

1 UNITED STATES COURT OF APPEALS
2 FOR THE DISTRICT OF COLUMBIA CIRCUIT

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4
5 AMERICAN SOCIETY FOR THE
6 PREVENTION OF CRUELTY TO
ANIMALS, ET AL.,

7 Appellants,

No. 10-7007

8 v.

9 RINGLING BROS. AND BARNUM &
10 BAILEY CIRCUS, ET AL.,

11 Appellees.
12

13 Monday, September 12, 2011

14 Washington, D.C.

15 The above-entitled matter came on for oral
16 argument pursuant to notice.

17 BEFORE:

18 CIRCUIT JUDGES TATEL, GARLAND, AND BROWN

19 APPEARANCES:

20 ON BEHALF OF THE APPELLANTS:

21 CARTER G. PHILLIPS, ESQ.

22 ON BEHALF OF THE APPELLEES:

23 JOHN M. SIMPSON, ESQ.
24
25

Deposition Services, Inc.
12321 Middlebrook Road, Suite 210
Germantown, MD 20874
Tel: (301) 881-3344 Fax: (301) 881-3338
info@DepositionServices.com www.DepositionServices.com

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1 standing was contested, but the redressability ultimately came
2 through a concession from the Solicitor General that the
3 federal government will abide by --

4 JUDGE GARLAND: That was the President, right? This
5 is an issue about whether the President could be forced by the
6 court.

7 MR. SIMPSON: No, it was the under-counting in the
8 census, and the state lost a representative.

9 JUDGE GARLAND: Yes, but the question was the
10 President had to in the end approve, and there was a serious
11 issue about whether the court had authority over the
12 President. We don't have that here.

13 MR. SIMPSON: No. It's --

14 JUDGE TATEL: So --

15 MR. SIMPSON: -- a different scenario, but you still
16 have a factual component to the concept of redressability.

17 JUDGE TATEL: Let me add to --

18 MR. SIMPSON: And if the federal government doesn't
19 acquiesce in that --

20 JUDGE TATEL: I'd like to add to Judge Garland's
21 hypothetical. Suppose we don't agree with you that the agency
22 lacks, that the agency has a discretion once we rule not to
23 proceed, not to go ahead, what's the basis then for no
24 informational standing?

25 MR. SIMPSON: The basis is that they never proved

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1 that they were deprived of information to begin with. The
2 witness they put on the stand talked about what they hoped to
3 get, how they would use it, but she never actually said at the
4 time this lawsuit was filed we are deprived of information as
5 a matter of fact. There's no a single piece of testimony on
6 that. And not only did she fail to testify to it, on cross-
7 examination it was brought out that every single piece of
8 information that that permit proceeding would yield they
9 already had, or got one way or the other through this case.
10 So, despite all the legal back and forth about whether they
11 have informational standing or not they failed to prove it as
12 a matter of fact.

13 And I would point out that Ms. Paquette was not the last
14 witness who testified at trial for the Plaintiff, she
15 testified on February 19th, that same day Judge Sullivan
16 ordered the parties to brief organizational standing because
17 they evidently had a serious issue about it. We did so. They
18 didn't rest for five more days. They could have come back and
19 recalled this witness, they could have called other witnesses,
20 they didn't shore up any of the facts that they needed to
21 establish either the organizational or informational theories
22 that they pursued. Thank you.

23 JUDGE TATEL: Thank you. Does Mr. Phillips have any
24 time left?

25 THE CLERK: No, he's out.