IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:14-CV-182-BR

WOODELL MCGOWAN, et al.,   )
)
          Plaintiffs,   )
)
    v.   )   ORDER
)
MURPHY-BROWN, LLC, d/b/a   )
SMITHFIELD HOG PRODUCTION   )
DIVISION,   )
)
          Defendant.   )
_____)

This matter is before the court on defendant's motion to take judicial notice of the

Migratory Bird Treaty Act ("Migratory Bird Act") and the Secretary of the United States

Department of Interior's List of Migratory Birds ("Interior's List of Migratory Birds") (DE #

511.) Plaintiffs filed a response in opposition. (DE # 520.)

Defendant moves to judicially notice the Migratory Bird Act and the Interior's List of

Migratory Birds, "which make it unlawful to hunt, capture, or kill any migratory bird, including

two birds that are commonly found in North Carolina, the Black Vulture and the Turkey

Vulture." (DE # 511, at 2.) Defendant claims these legislative facts are relevant because

"[p]laintiffs allege that the presence of 'buzzards' or other scavenger animals impair the right to

use and enjoy their properties." (Id.) (footnotes omitted). Plaintiffs oppose the court taking

judicial notice of either law, contending that defendant's request is untimely, irrelevant, and

"would confuse the jury and the issues." (DE # 520, at 2, 5.)

A "district court properly may take judicial notice of legislative facts[.]" United States v.

Gavegnano, 305 F. App'x 954, 956 (4th Cir. 2009) (citation omitted). "Legislative facts . . . are

those which have relevance to legal reasoning and the lawmaking process, whether in the

formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body." Fed. R. Evid. 201(a) advisory committee's note to 1972 proposed rules. Here, the court does not see the relevance of such facts. Accordingly, defendant's motion seeking judicial notice of the Migratory Bird Act and Interior's List of Migratory Birds is DENIED.

This 13 February 2019.

_____
W. Earl Britt
Senior U.S. District Judge