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

FARM LABOR ORGANIZING COMMITTEE, et al.,	)	
Plaintiffs,	)	
v.	)	1:17cv1037
JOSHUA STEIN, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

This case comes before the undersigned United States Magistrate Judge for a recommendation on the "Motion to Dismiss and collect Motions"), the "Motion to Intervene by the North Carolina Farm Bureau Federation, Inc." (Docket Entry 21) (the "Intervention Motion"), and "Plaintiffs' Amended Motion for a Preliminary Injunction" (Docket Entry 34) (the "Preliminary Injunction Motion"). For the reasons that follow, the Court should (i) grant the Warren Dismissal Motion, (ii) deny the Stein Dismissal Motion, (iii) deny the Intervention Motion, and (iv) grant the Preliminary Injunction Motion.

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1 For legibility reasons, this Opinion omits all-cap font in all quotations.

BACKGROUND

Asserting constitutional and statutory violations, Victor Toledo Vences, Valentin Alvarado Hernandez (collectively, the "Individual Plaintiffs," and, at times, each an "Individual Plaintiff"), and the Farm Labor Organizing Committee ("FLOC," and collectively with Individual Plaintiffs, the "Plaintiffs") initiated this lawsuit against Roy Cooper, in his official capacity as Governor of the State of North Carolina, and Marion R. Warren, in his official capacity as Director of the North Carolina Administrative Office of the Courts. (See Docket Entry 1 (the "Complaint"), ¶¶ 1, 2, 7, 8.) Shortly thereafter, Plaintiffs filed a motion for preliminary injunction. (See Docket Entry 7.) The North Carolina Farm Bureau Federation, Inc. (the "Farm Bureau")

North Carolina General Assembly Session Law 2017-108, SB 615 ('the Farm Act' or 'the Act')." (Docket Entry 34 at 1.) [2]

According to the Amended Complaint:

"FLOC is a farmworker labor union," whose "goals are to ensure that farmworkers have a voice in decisions that affect them in the workplace and in their communities and to bring all participants in the agricultural supply chain together to improve working conditions for farmworkers." (Docket Entry 31, ¶ 9.) "FLOC currently administers collective bargaining agreements covering about 10,000 farmworkers in North Carolina and is actively organizing to increase its membership and pursue new collective bargaining agreements throughout the state." (Id.) [3] "Since at least 1997, FLOC has been the only farmworker union organizing and representing farmworkers in North Carolina . . . ." (Id., ¶ 80.)

Approximately 80% of FLOC's roughly 6,000 dues-paying members work in North Carolina. (Id., ¶ 27.) "The vast majority of FLOC's dues-paying North Carolina members are H-2A guestworkers from Mexico who come to North Carolina each year for up to ten months to perform seasonal agricultural work" (id., ¶ 31) pursuant to a "temporary agricultural visa program" (id., ¶ 2). Individual Plaintiffs fit this profile: Vences, a Mexican national, "lived

2 Docket Entry page citations utilize the CM/ECF footer's pagination.

3 FLOC's existing collective bargaining agreements expire in 2019 and 2020. (Id., ¶ 40.)

and worked on a farm in Durham County, North Carolina during the 2017 agricultural season" pursuant to the H-2A visa program, as he has done "[f]or nearly twenty years" in various "North Carolina vegetable and tobacco growing operations" (id., ¶ 10), whereas Hernandez, another Mexican national working under the H-2A visa program, "lived and worked on a farm in Stokes County, North Carolina during the 2017 agricultural season," as he has done "[f]or the past three years" at various "North Carolina vegetable and/or tobacco growing operations" (id., ¶ 11), including an operation owned by one of the North Carolina legislators responsible for the Farm Act (see id., ¶¶ 62, 67, 77).

"FLOC works towards its goals by organizing workers to achieve collective bargaining agreements (CBAs) with agricultural producers in the state, under which farmworkers will be guaranteed certain wages, working conditions, and fair alternative dispute mechanisms for resolving workplace grievances and disputes." (Id., ¶ 29.) "FLOC also publicly engages with the major economic interests at the top of the industry supply chain, such as international tobacco corporations, to convince them to adopt business practices that are fair to both agricultural producers and farmworkers." (Id., ¶ 30.) "FLOC has pursued and secured CBAs and other improvements to farmworker conditions through various strategies, including public campaigns engaging major industry actors like tobacco corporations,

and assisting its members in bringing well-publicized litigation to challenge illegal employment practices." (Id., ¶ 37.)

"On occasion, FLOC has also participated in lawsuits as a party to pursue legal issues of importance to its members, such as in a case addressing whether the federal Department of Labor properly reinstated regulations governing minimum wages for H-2A guestworkers." (Id., ¶ 38.) "Lawsuits in which FLOC participates, or which FLOC assists its members in bringing by providing legal referrals, are meant to achieve tangible gains for FLOC's members and also to educate the public about the working conditions confronted by farmworkers." (Id.) For example, prior to the Farm Act's enactment,

> FLOC assisted some of its members in negotiating for voluntary union recognition agreements or an agreement for expanded collective bargaining rights as part of a class-wide settlement of employment rights litigation that was filed by FLOC members. In one such case, the defendant employer and the plaintiff farmworkers agreed that it was in their mutual interest to resolve the case in a settlement agreement that included: employer recognition of FLOC as the bargaining representative of workers who sign cards affirming their FLOC membership; an employer pledge to remain neutral on unionization matters in its workforce; dues checkoffs; a guaranteed hourly wage of $11.27/hour (increased from a prior wage of $8 per hour); worker/employer committees to address safety issues, worker housing, and employer competitiveness; and adoption of a binding alternative dispute mechanism for resolving workplace disputes.

(Id., ¶ 39.)

In sum,

> [t]hroughout the last decade, FLOC members, with the support of their union, have brought numerous claims

> under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act against several North Carolina agricultural producers seeking recovery for wage underpayment and other violations. Such suits have led to recovery of significant amounts of unpaid wages for hundreds of workers, as well as entry into a CBA as part of a settlement that occurred in the course of court-mandated mediation in [one such case].

(Id., ¶ 61.)

At any given time, "approximately 2,000 dues-paying [FLOC] members [are] located in North Carolina." (Id., ¶ 52; see also id., ¶ 82.) Most members "live in isolated, employer-owned labor camps in rural areas throughout the state," without access to personal transportation. (Id., ¶ 44.) In part "[b]ecause of the migratory and seasonal nature of their work, language barriers, and their low incomes, many farmworkers in North Carolina lack access to credit cards and bank accounts and conduct most transactions

Membership dues comprise approximately fifty-to-sixty percent of FLOC's budget. (Id., ¶ 83.) "Because of the size and geographic dispersion of FLOC's North Carolina membership, as well as its own limited resources and staff, FLOC lacks the resources and ability to collect weekly dues directly from each of its approximately 2,000 members who are working in the state at a given time." (Id., ¶ 82.) Thus, prior to the Farm Act's enactment, "it was FLOC's standard practice to negotiate a dues checkoff provision as part of any CBA or other union recognition agreement, in order to facilitate membership for workers who wish to join FLOC." (Id., ¶ 87.)

"As FLOC has increased its membership in North Carolina and expanded the number of workers covered by union agreements, and as its members have been involved in well-publicized litigation, FLOC's organizing drives have been met with considerable backlash by the . . . Farm Bureau . . .

id., ¶¶ 69, 72), which "proposed to amend [North Carolina General Statute Section] 95-79(b)" by adding the underlined text and deleting the stricken text shown 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.

