IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

THE TENNESSEE WALKING HORSE NATIONAL CELEBRATION ASSOCIATION, *et al.*,

Plaintiffs,

v. 2:24-CV-143-Z

UNITED STATES DEPARTMENT OF AGRICULTURE, *et al.*,

Defendants.

ORDER

Before the Court is the Humane Society of the United States' ("HSUS") Motion to Intervene ("Motion") (ECF No. 20, 21). For the reasons discussed below, the Motion is **DENIED**.

BACKGROUND

Tennessee Walking Horse National Celebration Association (together with Ms. Kimberly Lewis and Mr. Tom Gould, the "Plaintiffs") brings this suit to challenge a new rule promulgated by the United States Department of Agriculture ("USDA" or "Agency") and administered by its sub-agency, the Animal and Plant Inspection Service ("APHIS"). *See* Horse Protection Amendments, 89 Fed. Reg. 39194 (May 8, 2024) (amending 9 C.F.R. pt. 11).[1] Plaintiffs challenge several aspects of the new rule, designed to further the goal of eradicating the "soring" of horses — that is, intentionally inflicting pain to a horse's legs or hooves in order to exaggerate the horse's gait and gain and unfair competitive advantage in horse shows. ECF No. 15 at 2–8; 15 U.S.C. § 1821(3).

[1] This rule is scheduled to take full effect on February 1, 2025.

On October 14, 2024, the Humane Society of the United States ("HSUS" or "Intervenors") moved to intervene as defendants. ECF No. 20 at 1. HSUS is a non-profit organization that "work[s] to combat animal abuse and exploitation and promote the protection and welfare of animals," and, specific to the instant case, "vigorously advocates for and pursues legislative and regulatory change to combat soring." ECF No. 21 at 8, 11. HSUS moves to intervene as of right pursuant to Federal Rule of Civil Procedure ("FRCP") 24(a)(2) or, in the alternative, for permissive intervention pursuant to FRCP 24(b)(1). ECF No. 21 at 17, 26. Both Plaintiffs and Defendants oppose the Motion. (ECF Nos. 30, 31).

LEGAL STANDARD

FRCP 24(a) provides that, "[o]n timely motion, the court must permit anyone to intervene" who claims "an interest relating to the property or transaction that is the subject of the action," and is "so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." In other words, a proposed intervenor is entitled to intervene if: (1) the application for intervention is timely; (2) the applicant has an interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that the disposition of the action may impair or impede his ability to protect that interest; and (4) the applicant's interest is inadequately represented by the existing parties to the suit. *Guenther v. BP Ret. Accumulation Plan*, 50 F.4th 536, 542 (5th Cir. 2022); *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984).

FRCP 24(b) provides a permissive alternative: "On timely motion, the court *may* permit anyone to intervene who . . . is given a conditional right to intervene by a federal statute; or . . . has a claim or defense that shares with the main action a common question of law or fact." (emphasis

added). "Permissive intervention is 'wholly discretionary' and may be denied even when the requirements of Rule 24(b) are satisfied." *Turner v. Cincinnati Ins. Co.*, 9 F.4th 300, 317 (5th Cir. 2021) (quoting *United Gas Pipe Line Co.*, 732 F.2d at 471–72). The court must "consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights," as well as "whether the intervenors are adequately represented by other parties and whether they are likely to contribute significantly to the development of the underlying factual issues." FED. R. CIV. P. 24(b)(3); *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 884 F.2d 185, 189 (5th Cir. 1989).

ANALYSIS

I. Intervenors cannot intervene as of right.

Potential intervenors must prove that "the existing parties do not adequately represent [their] interest[s]." *Ross v. Marshall*, 426 F.3d 745, 761 (5th Cir. 2005). This burden requires only that a potential intervenor show "that 'representation by the existing parties may be inadequate.'" *Id.* (quoting *Heaton v. Monogram Credit Card Bank of Ga.*, 297 F.3d 416, 425 (5th Cir. 2002). But "[h]owever 'minimal' this burden may be, it cannot be treated as so minimal as to write the requirement completely out of the rule." *Bush v. Viterna*, 740 F.2d 350, 355 (5th Cir. 1984). To that end, a presumption of adequate representation arises in two situations. First, when "the would-be intervenor has the same ultimate objective as a party to the lawsuit." *Edwards v. City of Houston*, 78 F.3d 983, 1005 (5th Cir. 1996) (en banc). This presumption can only be rebutted where the proposed intervenor shows "adversity of interest, collusion, or nonfeasance on the part of the existing party to overcome the presumption." *Id.* Second, "where the party whose representation is said to be inadequate is a governmental agency, a much stronger showing of inadequacy is required." *Hopwood v. State of Tex.*, 21 F.3d 603, 605 (5th Cir. 1994).

