IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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,	)	
v.	)	1:16CV25
JOSH STEIN, in his official capacity as Attorney General of North Carolina; and DR. KEVIN GUSKIEWICZ,[1] in his official capacity as Chancellor of the University of North Carolina-Chapel Hill,	)	
Defendants.	)	

MEMORANDUM ORDER

THOMAS D. SCHROEDER, Chief District Judge.

Before the court is the motion of the North Carolina Farm Bureau Federation, Inc. ("the Federation") to intervene as a defendant in this constitutional challenge to provisions of N.C. Gen. Stat. § 99A-2. (Doc. 82.) Plaintiffs oppose the motion (Doc.

[1] As interim chancellor, Dr. Guskiewicz is automatically substituted for former chancellor Carol Folt pursuant to Federal Rule of Civil Procedure 25(d).

88); existing Defendants take no position on it (Doc. 89). Also before the court is Plaintiffs' motion for mandatory joinder of additional state officials as defendants. (Doc. 87.) For the reasons set forth below, the Federation's motion will be granted and Plaintiffs' motion will be denied without prejudice.

I. BACKGROUND

Section 99A-2 creates a private right of action against "[a]ny 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." Id. § 99A-2(a). Acts that exceed a person's authority include:

> (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 [employee'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 [employee'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[; and/or]
>
> . . .

> (5) An act that substantially interferes with the ownership or possession of real property.

Id. § 99A-2(b). The statute also makes jointly liable "[a]ny person who intentionally directs, assists, compensates, or induces another person to violate this section." Id. § 99A-2(c). A party prevailing under section 99A-2 may be awarded equitable relief, compensatory damages, costs and fees, and exemplary damages of $5,000 per day the statute was violated. Id. § 99A-2(d).

Plaintiffs are nonprofit organizations dedicated to exposing illegal and/or unethical conduct in private and public industries. (Doc. 21 ¶¶ 15–52.) Several Plaintiffs have a practice of sending investigators undercover at facilities suspected of engaging in illegal and/or unethical conduct — particularly animal abuse — and gathering data to be publicly reported. (Id.) In their first amended complaint, filed against the North Carolina Attorney General and the University of North Carolina ("UNC") Chancellor (together, "the State Defendants") on February 25, 2016, Plaintiffs allege that section 99A-2 violates their rights under the First and Fourteenth Amendments to the United States Constitution, as well as under several provisions of the North Carolina Constitution. (Id. at ¶¶ 114–141.) On May 2, 2017, pursuant to the State Defendants' motion, the court dismissed the complaint for lack of standing. (Doc. 49.) On June 5, 2018, the Fourth Circuit reversed and remanded for consideration of the

remainder of the motion to dismiss. (Doc. 56.) On December 20, 2018, the court granted the motion to dismiss as to Plaintiffs' state constitutional claims but denied it as to Plaintiff's First and Fourteenth Amendment claims. (Doc. 73.)

With their motion to dismiss resolved, the State Defendants answered the amended complaint on February 1, 2019. (Doc. 81.) The same day, the Federation — a nonprofit organization dedicated to representing the interests of North Carolina farmers — moved to intervene as defendants (Doc. 82) and filed a proposed answer (Doc. 82-1). Plaintiffs oppose intervention. (Doc. 88.) On February 13, 2019, Plaintiffs filed an unopposed motion to join the UNC president[2] and the UNC Board of Governors as Defendants. (Doc. 87.) The motions are ready for decision.

II. ANALYSIS

A. Motion to Intervene

The Federation seeks intervention as of right under Federal Rule of Civil Procedure 24(a)(2) or permissive intervention under Rule 24(b). Because the court finds permissive intervention warranted, it need not address whether the Federation is entitled to intervention as of right.

