

Case No. 20-2124

**In the United States Court of Appeals
for the Tenth Circuit**

ROBIN THORNTON and MICHAEL LUCERO

Plaintiffs-Appellants,

v.

TYSON FOODS, INC; CARGILL MEAT SOLUTIONS, CORP.; JBSUSA FOOD
CO.; and NATIONAL BEEF PACKING CO., LLC,

Defendants-Appellees.

**MOTION FOR LEAVE TO FILE AMICUS BRIEF OF RANCHERS-
CATTLEMEN ACTION LEGAL FUND, UNITED STOCKGROWERS OF
AMERICA AND PUBLIC JUSTICE
IN SUPPORT OF NEITHER PARTY**

Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (“R-CALF”) and Public Justice, pursuant to Fed. R. App. P. 29(a), seek leave to file the accompanying amicus brief in support of neither party. Their motion should be granted for the following reasons:

1. The proposed brief urges the Court the reverse the district court’s holding that state-law allegations that “Product of USA” and similar advertising claims are false and misleading are preempted by the Federal Meat Inspection Act (“FMIA”). The brief argues that, first, because the complaints do not make out any allegations

about advertisements—only labels—the district court should not have reached the question. Second, unlike labels, advertisements are not regulated by the FMIA and, therefore, claims about advertisements are not preempted by its regulatory regime. The proposed brief takes no position on the district court’s decision that Plaintiffs-Appellants’ labeling claims are preempted.

2. R-CALF is the nation’s largest association exclusively comprised of domestic, independent cattle producers. The promotion of beef from cattle born, raised, or slaughtered outside the United States as equivalent to true, domestically produced beef threatens the viability of R-CALF and its members. As a result, R-CALF has been at the forefront of promoting mandatory “Country-of-Origin Labeling” for beef, litigating cases on the matter, and lobbying for it at the state and federal level. R-CALF has also challenged claims that all beef is equal.

3. R-CALF seeks to submit this brief because the decision below would improperly narrow the mechanisms available to R-CALF and its members to protect their brand. While the federal government unfortunately allows imported beef to be *labeled* “Product of USA”—a decision even it recognizes may be confusing and misleading—it does not regulate meat *advertising* whatsoever. Thus, R-CALF seeks to preserve the ability to challenge such advertisements, and thereby highlight the exploitation of domestic producers’ brand, which undermines domestic agriculture.

4. Public Justice is a national legal advocacy organization. It works to ensure that all sorts of plaintiffs can access the courts and hold corporate wrongdoers accountable. Through its Food Project, Public Justice focuses especially on the ways in which corporate consolidation in the animal agriculture industry harms producers, workers, consumers, animals, and the environment. Among these exploitative practices, corporate meat producers regularly use false and misleading advertisements to convince consumers their products have the same attributes as independently produced, domestic goods.

5. Public Justice seeks to submit this brief to ensure that, where appropriate, consumers can protect their rights by bringing claims that meat producers' advertisements are false and misleading.

6. Permitting R-CALF and Public Justice to file the proposed amicus brief is especially appropriate because that the preemption analysis as to labeling claims must be approached differently than the preemption analysis as to advertising claims is unaddressed by the Plaintiffs-Appellants in their principal brief. Such an explanation will likely be useful to the Court in its resolution of the issues on appeal.

7. Despite previously suggesting that Public Justice file an amicus brief on the advertising preemption question, Plaintiffs-Appellants do not consent to R-CALF and Public Justice filing their proposed amicus brief.

8. Defendants-Appellees state they have no position on the filing of the proposed amicus brief.

For these reasons, the Court should grant R-CALF and Public Justice's motion for leave to file the accompanying amicus brief in support of neither party.

December 7, 2020

Respectfully submitted,

/s/ Leah M. Nicholls

Leah M. Nicholls

David S. Muraskin

Public Justice, P.C.

1620 L St. NW, Suite 630

Washington, DC 20036

(202) 797-8600

LNicholls@publicjustice.net

Counsel for Amici

CERTIFICATE OF COMPLIANCE

1. This document complies the word limit of FRAP 27(d)(2)(A) because, excluding the parts of the document exempted by FRAP 32(f) and FRAP 27(a)(2)(B), this document contains 553 words.

2. This document complies with the typeface requirements of FRAP 32(a)(5) and the type style requirements of FRAP 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman, 14-point font.

3. The undersigned certifies that all required privacy redactions have been made in accordance with FRAP 25(a)(5), no paper copies are required by the Court, and this document was scanned for viruses with Malwarebytes version 4.2.3.96, updated November 7, 2020.

December 7, 2020

/s/ Leah M. Nicholls
Leah M. Nicholls
Counsel for Amici

CERTIFICATE OF SERVICE

I hereby certify that on the December 7, 2020, I electronically filed the foregoing using the court's CM/ECF system, which will send notification of such filing to the following:

Patrick E. Brookhouser, Jr.: pbrookhouser@mcgrathnorth.com,
hjohnson@mcgrathnorth.com
Eric R. Burris, I: eburris@bhfs.com, yhernandez@bhfs.com
Martin Demoret: martin.demoret@faegredrinker.com,
elizabeth.collins@faegredrinker.com
A. Blair Dunn: abdunn@ablairdunn-esq.com, warba.llp@gmail.com,
warba.llp.tammy@gmail.com
Brian J. Fisher: bfisher@mayerllp.com, dlarsen@mayerllp.com,
ahuertaz@mayerllp.com, rdematty@mayerllp.com
Michael J. Hofmann: michael.hofmann@bryancave.com,
anita.langdon@bryancave.com, jennifer.pearce@bryancave.com
Armand D. Huertaz: ahuertaz@mayerllp.com
Matthew G. Munro: mmunro@mcgrathnorth.com
Amir M. Nassihi: anassihi@shb.com
Marshall Ray: mray@mraylaw.com
Michael M. Sawers: michael.sawers@faegredrinker.com,
lori.honse@faegredrinker.com
Andrew G. Schultz: aschultz@rodey.com, mzamora@rodey.com,
mmendoza@rodey.com
Robert M Thompson: rmthompson@bryancave.com, maforge@bryancave.com
Aaron Daniel Van Oort: aaron.vanoort@faegredrinker.com,
kristen.draves@faegredrinker.com
Cassandra Rose Wait: cassie.wait@bclplaw.com
Alex Walker: awalker@modrall.com, victorial@modrall.com
Tyler A. Young: tyler.young@faegrebd.com, staci.shaw@faegredrinker.com

/s/ Leah M. Nicholls
Leah M. Nicholls
Counsel for Amici