

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

SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENTAL BRIEF OF PETITIONERS

PETA's Motion for Attorney's Fees below

On March 8, 2021, after the date of filing of the Petition for Certiorari, PETA filed in the United States District Court of Maryland a Motion for Attorneys' Fees pursuant to the discretionary fee provisions of the Endangered Species Act, seeking more than \$1.2 Million in attorneys' fees and nontaxable costs (Case No. 17-2148, ECF 227, attached as App. 1). Based upon earlier statements by the District Court, it seems likely that the District Court will in fact grant that motion for fees and costs.

At the summary judgment hearing held in this case on June 28, 2019, more than four months before trial of the matter, the District Court judge expressly stated on the record as to attorneys' fees that "the non-prevailing party is going to pay." Mot. Hearing Tr. (June 28, 2019), ECF No. 140, at 86:14-15; see also *id.* 48:14-19, relevant excerpts attached as App. 2, in which the District Court stated, "I was curious as to why a zoo which proclaims not enough money to hire experts who can do the heavy lifting would ever be able to absorb the kinds of attorney's fees that we're talking about now in the event that PETA prevails. So I wanted to make sure

I understood how that attorney's fee provision works and make sure [Petitioner] Mr. Candy understands it." *Id.*, App. 2 at 5a.

The statement by the District Court directed toward "in the event that PETA prevails" appears to be mere window dressing, since on that same day, the District Court openly discussed with counsel for PETA on the record that having a trial in the case, rather than entering summary judgment, would be advantageous because "while summary judgment is all fine and good, it's also less bullet proof on appeal. And since this is a bench trial, this Court can do it and would do it whenever you tell me you're ready. We can streamline it." (Case No. 17-2148, ECF 140, p. 57, App. 2 at 14a). In other words, the District Court had already decided that PETA would be the prevailing party, whether by summary judgment or by trial, more than four months before the trial date in this case, and therefore it was already certain that any award of attorneys' fees would be in PETA's favor. On that same day, the District Court again brushed off the Zoo's argument as to standing, saying "[a]s a matter of fact, I'm now going to have to revisit standing because no doesn't mean no for the Zoo. So I'm going to do that in a moment, but that is just not going to hunt right now. Right?" (Case No. 17-2148, ECF 140, p. 58, App. 2 at 15a).

The District Court's attention having been directed toward the Zoo's ability to pay PETA's attorneys' fees, the implied threat of attorneys' fees to be awarded against the Zoo even months before trial, and the derisive treatment of the Zoo's

legal arguments, portends that if this Court declines to reverse the decision of the District Court, the District Court will award attorneys' fees in favor of PETA without giving proper consideration to the equitable factors involved in such a decision.

The Zoo did no more in this case than stand upon its well-established rights under precedents set by this Court as to organizational standing. The Zoo was correct to do so. Yet the Zoo now faces the very real prospect of a ruinous monetary judgment as a punishment for asserting its clearly established legal rights. This Court should invoke its supervisory authority to prevent such an injustice. This is a case where a summary reversal would clearly be merited.

Respectfully Submitted,

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