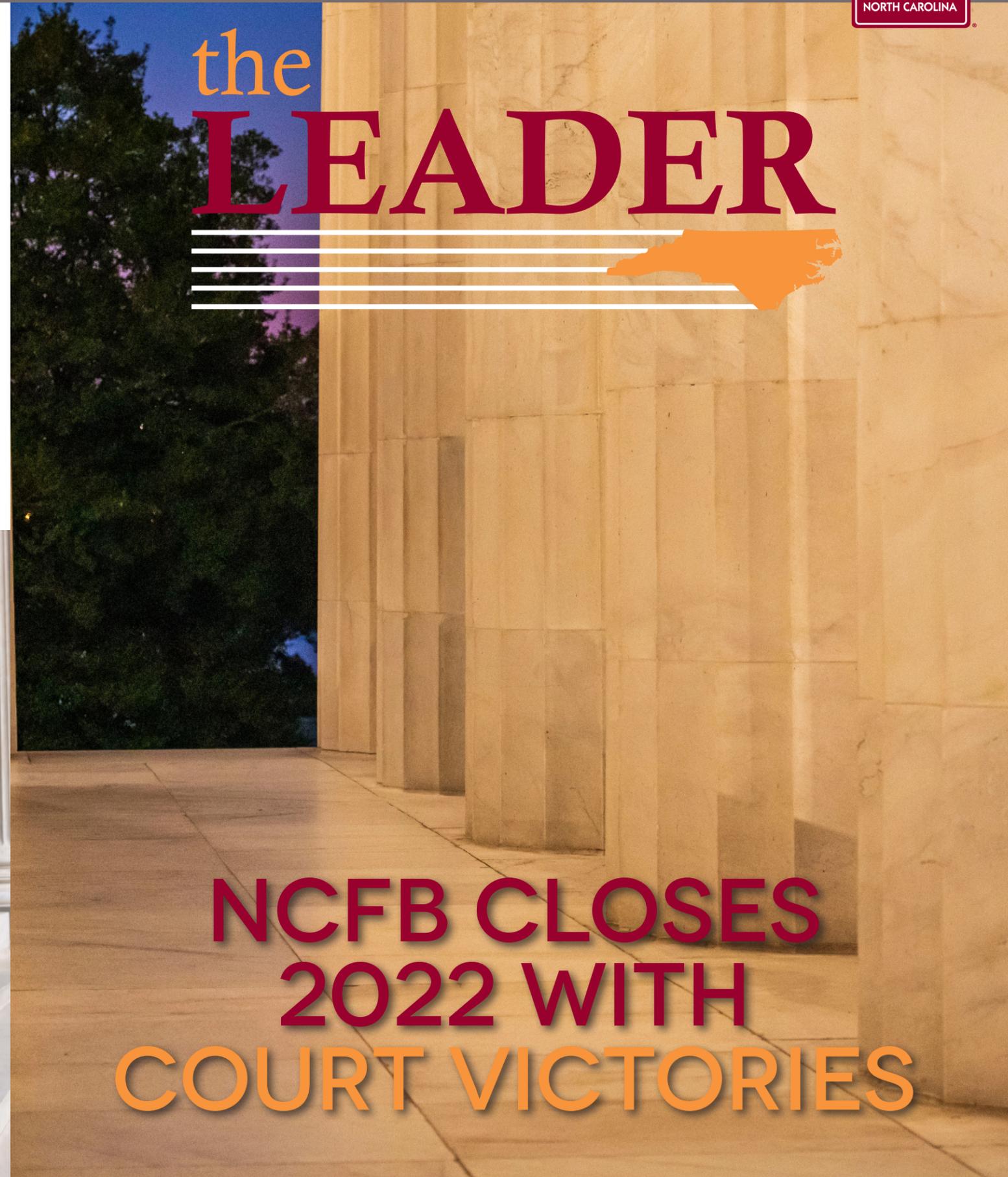




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NCFB CLOSES 2022 WITH COURT VICTORIES

NCFB closed December 2022 with two court wins. The two rulings, one in state court and one in federal court, upheld laws that the North Carolina General Assembly adopted in 2017 and 2018.

North Carolina Farm Bureau's mission is "to serve farmers and provide a unified voice for the interests and needs of the farming community." As an advocate for farmers, NCFB engages at the local, state, national, and international levels and intervenes on the behalf of farmers in legislative and regulatory matters. Chances are that if you're reading this you probably already know about that. But you may be less familiar

with NCFB's Legal Foundation and the important work it does to look out for farmers' interests. After all, our government has three branches and neglecting the Judicial Branch would jeopardize advances in other policy areas.