(Id., ¶ 70 (alterations in original).) The Farm Act "specifie[d] that it is effective when it becomes law and applies to agreements and settlements entered into, renewed, or extended on or after that date." (Id., ¶ 71 (internal quotation marks omitted).)

In introducing the Farm Act, Representative Dixon stated:

> This amendment —there are various organizations that for some time over the last couple of weeks had been looking for the right opportunity but weren't necessarily going to do it, here in the [f]arm [bill], although I think it's very applicable. But that's an explanation of why at this point that we're offering an amendment, Farm Bureau and other farm organizations. And over the last couple of days I've heard from a lot of farmers across the state expressing concerns about this and wishing that there was a vehicle to do what this amendment does. It strengthens our Right to Work statutes by declaring certain agreements involving agriculture producers are against the public policy of North Carolina. The amendment would prohibit the use of litigation to force farms to unionize and ensure farmers are not required to

> collect dues for their employees. This reduces a regulatory burden on farms that is not required under federal law and is completely within the State's purview to regulate.

(Id., ¶ 73 (internal quotation marks omitted).) In response to a question regarding why the Farm Act "would be necessary given the state's strong right to work laws," he stated:

> [b]ecause of continued

the

less personal assistance to members like [Individual Plaintiffs], who have benefitted individually from FLOC's assistance and advocacy with workplace grievances, work-related injuries, wage theft, and other legal matters." (Id.) In addition, "North Carolina farmworkers who have not yet had an opportunity to meet with FLOC representatives and learn about the benefits of union membership will have fewer opportunities for these organizing contacts." (Id.)

Furthermore,

> [b]y preventing FLOC from settling litigation or anticipated litigation as a party, from securing recognition as a bargaining representative in settlements by FLOC members, or from obtaining CBAs in settlements entered into by FLOC members, the Farm Act significantly hinders FLOC's ability to advance and publicize its members' interests through litigation.

(Id., ¶ 89.) Notably, "[s]ince the Farm Act took effect, FLOC has had at least one opportunity to assist members who have potential employment claims to negotiate with their employer for a pre-filing settlement of such claims." (Id., ¶ 90.) However, "[b]ecause of the Act, these members are unable to seek a settlement agreement that includes voluntary recognition of FLOC as their bargaining representative and dues checkoff. If they did so, they would be subject to investigation[and] criminal and civil enforcement by Defendant Stein." (Id.) "By invalidating and rendering unenforceable all settlement agreements that stipulate to recognition of FLOC or an agreement between FLOC and agricultural

producers, the Farm Act deprives FLOC and its members [of] the ability to secure and benefit from settlement terms that they believe are in their best interests." (Id., ¶ 91.) Finally, "[b]y invalidating and rendering unenforceable all settlement agreements of any kind between FLOC and agricultural producers, the Farm Act strips from FLOC the right and ability to settle litigation or potential litigation." (Id., ¶ 92.)

As such, Plaintiffs maintain that the Farm Act violates (1) their rights to free expression and free association under the First Amendment, as applied to the states through the Fourteenth Amendment; (2) their rights under the Equal Protection Clause of the Fourteenth Amendment; (3) their rights under 42 United States Code Section 1981; and (4) FLOC's rights under the Bill of Attainder Clause f

(See Docket Entry 39 at 1; Docket Entry 40 at 8, 18; Docket Entry 44 at 1; Docket Entry 45 at 7.) More specifically, Defendants maintain that

> Plaintiffs' Amended Complaint should be dismissed because the Eleventh Amendment bars all the claims brought against [Defendants] in this case, and as a result, this [C]ourt lacks jurisdiction over [them]. Moreover, the Amended Complaint should be dismissed because Plaintiffs[] have failed to demonstrate that they have suffered an injury-in-fact and that any alleged injuries are traceable to [Defendants], and as a result, Plaintiffs lack standing to bring this lawsuit.

(Docket Entry 45 at 7; accord Docket Entry 40 at 8, 23-27.) [4]

The Eleventh Amendment generally shields a State from lawsuits brought by individuals against the State without its consent. See Frew ex rel. Frew v. Hawkins, 540 U.S. 431, 437 (2004). "To ensure

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4 Accordingly, although ostensibly relying on Rules 12(b)(2) and 12(b)(6), Defendants effectively pursue a Rule 12(b)(1) facial challenge to the Court's jurisdiction. See Kerns v. United States, 585 F.3d 187, 192 (4th Cir. 2009). Under such circumstances, Plaintiffs "[are] afforded the same procedural protection as [they] would receive under a Rule 12(b)(6) consideration." Id. (internal

the enforcement of federal law, however, the Eleventh Amendment permits suits for prospective injunctive relief against state officials acting in violation of federal law." Id.[5] Under this so-called Ex parte Young exception, "federal courts may exercise jurisdiction over claims against state officials by persons at risk of or suffering from violations by those officials of federally protected rights, if (1) the violation for which relief is sought is an ongoing one, and (2) the relief sought is only prospective." Republic of Paraguay v. Allen, 134 F.3d 622, 627 (4th Cir. 1998). "The requirement that the violation of federal law be ongoing is satisfied when a state officer's enforcement of an allegedly unconstitutional state law is threatened, even if the threat is not yet imminent." Waste Mgmt. Holdings, Inc. v. Gilmore, 252 F.3d 316, 330 (4th Cir. 2001). As such, at the motion to dismiss stage, "[f]or purposes of Eleventh Amendment analysis, it is sufficient to determine that [Plaintiffs] allege[] facts that, if proven, would violate federal law and that the requested relief is prospective." South Carolina Wildlife Fed'n v. Limehouse, 549 F.3d 324, 332 (4th Cir. 2008). Finally, eleventh-amendment "sovereign immunity is akin to an affirmative defense, which the defendant bears the burden of demonstrating." Hutto v. South Carolina Ret. Sys., 773 F.3d 536, 543 (4th Cir. 2014).

5 "This standard allows courts to order prospective relief as well as measures ancillary to appropriate prospective relief." Id. (citations omitted).

the State of North Carolina" (id., ¶ 12). Defendants dispute the applicability of this exception. (See generally Docket Entries 39, 40, 44, 45.) In Defendants' view, North Carolina's eleventh-amendment sovereign immunity shields them from Plaintiffs' claims. (Id.)

As the United States Court of Appeals for the Fourth Circuit has explained:

> with Under the *Ex parte Young* exception, a suit in federal court to enjoin a state officer from enforcing an unconstitutional statute is not a suit against the state for purposes of the Eleventh Amendment. The theory of *Ex parte Young* is that because an unconstitutional statute is void, it cannot cloak an official in the state's sovereign immunity.

Waste Mgmt., 252 F.3d at 329 (citation and internal quotation marks omitted). Yet, "[i]n making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the state, and thereby attempting to make the state a party." Ex parte Young, 209 U.S. 123, 157 (1908). General authority to enforce a state's laws does not suffice. See Waste Mgmt., 252 F.3d at 331. Notably, though, the official's duty to enforce the law need not "be declared in the same act which is to be enforced." Ex parte Young, 209 U.S. at 157. Rather, ma

important and material fact, and whether it arises out of the general law, or is specially created by the act itself, is not material so long as it exists." Id.

"Primarily, th[is special relation] requirement has been a bar to injunctive actions where the relationship between the state official sought to be enjoined and the enforcement of the state statute is significantly attenuated." Limehouse, 549 F.3d

prosecution for a Class H felony and civil enforcement" and (2) it further obliges "courts in North Carolina [to] refuse to enforce or otherwise recognize the legal validity of otherwise enforceable law immunity contracts." (Id. at 7-8.) Thus, Plaintiffs posit,

> [a] court order enjoining Warren from enforcing the Farm Act would provide the relief that Plaintiffs seek because Warren is empowered — and indeed has the duty — to provide legal counsel to the courts and otherwise take steps to ensure that the state courts comply with the law. As such, if this Court grants an injunction against. . . the Farm Act, Warren would be required to inform the North Carolina courts of the injunction and ensure that they do not enforce [the Farm Act].

