. — **APPELLEES**

APPELLEE PECO FOODS, INC.'S OPPOSITION TO THE MOTION OF THE DEANS AND LAW PROFESSORS FOR LEAVE TO PARTICIPATE IN SUPPORT OF PLAINTIFFS-APPELLANTS

Peco Foods, Inc. ("Peco") opposes the June 3, 2020, motion by the Deans and Law Professors to file an amicus brief in this appeal. The Deans and Law Professors make the same mistake as the Plaintiffs and the media organizations who also seek to file an amicus brief on Plaintiffs' behalf – they disregard that this lawsuit, based on the facts pleaded, could have been brought against any business in Arkansas (or law school, or public interest organization), and is contrived.

Peco has done nothing except engage in lawful business in Arkansas and other states to provide safe, affordable food to those who chose to purchase it. That is undisputed. Peco's only connection with the Arkansas "Trespass Statute," Ark. Code

Ann. § 16-118-113, which is at issue in this case, is that Peco has business operations in Arkansas and therefore theoretically might someday have a civil claim under the Trespass Statute just as any other business in Arkansas might. Peco has never brought a civil action under the Trespass Statute, Peco has never said that it might bring such a claim, and Peco, by admission of all the parties, has no such claim against Plaintiffs.

Plaintiffs nevertheless filed a pre-emptive lawsuit against Peco, a private entity, for violating the First Amendment (which is a fatal flaw the District Court did not have to reach), trying to force Peco to defend the lawfulness of a statute Peco has nothing to do with. Plaintiffs could have sued any business in Arkansas based on the facts pleaded. The District Court correctly concluded that, under these circumstances, Plaintiffs had not suffered an objectively reasonable injury-in-fact resulting from anything Peco did and that Article III standing was absent. The District Court dismissed the lawsuit without prejudice, and the Plaintiffs appealed.

The Deans and Law Professors do not meet the criteria for amicus status because they have no insight to provide the Court on the issue before the Court, which is a straightforward application of Article III's standing requirements. Their motion for leave to file an amicus brief should therefore be denied.

I. THE DEANS AND LAW PROFESSORS DO NOT HAVE ANY SPECIAL INSIGHT INTO PLAINTIFFS' INJURY-IN-FACT

The Court should deny the Deans and Law Professors' request to file an amicus brief because they have not demonstrated any special interest or insight they can share on the sole issue raised by Plaintiffs' appeal – whether Plaintiffs established that Article III's injury-in-fact requirement is satisfied. An amicus should assist the court in some way that the existing parties cannot. The Seventh Circuit has explained: "[n]o matter who a would-be amicus curiae is, therefore, the criterion for deciding whether to permit the filing of an amicus brief should be the same: whether the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties' briefs. The criterion is more likely to be satisfied in a case in which a party is inadequately represented; or in which the would-be amicus has a direct interest in another case that may be materially affected by a decision in this case; or in which the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide." *Voices for Choices v. Illinois Bell Telephone Co.*, 339F.3d 542 at 545 (7th Cir. 2003). The Plaintiffs list eight lawyers in the signature block of their opening brief, so adequate representation is not an issue.

More importantly, the Deans and Law Professors do not profess to have any special insight into Article III's injury-in-fact requirement, which is the only issue on appeal. The Deans and Law Professors devote their proposed amicus brief to

arguing that pre-enforcement challenges to laws that allegedly violate the First Amendment are important. However, like the Plaintiffs and the media organizations, the Deans and Law Professors miss the real-world importance of this case – Article III does not allow you to sue pre-emptively a private party who has done nothing for violating the First Amendment.

The only issue before this Court is whether the Plaintiffs in this case have suffered an injury-in-fact due to Peco. The Deans and Law Professors do not claim to have any special insight into Plaintiffs and their injuries, nor could they. Consequently, the Deans and Law Professors' proposed brief is irrelevant, and this Court should deny their request to file such briefing. *See*, *e.g.*, *Bentonville School District v. Smith*, 795 Fed. Appx. 992, 993 (8th Cir. 2020) (denying permission to file an amicus brief because it addressed issues that were not on appeal because of waiver and mootness); *Sandy Lake Band of Mississippi Chippewa v. United States*, 714 F.3d 1098, 1104 (8th Cir. 2013) (denying permission to file an amicus brief because the issue would not be litigated on appeal); *Williams v. Armontrout*, 912 F.2d 924, 941 (8th Cir. 1990) (denying permission to file amicus briefs because the arguments asserted in the briefs were irrelevant to the court's decision).

Peco is already defending itself against four organizations simply for doing business in a state that happens to have a law that the four organizations dislike. Apparently, the Deans and Law Professors do not like it either. They offer nothing

beyond repeating the same arguments as Plaintiffs as if arguing the wrong thing twice somehow makes it right. It is unjust and unnecessary for this Court to allow additional entities to file briefs that Peco, which did nothing to cause this lawsuit, must also address. Plaintiffs have addressed in their brief the issue of injury-in-fact under Article III. That is the only issue on appeal, and there is no party who can speak to that issue more authoritatively than Plaintiffs, and accordingly no amicus briefing should be allowed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to all counsel of record.

/s/ Michael B. Heister
Michael B. Heister