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

TOM GOULD, ANN MILLS, and THE TENNESSEE WALKING HORSE NATIONAL CELEBRATION ASSOCIATION,

Plaintiffs,

v.

U.S. DEPARTMENT OF AGRICULTURE; BROOKE ROLLINS, in her official capacity as Secretary of Agriculture; ANIMAL AND PLANT HEALTH INSPECTION SERVICE; MICHAEL WATSON, in his official capacity as Administrator of the Animal and Plant Health Inspection Service,

Defendants.

Civil Action No.: 2:25-cv-147-Z

ORAL ARGUMENT REQUESTED

PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

Plaintiffs Tom Gould, Ann Mills, and the Tennessee Walking Horse National Celebration Association ("Association") are victims of unlawful rules enforced by Defendants to disqualify horses from competing at Tennessee Walking Horse shows. Under the Horse Protection Act of 1970, 15 U.S.C. § 1821 *et seq.* ("HPA"), the Department of Agriculture ("USDA") has authority to inspect and disqualify from shows horses that are "sore"—that is, horses that suffer pain or sensitivity on their legs due to a deliberate injury intended to prompt the horse to enhance its gait. But USDA's rules rewrite the statutory definition of sore and prevent horses that are *not* sore from competing. Worse, because USDA provides no mechanism to review its decisions, Plaintiffs are denied due process when horses are disqualified because they are left without any recourse to demonstrate that a disqualification was erroneous.

In this lawsuit, Gould and Mills challenge specific disqualifications of their horses. The Association—which is required as a show "manager" to enforce USDA disqualifications by excluding disqualified horses from its shows—also challenges a set of disqualifications that USDA required it to enforce by excluding horses at the 2024 Tennessee Walking Horse National Celebration. The Celebration is the Tennessee Walking Horse industry's annual marquee event—an eleven-day competition owned and managed by the Association at which 2,000 horses have historically competed and that culminates in crowning the Tennessee Walking Horse World Grand Champion.

All three Plaintiffs also seek vacatur of the unlawful rules USDA applied in the disqualification decisions they are challenging. In this motion for a preliminary injunction, Plaintiffs ask the Court to prevent USDA from continuing to apply those unlawful rules, particularly at the fast-approaching 2025 Celebration, which will be held from August 20-30, 2025. Plaintiffs Gould and Mills both intend to have their horses compete at the Celebration and, absent a preliminary injunction, their horses will be subjected to inspection under USDA's unlawful rules. If their horses are disqualified, the absence of an appeals process means they will be denied due process. The Association will be required to enforce *all* disqualifications USDA makes under its unlawful rules, resulting in the Association being

forced to exclude potentially dozens of horses from the show and irreversibly degrading the quality of the competition at the Celebration. The requirements for a preliminary injunction are readily met.

First, Plaintiffs are likely to succeed in showing that the rules they challenge are unlawful. Three distinct rules are at issue.

No-Showback. Under the No-Showback Rule, USDA insists that a horse disqualified on one day of a multi-day show cannot "show back" on a later day or in a different class of competition, even when the horse is not sore and can pass an inspection. The Rule is unlawful because the HPA prohibits only showing a horse that is *presently* sore. It does not give USDA authority to prohibit the showing of a horse that "was sore" a few days ago or "has been sore," particularly where the prior finding was based on temporary sensitivity that could dissipate in a matter of hours. At an eleven-day show like the Celebration, a horse that is disqualified under the No-Showback Rule on the first day of competition can miss out on ten other days of competition and a chance to become World Champion in a second or third class of competition or to become the World Grand Champion. And requiring the Association, as show manager, to enforce the No-Showback Rule substantially alters the quality of the show by precluding potentially dozens of horses from competing in later classes and championship rounds of competition.

No Due Process. When USDA disqualifies a horse at a show, its rules provide no mechanism whatsoever to appeal those decisions. Instead, once USDA tells show management (like the Association) that a horse is in violation, management is required to disqualify the horse and there is no pre-deprivation—or even post-deprivation—review. At least two courts—including this Court—have recognized that the lack of any ability to be heard following such disqualifications and before the horse is actually barred from competition deprives horse owners and trainers of their due process rights. *See Tenn. Walking Horse Nat'l Celebration Ass'n v. USDA*, 765 F. Supp. 3d 534, 543-44 (N.D. Tex. 2025) ("*TWHNCA*"); *McSwain v. Vilsack*, No. 1:16-cv-01234, 2016 WL 4150036, at *3 (N.D. Ga. May 25, 2016). Despite these rulings, the Agency continues to foreclose any opportunity for review of disqualification decisions. This violates the rights not only of owners and trainers whose horses

are disqualified, but also of the Association, which has a due process protected interest in exhibiting horses at its shows without undue government interference.

Scar Rule. Perhaps the most infamous rule USDA uses to disqualify horses is the so-called "Scar Rule," which this Court recently described as "disreputable and unscientific" and "a relic of a bygone era." *TWHNCA*, 765 F. Supp. 3d at 543. The Scar Rule sets forth certain conditions that, if found on a horse following a visual inspection and palpation of the horse's legs, require that the horse *must* be deemed sore. *See* 9 C.F.R. § 11.3. But the Scar Rule uses criteria that bear no relation to the HPA's definition of sore. Instead, the Scar Rule requires inspectors to find a horse "sore" based on different, fundamentally vague criteria set by USDA. As the National Academy of Sciences, Engineering, and Medicine ("NAS") told USDA, the Scar Rule's criteria (i) have never been shown to be connected to soring and (ii) cannot reliably be identified by a visual inspection in any event. In addition, the Rule requires that horses be disqualified based solely on evidence of a prior injury that has healed, meaning that the horse is not presently sore.

Second, absent an injunction, Plaintiffs will suffer irreparable harm. Plaintiffs Gould and Mills intend to show their horses at the Celebration and, absent an injunction, they will be subject to inspections under USDA's unlawful rules and may have horses disqualified without any review mechanism to challenge a disqualification. If the Court waits until after the disqualification, there will be no way to unring the bell and allow an improperly disqualified horse to compete. As this Court has noted, any after-the-fact relief that theoretically could be provided after a disqualification "still forecloses the ability of a horse to compete, as well as any ability for owners or trainers to claim prize money and notoriety within the industry," which "remains unsatisfactory." *TWHNCA*, 765 F. Supp. 3d at 546. The Association also faces irreparable harm from being forced improperly to exclude horses at its show. The Association's ability to put on a successful Celebration is directly affected by the number of horses that compete. At last year's Celebration, USDA disqualified 174 out of 305 horses they inspected—a disqualification rate of 57%. When USDA improperly disqualifies large numbers of horses under its unlawful rules, the quality of competition is necessarily reduced. In addition, the No-Showback Rule means that when there are high disqualification rates in early rounds,

owners are prohibited from entering a horse in additional classes later in the show, further reducing the field of competition. And fans of horses disqualified in the early days of competition will not purchase tickets for the later days of the show if their favorite horses are unable to compete. These injuries to the quality of the show and the revenue it can generate from entrants and from ticket sales are wholly irreparable.