(Id. at 8-9.) In short, Plaintiffs maintain, "because Warren heads an administrative agency that enforces the challenged statute through the state court system, he falls within an exception to Eleventh Amendment sovereign immunity and is therefore a proper defendant." (Id. at 6.)

General authority to enforce state and federal law does not satisfy the Ex parte Young special relationship requirement. See, e.g., Waste Mgmt., 252 F.3d at 331 ("General authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law." (internal quotation mar` ' ` Ò€ ÙSee,Œ ÙSee ñq 6÷W'G2

environmental impact statement (the "FEIS") regarding construction of a bridge (the "Connector") in alleged violation of federal law, that agency director possessed special relationship where, inter alia, (1) "[he] has supervisory authority over the state's participation in the FEIS process," (2) "[he] and his agency are deeply involved in the preparation of the challenged FEIS and the procurement of permits to proceed with construction on the basis of the FEIS," and (3) his agency "will be the agency eventually charged with the actual construction of the Connector"). In this regard, Plaintiffs contend that a state agency's "statutory role in implementing the challenged law" renders the "agency head . . . a proper defendant in actions for injunctive and declaratory relief under *Ex parte Young*." (Docket Entry 47 at 7 (citing, inter alia, Limehouse, 549 F.3d at 333, Action NC v. Strach, 216 F. Supp. 3d 597, 624-26 (M.D.N.C. 2016), and Red Wolf Coal. v. North Carolina Wildlife Res. Comm'n, No. 2:13cv60, 2014 WL 1922234, at *4 (E.D.N.C. May 13, 2014)).)

As an initial matter, the cases upon which Plaintiffs rely for this proposition reflect direct involvement and active roles in the challenged conduct. See, e.g., Action N.C., 216 F. Supp. 3d at 625 (concluding, in action challenging compliance with the National Voter Registration Act (the "NVRA") that officials whose agencies bore responsibility for (1)

available through [the agency]," (2) "provid[ing] voter registration services under . . . the NVRA," and/or (3) "ensuring that all [agency] voter registration materials are timely forwarded to the appropriate [elect i on officials]" possessed a special relationship to enforcement of the NVRA (internal quotation marks omitted)); Red Wolf, 2014 WL 1922234, at *4 (concluding, in action alleging "violation of the Endangered Species Act's prohibition on unauthorized takes" that officials who "are clothed with specific statutory duties to *prescribe* the manner of take and set limits on hunting seasons for wild animals classified as non-game animals . . . as well as more generally to *administer* the laws relating to game, freshwater fishes, and other wildlife resources" possessed requisite connection (emphasis in original)). By contrast, insofar as the North Carolina courts play a role in implementing the Farm Act, it arises "merely" fro m t heir "general authority to enforce the laws of the state," McBurney v. Cuccinelli, 616 F.3d 393, 399 (4th Cir. 2010) (alteration and internal quotation marks omitted), rather than some special connection to the Farm Act. As such, it fails to establish the necessary special relationship for abrogation of North Carolina's sovereign immunity. See id. at 399-401. [6]

6 Further, Plaintiffs do not allege that Warren has issued any advice or legal opinions regarding the Farm Act, let alone that anyon e has relied on such advice or opinion to Plaintiffs' detriment. (See generally Docket Entry 31.) As such, Warren's authority to "formulate[] legal opinions, give[] advice, and make[]

Director, Warren's duties include preparing budgetary estimates, establishing travel reimbursement rates, "determining the number

> responsibility for carrying out its policies. The Director's duties include "ensur[ing] overall compliance with federal and State laws" in the court system. N.C. Gen. Stat. § 7A-343(3a)(c). Defendant Warren is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint.

(Id., ¶¶ 8, 13 (alteration in original).) By alleging only a general duty to ensure that North Carolina courts comply with federal and state law, the Amended Complaint fails to establish the necessary special relationship between Warren and the Farm Act. After all, if such a duty sufficed,

> then the constitutionality of every act passed by the legislature could be tested by a suit against [Warren] . . . . That would be a very convenient way for obtaining a speedy judicial determination of questions of constitutional law which may be raised by individuals, but it is a mode which cannot be applied to the states of the Union consistently with the fundamental principle that they cannot, without their assent, be brought into any court at the suit of private persons.

Ex parte Young, 209 U.S. at 157 (internal quotation marks omitted).

In sum, the Ex parte Young exception does not render Warren a proper defendant in this action. The Court should therefore grant the Warren Dismissal Motion.

ii. Stein

Unlike with Warren, the Amended Complaint alleges that Stein bears direct enforcement responsibility for violations of the Farm Act. (See Docket Entry 31, ¶¶

them of two significant legal rights enjoyed by all other workers in the state. First, the Act mandates that agreements by agricultural employers to administer payroll union dues deductions requested by employees (commonly known as "dues checkoff" agreements) shall be invalid and unenforceable. Second, the Act declares that settlement agreements that include a stipulation that an agricultural employer will recognize or enter into an agreement with a union shall

enjoye

conspiracy shall be guilty of a Class H felony." Id. [8]

Significantly,

> [t]he Attorney General of the State of North Carolina shall have power, and it shall be his duty, to investigate, from time to time, the affairs of all corporations or persons doing business in this State, which are or may be embraced within the meaning of the statutes of this State defining and denouncing trusts and combinations against trade and commerce, or which he shall be of opinion are so embraced, and all other corporations or persons in North Carolina doing business in violation of law[] . . . . Such investigation shall be with a view of ascertaining whether the law . . . is being or has been violated by any such corporation, officers or agents or employees thereof, and if so, in what respect, with the purpose of acquiring such information as may be necessary to enable him to prosecute any such corporation, its agents, officers and employees for crime, or prosecute civil actions against them if he discovers they are liable and should be prosecuted.

N.C. Gen. Stat. § 75-9 (emphasis added); see also N.C. Gen. Stat. § 75-13 (providing that the Attorney General may initiate and/or "take charge of and prosecute all cases coming within the purview of [Chapter 75]"); N.C. Gen. Stat. § 75-14 (providing that "the Attorney General may prosecute civil actions . . . to obtain a mandatory order, including (but not limited to) permanent or temporary injunctions and temporary restraining orders, to carry out the provisions of [Chapter 75]").

Notwithstanding the foregoing statutory language, Stein maintains that "Plaintiffs have failed to demonstrate that [he] is

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8 "A Class H felony conviction carries with it a presumptive term of imprisonment of up to twenty months." Doe v. Cooper, 842 F.3d 833, 839 (4th Cir. 2016).