Under Rule 24(b), the court may permit anyone who "has a claim

[2] The motion names then-president Margaret Spellings, who was in the process of moving to another position, and notes that as interim president, Dr. William L. Roper would be automatically substituted for her pursuant to Federal Rule of Civil Procedure 25(d).

or defense that shares with the main action a common question of law or fact" to intervene on timely motion. Fed. R. Civ. P. 24(b)(1)(B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Id. at 24(b)(3). "Thus, where a movant seeks permissive intervention as a defendant, the movant must satisfy three requirements: (1) the motion is timely; (2) the defenses or counterclaims have a question of law or fact in common with the main action; and (3) intervention will not result in undue delay or prejudice to the existing parties." Carcaño v. McCrory, 315 F.R.D. 176, 178 (M.D.N.C. 2016). Rule 24(b) is construed liberally to allow intervention where appropriate. Id. (citing Feller v. Brock, 802 F.2d 722, 729 (4th Cir. 1986)).

As to the first factor, the court finds that the motion to intervene is timely because, when the motion was filed, the case had not progressed past the initial pleading stage or the court's deadlines for joinder of additional parties and amendment of the pleadings. See, e.g., League of Women Voters of N.C. v. North Carolina, No. 1:13CV660, 2014 WL 12770081, at *2 (M.D.N.C. Jan. 27, 2014) (finding motion to intervene timely "[m]ost significantly" because it was filed "well before the scheduling order's . . . deadline for amendments to pleadings"); United States v. Virginia, 282 F.R.D. 403, 405 (E.D. Va. 2012) ("Where a

case has not progressed beyond the initial pleading stage, a motion to intervene is timely."); MacGregor v. Farmers Ins. Exch., No. 2:10-cv-03088, 2012 WL 5380631, at *2 (D.S.C. Oct. 31, 2012) (motion to intervene untimely when filed "more than five months after the deadline to join other parties and amend the pleadings"). To the extent Plaintiffs maintain that the Federation should be required to give "some explanation" for allowing the case to proceed for several years before moving for intervention (Doc. 88 at 10), the court notes the Federation's response that it was waiting on the court's resolution of the State Defendants' long-pending motion to dismiss, given that dismissal would obviate any need for intervention. Indeed, any such need was very nearly obviated in this case, as the court originally dismissed Plaintiffs' complaint in its entirety on standing grounds. (Doc. 49.) Only after the Fourth Circuit reversed that determination did the court address the remainder of the State Defendants' motion to dismiss; the Federation filed its motion and proposed answer within a little over a month of that denial, on the same day the State Defendants filed their answer and several months in advance of the State Defendants' deadline to join additional parties or amend the pleadings. (Docs. 73, 80, 81, 82.)

As to the second and third factors, Plaintiffs do not meaningfully contest the Federation's contentions that its defenses "have a question of law or fact in common with the main

action" and that "intervention will not result in undue delay or prejudice to the existing parties," Carcaño, 315 F.R.D. at 178. The court finds that these factors are met for the reasons offered by the Federation: the constitutionality of section 99A-2 is a common question of law, see City of Greensboro v. Guilford Cty. Bd. of Elections ("Guilford I"), No. 1:15-CV-559, 2015 WL 12752936, at *1 (M.D.N.C. Oct. 30, 2015), and the Federation's commitment to minimal discovery and to abide by the deadlines already agreed upon in the scheduling order means that intervention should not cause undue delay or prejudice.

Plaintiffs contend that the very fact that the Federation will be arguing the same question of law and will not be making a "contribution" via substantial discovery is reason enough to deny intervention. (Doc. 88 at 13.) Plaintiffs cite United States v. North Carolina, No. 1:13CV861, 2014 WL 494911, at *5 (M.D.N.C. Feb. 6, 2014), where the court denied permissive intervention and noted that the proposed intervenors would "generate little, if any" additional value in the case. There, however, the court was balancing the proposed intervenors' contribution to the case against a finding that intervention "would consume additional and unnecessary judicial resources, further complicate the discovery process, [and] potentially unduly delay the adjudication of the case on the merits." Id. The finding of likely delay and prejudice outweighed any possible contribution the proposed intervenors

could make, rendering that delay and prejudice undue. In the instant case, there is little reason to believe that intervention will cause any delay or prejudice.

Under the circumstances of this case, having found that the Federation satisfies the requirements for permissive intervention under Rule 24(b)(1)(B), the court will grant the motion to intervene. However, in order to hold the Federation to its commitment to a minimal discovery burden, the court will authorize the Magistrate Judge overseeing discovery to impose reasonable limits on discovery of and by the Federation, if deemed appropriate. See Guilford I, 2015 WL 12752936, at *2 (authorizing the same). If the Federation's participation in the case "causes unexpected delays or problems, unnecessarily expands the case, or otherwise interferes with or complicates resolution of the issues, the Court may re-examine its decision." Id. at *1 n.1.