This month we're going to take a look at North Carolina Legal Foundation's role in two important court victories in December 2022.

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NC COURTS: NC'S RIGHT-TO-FARM AMENDMENTS VALID

In 2013, hundreds of hog farm neighbors filed nuisance lawsuits against Smithfield Foods and some of its contract growers, including many NCFB members. Five of those cases went to trial, resulting in several enormous jury verdicts against Smithfield. Like every other state, North Carolina has a right-to-farm law that is supposed to protect farms against nuisance lawsuits. But an early ruling in the Smithfield cases essentially rendered the law useless in North Carolina.

In response, the General Assembly stepped in to restore and strengthen North Carolina's right-to-farm protections. In 2017, the General Assembly capped the value of damages that a farm nuisance plaintiff can win when they sue a farm for nuisance. A year later, the General Assembly limited plaintiffs from filing farm nuisance lawsuits unless they lived within a half-mile of a farm and they filed their lawsuit within a year of the farm's establishment or date of a fundamental change to the farm.

In July 2019, three organizations that opposed the amendments in the General Assembly challenged the amendments in state court. They claimed the amendments violated several provisions of North Carolina's Constitution. NCFB intervened in the case to defend the law alongside the North Carolina Attorney General and the General Assembly's leadership.

A three-judge panel of Superior Court judges dismissed the case in December 2020 and the three organizations appealed. In December 2021, the North Carolina Court of Appeals affirmed that decision, concluding that the amendments were "a valid exercise of the legislative and State police powers." On December 16, 2022, the North Carolina Supreme Court declined the organizations' request to conduct further appellate review.

As a result, North Carolina's right-to-farm protections are fully available to North Carolina's farm families.

U.S. APPEALS COURT: FARM LABOR AMENDMENTS DON'T VIOLATE FIRST AMENDMENT

In 2017, after learning about aggressive efforts to unionize farms, NCFB asked the General Assembly to bolster the state's labor laws. In response, the General Assembly enacted two statutes. One prohibited the use of mandatory dues check-off arrangements, which force farmers to deduct union dues from their employees' paychecks and transfer the funds to the union ("the Check-off Provision"). The second prohibited the use of litigation to coerce farmers into unionizing their farms ("the Settlement Provision").

Soon after the amendments were enacted, a farmworker union challenged them in federal court, alleging they violated the union's First Amendment rights. NCFB again partnered with the Attorney General to defend the law and filed several friend-of-the-court briefs.

In 2021, a federal district judge ruled that the Check-off Provision was constitutional, but the Settlement Provision was not. On appeal, the Fourth Circuit, U.S. Court of Appeals concluded in an opinion issued on December 28, 2022, that both provisions did not violate the union's First Amendment rights.

The union recently requested a rehearing in the Fourth Circuit, which are rarely successful.

ONGOING LITIGATION UPDATE (AS OF 1/2/23)

PETA v. Stein (4th Circuit, U.S. Court of Appeals)

Animal rights groups challenged North Carolina's Property Protection Act (2015) under First Amendment to the United States Constitution. **Status:**

- District Court found statute unconstitutional June 12, 2020
- NCFB, AG, & UNC appealed July 10 & 13, 2020
- Virtual oral argument held October 27, 2021

NCFB v. DEQ (2019 Animal Waste General Permits) (N.C. Court of Appeals)

Administrative challenge to DEQ's use of sue-and-settle agreement to write parts of animal waste general permits **Status:**

- Admin. Law Judge ("ALJ") blocked three permit conditions February 9, 2021
- Superior Court judge reversed ALJ ruling June 20, 2022
- NCFB appealed to N.C. Court of Appeals July 8, 2022
- Court of Appeals temporarily stayed three conditions September 15, 2022

National Pork Producers Council v. Ross (U.S Supreme Court)

NCFB lead friend-of-the-court effort to support National Pork Producers Council and American Farm Bureau Federation's appeal regarding California's Prop 12 law **Status:**

- U.S. Supreme Court held oral argument October 11, 2022

Sackett v. EPA (U.S Supreme Court)

NCFB and 19 other state Farm Bureaus filed friend-of-the-court brief in Clean Water Act case

- U.S. Supreme Court held oral argument October 3, 2022

NCFB v. DEQ (2022 Digester Permits) (N.C. Office of Administrative Hearings)

Administrative challenge to three conditions appearing in DEQ's biogas animal waste permits **Status:**

- Contested case petition filed July 29, 2022
- Case on hold pending the result in NCFB v. DEQ animal waste permits case