Third, the public interest and the balance of the equities overwhelmingly favor a preliminary injunction. Where, as here, the government is the defendant, the balance of equities and public interest inquiries merge, and "[t]here is generally no public interest in the perpetuation of unlawful agency action." *Louisiana v. Biden*, 55 F.4th 1017, 1035 (5th Cir. 2022) (quotation omitted).

For all these reasons, Plaintiffs respectfully request that the Court enter a preliminary injunction barring USDA from enforcing the No-Showback Rule and the Scar Rule, and from disqualifying horses without affording a mechanism for pre-deprivation review.

BACKGROUND

A. The Tennessee Walking Horse Industry

Tennessee Walking Horses are prized for their high-stepping gait, a distinctive walk that is the fruit of careful breeding and patient training. At exhibitions, Tennessee Walking Horse owners and trainers compete for prize money awarded to the horse with the most elegant, high-stepping strut. These horse shows have continued for nearly a century, attracting spectators of all ages who come to cheer for their favorite horses and enjoy wholesome fun with their families and friends.

Tennessee Walking Horses are trained and compete while wearing action devices: small weights of six ounces or less placed on their legs. Ex. A, Declaration of Warren Wells ("Wells Decl.") ¶ 8. They also wear pads between the hoof and shoe. *Id.* The value of a horse is tied to its ability to compete at shows. *Id.* ¶ 9. When a horse has been trained well and performs successfully, particularly if it has repeated success, the value of the horse increases. *Id.* By contrast, horses that are disqualified from competition are worth less than those that are not. *Id.*

B. The Horse Protection Act

As in any sport, fair competition is essential. To ensure fair competition and to protect horses, over 50 years ago Congress passed the Horse Protection Act, 15 U.S.C. § 1821 *et seq.* ("HPA" or "Act"), to punish a practice called "soring" that was (then) a significant problem in the industry. The gait of a Tennessee Walking Horse is properly developed through careful training. Disreputable trainers, however, would "sore" horses by deliberately making their horses' legs sore to exaggerate their gait. Soring is an abhorrent practice, and those who do it should be punished. But those who compete fairly should not be subjected to collective punishment based on the bad acts of others.

In enacting the HPA, Congress made clear that it had twin goals—preventing soring while simultaneously protecting and enhancing fair competition. The Act declares that "the soring of horses is cruel and inhumane" while also highlighting that "horses shown or exhibited which are sore . . . compete unfairly with horses which are not sore." 15 U.S.C. § 1822(1)-(2).

The HPA makes it unlawful (among other things) to show or exhibit any horse that is sore. *See id.* § 1824(2). It also makes it unlawful for the management of a show to fail to disqualify a horse that is sore from an event. *See id.* § 1824(3)-(6). Under the Act, *id.* § 1821(3), a horse is "sore" when:

> (A) an irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,
>
> (B) any burn, cut, or laceration has been inflicted by a person on any limb of a horse,
>
> (C) any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse, or
>
> (D) any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse,
>
> and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was given.

To combat soring, the statute provides for USDA inspectors as well as private inspectors operating under USDA criteria. *Id.* §§ 1823(c), 1823(e).

C. The U.S. Department Of Agriculture And The Horse Protection Program

The HPA gives the Secretary of Agriculture rulemaking authority to "carry out" the Act. *Id.* § 1828. To enforce the Act, USDA has delegated inspection authority to private inspectors known as Designated Qualified Persons ("DQPs"), 9 C.F.R. §§ 11.7, 11.21, in addition to employing its own Veterinary Medical Officers ("VMOs"), who are part of the Animal and Plant Health Inspection Service ("APHIS"), a federal agency within USDA. *See id.* § 11.4. DQPs are licensed by private Horse Industry Organizations ("HIOs"). 9 C.F.R. § 11.7. USDA regulations provide that HIOs are certified by the Agency to train and license DQPs. *Id.* Under current rules, both VMOs and DQPs inspect horses at shows pursuant to USDA-issued regulations and requirements. *See id.* §§ 11.4, 11.21.

Horses are inspected shortly before they compete and then kept in a holding area before they enter the ring. *Id.* § 11.20(b)(2). If a horse is disqualified pre-show, it cannot compete at all and its chance of winning a prize is foreclosed.[1] Ex. A, Wells Decl. ¶ 10. Some horses are also selected by USDA for "post-show inspection" immediately after leaving the ring. 9 C.F.R. § 11.20(a). A horse disqualified post-show may also lose the ability to win a prize. Ex. A, Wells Decl. ¶ 10.

If an owner or trainer's horse is disqualified as sore, that decision opens the owner and trainer to a complaint by USDA for civil penalties (and a ban from showing horses), *see* 15 U.S.C. § 1825(b)-(c), and potentially to criminal prosecution, *see id.* § 1825(a). Disqualification also devalues a horse, reducing future sale proceeds. Ex. A, Wells Decl. ¶ 12.

The HPA also imposes specific obligations on the management of horse shows, like the Association, to enforce the prohibitions in the Act. The HPA mandates that the "management of any horse show or horse exhibition shall disqualify any horse from being shown or exhibited (1) which is sore or (2) if the management has been notified . . . by the Secretary that the horse is sore." 15 U.S.C. § 1823(a). Similarly, section 1824 of the Act makes it unlawful for the management of a horse show, to disqualify any horse from an event after being told by USDA that the horse is sore. Specifically, the Act prohibits "[t]he failure by the management of any horse show or horse exhibition, which has

[1] Under industry practice, 100% of any prize money goes to a horse's trainer. Ex. A, Wells Decl. ¶ 11. A horse owner benefits when his horse is successful in competition because the horse gains in value, both to breed and sell. *Id.* That is particularly true for horses that have repeated success.

appointed [a horse inspector] . . . to disqualify from being shown or exhibited any horse (A) which is sore, and (B) after having been notified by . . . the Secretary that the horse is sore or after otherwise having knowledge that the horse is sore." *Id.* § 1824(5).

Three of USDA's rules are at issue in this case and have harmed Plaintiffs.

The No-Showback Rule. Prior to 2010, an owner or trainer whose horse was disqualified upon inspection at a multi-day show could present that horse again for inspection in another class or on another day of competition. Ex. A, Wells Decl. ¶ 15. This approach was consistent with the HPA. It allowed an owner to demonstrate on a later day that a horse was not sore by passing inspection. The ability to present a horse for another class of competition or on a later day is important for the Association and other managers of large shows. The Celebration, for example, goes spans eleven days, at which 2,000 horses have historically competed compete in nearly 200 classes. *Id.* ¶ 6. A single horse would typically be entered in several classes of competition. Treating a single disqualification in an early class qualifying round as barring a horse from the entire show could significantly reduce the field of competition in later classes and hinder the success of the show. *Id.* ¶ 20.