Stein next argues that, unlike various other statutes, the Farm Act neither explicitly states who will enforce it nor cross-references Chapter 75. (See Docket Entry 45 at 11; Docket Entry 54 at 2-5 (citing, in turn, N.C. Gen. Stat. §§ 133-27, 133-24, 14-113.33, 42A-10, 66-67.5(b), 90-672).) However, the Attorney General's duty to enforce the challenged provisions need not appear in the Farm Act itself for the requisite connection to exist. See Ex parte Young, 209 U.S. at 157. Further, the fact that other statutes, which fall outside Chapter 95, explicitly specify that their violation constitutes "'an unfair trade practice under [North Carolina General Statute Section] 75-1.1'" (Docket Entry 54 at 5 (emphasis added)) does not impact whether violations of the Farm Act also violate Chapter 75. Moreover, the North Carolina Supreme Court has held that violations of multiple provisions in Chapter 95 violated Chapter 75, even though none of those statutes referenced Chapter 75. See Winston Realty Co. v. G.H.G., Inc., 314 N.C. 90, 97, 331 S.E.2d 677, 681 (1985) ("hold[ing] that a violation of either or both [North Carolina General Statute Sections] 95-47.6(2) and (9) as a matter of law constitutes an unfair or deceptive trade practice in violation of [North Carolina General Statute Section] 75-1.1"); State v. Whitaker, 228 N.C. 352, 45 S.E.2d 860 (1947)

Attorney General's Office, Chapter 75 criminal convictions of employer and labor unions for violating North Carolina's right to work laws, codified in relevant part at North Carolina General Statute Sections 95-79(a), 95-80, 95-82), aff'd sub nom. Lincoln Fed. Labor Union No. 19129 v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949).

contracts in restraint of trade illegal and

("The similarity of language in [two statutes] is, of course, a strong indication that the two statutes should be interpreted pari passu."); see also Sorenson v. Secretary of the Treasury, 475 U.S. 851, 860 (1986) (discussing statutory construction rules, including the "normal rule . . . that identical words used in different parts of the same act are intended to have the same meaning" (internal quotation marks omitted)).

At a minimum, the Farm Act "may be embraced within the meaning of the statutes of [North Carolina] defining and denouncing trusts and combinations against trade and commerce," N.C. Gen. Stat. § 75-9, bringing it within the ambit of North Carolina General Statute Sectio n 75-9 and under the Attorney General's enforcement authority. See also id. (authorizing and obligating Attorney General to investigate and, if appropriate, prosecute "al l%' ‡ GFVB'— `8vp

therefore deny Stein's request to dismiss on the basis of sovereign immunity. [12]

C. Remaining Dismissal Challenges[13]

Stein further argues that Plaintiffs lack standing to pursue this suit, on the grounds that they failed to allege an injury resulting from his enforcement of the Farm Act. (See Docket Entry 45 at 11-21; Docket Entry 54 at 6-11.) Plaintiffs dispute Stein's contentions. (See Docket Entry 49 at 9-24.)

To possess standing, Plaintiffs "must demonstrate a realistic danger of sustaining a direct injury as a result of the [Farm Act's] operation or enforcement." Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 298 (1979). However, "[w]hen contesting

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12 Stein also argues that the Ex parte Young exception does not apply because Plaintiffs "failed to show that there is 'no

the constitutionality of a criminal statute, it is not necessary that [a] plaintiff first expose himself to actual arrest or prosecution to be entitled to challenge the statute that he claims deters the exercise of his constitutional rights." Id. (internal quotation marks and alterations omitted); see also id. ("When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." (internal quotation marks omitted)). Moreover, when a plaintiff "is himself an object of the" challenged government stricture, "there is ordinarily little question that the [governmental action] has caused him injury, and that a judgment preventing or requiring the action will redress it." Lujan, 504 U.S. at 561–62.

Here, Stein first contends that Plaintiffs have failed to show a credible threat that he will enforce the Farm Act. (See, e.g., Docket Entry 45 at 11-15; see also id. at 20 ("[E]ven if the Attorney General had the authority to enforce the Farm Act, Plaintiffs have not alleged that the Attorney General has taken, or threatened to take, any action to enforce it.").) North Carolina enacted the Farm Act barely a year ago (see Docket Entry 31, ¶ 1), and only a few months before Plaintiffs filed suit (see Docket Entry 1 at 39). Given the Farm Act's "newly enacted" nature, "[i]t

would be unreasonable to assume that [North Carolina] adopted the [Farm Act] without intending that it be enforced." Mobil Oil, 940 F.2d at 76 (internal quotation marks omitted); see also Virginia v. American Booksellers Ass'n, Inc., 484 U.S. 383, 393 ("We are not troubled by the pre-enforcement nature of this suit. The State has not suggested that the newly enacted law will not be enforced, and we see no reason to assume otherwise."), certified question answered Commonwealth v. American Booksellers Ass'n, Inc., 236 Va. 168, 372 S.E.2d 618 (1988).

Further, Plaintiffs assert that, at the urging of certain farmers (including farmer-legislators), North Carolina enacted the Farm Act to deliberately target FLOC and its members. (See, e.g., Docket Entry 31, ¶¶ 57-81.) Under the circumstances, "[P]laintiffs have alleged an actual and well-founded fear that the law will be enforced against them." American Booksellers, 484 U.S. at 393. In sum:

> This case does not present the Court with a moribund statute. Here, . . . Plaintiffs are faced with a statute . . . so new that it has yet to be fully enforced . . . . Yet, the newness of this statute is also what gives it vigor and potential potency. While the Court knows of no prosecutions under this statute, this is not because the State lacks the will to bring them. Instead, there are no prosecutions because of [the statute's] youth, not the credibility of the threat that the State will enforce it against all people who engage in the conduct encompassed by its prohibitions. This statute is far from moribund; it is not even yet adolescent. Its youth counsels not that it will go unenforced, but instead that the reach of its proscriptions and the zeal of their enforcement remains unknown. The Court [should] find[] Plaintiffs are faced with a statute that is alive and well, and

> backed by a State poised to fully enforce it and a known constituency very eager to have it enforced.

Hoffman v. Hunt, 845 F. Supp. 340, 347 (W.D.N.C. 1994) (footnote omitted).

Nevertheless, Stein maintains th at, "to prevail on their Section 1983 claim, [Plaintiffs] must first show that the Attorney General acted or threatened to act." (Docket Entry 45 at 13.) [14] Stein further maintains that "Plaintiffs have failed to show that the Attorney General has any connection to the harms or injuries th ey allegedly suffered," as they "have not alleged that the Attorney General has taken, or threatened to take, any action to enforce]] E2 ÓF‹P×— — ©] ° cket

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As the Fourth Circuit explained, such arguments lack merit:

> The Attorney General tries to distance h[im]self from the state, but we think a dispute with a state suffices to create a dispute with the state's enforcement officer sued in a representative capacity. A controversy exists not because the state

farmworker conditions through various strategies, including . . . assisting its members in bringing well-publicized litigation to challenge illegal employment practices." (Docket Entry 31, ¶ 37.) For instance, "[b]efore the Farm Act was enacted, FLOC assisted some of its members in negotiating for voluntary union recognition agreements or an agreement for expanded collective bargaining rights as part of a class-wide settlement of employment rights litigation that was filed by FLOC members." (Id., ¶ 39.) These settlements have included "employer recognition of FLOC as the bargaining representative of workers who sign cards affirming their FLOC membership," as well as "dues checkoffs." (Id.) Furthermore, "[p]rior to the Act, it was FLOC's standard practice to negotiate a dues checkoff provision as part of any CBA or other union recognition agreement, in order to facilitate membership for workers who wish to join FLOC." (Id., ¶ 87.)

