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.

UNITED STATES DEPARTMENT OF AGRICULTURE, BROOKE ROLLINS, in her official capacity as Secretary of Agriculture, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, and MICHAEL WATSON, in his official capacity as Administrator of APHIS,

Defendants.

No. 2:25-CV-00147-Z

DEFENDANTS' RESPONSE AND OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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I. Introduction

In response to the widespread and inhumane practice of "soring" horses, which involves the infliction of pain on a horse's limbs to exaggerate its gait for a favorable performance in the show ring, Congress passed the Horse Protection Act ("HPA" or "Act") in 1970 to prohibit the showing or selling of horses that have been sored. *See* 15 U.S.C. §§ 1821 *et seq*. Congress authorized the U.S. Department of Agriculture ("USDA") to issue regulations implementing the HPA, which it did in 1972. *See Horse Protection Regulation*, 37 Fed. Reg. 2,426–29 (Feb. 1, 1972). Beginning in 1979, when Congress amended the HPA to strengthen the law's protection of horses, USDA in turn amended the HPA regulations to include the provisions challenged in this suit (among other provisions).[1] All parties agree that in some respects, certain of these regulations are antiquated, and this Court is familiar with recent efforts by USDA to modernize them, including the 2025 HPA amendments that the Court vacated in part in January of this year. *See* Horse Protection Amendments, 89 Fed. Reg. 39,194–39,241 (May 8, 2024); *Tennessee Walking Horse Nat'l Celebration Ass'n, et al. v. U.S. Dep't of Agric., et al.*, 765 F. Supp. 3d 534 (N.D. Tex. 2025) ("TWHNCA"). Nevertheless, some aspects of

[1] The provisions challenged in this suit are (a) 9 C.F.R. § 11.3, which was enacted in 1979 and amended to its current, operative form in 1988, *see* Prohibition Concerning Exhibitors of Horses, 44 Fed. Reg. 25,172 (Apr. 27, 1979); Horse Protection Regulations, 53 Fed. Reg. 14,778 (Apr. 26, 1988); (b) 9 C.F.R. § 11.4, which was enacted in the original HPA regulations of 1972 and amended to its current, operative form in 1991, *see* 37 Fed. Reg. 2,426 (Feb. 1, 1972); Horse Protection, 56 Fed. Reg. 13,749 (Apr. 4, 1991); and (c) 9 C.F.R. § 11.21, which was enacted in 1979 and amended to its current, operative form in 2012, *see* 44 Fed. Reg. 25,172 (Apr. 27, 1979); Horse Protection Act, 77 Fed. Reg. 33,607 (June 7, 2012).

these regulations remain in effect—in particular the "Scar Rule," which has governed inspectors' soring determinations under the HPA since the 1970s. Relatedly, what Plaintiffs refer to as the "No Showback" policy, that Plaintiffs also challenge, has been utilized since 2010. By this action, and through their motion for a preliminary injunction, Plaintiffs seek to enjoin longstanding rules and policies that, through the rational exercise of USDA's authority under the HPA, have applied for years, including to Plaintiffs. The Court should reject their demand for the extraordinary remedy of a preliminary injunction.

Plaintiffs Gould and Mills, who own or train Tennessee Walking Horses to compete in shows, allege that their horses were disqualified from various shows between 2022 and 2024. They challenge certain rules and policies relied upon by USDA in making those disqualification decisions. The Tennessee Walking Horse National Celebration Association (the Association) alleges that it must enforce unlawful USDA rules under threat of penalty and has suffered lost revenue. In addition to their claims challenging the application of regulations and policies to them with respect to past disqualifications involving Gould and Mills, Plaintiffs also raise facial challenges seeking to prospectively vacate and preliminarily enjoin certain regulations across the entire horse industry, without regard to specific past disqualifications, or even to them as individual litigants.

Defendants oppose Plaintiffs' motion for preliminary injunctive relief on multiple grounds. First, certain of their claims are time-barred under the Administrative Procedure Act (APA). *See* 28 U.S.C. § 2401(a). Plaintiffs Gould and Mills have been subject to the

regulations they seek to facially invalidate for at least a decade, and the Association has been subject to the challenged regulations since they were first issued nearly fifty years ago. Any right Plaintiffs had to assert such claims thus "first accrued" well before the six-year statute of limitations period to bring this suit began. *See id*. Second, even if Plaintiffs' claims were not time-barred, the No Showback policy is a lawful and appropriate measure to implement the HPA's prohibition on showing sore horses. With full acknowledgment of the Court's prior opinion touching on Plaintiffs' other challenges, the Department maintains, as well, that the longstanding Scar Rule is lawful and that the HPA regulations provide adequate due process.

