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NCLA Rejects USDA's Attempt to 'Moot' Its Lawsuit Against Proposed RFID Mandate

R-CALF USA, Tracy and Donna Hunt, and Kenny and Roxy Fox v. USDA et al.

Washington, DC (February 6, 2020) – The New Civil Liberties Alliance [replied](#) to the U.S. Department of Agriculture (USDA) and the Animal and Plant Health Inspection Service's (APHIS) motion to dismiss NCLA's lawsuit over unlawful guidance those agencies published mandating the use of radio frequency identification (RFID) technology. The agencies claim that NCLA's lawsuit on behalf of R-CALF USA (Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America) is no longer necessary simply because the agencies took down the guidance (without admitting to any improper conduct). NCLA's brief explains why that action is not enough and does not moot the case.

USDA and APHIS sought to impose the RFID mandate in April 2019 by posting a two-page "Factsheet" to their website. That notice required livestock producers who move or sell bison or cattle across state lines to obtain a premises identification number (PIN), a requirement that has been hotly opposed by the industry for years. The notice also outlawed the use of the most common forms of identification such as brands, tattoos, metal ear tags, and back tags. The agencies did not go through the proper process that the Administrative Procedure Act (APA) mandates for binding regulations, and they disregarded the impact such an RFID mandate would have on livestock producers throughout the country.

On October 4, 2019, NCLA filed a lawsuit on behalf of R-CALF USA and several ranchers against these agencies for acting beyond the scope of their legal authority by trying to supersede the animal identification rule issued in 2013 with a guidance. Three weeks later the agencies quietly removed the mandate from the official website where it had resided and posted a statement indicating that USDA/APHIS did not intend to implement the RFID guidelines.

Now USDA and APHIS want everyone to pretend there is no case simply because they withdrew a Factsheet from their website. But in their filings before the court, the USDA and APHIS fail to admit wrongdoing or offer any substantive assurance that they will follow the law in the future.

NCLA released the following statement:

"Having now been 'caught red-handed' the agencies are seeking not only to avoid accountability for their wrongful acts but also to deprive the judicial branch of its ability to clarify the legal framework within which federal agencies must operate. The Court should allow the matter to proceed to force transparency and accountability upon federal agencies who too often regulate through shortcut guidance in order to circumvent the notice-and-comment rulemaking process." — **Harriet Hageman, NCLA Senior Litigation Counsel**

ABOUT NCLA

NCLA is a nonpartisan nonprofit civil rights organization founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other *pro bono* advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.