

Animal Agriculture Arkansas Statute Addressing Unauthorized Property Access: Federal Appeals Court Addresses Standing Issue



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08/12/2021

The United States Court of Appeals for the Eighth Circuit (“Eighth Circuit”) addressed in an August 9th Opinion an issue arising out of a judicial challenge to an Arkansas statute addressing the unauthorized access to commercial property. See *Animal Legal Defense Fund, et al. v. Prayer Creek Farm, et al.*, No. 20-1538.

The question considered was whether a challenge to the Arkansas statute (“Arkansas Statute”) should be dismissed for failure to demonstrate Article III standing.

The Arkansas General Assembly in 2017 enacted Ark. Code Ann. § 16-118-113, “Civil Cause of Action for Unauthorized Access to Property.”

The Statute imposes civil liability on any:

. . . person who knowingly gains access to a nonpublic area of a commercial property and engages in an act that exceeds the person’s authority to enter the nonpublic area.

See Ark. Code Ann. § 16-118-113(b). This includes but is not limited to employees who enter nonpublic areas of commercial property:

. . . for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer. . .

Such persons are included if they without authorization capture the employer’s data or documents, record images or sound from nonpublic areas, or place unattended recording devices, if those activities cause harm to the employer. Ark. Code Ann. § 16-118-113(c).

Ark Code Ann. § 16-118-113(e) provides for potential recovery of compensatory damages, attorney’s fees, and/or statutory damages up to \$5,000 per day for violations.

The Animal Legal Defense Fund, Animal Equality, Center for Biological Diversity, and Food Chain Workers (collectively “ALDF”) brought an action against Peco Foods, Inc., and two individuals d/b/a Prayer Creek Farm (collectively “Peco Foods”) in the United States District Court (Eastern District of Arkansas) (“District Court”). The action sought to prevent these defendants from bringing a civil suit against the plaintiffs under the Arkansas Statute.

The District Court dismissed the action concluding that:

The Complaint failed to allege sufficient facts to establish Article III standing.

The Eighth Circuit notes two of the ALDF plaintiffs have alleged plans to investigate one of the defendant's chicken slaughterhouses and one of the defendant's pig farms. It states that such organizations allege:

. . . that they would send undercover investigators to seek employment with the slaughterhouse and the farm, or with third parties who have access to the target facilities. Once employed, the investigators would collect information on the operation of the facilities by personal observation or through the use of unattended recording devices. But the lead organizations have refrained from investigating due to the threat that Peco Foods and the Vaughns, as commercial property owners, will bring a lawsuit against them under the statute.

The District Court had concluded that there was no Article III standing because any injury was too speculative.

The Eighth Circuit notes that to establish Article III standing a plaintiff must demonstrate:

1. an injury in fact,
2. a causal relationship between the injury and the challenged conduct, and
3. that a favorable decision will likely redress the injury.

The Eighth Circuit concludes that the complaint adequately alleges the elements of Article III standing, noting in part:

1. ALDF alleges that, but for the statute, they would send an investigator to gather information and take video/audio recordings at the defendants' facilities (which they would use in their advocacy)
2. The above conduct is arguably affected with a constitutional interest, because it involves the creation and dissemination of information which is speech within the meaning of the First Amendment
3. The Complaint alleges an intention to engage in a course of conduct arguably proscribed by the Arkansas Statute (noting that the plaintiffs have retained an experienced investigator to conduct an employment-based investigation into certain defendants' facilities)
4. The Complaint sufficiently alleges a credible threat of enforcement (concluding that ALDF plaintiffs have an objectively reasonable fear of legal action chilling their speech)

The Eighth Circuit reverses the District Court and remands the case for further proceedings.

Circuit Judge Shepherd dissents.

A copy of the Opinion can be downloaded [here](#).