Plaintiffs also fail to show irreparable harm where there is no indication that the challenged rules and policies have caused or are likely to cause prospective harm for which an injunction is the appropriate remedy. Plaintiffs also have not met their burden to show that their asserted pecuniary harm outweighs the Agency's and the public's interests in enforcing the HPA as intended by Congress and enshrined in USDA's longstanding rules and policies. Additionally, as the Supreme Court recently clarified, issuing a universal injunction—that Plaintiffs request here—is outside the scope of the Court's authority. Even a limited or narrowly tailored injunction also would cause harm to other stakeholders, the agency, and the public by creating a regulatory vacuum. Plaintiffs' request for a preliminary injunction should be denied.

II. Background

The Association, Gould, and Mills (collectively, Plaintiffs), challenge the Scar Rule, two regulations governing horse inspection procedures, and the No Showback

policy, and seek to enjoin the agency from enforcing these rules and policy throughout the entire horse industry. Gould and Mills also seek to enjoin the application of those rules and policy to their horses, seeking to prevent a *potential* disqualification of their horses at upcoming horse shows. Plaintiffs move to vacate the Scar Rule, the USDA's disqualification process, and the No Showback policy at Tennessee Walking Horse shows, *including but not limited to* the upcoming August 2025 Celebration.[2] (Doc. 10 at 1, 25.)

The Scar Rule provides that a horse is considered to be "sore" and subject to all prohibitions of the HPA under certain conditions. 9 C.F.R. § 11.3. Sections 11.4 and 11.21 of the HPA regulations set forth the procedures for inspecting horses for soreness during shows. *Id.* §§ 11.4, 11.21. For horses determined to be "sore" by an APHIS inspector, HPA regulations have provided that the owner or trainer "may request re-inspection and testing of said horse within a 24-hour period," provided that three requirements are satisfied: (1) the request is made immediately after the horse has been inspected and before removal from the inspection facility; (2) an APHIS representative determines that "sufficient cause for re-inspection" exists; and (3) the disqualified horse is maintained under APHIS custody until re-inspection is complete.[3] 9 C.F.R. § 11.4(h).

[2] Plaintiffs' motion seeks a preliminary injunction "barring the USDA from enforcing the Scar Rule and the No-Showback Rule and barring USDA from disqualifying horses without providing meaningful pre-deprivation review of a disqualification by an unbiased and impartial officer." (Doc. 10, at 25.)

[3] This regulation providing for re-inspection, which was to be codified at 9 C.F.R. § 11.8(h), was found unlawful and vacated by this Court in January 2025. This Court

The Act requires "[t]he management of any horse show or horse exhibition [to] disqualify any horse from being shown or exhibited (1) which is sore or (2) 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." 15 U.S.C. § 1823(a).

The No Showback policy is predicated on a document entitled "USDA Horse Protection Program 2010 Points of Emphasis" (2010 letter) and various USDA communications regarding enforcement of the HPA. (Doc. 10 at 7–8), *see also* Doc. 1-1 at 2, Doc. 1-2 at 2–3, Doc. 10-2 at 2–4.); *see also* USDA OIG Report No. 33601-2-KC, *APHIS Administration of the Horse Protection Program and the Slaughter Horse Transport Program*, at 24 (September 2010) (recommending "regulations to prohibit horses disqualified as sore from competing in all classes at a horse show, exhibition, or other horse-related event"). The 2010 letter advises Horse Industry Organizations (HIO) to dismiss a horse found in violation of HPA from participating in any remaining portion of a horse show, horse exhibition, horse sale or auction (rather than just the individual class). (Doc. 10–2 at 2–4.) Plaintiffs contend that the Agency created a new rule in 2010 that precludes a horse from participating in any remaining portion of a horse show if the horse was found in violation of the HPA. (Doc. 10 at 7–8.)

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also vacated a regulation that would have provided an appeal process for disqualification decisions. *See generally TWHNCA*, 765 F. Supp. 3d at 545–46.