In 2010, however, USDA issued a new substantive rule doing exactly that. In a document titled "USDA Horse Protection Program 2010 Points of Emphasis," USDA decreed that: "HIOs must dismiss a horse found in violation of [the] HPA from participating in any remaining portion of [a] horse show, horse exhibition, horse sale or auction (rather than just the individual class)." Ex. B, 2010 Points of Emphasis, at 1 (emphasis in original). Although the document instructed HIOs to dismiss a horse found in violation of the HPA from any remaining portion of a show, the HPA places the responsibility for disqualifying horses on show management. *See*, *e.g.*, 15 U.S.C. § 1823(a) ("The management of any horse show or horse exhibition shall disqualify any horse from being shown or exhibited . . . if the management has been notified by a person appointed in accordance with regulations under subsection (c) or by the Secretary that the horse is sore."); *see also* Ex. B (citing § 1823(a) as authority for the Rule). In practice, USDA has also made clear that the Rule set forth in the 2010 Points of Emphasis applies to horse show management. Ex. A, Wells Decl. ¶ 18.

USDA made clear that the 2010 Points of Emphasis "are mandatory for all certified HIOs" and that HIOs "that fail to implement the . . . 2010 Points of Emphasis . . . will be subjected to action as outlined in the HPA and Regulations." *USDA Responds to Points of Emphasis Questions*, THE WALKING HORSE REPORT (Mar. 25, 2010), https://perma.cc/FG3X-EPLL. Again, though USDA suggests that it is HIOs that are obligated to impose the Rule, show management bears the ultimate responsibility under the HPA and binding regulations. USDA has made clear that it expects show management to enforce the No-Showback Rule. Ex. A, Wells Decl. ¶ 18.

The No-Showback Rule was applied to Plaintiff Gould at the 2022 Celebration. On August 27, 2022, a DQP disqualified a horse he then owned, The River Walk, from competing in the Amateur Novice Gentlemen Riders on Novice Walking Mares or Geldings class because of bilateral sensitivity. Ex. C, Declaration of Tom Gould ("Gould Decl.") ¶ 6. This disqualification prevented the horse from competing in the qualifying round for two other classes in which it had been entered, as well as competing in the championship round of competition for any class. *Id.* Additionally, on April 28, 2024, Plaintiff Gould's horse Marshall Mathers was disqualified by a DQP for unilateral sensitivity on the first day of the two-day 2023 Spring Extravaganza. *Id.* ¶ 7. The horse would have been eligible to compete on the second day of competition but for the No-Showback Rule. *Id.*

The No-Showback Rule was also applied to Plaintiff Mills at the 2023 Celebration. On August 24, 2023, a USDA VMO disqualified her horse, Jose's Count It Up, from competing in the Owner Amateur Riders on Two-Year-Old Walking Stallions qualifying class because of a shoeing violation. Ex. D, Declaration of Ann Mills ("Mills Decl.") ¶ 7. Jose's Count It Up was also registered to compete in the Professional Two-Year-Old Walking Stallions qualifying class but was unable to do so because of the No-Showback Rule. *Id.* ¶ 8. If Jose's Count It Up had been able to show in either of those two classes, it would have also been eligible to show back in the championship round of each class. *Id.* Thus, the initial disqualification (which could have been remedied through a simple change of equipment) prevented Plaintiff Mills's horse from appearing in three additional events.

The Association must enforce the No-Showback Rule at each horse show it manages under threat of USDA penalty. Ex. A, Wells Decl. ¶ 20. The application of the Rule has prevented horses

that are not sore from competing at the Association's horse shows. At last year's Celebration, USDA disqualified fifty-four horses during post-show inspections in the first eight days of competition where the owners of those horses had been entered to compete in more than one class of competition. *Id.* Those horses were either (i) prevented from competing in an additional qualifying event for another class, or (ii) had already successfully competed in another qualifying event and would have been eligible to compete in the championship round of competition for that other class. *Id.* Those disqualification decisions and the application of the No-Showback Rule significantly impacted the Association's conduct of the Celebration and significantly diminished competition in later rounds of the show. *Id.*

Since the Rule was put in place in 2010, there has been a 42% drop in ticket sales and 22% drop in entries at the Celebration. *Id.* ¶ 31.

Disqualification Of Horses Without Due Process. USDA rules govern the inspection process by which its appointees examine a horse to determine whether it is sore. *See* 9 C.F.R. §§ 11.4, 11.21. Critically, those regulations do not provide any type of hearing prior to a horse being disqualified from competition, nor do they provide any mechanism by which anyone can contest an inspector's decision before the horse is disqualified. The trainer or owner of a disqualified horse may challenge a disqualification only if the disqualification becomes the subject of an administrative complaint or a criminal action initiated by USDA. *See* 15 U.S.C. §§ 1825(a), (b).

For the vast majority of disqualifications where USDA does not file an administrative complaint or criminal action, horse owners and trainers have no recourse to challenge the disqualification. And, in many instances, horses are disqualified pre-show, depriving an owner and trainer of ***the right to compete at all***.

Plaintiff Gould's horse Hip to the Trip was disqualified by a VMO on September 28, 2024 at the Alabama Jubilee horse show for an alleged Scar Rule violation. Ex. C, Gould Decl. ¶ 8. Mr. Gould was not afforded any opportunity to appeal that disqualification. *Id.* Plaintiff Ann Mills's horse Jose's Count It Up was disqualified on August 24, 2023 by a VMO at the 2023 Celebration for an alleged shoeing violation. Ex. D, Mills Decl. ¶ 7. She was not afforded any opportunity to appeal that disqualification. *Id.* The HPA also requires show management to enforce disqualifications under

threat of penalty, *see* 15 U.S.C. §§ 1823(a), 1824(3); *see also* Ex. A, Wells Decl. ¶ 22. At last year's Celebration, the Association had to enforce 174 disqualifications made by USDA without affording the owner or trainer an opportunity to appeal the decision. *Id.* ¶ 23. The disqualification of horses without affording the owners and trainers any appeal has prevented horses that are not sore from competing at the Association's horse shows, reducing registrations and ticket sales. *Id.* ¶ 24.

The Scar Rule. In 1979, USDA promulgated the so-called Scar Rule, 9 C.F.R. § 11.3, which lists criteria that, if found on a horse following a visual inspection and palpation of the horse's legs, would require an inspector to deem the horse to be sore.[2]

The Scar Rule states that a horse found with any of the characteristics described in the Rule "***shall*** be considered to be 'sore.'" *Id.* (emphasis added). In contrast to the definition of sore in the HPA, under which a horse is "sore" only if it "suffers, or can reasonably be expected to suffer," pain or distress, *see* 15 U.S.C. § 1821(3), the Scar Rule makes no distinction between evidence of ***prior*** injury and evidence of a ***current*** or expected injury. A horse that has a scar on the front of its pastern based on prior conduct would not be sore under the HPA absent additional evidence showing that the horse currently "suffers, or can reasonably be expected to suffer, physical pain or distress." 15 U.S.C. § 1821(3).

