

No. 05-35264

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

**RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA**
Plaintiff – Appellee,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, Animal and Plant
Health Inspection Service; et al.,**
Defendants – Appellants.

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*
AMERICAN MEAT INSTITUTE, NORTH AMERICAN MEAT
PROCESSORS, SOUTHWESTERN MEAT ASSOCIATION, EASTERN
MEAT PACKERS ASSOCIATION, AMERICAN ASSOCIATION OF
MEAT PROCESSORS, NATIONAL RESTAURANT ASSOCIATION, AND
UNITED FOOD AND COMMERCIAL WORKERS**

Pursuant to Fed. R. App. P. 29, the American Meat Institute (“AMI”), North American Meat Processors (“NAMP”), Southwestern Meat Association (“SMA”), Eastern Meat Packers Association (“EMPA”), American Association of Meat Processors (“AAMP”), National Restaurant Association (“NRA”), and United Food and Commercial Workers (“UFCW”) hereby respectfully move this court for leave to file a brief as *amici curiae* in support of Appellants the United States

Department of Agriculture (“USDA”), Animal and Plant Health Inspection Service (“APHIS”), et al.

The above organizations represent virtually the entire spectrum of companies involved in packing, processing and selling of beef products in the United States as well as the workers employed by those companies and the major restaurant purchasers of beef products. Although all of these organizations and their members are significantly affected by the preliminary injunction issued by the court below, none of them was given an opportunity to participate in the proceedings before the district court, nor were their interests represented by the parties to those proceedings. In support of this motion, *amici* state as follows:

1: Interest of *Amici*

Amicus AMI is a non-profit, national trade association, whose members are the producers, packers, and processors of meat and poultry products marketed in the United States. AMI represents its members for purposes of furthering and protecting their interests, general welfare, and prosperity, and to foster improvements in the production of meat and allied products and to gather and disseminate practical and useful information, including scientific and economic information, relating to the meat industry. AMI member companies account for more than 75 percent of the United States output of beef products.

Amicus NAMP is a non-profit corporation, whose members are meat

processing companies and associates who share a continuing commitment to provide their customers with safe, reliable and consistent meat, poultry, seafood, game and other products.

Amicus SMA's members are meat processors, packers and purveyors, meat and meat product suppliers and service providers, livestock producers, financial institutions, and retail establishments. The primary focus of SMA's member companies is to produce products that meet or exceed consumer expectations with regard to product safety, nutrition and value. On behalf of its members, SMA initiates opportunities and resolves problems, thus helping to allow its member companies to earn a reasonable return on investment.

Amicus EMPA is a non-profit organization that has represented the interests of its members since 1927. Its membership consists primarily of small to medium-sized meat and poultry processing firms located in the northeastern United States. EMPA represents its members on a wide variety of public policy issues at the state and federal level and conducts various educational programs. Virtually all of its processing members utilize beef as a major ingredient in their processing operations.

Amicus AAMP is America's largest meat trade organization. AAMP's members include more than 1,700 medium-sized and smaller meat, poultry and food businesses: slaughterers, packers, processors, wholesalers, in-home food

service business, retailers, deli and catering operators, and industry suppliers.

Amicus NRA is a non-profit corporation and is the largest trade association representing restaurants in the United States. Membership in the Association includes over 325,000 establishments. The type of establishments include large chain restaurants, fine dining establishments and quick service restaurants.

Amicus UFCW is a union of working men and women from the United States and Canada who work in a wide range of industries including healthcare, meatpacking, poultry and food processing, manufacturing, distillery, winery, textile and chemical trades, and retail food. UFCW helps workers achieve better wages, better benefits, and safer working conditions.

In its appeal in this case, defendant-appellant USDA challenges a preliminary injunction granted by the district court, on motion of plaintiff-appellee Ranchers Cattleman Action Legal Fund United Stockgrowers of America (“R-Calf”), enjoining the implementation of a final rule that would have reopened the United States-Canadian border to importation of certain cattle and beef products from Canada after a nearly two-year suspension of such trade.

