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NCLA Uncovers Ongoing Efforts to Require Livestock Producers to Use RFID Eartags

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

Washington, DC (February 28, 2020) – The New Civil Liberties Alliance, a nonpartisan nonprofit civil rights organization, has filed a supplemental motion, asking the Court to reopen its case against the U.S. Department of Agriculture (USDA) and the Animal and Plant Health Inspection Service (APHIS). The motion seeks to block ongoing efforts to rely upon an unlawful “guidance” document to mandate the use of radio frequency identification (RFID) tracking technology on livestock. This latest filing asks Nancy D. Freudenthal, U.S. District Judge for the District of Wyoming, to revisit the court order she recently issued in *R-CALF et al. v. USDA et al.*, which dismissed the lawsuit upon her concluding that the agencies had fully withdrawn their previous efforts to require livestock producers to use RFID eartags.

In her February 13th order, Judge Freudenthal found that the case was now moot because the USDA and APHIS had responded to NCLA’s lawsuit by withdrawing the unlawful guidance “Factsheet” and removing it from the agency website. Her order made it clear that she believed USDA’s Factsheet and underlying policy have been fully and completely withdrawn, and she also emphasized that “[the agencies have] unambiguously stated that the requirements of the 2019 Factsheet **will not be implemented**[.]”

Nevertheless, NCLA recently found an “informational page” nearly identical to the Factsheet published in the February 2020 edition of *Nebraska Cattleman* magazine announcing that RFID eartags will become mandatory, albeit through a phased approach. The “informational page” is on USDA/APHIS letterhead, and it states that it is funded by those agencies pursuant to a cooperative agreement with the Nebraska Department of Agriculture. This announcement confirms that NCLA was rightly concerned that USDA/APHIS had failed to issue and publish an effective retraction of the 2019 Factsheet and that there remains substantial confusion and uncertainty in the industry. NCLA’s latest motion asks the judge to reopen the case for the purpose of issuing a declaratory judgment and ordering the agencies to make a more robust effort at notifying states and others that the RFID mandate has been withdrawn.

NCLA filed a **motion** with the court last week to allow R-CALF and the ranchers affected by the agencies’ unlawful actions to proceed with discovery and to block USDA and APHIS from using any work product, reports, and materials generated by one or more advisory committee(s) that they had convened in violation of the Federal Advisory Committee Act. NCLA argued that such

a move was necessary to ensure that any future efforts to adopt the RFID requirement is not tainted by such materials.

NCLA released the following statements:

“We must remain vigilant in monitoring the USDA and APHIS to ensure that neither they nor state agencies are able to avoid complying with the law if they seek to move forward with imposing RFID requirements on our livestock producers. Had these agencies made an effort to effectively inform the public and their state partners that they had withdrawn the Factsheet and the RFID mandate, we could have avoided this situation.”

– **Harriet Hageman, Senior Litigation Counsel, NCLA**

“The old adage ‘actions speak louder than words’ rings true here. The agencies successfully mooted this case by unambiguously stating that the 2019 Factsheet’s mandates will not be implemented. But new evidence shows that they have failed to follow through on that promise. The agencies should be held to the same standard to which courts hold ordinary Americans. USDA/APHIS should say what they mean, mean what they say, and follow through with actions that put their words into effect.”

– **Kara Rollins, Litigation Counsel, NCLA**

See the full case summary page [here](#).

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.