In 2017, responding to a joint invitation from USDA and the Tennessee Walking Horse industry, the National Academy of Sciences, Engineering, and Medicine ("NAS") oversaw a study to

---

[2] Codified at 9 C.F.R. § 11.3, the Scar Rule provides in relevant part:

> Horses subject to this rule that do not meet the following scar rule criteria shall be considered to be "sore" and are subject to all prohibitions of section 5 of the Act. The scar rule criteria are as follows:
>
> (a) The anterior and anterior-lateral surfaces of the fore pasterns (extensor surface) must be free of bilateral granulomas, other bilateral pathological evidence of inflammation, and, other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair.
>
> (b) The posterior surfaces of the pasterns (flexor surface), including the sulcus or "pocket" may show bilateral areas of uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.

analyze whether USDA's regulations were "based on sound scientific principles" and "can be applied with consistency and objectivity." *See* Nat'l Acads. of Scis., Eng'g, & Med., A Review of Methods for Detecting Soreness in Horses 2, 17 (2021), https://doi.org/10.17226/25949 ("NAS Report").

NAS concluded that the Scar Rule cannot reliably identify soring. For example, NAS noted that the Rule required inspectors to identify granulomas, a particular type of inflammatory lesion composed of certain cells, through a gross inspection. *Id.* at 83. But, as NAS concluded: (i) there is no evidence that granulomas are present in horses that are "sore" within the meaning of the Act and (ii) granulomas "cannot be determined to be present by gross examination alone." *Id.* Instead, a "microscopic evaluation" is "absolutely necessary." *Id.*

Plaintiff Tom Gould's horse Hip to the Trip was disqualified on September 28, 2024 at the Alabama Jubilee horse show for a Scar Rule violation. Ex. C, Gould Decl. ¶ 8. At last year's Celebration, USDA disqualified seventy-two horses pursuant to the Scar Rule. Ex. A, Wells Decl. ¶ 28. Under threat of penalty, the Association had to enforce these disqualifications. *Id.*

LEGAL STANDARD

"[A] plaintiff seeking a preliminary injunction must make a clear showing that he is likely to succeed on the merits, likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *SEC v. Barton*, 135 F.4th 206, 226 (5th Cir. 2025) (quotation omitted). The Fifth Circuit evaluates "the four preliminary injunction requirements" with a "'sliding-scale' analysis." *TitleMax of Tex., Inc v. City of Dallas*, No. 21-11170, 2025 WL 1802427, at *2 (5th Cir. July 1, 2025). "Where the other factors are strong, a showing of *some* likelihood of success on the merits will justify temporary injunctive relief." *Id.* (emphasis added) (quotation omitted); *see Purl v. HHS*, 760 F. Supp. 3d 489, 497 (N.D. Tex. 2024) (Kacsmaryk, J.) (granting preliminary injunction on "sliding scale" analysis). "The purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits." *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974).

ARGUMENT

I. Plaintiffs Are Likely To Succeed On The Merits Of Their Challenges Seeking To Set Aside USDA's Unlawful Rules.

Plaintiffs can readily show that they are likely to succeed in their challenges seeking to set aside the unlawful USDA rules that were applied in the disqualifications at issue in this case. To show likely success, a plaintiff "need not provide evidence that would satisfy a summary judgment standard." *Purl*, 760 F. Supp. 3d at 499 (citation omitted). Instead, a plaintiff "must show a 'reasonably probable chance' of succeeding on the merits." *Id.* at 500. And where—as here—the other preliminary injunction factors strongly favor preliminary relief, Plaintiffs need only show "*some* likelihood of success." *TitleMax of Tex., Inc.*, 2025 WL 1802427, at *2 (emphasis added).

It is well settled that when a plaintiff challenges a particular agency decision (like the disqualification decisions at issue in this case), the plaintiff may also challenge an agency rule applied in that decision, however long ago the rule was promulgated. *See, e.g.*, *Texas v. Rettig*, 987 F.3d 518, 529 (5th Cir. 2021) (citing *Dunn-McCampbell Royalty Int., Inc. v. Nat'l Park Serv.*, 112 F.3d 1283, 1287 (5th Cir. 1997); *AT&T v. FCC*, 978 F.2d 727, 734 (D.C. Cir. 1992) ("It is well established that a rule may be reviewed when it is applied in an adjudication."). Thus, by attacking the specific disqualification by USDA, Plaintiffs may also challenge the rules applied by USDA in those decisions.

A. The No-Showback Rule Exceeds USDA's Statutory Authority Because It Prevents Horses That Are Not Sore From Competing.

"A regulator's authority is constrained by the authority that Congress delegated it by statute." *Chamber of Com. of the U.S. v. U.S. Dep't of Lab.*, 885 F.3d 360, 369 (5th Cir. 2018). Here, the No-Showback Rule exceeds the scope of USDA's authority because it requires barring a horse disqualified at one point in time from an entire multi-day show even though there is no basis for believing that such a horse will continue to be sore as defined in the statute on subsequent days.

Under the HPA, a horse may be considered "sore" only if (i) specified actions are taken by a person and (ii) as a result of those actions, a horse "suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving." 15 U.S.C. § 1821(3). The HPA requires that "[t]he management of any horse show or horse exhibition

shall disqualify any horse from being shown or exhibited . . . if the management has been notified . . . by the Secretary that the horse is sore." 15 U.S.C. § 1823(a). As those two provisions make clear, USDA is authorized only to prohibit the showing of a horse that "is sore"—present tense. And the condition of being sore is statutorily defined as meaning that the horse "suffers or can reasonably be expected to suffer"—again, present tense—pain or distress. The statute does not permit USDA to presume a horse "is sore" if it was ***previously*** sore but is no longer suffering or reasonably expected to suffer pain or distress.

USDA's No-Showback Rule rewrites the statute to allow the Agency to disqualify horses that "have been sore" or "used to be sore," even if it could be shown that the horses are not presently sore because they could pass an inspection. Take, for example, a horse disqualified for bilateral sensitivity in its front pasterns on the first day of a show. Because that condition could result from causes other than any illicit soring *and* dissipate within hours, the same horse could be perfectly fine by the third day of the show and pass inspection with no signs of sensitivity. But the arbitrary "No-Showback Rule" means that this horse would be prevented from even being considered for inspection again.