Amici’s member companies rely on beef supplied by producers, like R-Calf, for their businesses. Already, because of the border closure, the lack of competition from Canada has diminished the supply of cattle in the United States and raised domestic cattle prices. This has provided an economic windfall for R-

Calf and other cattle producers. Processors, packers, and restaurants, like *amici's* members, however, have been forced to purchase their beef supplies at these artificially inflated prices. Thus, *amici's* members' costs have been driven upward and their profit margins have been significantly decreased.

As a result, many of *amici's* members have found it necessary to reduce their businesses. Some have even contemplated closing facilities. Therefore, *amici's* members have a substantial economic interest in the reopening of the United States border to the importation of cattle and beef products from Canada.

Indeed, AMI's interest in the final rule is so substantial that AMI filed suit in a separate action in the United States District Court for the District of Columbia, asserting that it is scientifically unsupportable to distinguish, for importation purposes, between live animals 30 months of age or older and beef from those same animals or between animals 30 months of age or older and animals under 30 months of age. Therefore, AMI argued, the scientific evidence supports extending the final rule to permit importation of all cattle and cattle products from Canada, not just some.

Should this Court affirm the district court's injunction, the injury to *amici's* members and to the United States' beef processing, beef packaging, and restaurant industries will continue. Moreover, *amicus* AMI's ability to protect its interests by pursuing its claims in the District of Columbia will be severely impaired.

2. Why the proposed *amici* brief is desirable and why the matters asserted are relevant to the disposition of the case

Amici are uniquely positioned to present to the Court with complete evidence and argument in support of the final rule. Indeed, *amici* can present views in support of reopening the border to Canadian cattle and cattle products that the Government cannot, in light of the limited nature of the border reopening permitted by the final rule.

First, *amici*, as representatives of companies and workers in the United States beef and restaurant industries, are uniquely positioned to provide the Court with information regarding the harms that will result if the ban on importation of Canadian cattle and beef products is continued. The Government simply does not have the same first-hand knowledge or access to resources relating to industry harm as *amici*.

Second, the nature and extent of the arguments that the Government can provide to support opening the border is constrained by APHIS' compromise position in the final rule, *i.e.*, that cattle under 30 months of age and beef from that same cattle may be imported into the United States, but that cattle 30 months of age or older and beef from cattle 30 months of age or older are prohibited from importation. Because of that position, the Government's hands are tied with regard to its ability to present this Court with all arguments in favor of opening the United States border to Canadian cattle imports. The Government must limit its

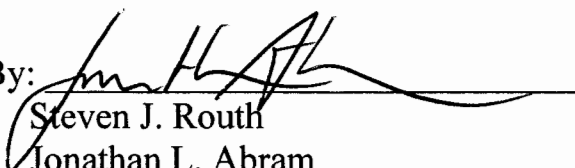
arguments so as to remain consistent in APHIS's decision to permit importation of *some but not all* cattle and beef products from Canada.

Amici, in contrast, face no such constraints. They can present all evidence and arguments supporting the reopening of the United States border for importation of Canadian cattle and beef products. Unlike APHIS, *amici* need not worry about revealing the illogic of distinguishing, for importation purposes, between cattle and beef from cattle 30 months of age or older and cattle and beef from cattle under 30 months of age. Indeed, *amici* will show that these distinctions are irrational and that the evidence and science require return to fully free trade.

Thus, *amici* respectfully submit that the evidence and arguments set forth in its brief will assist the Court in its consideration and disposition of this case. Given the importance of the issues to be decided in this case, the Court should have the benefit of *amici's* views.

Respectfully submitted,

HOGAN & HARTSON, L.L.P.

By: 
Steven J. Routh
Jonathan L. Abram
Lisa M. Cylus

555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
Telephone: (202) 637-5600
Facsimile: (202) 637-5910

**Attorneys for Amici
American Meat Institute, North American
Meat Processors, Southwestern Meat
Association, Eastern Meat Packers
Association, American Association of Meat
Processors, National Restaurant Association,
and United Food and Commercial Workers**

Dated: April 21, 2005