When farmworkers join FLOC, they typically execute a dues checkoff agreement, "a written authorization, compliant with [North Carolina General Statute Section] 95-25.8, requesting that their employer deduct 2.5% of their weekly wages and directly divert such funds to FLOC for the payment of union dues." (Id., ¶ 48.) Individual Plaintiffs executed such authorizations, paying their FLOC membership fees through dues checkoff agreements during their work in North Carolina in the 2017 and previous agricultural season. (See id., ¶¶ 6, 10, 11.) They wish to continue paying

their FLOC dues through dues checkoffs when they "exercise [their] right to return to North Carolina to work in future agricultural seasons" (id., ¶ 10; accord id., ¶ 11).[15]

15 In this regard, Stein maintains that Individual Plaintiffs fail to allege "an injury or harm that is 'concrete in both a qualitative and temporal sense'" (Docket Entry 45 at 19 (quoting Whitmore v. Arkansas, 495 U.S. 149, 155 (1990))), as they "merely assert that they 'plan' on returning to North Carolina to work, and that they want their future employers to deduct union dues from their wages" (id.). As a preliminary matter, because (as discussed below) FLOC possesses standing, whether Individual Plaintiffs "have standing is perhaps a matter of no great consequence." Doe v.

FLOC derives the majority of its funding from membership dues. (See id., ¶ 83 ("Union member dues constitute approximately 50-60% of FLOC's annual budget.").) Because of, inter alia, rural isolation, geographic dispersion, lack of access to bank accounts, and long working hours, it generally remains difficult for FLOC members to

In addition, since the Farm Act's enactment, FLOC "has had at least one opportunity to negotiate a CBA with an agricultural producer," but could not negotiate a dues checkoff in light of the Farm Act's prohibition on such arrangements. (Id., ¶ 87 (alleging that, if it negotiated the dues checkoff, "FLOC, as well as its members who authorized dues checkoffs, would be subject to investigation and criminal and civil enforcement by Defendant Stein").) Additionally, since the Farm Act's enactment, "FLOC has had at least one opportunity to assist members who have potential employment claims to negotiate with their employer for a pre-filing settlement of such claims. Because of the Act, these members are unable to seek a settlement agreement that includes voluntary recognition of FLOC as their bargaining representative and dues checkoff." (Id., ¶ 90 (asserting that, "[i]f they did so, they would be subject to investigation[and] criminal and civil enforcement by Defendant Stein").)

In Stein's view, "Plaintiffs' contentions do not constitute an injury-in-fact because the actions they complain they are prevented from taking are not proscribed by the Act." (Docket Entry 54 at 10.) According to Stein,

> no reasonable reading of the Farm Act supports Plaintiffs' contention that the Act prohibits FLOC from settling litigation as a party or obtaining a settlement agreement with an agricultural producer "that includes voluntary recognition of FLOC as their bargaining representative." Rather, the statute merely provides that an agricultural producer cannot be forced to enter into an agreement with a labor union or labor

> organi zation as a condition of settling litigation or anticipated litigation.
>
> Second, contrary to Plaintiffs' contentions, the Farm Act does not prevent parties from entering into dues checkoff agreements. Rather, the Farm Act simply provides that an agricultural producer cannot be required to transfer funds to a labor union or labor organization. There is nothing in the Farm Act that prevents or otherwise prohibits an agricultural producer from voluntarily entering i nt o a dues checkoff agreement or otherwise voluntarily agreeing to transfer a portion of an employee's wages to FLOC for the purpose of paying the employee's membership dues.

(Id. at 10-11 (citations omitted).)

> The Farm Act renders
>
> [a]ny provision that directly or indirectly conditions . . . 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 wi t h a labor union or labor organization . . . invalid and unenforceable as against public pol i cy in restraint of trade or commerce in the State of North Carolina.

N.C. Gen. Stat. § 95-79(b). It further provides that, "notwithstanding [North Carolina Statute Section] riF–öåÞ^i

Thus, by its plain terms, the Farm Act prohibits, "as against public policy in restraint of trade or commerce," N.C. Gen. Stat. § 95-79(b), any settlement agreement provisions regarding collective bargaining agreements or voluntary union recognition

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defe r red; it is still inevitable"). [17] Accordingly, Stein's standing-related arguments lack merit.

In sum, Plaintiffs possess standing and the Ex parte Young exception applies to Plaintiffs' suit against Stein. The Court should therefore deny the Stein Dismissal Motion.

II. Intervention Motion

A. Preliminary Matters

The Farm Bureau seeks to intervene as a defendant in this action either as of right, pursuant to Rule 24(a)(2), or

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17 In this regard, Stein maintains that "FLOC's fear of injury is too attenuated to support standing" because "FLOC's collection of dues from its members is entirely dependent on the conduct of independent actors , i .e. FLOC's members and the empl oyers," as well as "on the occurrence of a chain of events." (Docket Entry 45 at 18-19 (citing Clapper v. Amnesty Int'l USA, 568 U.S. 398, 414 (2013)).) More specifically, according to Stein, a farmworker must decide to (1) join FLOC and (2) pay the membership dues through a dues checkoff, which (3) the employer must decide to honor. (See id.) Thus, Stein contends, "[b]ecause the payment of dues is dependent on so many conditions, and because those conditions turn on the decisions of independent actors, FLOC's fear of injury is too attenuated to suppor t st andi ng." (Id. at 19.) However, unlike Clapper, which involved potential surveillance of American-based individuals in communication with individuals located abroad under a specific governmental surveillance program, the asserted harms here do not i nvolve actions by multiple independent actors exercising their discretion. See Clapper, 568 U.S. at 410-14; see also id. at 414 ("In sum, respondents' speculative chain of possibilities does not establish that injury based on potential future surveillance is certainly impending or is fairly traceable to [the particular surveillance provision]."). Inst ead, Plaintiffs' dues-related injuries arise from the Farm Act's prohibition on farmworker dues checkoff agreements rather than "a highly attenuated chain of possibilities," id. at 410, involving the discretionary actions of independent individuals. Accordingly, Stein's Clapper-based argument does not undermine Plaintiffs' standing.

permissively, pursuant to Rule 24(b)(1)(B). (See Docket Entry 21 at 1.) Defendants "take no position on the [intervention request]," but "Plaintiffs oppose [it]." (Id. at 2; see also Docket Entries dated Jan. 25, 2018, to present (containing response to Intervention Motion from Plaintiffs but not Defendants).)

The Rule in question requires the Court to "permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). In addition, pursuant to this Rule, "the [C]ourt may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). In either circumstance, the would-be intervenor must file a "timely motion" to intervene, Fed. R. Civ. P. 24(a) & (b), that "state[s] the grounds for intervention and [is] accompanied by a pleading that sets out the claim or defense for which intervention is sought," Fed. R. Civ. P. 24(c).[18] Finally, when "exercising its discretion [regarding permissive

18 The requirement that the proposed "intervenor serve on the existing parties and the court not only its motion to intervene, giving the reasons therefor, but also a pleading 'setting forth the claim or defense for which intervention is sought'" serves to "protect[] existing parties." Bridges v. Department of Md. State Police, 441 F.3d 197, 207-08 (4th Cir. 2006) (quoting Fed. R. Civ. P. 24(c)).

intervention requests], the [C]ourt must consider whether the

Bridges, an earlier-filed "proposed third amended complaint . . . contained the actual allegations that the would-be plaintiffs would be making against the defendants," thereby "satisfy[ing] in substance the Rule 24(c) requirement that intervenors provide defendants with a copy of their proposed complaint." Bridges, 441 F.3d at 208; see also Spring Constr., 614 F.2d at 377.

