

to participate as *amici curiae* at 10:20 p.m. on October 30. They did not consult with Appellants (or any other party, apparently) before filing.

The Motion should be denied. First, it is not timely. As Appellants explained in opposing the participation of the organizations represented by Food & Water Watch, Inc.,¹ anyone interested in this case has known (or should reasonably have known) from the start that this appeal was to be briefed on an expedited schedule, in which Appellants would have just ten days to respond to Appellees' and Intervenors' briefs. *See* Doc. 1459859. The parties all cooperated to give this Court the notice it needed to facilitate expedited review, but the Proposed HSUS Amici did not notify the Court that they were interested in participating, and they did not seek accommodation for an amicus brief in the scheduling order or in the weeks thereafter. *See* D.C. Cir. Handbook of Practice and Internal Procedures 38 (encouraging prospective *amici* "to notify the Court as soon as practicable after a case is docketed" so as to "enable the Court to accommodate *amici* briefs in setting the briefing format and schedule in each case"). And the Proposed HSUS Amici cannot plead ignorance of the existence or status of the case; they notified Appellants on September 23 that they intended to intervene in the District Court proceedings. (They never did.) But, despite their awareness of and declared

¹ This Court has not acted on the Proposed Food & Water Watch Amici's Motion. Their proposed brief, filed on October 25, confirms Appellants' prediction that the proposed amicus brief would do little more than repeat the Intervenors' arguments.

interest in the case, and despite this Court's guidance to seek leave to participate "as soon as practicable," the Proposed HSUS Amici waited to lodge their brief until late in the evening less than two days before Appellants' reply was to be filed. Their untimely Motion should be denied.

The Motion also should be denied because the proposed brief adds nothing of relevance to the arguments advanced by the parties. *See* D.C. Cir. R. 29 (proposed amicus brief "must avoid repetition of facts or legal arguments made in the principal [appellee] brief and focus on points not made or adequately elaborated upon in the principal brief"). The brief lodged by the Proposed HSUS Amici consists of arguments that have already been given full voicing by Appellees and Intervenor. Just like those parties, the Proposed HSUS Amici assert that *all* compelled disclosures are reviewed for reasonableness. Lodged Amicus Br. 10-11. This Court has already rejected that position twice over, in both *R.J. Reynolds Tobacco Co. v. FDA*, 696 F.3d 1205 (2013) and *Spirit Airlines, Inc. v. Department of Transportation*, 687 F.3d 403 (2012); it does not need further briefing on the topic from these putative *amici*. To be sure, the Proposed HSUS Amici do offer a few new arguments in support of "Born, Raised, and Slaughtered" labels. For example, they assert that country-of-origin labeling provides domestic producers with a competitive "leg up." *See* Lodged Br. 15 (quoting legislative history). But protectionism can hardly justify a rule adopted in response to WTO

concerns about protectionism. And in any event, it cannot be justification for the Final Rule because the government did not rely on it (or any other purported governmental interest) when it promulgated the Final Rule. *See* Appellants' Opening Br. 21-22.

At least the Proposed HSUS Amici are candid about their interests, however, in advocating the "leg up" argument in favor of domestic producers. Lodged Amicus Br. 15. For just like the Proposed Food & Water Watch Amici, these proposed amici consist of domestic agricultural interests lined up behind a lead organization that purports to represent consumers. *See* Proposed HSUS Amici Br. 3-8; compare *The Humane Soc'y of the United States v. Vilsack*, --- F.Supp.2d ----, 2013 WL 5346065, at *14 (D.D.C. Sept. 25, 2013) (finding that HSUS lacked standing to dispute government's purchase of trademark from Appellant NPPC because HSUS's "core mission" is "to promote humane care, oppose intensive confinement, and advance the legal protections that promote the well-being of animals") (quoting Amended Complaint; internal quotation marks omitted). The protectionist interests spurring these groups to demand airtime in this Court are neither relevant to this case nor supportive of Appellees' arguments. Those protectionist interests do, however, further confirm the damage done to Appellants by the COOL regulations; the benefits the Final Rule will confer upon the domestic

producers represented by Intervenors and the prospective amici are the basis of Appellants' irreparable injury. *See* Appellants' Reply 24-28.

For all of the foregoing reasons, the Motion should be denied.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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