The Rule is untethered from the statute for an additional reason: It prevents horses from competing for an entire show even when there is *no* evidence of soring. A horse may be disqualified, for instance, for an equipment violation, such as wearing an action device exceeding the USDA-approved weight of six ounces. *See* 9 C.F.R. § 11.2(b)(2). There is no reason to believe that a horse disqualified from competition solely for arriving at inspection with an action device that weighs 6.1 ounces is actually sore, much less that it would be sore upon a future reinspection in another class or on another day. If the same horse presented for inspection two days later wearing an action device weighing six ounces or less—the approved weight at which USDA has decided horses can compete with an action device without an expectation that they would become sore—there would be no rational basis for concluding that the horse was presently sore.

As these examples show, the No-Showback Rule extends disqualifications of horses to horses that are not sore and can demonstrate they are not sore by passing inspection. This violates the principle that an Agency is not permitted to rewrite the meaning of a statutory term (such as the HPA's

definition of sore). *See Texas v. Cardona*, 743 F. Supp. 3d 824, 884 (N.D. Tex. 2024); *cf. USDA Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 59 (2024) ("When Congress takes the trouble to define the terms it uses, a court must respect its definitions as 'virtually conclusive.'") (quoting *Sturgeon v. Frost*, 587 U.S. 28, 56 (2019)). Because extended disqualifications under the No-Showback Rule cannot be squared with the statutory definition of sore, they are unlawful.

USDA has pointed to 15 U.S.C. § 1823(a) as authority for the No-Showback Rule, *see* Ex. B at 1, but that provision provides no support. Section 1823(a) states only that show management is required to disqualify a horse that "is sore"—not horses that *were* sore at some time in the past. Yet the No-Showback Rule requires precisely that—extending a disqualification to bar a horse from competing on day seven or day eight of a show because it showed signs of soreness a *week ago* on day one. The Agency has also made clear that show management (like the Association) will be held responsible if it fails to enforce USDA's rule. The Agency has decreed that the 2010 Points of Emphasis (and the included No-Showback Rule) "are mandatory" and that those that "fail to implement the . . . 2010 Points of Emphasis . . . will be subjected to action as outlined in the HPA and Regulations." *USDA Responds to Points of Emphasis Questions*, THE WALKING HORSE REPORT (Mar. 25, 2010), https://perma.cc/FG3X-EPLL.

B. The No-Showback Rule Is Arbitrary And Capricious.

The No-Showback Rule is also arbitrary and capricious for at least two reasons. *First*, the Rule categorically requires disqualification of horses from an entire multi-day show, which necessarily results in excluding from competition horses that are *not* sore and that present no other violation of USDA's rules. USDA did not base the No-Showback rule on any evidence about the duration of all forms of soreness; it arbitrarily decreed the Rule with no explanation. The Rule, moreover, by its terms prevents horses from competing even when they can demonstrate that they are *not* sore by passing an inspection. In short, it is plainly not based on any "rational connection between the facts found and the choice made." *Huawei Techs. USA, Inc. v. FCC*, 2 F.4th 421, 433 (5th Cir. 2021); *see also id.* at 433-34 ("Not only must an agency's decreed result be within the scope of its lawful authority,

but the process by which it reaches that result must be logical and rational.") (quoting *Michigan v. EPA*, 576 U.S. 743, 750 (2015)).

Second, the scope of the disqualification imposed under the No-Showback Rule is arbitrary and capricious because it is inconsistent with USDA's own practice in logically parallel circumstances. USDA does not consistently apply any principle that a disqualification must bar a horse from competition for some set period of time. Instead, USDA VMOs will regularly pass a horse and allow it to compete at a horse show even though the same horse was disqualified the night before—so long as the disqualification occurred in a different show. *See* Ex. A, Wells Decl. ¶ 26. There is no logical reason that a horse disqualified last night at a different show should be allowed to compete while a horse disqualified at the same show should be automatically barred. Such "'unexplained' and 'inconsistent' positions' are likely arbitrary and capricious." *R.J. Reynolds Vapor Co. v. FDA*, 65 F.4th 182, 191 (5th Cir. 2023). There is nothing rational about USDA's policy of disqualifying horses for multi-day shows when the Agency will regularly pass horses under the same timeline so long as those horses are competing at different shows. This practice is fundamentally arbitrary.

C. USDA's Rules Violate The Due Process Clause Because They Fail To Provide Any Pre-Deprivation Mechanism For Review.

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quotation omitted). As two federal courts—including this Court—have recognized, USDA's failure to provide pre-deprivation review before a horse is barred from competing violates the Due Process Clause.

In *McSwain v. Vilsack*, the court held that USDA violated the rights of a horse's owners and trainers because they did "not have the opportunity to appeal or otherwise be heard prior to their horse's disqualification." No. 1:16-cv-01234, 2016 WL 4150036, at *5 (N.D. Ga. May 25, 2016). As the court observed, although the regulations provide for a hearing when USDA seeks a civil or criminal penalty after a violation, the decision whether to pursue a penalty is entirely within USDA's discretion—and USDA historically has rarely sought such penalties. *Id.* at *5. As a result, in the vast majority of cases, no process at all is provided in connection with a disqualification. The court held

that due process "requir[ed] pre-deprivation" review. *Id.* at *6. It also found that any post-deprivation process provided in connection with a penalty proceeding could not cure the due process violation, because "there is no guarantee of post-deprivation process." *Id.* at *5. The court concluded that "[t]he disqualification of [Plaintiffs' horse] marks the point of deprivation and Plaintiffs have no guarantee of either pre- or post-deprivation process." *Id.*

More recently, this Court reaffirmed that, when USDA inspectors disqualify horses at shows, due process requires some pre-deprivation review mechanism. *See TWHNCA*, 765 F. Supp. 3d at 546. This Court addressed USDA's efforts to expand its existing procedures to provide ***additional*** due process in a newly promulgated rule and held that those efforts still fell constitutionally short. *See id.* at 544-46 (addressing Horse Protection Amendments, 89 Fed. Reg. 39,194 (May 8, 2024) (the "2024 Rule")). In the 2024 Rule, USDA gave horse owners and trainers the ability to appeal within twenty-one days after a disqualification. *See TWHNCA*, F. Supp. 3d at 545. This Court vacated that review mechanism as constitutionally insufficient on the ground that it failed to provide pre-deprivation process. *Id.* at 545-46. "Once a horse is disqualified," the Court explained, "the opportunity for that horse to compete is practically extinguished because inspection occurs approximately 30 minutes before the horse enters the arena." *Id.* at 546 (quotation omitted). The addition of a right to an appeal within twenty-one days *after* disqualification did not cure the deprivation because "overturning a disqualification still forecloses the ability of a horse to compete, as well as any ability for owners or trainers to claim prize money and notoriety within the industry." *Id.*

In promulgating the 2024 Rule that this Court found insufficient, USDA tacitly recognized that its existing system fails to provide adequate due process. When seeking public comment on the 2024 Rule, USDA noted that it had previously "received some comments raising due process concerns," and requests that it "develop and implement a pre-show process whereby owners and trainers may contest and seek immediate review of a finding that a horse is sore from a decision-maker." Horse Protection, 88 Fed. Reg. 56,924, 56,935 (Aug. 21, 2023). USDA sought "additional public comment" because it knew there was a due process problem with its current system.