Plaintiffs and Defendants maintain that both presumptions of adequate representation are present and that HSUS has failed to rebut them. ECF No. 30 at 7–8; ECF No. 31 at 6–7. The Court agrees. While HSUS concedes that both presumptions are present in the case at hand, it argues that both can be rebutted due to an "adversity of interests" with the USDA. ECF No. 21 at 24–25. Specifically, HSUS asserts that because the "USDA is a federal agency that represents a broad array of citizens' interests," it is not solely "concerned with protecting the horses and HSUS's members' interests" as it may also decide to consider the "interests of industry." *Id.* HSUS asserts that it, by contrast, is "only concerned with protecting horses and its members' interests by ensuring that the Final Rule accomplishes what the HPA intended: protection of horses and fair competition." ECF No. 21 at 24.

According to the Fifth Circuit, showing adversity of interest requires an intervenor to "demonstrate that its interests diverge from the putative representative's interests in a manner germane to the case." *Texas v. United States*, 805 F.3d 653, 662 (5th Cir. 2015). In other words, an intervenor must show that its interests are different from those of the existing parties in a specific way that is meaningful to the case. The Court finds no such meaningful difference between the interests currently represented by the USDA and those claimed by HSUS. Though intervenors rely on an analysis of *Brumfield v. Dodd* to bolster their claim of adversity of interest, *Brumfield* is distinguishable from the instant case. 749 F.3d 339 (5th Cir. 2014); ECF No. 21 at 24–25. There, the Fifth Circuit permitted parents to intervene as defendants alongside the state of Louisiana in order to protect the state's school voucher program from an injunction sought by the federal government. *Brumfield*, 749 F.3d at 346. While the court acknowledged the difference in interests between the parents and the state, as the state had "many interests" in the case, one key point must be emphasized: the intervening parents *challenged* the jurisdiction of the district court, but the

state *conceded* it. *Id.* at 346. In particular, the parents and the state of Louisiana disagreed as to whether the state's voucher program constituted "state aid," resulting in a misalignment of the defendant and the intervenor's legal arguments. *Id.*

No such legal misalignment exists here, as both Defendants and HSUS believe that the challenges to the new rule lack merit. That Defendants concern themselves with a broader grouping of interests than HSUS in no way compromises the integrity of their current representation. In fact, courts often deny intervention where the intervenor's primary contention is rooted in the current defendant representing broader interests. *See Brackeen v. Zinke*, No. 4:17-cv-00868, 2018 WL 10561984, at *3 (N.D. Tex. June 1, 2018) ("Proposed Intervenor argues that the Federal Defendants must necessarily represent the 'broad public interest'. . . The Fifth Circuit has previously ruled that this type of abstract argument is insufficient to satisfy Rule 24(a).") (citing *Texas*, 805 F.3d at 663). Because HSUS has failed to show any true divergence of interest or "legal position significantly different from that" advanced by the USDA, the Court does not find that intervention as of right is warranted. *Texas*, 805 F.3d at 662.

II. Intervenors cannot intervene permissively.

When addressing a request for permissive intervention, a district court may consider "whether the intervenors' interests are adequately represented by other parties." *See, e.g.*, *Kneeland v. Nat'l Collegiate Athletic Ass'n*, 806 F.2d 1285, 1289 (5th Cir. 1987); *Staley v. Harris Cnty., Tex.*, 160 F. App'x 410, 414 (5th Cir. 2005) (per curiam) (denying permissive intervention, as an existing party "adequately represent[ed] [intervenor's] interests in this case"); *United States v. Tex. Educ. Agency (Lubbock Indep. Sch. Dist.)*, 138 F.R.D. 503, 508 (N.D. Tex. 1991) ("[T]he Court finds that the Proposed Intervenors have not overcome the

presumption of adequate representation on the part of the Government, and therefore, denies permissive intervention.").

Here, as discussed *supra*, HSUS has failed to show how existing Defendants will not adequately represent its interests in arguing to enforce the new rule. Accordingly, permitting HSUS to intervene as a defendant would also fail to significantly contribute to the development of any underlying factual issues. For the reasons articulated above, and because a grant of permissive intervention by the Court is wholly discretionary, the Court does not find that permissive intervention in the instant case is warranted.

CONCLUSION

For the above reasons, is **ORDERED** that HSUS's Motion to Intervene (ECF No. 20) is **DENIED.** However, this order does not preclude HSUS's participation as amicus curiae. *See, e.g.*, *All. for Hippocratic Med. v. U.S. Food & Drug Admin.*, 2:22-cv-223-Z (N.D. Tex. Feb. 10, 2023), ECF No. 94 (granting fifteen motions for leave to file amicus briefs).

SO ORDERED.

January 13, 2025

MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE