IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:17-cv-01037

FARM LABOR ORGANIZING COMMITTEE, et al.	)	
Plaintiffs,	)	**ORAL ARGUMENT REQUESTED**
v.	)	
JOSHUA STEIN, et al.	)	
Defendants.	)	

PLAINTIFFS' AMENDED MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65(a) and LR 65.1, Plaintiffs Farm Labor Organizing Committee (FLOC), Victor Toledo Vences and Valentin Alvarado Hernandez move this Court to preliminary enjoin Section 20.5 of the North Carolina General Assembly Session Law 2017-108, SB 615 ("the Farm Act" or "the Act"). In support of this Motion, Plaintiffs state as follows:

1. The Farm Act was signed into law by Governor Roy Cooper on July 12, 2017.

2. Section 20.5 of the Farm Act amended N.C. Gen. Stat. § 95-79(b), to remove the text stricken below and to add the language underlined below:

> (b) Any provision that directly or indirectly conditions the purchase of agricultural products, ~~products or~~ the terms of an agreement for the purchase of agricultural products, or the terms of an agreement not to sue or settle litigation upon an agricultural producer's status as a union or

> nonunion employer or entry into or refusal to enter into an agreement with a labor union or labor organization is invalid and unenforceable as against public policy in restraint of trade or commerce in the State of North Carolina. Further, notwithstanding G.S. 95-25.8, an agreement requiring an agricultural producer to transfer funds to a labor union or labor organization for the purpose of paying an employee's membership fee or dues is invalid and unenforceable against public policy in restraint of trade or commerce in the State of North Carolina.

3. The Farm Act renders voluntary dues check-offs and settlement agreements involving union recognition, or entry into an agreement with the union, invalid and unenforceable. In so doing, the Act imposes sweeping new obstacles to Plaintiffs' and other farmworkers' rights to engage in the expressive and associative activities of union organizing and to enter voluntary agreements with willing agricultural employers.

4. On November 15, 2017, Plaintiffs filed suit against Governor Roy Cooper and Administrative Office of Courts Director Marion R. Warren to challenge Section 20.5 of the Farm Act. (DE 1). On November 20, 2017, Plaintiffs filed a Motion for a Preliminary Injunction (DE 7). On January 25, 2018, Defendants Cooper and Warren filed motions to dismiss and oppositions to Plaintiffs' Motion for a Preliminary Injunction (DE 24, 26, 27, 29).

5. Yesterday, Plaintiffs filed an Amended Complaint as a matter of course pursuant to Fed. R. Civ. P. 15(a)(1)(DE 31). The Amended Complaint adds Attorney General Joshua Stein as a defendant and removes Governor Cooper as a defendant.[1] The Amended Complaint adds specific allegations regarding Attorney General Stein's role in

[1] Plaintiffs have also filed a notice of voluntary dismissal as to Governor Cooper pursuant to Fed. R. Civ. P. 41(a)(1) (DE 30).

enforcing the Farm Act and updated allegations regarding harm occurring to FLOC as a result of the Act since Plaintiffs' initial complaint was filed.

6. In order to reflect these changed circumstances, Plaintiffs have withdrawn their original November 20 Motion for a Preliminary Injunction (*see* DE 32) and now file this Amended Motion for Preliminary Injunction.

7. As demonstrated in Plaintiffs' brief and the exhibits supporting this Motion, Plaintiffs are likely to succeed on the merits of their arguments that Section 20.5 of the Farm Act violates the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the Bill of Attainder Clause (Article I, Section 10) of the United States Constitution.

8. As set forth in the declarations filed in support of this Motion, Plaintiffs are suffering irreparable harm as a result of the Farm Act, including: ongoing violation of their First Amendment rights to expression and association; criminal and civil liability should they continue to engage in prior, regular expressive and associative activities that are now outlawed by the Farm Act; loss of opportunities to negotiate and enter into voluntary union-related agreements with agricultural employers; and irreparable damage to Plaintiff FLOC's core organizational functions and operations.

9. Entry of an injunction poses no harm to Defendants, as it would restrain enforcement of an unconstitutional law. An injunction would be in the public interest because it would restore the status quo that existed before the recent enactment of the

Farm Act and would ensure that Plaintiffs and other farmworkers may continue to exercise their constitutional rights to expression and association during the pendency of this litigation.

10. The Farm Act infringes on the constitutional rights of an estimated 100,000 or more farmworkers in North Carolina and subjects them and their sole union to criminal and civil liability for engaging in commonplace union organizing activities. In light of this far-reaching impact and the multiple ways in which the Act violates Plaintiffs' constitutional rights, Plaintiffs respectfully request leave to present oral argument related to this Motion on a date to be determined by the Court.

11. Plaintiffs should not be required to post a security bond because no harm, pecuniary or otherwise, will result to Defendants if an injunction is granted. *See Pashby v. Delia*, 709 F.3d 307, 332 (4th Cir. 2013) ("[T]he district court retains the discretion to set the bond amount as it sees fit or waive the security requirement."); *Planned Parenthood of Cent. N.C. v. Cansler*, 804 F. Supp. 2d 482, 501 (M.D.N.C. 2011) ("Given the lack of any monetary injury to Defendant, no bond will be required."); *Doe v. Pittsylvania Cty., Va.*, 842 F. Supp. 2d 927, 937 (W.D. Va. 2012) (fixing security bond at $0 because "there can be no monetary damages or other harm to the Board from conducting its meetings in a manner consistent with the Establishment Clause[.]"); *Complete Angler, LLC v. City of Clearwater, Fla.*, 607 F. Supp. 2d 1326, 1335 (M.D.

Fla. 2009) ("Waiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right.").

WHEREFORE, Plaintiffs respectfully request that this Court:

(a) Set a date on which to hear oral argument on this Motion;

(b) Preliminarily enjoin enforcement of Section 20.5 of the Farm Act;

(c) Order Defendants to immediately notify their officers, agents, employees, and other persons in active concert or participation with them, including the administrative and judicial officials of all state courts, if a preliminary injunction is entered;

(d) If a preliminary injunction is entered, waive the requirement of a security bond; and

(e) Order such other relief as this Court deems just and equitable.

Respectfully submitted this 6th day of February, 2018,

/s/ Kristi L. Graunke

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CERTIFICATE OF SERVICE

I certify that on February 6, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will provide notice to Defendant Warren. I mailed true copies of this motion and a disc containing true copies of all exhibits to the following:

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/s/ Kristi L. Graunke
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