Here, though, the Farm Bureau entirely failed to file a proposed pleading, instead relying on a proposed motion to dismiss for lack of standing. (See Docket Entry 21-1 at 3; Docket Entry 21-2 at 2; Docket Entry 43-1 at 3; Docket Entry 43-2 at 2.) As a consequence of this litigation strategy, although the Farm "Bureau says it wants to intervene to respond to allegations that it intentionally acted to violate Plaintiffs' rights, . . . it never specifies, either in its [Intervention Motion] or in a pleading required by [Rule] 24(c), what its response would be to the particular allegations at issue." (Docket Entry 38 at 10 (asserting that the Farm "Bureau's opacity regarding its role in passing the contested legislation — even as it claims it is entitled to become a party to this lawsuit in order to defend it — underscores that its involvement in this case as a party will only obscure and complicate the issues").) This failure seemingly qualifies as more than a "non-prejudicial technical defect," Bridges, 441 F.3d at 208 (emphasis and internal quotation marks omitted). Nevertheless, the Court need not resolve whether the

Farm Bureau's "fail[ure] to abide by the letter of Rule 24," id., ___ thwarts its intervention reques t , for (as discussed below) the Intervention Motion fails on its merits.

B. Intervention of Right

To establish an entitlement to intervention of right, the Farm establiÑq Tar

litigation' as that term has been defined. Certainly all [proposed intervenors] are interested in the subject matter of the litigation, but that is not the same thing."), aff'd, 706 F.3d 345 (4th Cir. 2013).

The Farm Bureau further asserts that this litigation threatens to adversely impact its interests, as the Farm Act "is of great importance to [the] Farm Bureau and its members." (Docket Entry 22 at 16.) In addition, the Farm Bureau maintains that it "could suffer irreparable reputational damage and its members could be subjected to federal investigation, audits, fines, and debarment from the H-2A program" if the Farm Bureau is "unable to defend itself against Plaintiffs' specific allegations that (1) [the] Farm Bureau acted to intentionally obstruct Plaintiffs' exercise of their constitutional rights, and (2) [its] members are exploiting their H-2A workers in violation of the workers' human rights and H-2A program regulations." (Id.; see also id. at 13 ("Plaintiffs accuse North Carolina farmers of actions that equate to violations of H-2A visa program regulations.").) According to the Farm Bureau, "[t]hese allegations have been made in the public square and therefore could incite investigations into the claims. Even if disproven in such a scenario, the potential for undue hardship is substantial and warrants [the] Farm Bureau having an opportunity to defend its members in this forum." (Id. at 7; see also id. at 9 ("These accusations are demonstrably false, but due to their public

will not impair or impede the abilities of the [Farm] Bureau and its members to defend themselves" (id. at 21). (See id. at 11-13.) Finally, Plaintiffs dispute the necessity of the Farm Bureau's intervention on the grounds that "Defendants are already defending [the Farm Act] against Plaintiffs' constitutional claims." (Id. at 21.)

In response, the Farm Bureau narrows the focus of its intervention request to upholding the constitutionality of the Farm Act. (See, e.g., Docket Entry 43 at 3 (asserting that the Farm Bureau "intends to defend the constitutionality of [the Farm Act] in order to protect the interests of its members, not to pursue declaratory judgments that thousands of its individual members are in compliance with the H-2A program"), 5 (asserting that intervention does not risk expansion of discovery to issues regarding, inter alia, farmers' employment practices because "[the Farm Bureau] seeks intervention to defend the interests of its members in preserving the [Farm Act's] protections").)[19]

"It is not necessary to decide [whether the Farm Bureau satisfied the first two elements for Rule 24(a) intervention], however, since the [Farm Bureau] clearly ha[s] not met the third

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19 In addition, the Farm Bureau clarifies that it "articulated its unique interest in opposing those allegations which, if proven, could result in increased government scrutiny against its members" (id. at 4) solely in connection with "its alternative motion for mandatory intervention under Rule 24(a)" (id. at 4 n.3), but "d[oes] not rely on these interests in [seeking] . . . permissive intervention under Rule 24(b)" (id.).

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element of the test: [it] ha[s] not shown that [its] interests are not being properly represented by the current Defendants." Stuart, 2011 WL 6740400, at *2. "When the party seeking intervention has the same ultimate objective as a party to the suit, a presumption arises that its interests are adequately represented, against which the [proposed intervenor] must demonstrate adversity of interest, collusion, or nonfeasance." Virginia v. Westinghouse Elec. Corp., 542 F.2d 214, 216 (4th Cir. 1976). Moreover, "where the proposed intervenor shares the same objective as a government party," Stuart v. Huff, 706 F.3d 345, 351 (4th Cir. 2013), "the putative intervenor must mount a strong showing of inadequacy," id. at 352. See also id. (explaining that any lesser requirement "would place a severe and unnecessary burden on government agencies as they seek to fulfill their basic duty of representing the people in matters of public litigation").[20]

[illegible]

20 In so holding, the Fourth Circuit observed, "[t]o start, it is among the most elementary functions of a government to serve its citizens in a representative capacity on behalf of its citizens. [illegible]

Here, the Farm Bureau's interests align with Defendants, as "[b]oth the government [officials] and the would-be intervenors want the statute to be constitutionally sustained," id. at 352. (See, e.g., Docket Entry 43 at 3 (asserting, in the Farm Bureau's

> establish inadequacy of representation since would-be intervenors will nearly always have intense desires that are more particular than the state's (or else why seek party status at all). Allowing such interests to rebut the presumption of adequacy would simply open the door to a complicating host of intervening parties with hardly a corresponding benefit.

Stuart, 706 F.3d at 353 (rejecting proposed intervenors' argument that, "as the 'class of beneficiaries protected by the Act,' their interests in defending the Act are 'stronger' and more 'specific' than the state's general interest").

The Farm Bureau further implies that differing litigation strategies justify Rule 24(a) intervention. (See Docket Entry 43 at 7-8.) Here, though, the Farm Bureau "share[s] the same objective as the existing government defendants: upholding the constitutionality of the Act," Stuart, 706 F.3d at 353. (See, e.g., Docket Entry 43 at 3 (asserting that the Farm Bureau "intends to defend the constitutionality of [the Farm Act]").) Hence, "the relevant and settled rule is that disagreement over how to approach the conduct of the litigation is not enough to rebut the presumption of adequacy." Stuart, 706 F.3d at 353; see also Stuart, 2011 WL 6740400, at *2 (rejecting proposed intervenors' arguments "that the existing [d]efendants' decision not to present evidence at a preliminary injunction hearing demonstrates that their interests are not being adequately represented" and "that they would offer additional compelling state interests in support of the Act that the [d]efendants have not brought to the [c]ourt's

and motion practice, thwart settlement, and delay trial." Id. at 350.

The Farm Bureau argues that its intervention will not unduly delay or prejudice the adjudication of the existing parties' rights because it moved to intervene early in the litigation and Plaintiffs' allegations ostensibly render it "a de facto party" (Docket Entry 22 at 2, 12). (See id. at 9-13; Docket Entry 43 at 2-5.) Plaintiffs dispute these assertions, noting as an initial matter that its pleadings "mentioned the [Farm] Bureau only three times in the course of a complaint numbering [over] 3[7] pages and over 124 paragraphs," and "[t]wo of those mentions arose in the context of quoting Representative Jimmy Dixon, the legislator who introduced [the Farm Act]." (Docket Entry 38 at 2-3.) [22] Plaintiffs further contend that the issues that the Farm Bureau originally sought to litigate, namely its putative reputational harm and its members' compliance with the H-2A program requirements, "are largely irrelevant to the disposition of Plaintiffs' claims and will inject substantial burden and delay into these proceedings." (Id. at 5.) Plaintiffs next maintain that permitting the Farm Bureau's intervention would pave the way for intervention by multiple additional parties:

> [i]f the Bureau is allowed to become a party, there is no fairly applied limiting principle that would prevent any of the tens of thousands of North Carolina agricultural

22 The Complaint measures 39 pages and the Amended Complaint measures 38 pages. (See Docket Entries 1, 31.)

> producers it claims to represent —or any other interest groups or individuals who may be affected the law —from securing permissive intervention in this case.