Despite acknowledging due process concerns with its current system—and even after two federal courts held that the absence of pre-deprivation process violates the Due Process Clause—USDA continues to disqualify horses without providing any pre-deprivation review mechanism. USDA's failure to provide any appeal also flouts the fundamental tenet of due process that a person is entitled to an impartial and disinterested adjudicator. When a horse is disqualified based on the judgment of a single horse inspector—who may be biased and who may apply subjective rules, *see infra* §§ Parts I.D-F—there is no guarantee of a neutral arbiter. *See Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) ("This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decisionmaking process.").

The blatant absence of due process has harmed and will continue to harm Plaintiffs Gould and Mills every time they present one of their horses for inspection and the Association every time it is forced to bar a horse from one of its shows without any chance for a pre-deprivation review. In each case, the Plaintiffs will all have the government unduly interfere with their ability to either show horses or to run a horse show.

D. The Scar Rule Exceeds USDA's Statutory Authority Because The Scar Rule Redefines The Statutory Definition Of Sore.

The Scar Rule exceeds USDA's authority under the HPA and is contrary to the terms of the HPA in at least two ways.

First, the Scar Rule sets criteria for what it means for a horse to be "sore" that differ from the statutory criteria and thus redefines and exceeds the scope of the statutory definition. As noted, the HPA mandates that a finding of soreness can be made only where a person has taken specific actions that cause a horse to "suffer[]" or to "reasonably be expected to suffer" physical pain or distress. 15 U.S.C. § 1821(3). The Scar Rule casts aside these requirements and requires inspectors to identify "soreness" based on different, fundamentally vague criteria set by USDA. For example, a horse might be disqualified as sore under the Scar Rule if it shows an "excessive loss of hair." 9 C.F.R. § 11.3. But loss of hair is not found in the statutory definition of "sore," and there are many reasons—including

use of approved training equipment (or "action devices")—for hair loss that have no relation to soring as defined in the Act.

Hair loss may also be caused by skin conditions that have non-human causes. For example, pastern dermatitis is a condition marked by many of the same symptoms that would cause a horse to be disqualified under the Scar Rule. *See* Danny W. Scott & William H. Miller, Jr., *Equine Dermatology* 460-61 (2011). This condition can be marked by hair loss. *Id.* And it has many potential causes, including bacterial infection, worm or mite infection, and irritation from exposure to alkaline soil. *See id.* at 460. None of those causes is related to soring. But the mere loss of hair can lead a horse inspector to disqualify a horse under the Scar Rule. In other words, by enforcing the Scar Rule, USDA disqualifies horses as "sore" even though they are ***not*** sore under the HPA definition of that term.

Second, the Scar Rule also departs from the statute because it requires inspectors to disqualify a horse if the horse shows evidence that it may have been sored at some point in the past, without establishing that the horse is ***presently*** sore. As noted, the HPA requires disqualification only of a horse that "is sore," 15 U.S.C. § 1824(2)-(6), and makes clear that a horse is sore only if it "suffers" or "can reasonably be expected to suffer" physical pain or distress. *Id.* § 1821(3). The Scar Rule expands the definition by presuming a horse is sore if it has any evidence of a prior injury. The language of the Rule provides that "[t]he anterior and anterior-lateral [front and side] surfaces of the fore pasterns (extensor surface) must be free of . . . evidence of abuse indicative of soring." But a horse that has a scar on the front of its pastern based on some long-ago incident (whether illicit, accidental, or naturally occurring) would not be sore under the HPA absent additional evidence showing that the horse currently "suffers" pain or physical distress.

Indeed, the name "Scar Rule" itself indicates the disconnect between the substance of the Rule (which, loosely speaking, requires inspectors to look for evidence of scars), and the actual prohibitions in the HPA, which focus on current soreness. A "scar" is commonly understood to be evidence of a wound that has healed, often long ago. Thus, a scar might provide evidence that something happened to a horse in the past that made it sore, but it provides no evidence of current soreness, which is the relevant standard under the statute.

USDA tacitly recognized that there is a problem with the Scar Rule by attempting to replace it in the 2024 Rule. Unfortunately, the Agency's attempt to replace the Rule—with a new rule it dubbed "Dermatologic Conditions Indicative of Soring," or "DCIS"—was even worse. This Court rightly vacated that replacement as unconstitutionally vague, *TWHNCA*, 765 F. Supp. 3d at 544, and USDA did not even appeal that decision. Instead, the Agency's response to its failure to promulgate a viable Scar Rule replacement has been simply to return to enforcing the very rule it recognized needed to be replaced.

E. The Scar Rule Is Arbitrary And Capricious.

The Scar Rule is inherently arbitrary because it asks inspectors to identify things on a visual inspection that USDA's own experts have told it cannot be seen with the naked eye. Specifically, the Scar Rule requires that horses' fore pasterns "be free of bilateral granulomas." 9 C.F.R. § 11.3. But, as the NAS Report explained, granulomas cannot be seen with the naked eye. NAS Report at 83 ("A microscopic evaluation of the tissue is absolutely necessary to establish the presence of granulomatous inflammation."). As a result, the Scar Rule asks inspectors to look for things they cannot see and will necessarily produce arbitrary results. As NAS concluded, "the rule as written is not enforceable." *Id.*

NAS's finding that the Scar Rule is not enforceable as written is consistent with the earlier research of Dr. Paul Stromberg, a professor at the Ohio State University College of Veterinary Medicine. Dr. Stromberg evaluated 136 biopsies from sixty-eight Tennessee Walking Horses that were disqualified for violations of the Scar Rule at the 2015 and 2016 National Celebration to determine whether the tissue from horses that had been disqualified under the Scar Rule actually showed any medical evidence that would support the violations. His answer was no. His findings, as reported by NAS, were that "no scar formation or granulomatous inflammation was present in any of the tissue samples." NAS Report at 78. As a result of Dr. Stromberg's research, NAS concluded that "[t]he primary injuries to the pastern of the horses in the Stromberg study or any of the TWHs presenting with lichenification of the skin of the palmar aspect of the pastern are not known." *Id.* at

80. In other words, none of the horses in Dr. Stromberg's study met the criteria for a Scar Rule violation. Based on this sample, USDA's testing protocol had an accuracy rate of zero percent.

Dr. Stromberg reached similar conclusions based on a review of horses disqualified from the 2014 Celebration, observing that these disqualifications "must be considered false positives" because:

> All I found was some minor folding in the skin of the flexor surface and sulcus of both pasterns. . . . The skin did not feel thick nor was there any clinical evidence of granulomatous inflammation, granulation tissue (scar tissue or proud flesh) or anything else that could be interpreted to be a scar.

