

Docket No. 05-35264

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RANCHERS CATTLEMEN
ACTION LEGAL FUND UNITED
STOCKGROWERS OF AMERICA,

Plaintiff – Appellant,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, Animal and Plant
Health Inspection Service, et al.,

Defendants – Appellees

No. 06-35512

D.C. No. CV-05-00006-RFC

**RANCHERS CATTLEMEN
ACTION LEGAL FUND
UNITED STOCKGROWERS
OF AMERICA’S UNOPPOSED
MOTION FOR STAY OF
BRIEFING SCHEDULE**

Plaintiff-Appellant Ranchers Cattlemen Action Legal Fund United
Stockgrowers of America (“R-CALF USA”) hereby moves the Court for stay of
the briefing schedule established by the Court’s June 15, 2006 Time Schedule
Order (as amended by an Order dated July 17, 2006).

Under the Time Schedule Order, R-CALF USA's opening brief is due September 21, 2006. On August 15, 2006, Appellees filed a Motion for Summary Affirmance, asking the Court to affirm the District Court action that is the subject of this appeal without briefing or argument. R-CALF USA's opposition to the Motion for Summary Affirmance is currently due on August 28, 2006.

Although Appellee's Motion for Summary Affirmance is misleading and meritless, if it were granted it would render any briefs that had been filed in this case irrelevant. Given the timing of the motion, at best the Court will act on it only about three weeks before R-CALF USA's opening brief is due, and it is entirely possible that the Court will not rule on the motion until all or substantially all of the work on that brief would have already been done. It would be unfair to impose that potentially unnecessary expenditure of resources on R-CALF USA, particularly when Appellees could have filed their Motion for Summary Affirmance a month or two ago, given the absence of record citation and limited caselaw citation that went into Appellees' six-page motion.

This Court's rules recognize the appropriateness of staying the briefing schedule in almost identical circumstances: Under Circuit Rule 27-11(a)(1), the filing of a motion to dismiss automatically stays briefing, pending the Court's disposition of the motion. The briefing schedule then "shall be reset as necessary upon the Court's disposition of the motion." Circuit Rule 27-11(b). Appellees'

Motion for Summary Affirmance is functionally identical to a motion for dismissal, in that the Court's disposition of the motion may obviate the need for further briefing.

R-CALF USA is anxious to move its appeal along to a decision and remand to the District Court. But given the potential for wasted effort should the Court grant Appellees' Motion for Summary Affirmance, R-CALF USA respectfully requests that the Court stay the briefing schedule established by the Time Schedule Order pending the Court's disposition of the Motion for Summary Affirmance. Once the Court acts on the Motion for Summary Affirmance, R-CALF USA respectfully requests that the briefing schedule be reset, with R-CALF USA's opening brief due at least 30 days thereafter.

Undersigned counsel has contacted counsel for the Appellees, who has stated that Appellees consent to the stay of the briefing schedule.

Dated: August 18, 2006

Respectfully submitted,

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RANCHERS CATTLEMEN ACTION LEGAL
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AMERICA

CERTIFICATE OF SERVICE

I hereby certify that, on the 18th day of August, 2006, I have caused a true and accurate copy of the Plaintiff-Appellant's Unopposed Motion for Stay of Briefing Schedule to be served by U.S. Mail upon:

Michael S. Raab
Joshua Waldman
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