(Id. at 13.) Finally, Plaintiffs contend that "any relevant legal arguments the[

> would invite [other identified entities [23] as well as the Farm Bureau's] members to individually petition for permissive intervention. If such were the case, the Court could not draw a meaningful line that prevents all [such entities and individuals] from gaining permissive intervention in this case, since all would have an argument for intervention just as tenable as [the Farm Bureau]. Just dealing with this flood of foreseeable motions for intervention would cost substantial judicial resources.

Ohio Valley Envtl. Coal., Inc. v. McCarthy, 313 F.R.D. 10, 31 (S.D. W. Va. 2015) (denying intervention request). It would be particularly inappropriate to grant such intervention here, given the substantial overlap in the legal positions that Defendants and the Farm Bureau advance. (Compare, e.g., Docket Entries 40, 45 (seeking dismissal on grounds that Plaintiffs lack standing and Defendants lack enforcement authority), with Docket Entry 43-2 (same).) See Ohio Valley, 313 F.R.D. at 31 (denying intervention request where it "is likely only to result in duplicative briefing adding a layer of unwarranted procedural complexity" (internal quotation marks and brackets omitted).)

Finally, particularly to the extent that the Farm Bureau "seeks intervention [solely] to defend the interests of its members

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23 For instance, the Amended Complaint alleges that, inter alia, Representative Dixon (see, e.g., Docket Entry 31, ¶¶ 69, 73-77), "State Senator Brent Jackson" (id., ¶ 62; see also, e.g., id., ¶¶ 67, 77), "'other farm organizations'" than the Farm Bureau (id., ¶¶ 73, 76), "'a lot of farmers across the state'" who contacted Representative Dixon "'over the last couple of days'" before the Farm Act's introduction (id., ¶ 73), and "'a few [North Carolina] farmers [who] are getting a little bit tired of'" FLOC's activities (id., ¶ 75) all played a role in the Farm Act's passage. As such, all those entities presumably possess a similar interest in the Farm Act's continuance.

in preserving the protections of [the Farm Act]" (Docket Entry 43 at 5), it does not need "party status and all the privileges pertaining thereto," Stuart, 706 F.3d at 355, to achieve this objective. Rather, the Farm Bureau "retain[s] the ability to present [its] views in support of

IV. Preliminary Injunction Motion[25]

Finally, Plaintiffs move to preliminarily enjoin Stein from enforcing the Farm Act. (See Docket

A. Factual Background

As relevant to the Preliminary Injunction Motion, the undisputed evidence reflects the following:

Representative Dixon introduced the Farm Act amendment to a pending farm bill shortly before five o'clock on the evening of June 28, 2017. (Docket Entry 34-18 at 3-6; Docket Entry 34-22 at 2.) In introducing the Farm Act, Representative Dixon stated that it "would prohibit the use of litigation to force farms to unionize and ensure farmers are not required to collect dues for their employees," thereby "reduc[ing] a regulatory burden on farms that is not required under federal law." (Docket Entry 34-18 at 4.) He further indicated that the Farm Act arose from a desire to stop "folks that are interested in farm labor" from "getting people to be dissatisfied" (id. at 5), for, although he denied being "afraid that they're going to organize the farm workers into a union," he expressed that "a few of us farmers are getting a little bit tired of it and we want some properly measured priority so that we can continue to feed you" (id. at 5-6). In Representative Dixon's view, "[b]ecause of continued harassment from out of state[,] there seems to be a growing wave of folks that are interested in farm labor" as well as "a general tendency for an increase in activity that we consider to be harassment." (Id. at 5.)

"[S]ince the 1990s, FLOC has been the only union organizing and representing farmworkers in North Carolina." (Docket Entry 34-

their pay via "checks which their employers cash for them, or which they must take to local stores that offer check cashing services for a fee." (Docket Entry 34-5, ¶ 43; accord Docket Entry 34-6, ¶ 20; Docket Entry 34-7, ¶ 14.) Migrant farmworkers in North Carolina, including H-2A workers, generally lack access to bank accounts and credit cards and "conduct most transactions by cash." (Docket Entry 34-5, ¶ 44; Docket Entry 34-6, ¶¶ 20-22; Docket Entry 34-7, ¶¶ 14-16.) Due to the seasonal and weather-dependent nature of their work, as well as the piece-rate basis by which they "are often paid," farmworkers' "earnings generally fluctuate throughout the season." (Docket Entry 34-5, ¶ 42.) "In many cases, . . . the transaction fees for wiring weekly dues w[ould] be more than the dues owed." (Id., ¶ 57.)

Member dues comprise roughly fifty-to-sixty percent of FLOC's annual budget, rendering timely, consistent dues collection "essential to FLOC's ability to administer CBAs and provide services to its worker-members." (Id., ¶ 56.) "The Farm Act guts [FLOC's] ability to maintain this essential and irreplaceable source of funding" (id.), as the majority of members "pay their dues through dues checkoffs" (id., ¶ 46) and face significant challenges to utilizing alternative payment methods (see, e.g., id., ¶ 57). Due to "the size and geographic dispersion of FLOC's North Carolina membership as well as [its] own limited resources and staff, FLOC lacks the resources and ability to collect weekly

dues directly from each of [its] approximately 2,000 dues paying members who are working in the state at a given time." (Id., ¶ 55.)[27] In the absence of the weekly dues-checkoffs upon which they rely to pay their membership dues (see id., ¶ 57), FLOC members will need "to ` `

opportunity for FLOC and its members, especially because the agreements [they] negotiate typically last multiple years." (Id.)

Historically, FLOC and its members have obtained "CBAs and other improvements to farmworker conditions through," inter alia, "well-publicized litigation to challenge illegal employment practices." (Id., ¶ 14.) "Lawsuits in which FLOC participates, or which FLOC assists [its] members in bringing by providing legal referrals, are meant to recover unpaid

working conditions. . . . in trying to resolve the legal issues without litigation." (Id., ¶ 52.) "Because of the Farm Act, these FLOC members no longer have the option to negotiate for voluntary union recognition agreements with dues checkoff or to secure an agreement for expanded collective bargaining rights as part of a group settlement agreement that would seek restitution and also non-monetary terms to resolve their claims." (Id.) FLOC has similarly assisted certain of its members with "obtaining legal counsel to assert claims for unpaid wages under federal and state laws," but "[b]ecause of the Act, these members will not have the option of seeking a CBA or other union recognition or dues checkoff agreement in addition to monetary compensation." (Id., ¶ 53.)

B. Analysis

In support of their Preliminary Injunction Motion, Plaintiffs maintain that they "are likely to succeed on the merits of their arguments

state under [North Carolina General Statute Section] 95-25.8").) Stein disputes neither that contention nor the argument that Plaintiffs qualify as similarly situated to "all other workers and unions in the state" (id. at 21), at least as relevant to the instant matter. (See generally Docket Entry 46.) Moreover, North Carolina General Statute Section 95-25.8 imposes no limitations regarding categories of workers permitted to authorize union dues withholding, see generally id., and the undersigned's research uncovered no statutory bar on such withholdings by any group of private sector employees other than farmworkers.[30]

Under these circumstances, Plaintiffs will likely succeed on the first step of their Equal Protection Claim. See Morrison, 239 F.3d at 654; Sylvia, 48 F.3d at 819. The inquiry thus turns to whether the differential treatment of farmworkers and their union bears a rational relationship to a legitimate government interest. See Romer, 517 U.S. at 631. Stein offers no justification for the Farm Act (see Docket Entry 46), but in sponsoring the Farm Act, Representative Dixon offered three rationales for its passage

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30 In addition, the Farm Act's legislative history reflects an intent to target "folks that are interested in farm labor" and particularly those who "make a good living coming around and getting people to be dissatisfied." (Docket Entry 34-18 at 5.) Such evidence bears on the Equal Protection Clause analysis. Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 268 (1977) (observing that, in determining discriminatory intent, "[t]he legislative or administrative history may be highly relevant, especially where there are contemporary statements by members of the decision making body, minutes of its meetings, or reports").