Ex. E, Declaration of Paul Stromberg at A-6 ("Stromberg Decl."). In other words, Dr. Stromberg agrees with NAS. The Scar Rule directs inspectors to look for skin conditions (granulomas) that cannot be seen with a naked eye and, even if they could be, are not connected with soring.

Unsurprisingly, the NAS Report found that the Scar Rule could not be "applied in a consistent manner by VMOs and DQPs tasked with examination of horses." NAS Report at 85. Here again, this finding was in step with research by other specialists of equine medicine. For instance, Dr. Stromberg explained that "[i]nspectors are attempting to detect the presence of a pathologic process far below the level of clinical significance **based on what they think they see and feel** without independent verification." *Id.* at A-10 (emphasis original). "They conclude from this," he continued, "proof of a scar rule violation." *Id.* "The result, not unexpectedly, is inconsistency in passing or disqualifying a horse for competition and many false positives." *Id.*

Echoing Dr. Stromberg's concerns was Dr. Joseph Bertone, a professor of equine medicine. He concluded that the examination protocol applying the Scar Rule "is highly subjective and unlikely to be applied consistently." "[O]bservations of the VMOs applying this examination protocol at the Celebration," he continued, "lead me to be skeptical that results from this examination protocol can be accurately interpreted to identify horses that are sore and those that are not sore." Ex. F, Declaration of Joseph Bertone ("Bertone Decl.") ¶ 16.

Accordingly, the NAS Report repeatedly recommended additional studies to determine whether any visually observable conditions on a horse's skin—such as lichenification—are evidence

of soring or whether they result from other, non-soring practices.[3] To date, Plaintiffs are not aware that any of these studies have been conducted.

As these studies show—including USDA's own commissioned NAS study—the Scar Rule is unsupported by science. Continuing to apply the Rule is inherently arbitrary.

F. The Scar Rule Is Unconstitutionally Vague.

The Scar Rule is also unconstitutionally vague. A regulation is unconstitutionally vague if it impinges on a liberty or property interest, *see, e.g.*, *Chalifoux v. New Caney Indep. Sch. Dist.*, 976 F. Supp. 659, 667 (S.D. Tex. 1997), and "(1) fails to provide those targeted by the [law] a reasonable opportunity to know what conduct is prohibited, or (2) is so indefinite that it allows arbitrary and discriminatory enforcement," *Women's Med. Ctr. of Nw. Houston v. Bell*, 248 F.3d 411, 421 (5th Cir. 2001); *see also Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972) (a "vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application"). The Scar Rule flunks the void-for-vagueness test.

As an initial matter, disqualifications under the Scar Rule deprive horse owners, trainers, and show management of a constitutionally protected interest. Horse owners (like Plaintiffs Gould and Mills) have a constitutionally protected interest in showing their horses without undue government interference. *See TWHNCA,* 765 F. Supp. 3d at 545. Similarly, the Association has an interest in being able to host and manage horse shows without undue government interference.

The Scar Rule also fails each prong of the void-for-vagueness test. *First*, the language of the Scar Rule does not give owners and trainers fair notice of the skin conditions that will result in a horse being deemed sore. Instead, the Rule is open-ended; it tells instructors to determine that a horse is

[3] *See* NAS Report at 10 ("More studies are needed to determine if training practices that can cause soreness in TWHs also result in lichenification. . . . These studies might elucidate at what point, if at all, during training epidermal hyperplasia and lichenification would develop and what particular training practices would cause these conditions."); *id.* ("Studies are also needed to determine if epidermal thickening (hyperplasia) and lichenification are solely caused by the action devices worn by TWHs.").

sore if it has "other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair." 9 C.F.R. § 11.3. Ultimately, this language leaves it entirely up to the discretion of each inspector to decide whether there is some evidence of soring without providing criteria that the inspector can use to determine whether a horse is sore. Owners and trainers are left to speculate as to what will be sufficient to disqualify their horse.

USDA's own actions prove the point. On March 15, 2024, it sent an e-mail to HIOs (mere hours before a show was set to begin) informing them that USDA "will no longer require hair loss . . . in order to disqualify a horse." *See* Ex. G, March 15, 2024 E-Mail from Aaron Rhyner to HIOs. A year later, USDA reverted to its prior position, once again requiring hair loss before it would disqualify a horse under the Scar Rule. *See* Ex. H, March 14, 2025 Stakeholder Letter. The malleability of a rule that allows such changes at a whim—saying on one day hair loss is required and the next day it is not—demonstrates why owners and trainers have no ability to know what will or will not be used to determine whether their horse is sore.

Due process demands more. *See FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) ("[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law[.]") (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)).

Second, because the Rule is completely standardless, it invites arbitrary enforcement. The Scar Rule lacks any limiting criteria that distinguish a sore horse from a horse that is not sore. USDA's own Administrative Law Judges recognize that the Scar Rule's failure to provide any meaningful criteria is damaging to owners and trainers. In a 2016 hearing for an HPA enforcement proceeding the ALJ remarked:

> [T]he reason I don't like scar rule cases is I think the determination of whether there is a scar is such an unquantified process that there is too much variety in the result, it's not predictable, it's not knowable how people are going to judge it. . . . At any rate, I wish there were a better way to have an objective, verifiable measurement of whether there's a scar rule violation. I don't think it exists yet. I don't think it's practiced yet.

Ex. I at 82:10-24 (Statement of ALJ Clifton).

Indeed, under the Rule, two horse inspectors cannot agree as to what is or is not a Scar Rule violation. When USDA implemented a requirement in late 2016 that a horse found in violation of the HPA must be re-inspected by a second VMO, only three Scar Rule violations were found by the Agency during the 2017, 2018, 2019, and 2020 Celebrations combined out of the 485 horses the Agency's VMOs inspected—a violation rate of 0.6%. *See* Ex. J, USDA Activity Reports from 2017-2020. In other words, when there was a requirement that two inspectors had to *agree* to find a Scar Rule violation, there were essentially zero findings at the Celebration four years in a row. As stated by Dr. Stromberg, "the current scar rule is so vague in describing what qualifies as a violation that it has led to . . . arbitrary results." *See* Ex. E., Stromberg Decl. ¶ 18.

II. Absent Injunctive Relief, Plaintiffs Will Suffer Irreparable Harm.

In the absence of a preliminary injunction, Plaintiffs will unquestionably suffer irreparable harm. As explained above, Plaintiffs Gould and Mills each have a constitutionally protected right to show their horses without undue governmental interference. *See TWHNCA*, 765 F. Supp. 3d at 545. Both plan to continue showing their horses—including at this year's Celebration in August—where each of USDA's unlawful rules will be applied to them. *See* Ex. C, Gould Decl. ¶ 4; Ex. D, Mills Decl. ¶ 4. If their horses are disqualified under USDA's rules without any mechanism for review, that will plainly violate their rights under the Due Process Clause. Because they can show that "an 'alleged' fundamental right is 'either threatened or in fact being impaired,'" they are "substantially threatened with irreparable injury that 'cannot be undone by monetary relief.'" *Mock v. Garland*, 697 F. Supp. 3d 564, 577 (N.D. Tex. 2023) (quoting *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) and *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981)); *see also BST Holdings, LLC v. Occupational Safety & Health Admin., U.S. Dep't of Lab.*, 17 F.4th 604, 618 (5th Cir. 2021) ("[T]he loss of constitutional freedoms for even minimal periods of time . . . unquestionably constitutes irreparable injury.").

