No. 20-1183

IN THE SUPREME COURT
OF THE UNITED STATES

Tri-State Zoological Park of Western Maryland, Inc., Animal Park, Care & Rescue, Inc., and Robert L. Candy

Petitioners,

v.

People for the Ethical Treatment of Animals, Inc.

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

PETA's Brief in Opposition to the Petition for Certiorari does not rebut the Zoo's arguments, but instead reinforces them. PETA repeatedly mischaracterizes the District Court's determination that PETA was injured as having been a factual determination, but does not rebut the fundamental contention of the Zoo—that any alleged injury to PETA was the result of PETA's own voluntarily adopted mission statement, and the voluntary pursuit of that mission statement due to PETA's ideological concerns. It is undisputed that the only "requirement" that PETA faced was a result of PETA's voluntarily adopted mission statement, and that its only injury was due to its ideological concern with the subject matter and its consequent voluntary expenditures.

PETA further attempts to cast aspersions and unfair prejudice upon the Zoo by reciting the erroneous factual findings of the District Court, and implies that the Zoo did not take issue with the findings of fact below. This is simply not true. However, the Zoo does recognize that this Court is not generally concerned with factual review, and therefore did not continue its factual arguments before this Court.

Finally, despite the clear departures of the lower courts from this Court's precedents, PETA makes no attempt to reconcile the aberrant holdings of the lower courts with the law as set forth by this Court. Instead, the essence of PETA's argument appears to be that because many of the lower circuits have departed so far from this Court's precedents, that this Court should simply accept the present state of affairs. This is exactly the problem that the Zoo addresses in its Petition. Various lower courts have embraced exactly the wrong interpretation of *Havens Realty v. Coleman*, 455 U.S. 363 (1982), and have ignored the requirements of concrete and discernible injury set forth by this Court in *Sierra Club v. Morton*, 405 U.S. 727 (1972), *Lujan v. Defenders of Wildlife*, 504 U.S. 455 (1992), and *Summers v. Earth Island Institute*, 555 U.S. 488 (2009).

PETA'S MISLEADING RECITATION OF PURPORTED FACTS

PETA misleadingly states that the Zoo did not challenge the findings of fact of the District Court below. The Zoo recognizes that PETA's lengthy recitation of the District Court's findings of fact is generally irrelevant to the legal question presented, and is designed to be prejudicial rather than to illuminate any point of law that would be of

interest to this Court. However, in light of PETA's statements, the Zoo is duty bound to rebut the idea that the Zoo agreed with the District Court's findings of fact or did not challenge those findings on appeal.

Instead, as is quite clear from a reading of the Opinion of the Fourth Circuit Court of Appeals, the Zoo challenged both the exclusion of the Zoo's expert witness Dr. Duncan, who served as the Zoo's regular veterinarian, and the admissibility of the testimony of Dr. Haddad, PETA's "star witness" in the case below. But for the exclusion of the Zoo's expert Dr. Duncan, which left the testimony of PETA's expert Dr. Haddad unopposed, the factual picture presented below would have been vastly different. In fact, if the law had been properly applied by the District Court, Dr. Duncan would have testified for the Zoo and Dr. Haddad's testimony on behalf of PETA would have been excluded. This would almost certainly have led to a completely different result at trial.

The Fourth Circuit rejected the Zoo's arguments, but it is irresponsible for PETA to claim that the Zoo did not dispute any of the factual findings below.

As for the purported uncontradicted facts related to the alleged injury to PETA for purposes of organizational standing, there could be no valid factual finding of injury because PETA never

passed the threshold of showing that its alleged injuries were legally cognizable. A voluntary injury sustained as a result of voluntary intermeddling, driven by a voluntarily chosen mission statement, is not a cognizable injury with respect to organizational standing. This is a matter that PETA never adequately addresses in its Brief. Instead, PETA mischaracterizes the wrong application of the law to the facts in this case as being nothing more than a finding of fact. Nothing could be further from the truth.

PETA DOES NOT ATTEMPT TO JUSTIFY THE RULINGS OF THE LOWER COURTS, WHICH ARE CLEARLY CONTRARY TO THE HOLDINGS OF THIS COURT

While PETA is quite verbose on the subject of whether certain lower courts have applied *Havens Realty*, *supra*, in a manner that supports PETA's position, PETA does not even attempt to show that those applications of *Havens Realty* conform with the law as set forth by this Court. Instead, PETA continues to insist that it was "injured" within the meaning of *Havens Realty*, *supra*, while ignoring the fact that all of its alleged injuries were due to its voluntarily adopted mission statement and its voluntary expenditures on subject matter that it viewed as ideologically

important. PETA never attempts to dispute the voluntary nature of its so-called injuries or expenditures, because there is no colorable dispute there. Instead, PETA engages in more language games, and attempts to turn the lower courts' erroneous application of the law to the facts into "findings of fact", while also continuing to insist that it was "required" to act, while not adequately addressing the fact that any perceived requirement was a result of its voluntarily chosen mission statement.

Instead, PETA simply brushes aside the dissents and doubts raised by some of the most esteemed judges of the lower courts, including Judge Jacobs, Judge Millette, Judge Ikuta, and Judge Boasberg. It is a rare occasion indeed when so many jurists openly express their frustration with the current state of the law in their written opinions, and the Zoo submits that those jurists are doing so for good reason. The present state of jurisprudence as to organizational standing in the lower courts, especially as to the application of *Havens Realty*, is in chaos. There is no consistency even within circuits. (See, e.g., the Fifth Circuit decisions in *Ass'n for Retarded Citizens of Dallas v. Dallas County Mental Health & Mental Retardation Ctr. Bd. of Trustees*, 19 F.3d 241 (5th Cir.1994), and *Association of Community Organizations for Reform Now v. Fowler*, 178 F.3d

350 (5th Cir. 1999), the decisions within the D.C. Circuit in *Am. Anti-Vivisection Society v. USDA*, 946 F.3d. 615 (D.C. Cir. 2019) and *Ctr. for Resp. Science v. Gottlieb (II)*, 346 F.Supp.3d 29 (D.C. Dist. Ct. 2018), and of course, the disjunct between the instant case and *Lane v. Holder*, 703 F.3d. 668 (4th Cir. 2012), *cert. denied* 571 U.S. 1195 (2014). One cannot even discern a predictable jurisprudence within the same circuits given the present state of affairs, let alone reconcile those decisions with the rulings of this Court. All seems to have become arbitrary, and litigants on either side can only hope they draw the right judge or the right appellate panel. This is not how the law is supposed to function.

PETA SHOULD WELCOME CLARITY ON THIS ISSUE, RATHER THAN EVADING IT

One would think that a party in PETA's position, often pursuing nationwide litigation, would urge this Court to grant certiorari to affirm PETA's position for once and for all. Of course PETA does not want this Court to grant certiorari, because its position is so plainly wrong as a matter of law. Instead, PETA and other like-minded organizations will quite likely continue a strategy of piecemeal litigation throughout the various circuits, wrongly invoking *Havens Realty* time and

again, because that strategy has been effective to date and has already created a large body of pernicious case law in the lower circuits. A clarification by this Court, to be applied nationwide, would be in the public interest.

PETA openly admits that it believes it should be allowed to pursue its present litigation strategies nationwide, based upon no more than its voluntarily chosen mission statement, without showing any particularized injury to itself as an organization. This position brings to mind the wise words of C.S. Lewis, that "[o]f all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive. It would be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end, for they do so with the approval of their own conscience."

For the reasons stated above, the Petition should be granted.

Respectfully Submitted,

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June 23, 2021