B. Motion for Joinder

Plaintiffs seek to add UNC President Dr. William L. Roper and the UNC Board of Governors as necessary Defendants under Federal Rule of Civil Procedure 19(a)(1)(A). (Doc. 87.) The motion is unopposed. Nevertheless, the court "must still consider the motion on the merits." Gardendance, Inc. v. Woodstock Copperworks, Ltd., 230 F.R.D. 438, 448 (M.D.N.C. 2005).

Rule 19(a)(1)(A) requires that "[a] person who is subject to service of process and whose joinder will not deprive the court of

subject-matter jurisdiction must be joined as a party if . . . in that person's absence, the court cannot accord complete relief among existing parties." Yet Plaintiffs, in their own Rule 19(a)(1)(A) motion, expressly "maintain that President [Roper] and the Board of Governors are wholly unnecessary parties." (Doc. 87 at 4.) The State Defendants, by virtue of their nonresponse, do not offer any argument to the contrary. Lacking any argument from any party that President Roper and the Board of Governors are necessary parties under Rule 19(a)(1)(A), and given Plaintiffs' insistence that they are in fact not necessary parties, the court is at a loss to discern a basis on which to grant the motion.[3]

Plaintiffs' justification for their paradoxical posture is that Defendants have "repeatedly" argued in the standing context that they are unable to redress Plaintiffs' injury. (Id. at 2.) However, this argument has been rejected as a basis for dismissal. (Doc. 73); see also People for the Ethical Treatment of Animals, Inc. v. Stein, 737 F. App'x 122, 132 (4th Cir. 2018) ("[A]n order preventing these [existing] Defendants from exercising their powers to initiate or bring a lawsuit under [section 99A-2] would seem to be sufficient to quell Plaintiffs' fear of liability."). Plaintiffs cite only to City of Greensboro v. Guilford County Board of Elections ("Guilford II"), No. 1:15-CV-559, 2016 WL 6810965

[3] The court notes, moreover, that Plaintiffs failed to attach a proposed amended complaint, as required by Local Rule 15.1.

(M.D.N.C. Mar. 23, 2016), for the proposition that a Rule 19(a)(1)(A) motion may be granted solely because a defendant contends it is an improper party. (Doc. 87 at 4.) But that case does not support Plaintiffs' argument. In denying a Rule 19(a)(1)(A) motion, the court merely observed that no party had "advised the Court of any . . . lack of power or authority" on the part of the existing defendants to comply with the requested relief. The court did not suggest that it would have granted the motion had a party floated any argument to the contrary, and certainly not on the basis of an argument that a party had previously made on a standing issue already rejected by the court.

In short, Plaintiffs cannot add defendants under Rule 19(a)(1)(A) as necessary parties while simultaneously assuring the court that those defendants "are wholly unnecessary parties."[4] (Doc. 87 at 4.) Their motion for joinder under Rule 19(a)(1)(A) will therefore be denied. Whether joinder is permissible under any other authority has not been raised and thus will not be addressed.

III. CONCLUSION

For the reasons stated,

[4] Plaintiffs represent that the court "invited Plaintiffs to file a Rule 19 motion" at a prior hearing. (Doc. 87 at 3.) In actuality, the court expressly left it to Plaintiffs whether they wished to join additional defendants, did not specify that any potential motion to join additional defendants should be for compulsory joinder under Rule 19, and certainly did not countenance a motion for compulsory joinder of additional defendants "wholly unnecessary" to the case.

IT IS THEREFORE ORDERED that the Federation's motion to intervene (Doc. 82) is GRANTED, and the Federation shall file its proposed answer forthwith and will be subject to whatever reasonable discovery limits the Magistrate Judge may find appropriate to ensure that resolution of the action is not delayed or complicated.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Joinder (Doc. 87) is DENIED without prejudice.

/s/ Thomas D. Schroeder
United States District Judge

May 14, 2019