In addition to the threatened due process violation, Gould and Mills also face irreparable harm if their horses are disqualified under either the Scar Rule or the No-Showback Rule. In that event,

their horses will improperly be barred from competing—and barred for the entire Celebration—and there will be no way to remedy that deprivation after the fact. As this Court has recognized, genuine relief after a horse has been excluded from competition is not possible because any after-the-fact relief "still forecloses the ability of a horse to compete, as well as any ability for owners or trainers to claim prize money and notoriety within the industry." *TWHNCA*, 765 F. Supp. 3d at 546. In other words, once the horse is barred from competing, that injury cannot be fully remedied after the fact.

The Association will also be irreparably harmed absent an injunction. As show manager, the Association also has a due process right to exhibit horses at its shows without undue government interference, and disqualifications that force the Association to alter its conduct of its shows without any mechanism for pre-deprivation review violate the Association's due process rights. The Association thus also faces threatened loss of a fundamental right.

In addition, disqualifications under USDA's unlawful rules irreparably harm the Association's ability to put on a successful horse show—especially the upcoming Celebration, which is the marquee annual event for the entire Tennessee Walking Horse industry. Arbitrary rules ruin horse shows. At last year's Celebration, 305 horses were inspected by USDA VMOs and they disqualified 174 of them—a disqualification rate of 57%. When USDA applies its unlawful rules and improperly disqualifies horses at the Celebration—especially when it disqualifies a large number of horses—the quality of the entire show is irreparably degraded and the Association suffers unrecoverable financial losses. *See* Ex. A, Wells Decl. ¶ 33. Spectators who planned to buy tickets for later nights of the show will put their wallets away when they hear that a favorite horse has been disqualified. *Id.* ¶ 32. Potential entrants will also decide not to enter and pay registration fees if it appears that USDA is disqualifying large numbers of horses—which is exactly what happened at last year's Celebration. *Id.* ¶ 31. Many horse owners have reported that they will not bring their horses to the Celebration because they do not believe they will be treated fairly. *Id.* As a result, the reputation of the Celebration as a world-class event is diminished as it becomes less attractive to those in the Industry. Indeed, since 2010, ticket sales have dropped by 42% and entries have dropped by 22%. *Id.* ¶ 33

The financial harm suffered by the Association—both in lost ticket sales and lost registration fees—is wholly unrecoverable. As the Fifth Circuit has recognized, "complying with [agency action] later held invalid almost always produces the irreparable harm of nonrecoverable compliance costs" because "federal agencies generally enjoy sovereign immunity for any monetary damages." *Wages & White Lion Invs., LLC v. FDA*, 16 F.4th 1130, 1142 (5th Cir. 2021) (quotation omitted). Only a preliminary injunction will ensure that the Association will be able to put on the Celebration unimpeded by unlawful and irreversible disqualifications imposed by USDA.

III. The Balance Of Equities And Public Interest Strongly Favor Injunctive Relief.

Where a party seeks a preliminary injunction against government officials, the balance of equities and public-interest prongs "merge." *Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ.*, 741 F. Supp. 3d 515, 525 (N.D. Tex. 2024) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). In assessing these factors, the court must "weigh[] 'the competing claims of injury' and consider[] 'the effect on each party of the granting or withholding of the requested relief,' paying close attention to the public consequences of granting an injunction." *Mock*, 697 F.3d at 590 (quotation omitted).

As noted, the Plaintiffs here will each suffer irreparable injury in the absence of an injunction. At the same time, "[t]here is generally no public interest in the perpetuation of unlawful agency action." *Louisiana v. Biden*, 55 F.4th 1017, 1035 (5th Cir. 2022) (citation omitted). Even though USDA's purported goal in promulgating its rules is one that all the parties share—eliminating the abhorrent act of soring—"our system does not permit agencies to act unlawfully even in pursuit of desirable ends." *R.J. Reynolds Vapor Co. v. FDA*, 65 F.4th 182, 195 (5th Cir. 2023) (quoting *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 766 (2021)).

CONCLUSION

The Court should enter a preliminary injunction barring USDA from enforcing the Scar Rule and the No-Showback Rule, and barring USDA from disqualifying horses without providing any meaningful pre-deprivation review of a disqualification by an unbiased and impartial officer.

July 2, 2025

Respectfully submitted.

/s/ *Patrick F. Philbin*

MARVIN W. JONES
Texas Bar No. 10929100
Sprouse Shrader Smith
701 S. Taylor St., #500
Amarillo, TX 79101
(806) 468-3344
marty.jones@sprouselaw.com

PATRICK F. PHILBIN*
JOHN V. COGHLAN*
CHASE T. HARRINGTON*
Torridon Law PLLC
801 Seventeenth Street NW, Suite 1100
Washington, DC 20006
(202) 249-6900
pphilbin@torridonlaw.com
jcoghlan@torridonlaw.com
charrington@torridonlaw.com

**Pro hac vice pending*

Counsel for Tom Gould, Ann Mills, and The Tennessee Walking Horse National Celebration Association

CERTIFICATE OF SERVICE

I certify that this brief and accompanying exhibits will be served today on all Defendants by certified mail to the addresses listed below. They will also be served by certified mail on the Attorney General of the United States and the U.S. Attorney for the Northern District of Texas. I will also cause courtesy copies to be sent by e-mail to Ralph Linden, acting General Counsel at the U.S. Department of Agriculture, and Brigham Bowen, Associate General Counsel, Marketing, Regulatory, and Food Safety Programs Division at the U.S. Department of Agriculture.

United States Department of Agriculture
1400 Independence Ave., SW
Washington, D.C. 20250

The Hon. Brooke Rollins
United States Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

The Animal and Plant Health Inspection Service
4700 River Rd.
Riverdale, MD 20737

The Hon. Michael Watson
Animal and Plant Health Inspection Service
4700 River Rd.
Riverdale, MD 20737

The Hon. Pamela J. Bondi
Attorney General of the United States
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Crystal Hopper, Civil-Process Clerk
U.S. Attorney's Office for the Northern District of Texas
1100 Commerce St., Third Floor
Dallas, TX 75242-1699

Cynthia Hendren
U.S. Attorney's Office for the Northern District of Texas (Amarillo)
500 South Taylor Street,
Suite 300
Amarillo, TX 79101-2446

July 2, 2025

Patrick F. Philbin
Patrick F. Philbin