(see Docket Entry 34-18 at 3-6). First, Representative Dixon maintained that the Farm Act "reduces a regulatory burden on farms." (Id. at 4.) However, the precluded activities (dues checkoffs and certain settlement provisions) arose from voluntary agreements between farmers, farmworkers, and/or FLOC rather than any regulatory mandate. (See Docket Entry 34-5, ¶ 11.) Moreover, the Farm Act does not affect payroll deductions for anything other than payment of union dues. See N.C. Gen. Stat. § 95-79(b). The Farm Act thus does not appear rationally related to reducing farmers' regulatory burdens. See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 446 (1985) ("The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.").

Representative Dixon further maintained that the Farm Act restrictions derive from a need to ensure that those farmers who "are getting a little bit tired" of "predatory folks that make a good living coming around and getting people to be dissatisfied" obtain "some properly measured priority so that [they] can continue to feed [people]." (Docket Entry 34-18 at 5-6.) On the current record, concern for the food supply does not bear a rational connection to restrictions on the organizing activity (through voluntary settlements) of all farmworkers and their union, given that (1) two of the three main crops tended by H-2A workers — who comprise the majority of FLOC's membership — do not involve food

(see Docket Entry 34-5, ¶ 7 (explaining that most such "workers work in tobacco, Christmas trees, and sweet potatoes")) and (2) the prohibitions do not apply to any other workers involved in the food supply chain, see, e.g., N.C. Gen. Stat. §§ 95-25.8, 95-79(b). See City of Cleburne, 473 U.S. at 449–50 (finding that proffered explanations failed to "rationally justify" differential treatment

In sum, Plaintiffs have established a likelihood of success on the merits of their Equal Protection Claim. [31]

ii. Irreparable Harm

Plaintiffs assert that they will suffer irreparable harm without an injunction because, in part, "the Act subjects FLOC, its representatives, and its members to criminal prosecution and civil liability for entering into voluntary agreements that are central to its mission." (Docket Entry 35 at 24.) In addition, because of the Act, FLOC cannot "engage in collective bargaining activity that was its standard practice prior to the Act." (Id.) For instance, since the Farm Act's passage, "FLOC has engaged in negotiations with one agricultural producer in North Carolina" to resolve certain FLOC members' legal claims, but because of the threat of civil and criminal prosecution, FLOC and its members could not negotiate for union recognition, a CBA, and/or dues checkoff in any settlement of this dispute. (Docket Entry 34-5, ¶¶ 49, 51, 52.) The same holds true for another group of FLOC members whom "FLOC has also been assisting . . . to assert claims for unpaid wages." (Id., ¶ 53.) These situations each represent "a significant lost opportunity for FLOC and its members," particularly given that its agreements "typically last multiple years." (Id., ¶ 49.)

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31 As such, the Court need not determine whether Plaintiffs independently established a

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"Generally, irreparable injury is suffered when monetary damages are difficult to ascertain or are inadequate. Thus, when the record indicates that [the] plaintiff's loss is a matter of simple mathematic calculation,

customers and investors," noting that "such damage is incalculable[,] not incalculably great or small, just incalculable" (internal quotation marks omitted)); see also Wilson v. Thomas, No. 5:14-cv-85, 2014 WL 7405462, at *3 (E.D.N.C. Dec. 23, 2014) (explaining, in case "implicat[ing] the [E]qual [P]rotection and [D]ue [P]rocess [C]lauses of the Fourteenth Amendment," that, because "plaintiffs allege constitutional harms and have established their likelihood of success on the merits, they have likewise established the existence of irreparable harm based on the infringements of their constitutional rights").

iii. Balance of the Equities

In addition, Plaintiffs maintain that the "[e]quities [f]avor an [i]njunction" because, inter alia, "[n]o harm will come to [Stein]" if he cannot enforce "a likely unconstitutional law." (Docket Entry 35 at 25 (emphasis omitted).) In response, Stein identifies no harm that issuance of the injunction would cause (see generally Docket Entry 46) and, indeed, disputes whether he possesses enforcement authority over the Farm Act in the first place (see, e.g., id. at 14 ("[T]he Attorney General does not have enforcement authority under the statute.")). Under the circumstances, enjoining Stein from enforcing the Farm Act "would not impose any undue burden on [Stein], since the injunction would not . . . impose any burden on the state." Planned Parenthood of Cent. N.C. v. Cansler, 804 F. Supp. 2d 482, 500 (M.D.N.C. 2011).

Moreover, "a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction." Giovani Carandola, Ltd. v. Bason, 303 F.3d 507, 521 (4th Cir. 2002) (internal quotation marks omitted). Thus, particularly in the absence of any asserted harm to Stein, the equities favor Plaintiffs.

iv. Public Interest

Plaintiffs further contend that issuance of "[a]n injunction would be in the public interest because it would restore the status quo that existed before the recent enactment of the Farm Act" (Docket Entry 34 at 3-4) and would "ensur[e] that Plaintiffs are no longer subjected to this unconstitutional law" (Docket Entry 35 at 25 (citing Giovani Carandola, 303 F.3d at 521)). The Fourth Circuit "has defined the status quo as the last uncontested status between the parties which preceded the controversy." Pashby, 709 F.3d at 320 (internal quotation marks omitted); see also Aggarao v. MOL Ship Mgmt. Co., 675 F.3d 355, 378 (4th Cir. 2012) ("The status quo to be preserved by a preliminary injunction, however, is not the circumstances existing at the moment the lawsuit or injunction request was actually filed, but the last uncontested status between the parties which preceded the controversy." (internal quotation marks omitted)). Here, the last unconteste d status between the parties occurred before enactment of the Farm Act. Thus, an

injunction would serve to preserve the status quo. Preservation of the status quo, in turn, serves the public interest. See, e.g., Blackwelder, 550 F.2d at 197 (noting "the 'public interest' in preserving the status quo ante litem until the merits of a serious controversy can be fully considered by a trial court").

Moreover, "upholding constitutional rights surely serves the public interest." Giovani Carandola, 303 F.3d at 521; see also, e.g., City of Greensboro v. Guilford Cty. Bd. of Elections, 120 F. Supp. 3d 479, 490 (M.D.N.C. 2015) (finding, where the plaintiffs established a likelihood of success on their equal protection claim regarding new election procedures, that "[t]he public interest is served by holding the 2015 elections according to a long-established system, as to which there has not been a constitutional challenge, rather than a system that poses serious constitutional concerns"); Wilson, 2014 WL 7405462, at *3 ("As

34 at 4.) Stein does not dispute this assertion. (See Docket

IT IS FURTHER RECOMMENDED that the Court deny the Stein Dismissal Motion (Docket Entry 44).

IT IS FURTHER RECOMMENDED that the Court deny the Intervention Motion (Docket Entry 21).

IT IS FURTHER RECOMMENDED that the Court grant the Preliminary Injunction Motion (Docket Entry 34) by enjoining Stein from enforcing the Farm Act and waiving the security requirement.

This 21st day of August, 2018.

/s/ L. Patrick Auld
L. Patrick Auld
United States Magistrate Judge