III. Legal Standard

"Injunctive relief is an extraordinary and drastic remedy and should only be granted when the movant has clearly carried the burden of persuasion." *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009). "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits[.]"[4] *Texas v. United States*, 740 F. Supp. 3d 537, 544 (N.D. Tex. 2024) (citing *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 68 L.Ed.2d 175 (1981)). To obtain a preliminary injunction, plaintiffs must demonstrate (1) a substantial likelihood of prevailing on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury outweighs any harm that will result to the non-movant if the injunction is granted; and (4) that the injunction will not disserve the public interest. *Id*. (citing *Robinson v. Ardoin*, 86 F.4th 574, 587 (5th Cir. 2023); *Air Prod. & Chemicals, Inc. v. Gen. Servs. Admin*., 700 F.Supp.3d 487, 494–96 (N.D. Tex. 2023)). The first two factors are most critical, and the latter two merge when the government is an opposing party. *Id*. at 545 (citing *Valentine v. Collier*, 956 F.3d 797, 801 (5th Cir. 2020); *Nken v. Holder*, 556 U.S. 418, 435, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009)). That said, no factor has a "fixed quantitative value." *Id*. at 545 (citing *Mock v. Garland*, 75 F.4th 563, 587 (5th Cir. 2023)). On the contrary, "a sliding scale is utilized, which takes into account the intensity of each in a given calculus." *Id*. In sum, "[t]he decision to grant or deny a

[4] A portion of the applicable law is excerpted from this Court's order in *Texas v. United States*, 740 F. Supp. 3d 537, 544–45 (N.D. Tex. 2024).

preliminary injunction lies within the sound discretion of the trial court[.]" *Id*. (citing *White v. Carlucci*, 862 F.2d 1209, 1211 (5th Cir. 1989)).

Neither declaratory nor injunctive relief can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs. *Trump v. CASA, Inc*., 145 S. Ct. 2540, 2552 (2025) (quotations and citations omitted). A court may fashion an equitable remedy for complete relief for the parties before it, but a universal injunction falls outside the bounds of a federal court's equitable authority under the Judiciary Act. *Id*. at 2553, 2557 (citing *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) ("[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.") (emphasis added)). The question is not whether an injunction offers complete relief to everyone potentially affected by an allegedly unlawful act; it is whether an injunction will offer complete relief to the plaintiffs before the court. *Id*. at 2557.

IV. Argument

A. Plaintiffs cannot demonstrate a substantial likelihood of success on the merits.

Plaintiffs bring facial challenges to the Scar Rule, the USDA's inspection procedures, and the No Showback policy. They also bring as-applied challenges to individual disqualification decisions. However, Plaintiffs cannot establish that they will prevail on the merits of their facial claims because those claims are barred by the statute of limitations, and the No Showback policy is a reasonable application of the HPA's mandates. Likewise, in full recognition of the Court's prior reasoning on the lawfulness

of the Scar Rule and issues relating to due process, *TWHNCA*, 765 F. Supp. at 543-46, the Department nevertheless maintains that the Scar Rule is lawful and that HPA regulations comport with due process.

1. Plaintiffs' facial challenges to HPA regulations and the No Showback policy are barred by the statute of limitations.

Plaintiffs raise facial claims seeking to prohibit USDA from enforcing certain HPA regulations and policies as to the entire horse industry. (*See* Doc. 10, ¶¶ 134-144 (Counts I); *id.* ¶¶ 145-153 (Count II); *id.* ¶¶ 154-160 (Count III); *id.* ¶¶ 161-169(Count IV); *id* (¶¶ 170-177) (Count V); *id* ¶¶ 178-186) (Count VI).) Specifically, Plaintiffs challenge the Scar Rule, the No Showback policy, and the Agency's lack of pre-deprivation review for disqualifications. However, these facial claims are time-barred because the statute of limitations period for those claims "first accrue[d]" when the regulations and challenged policy were first applied to Plaintiffs, which was far longer than six years ago. *See* 28 U.S.C. § 2401(a) ("[E]very civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues.").

A plaintiff's claim accrues when the plaintiff is injured by final agency action. *See Corner Post, Inc. v. Bd. Of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 824, 144 S. Ct. 2440, 2460 (2024); *see also Herr v. U.S. Forest Serv.*, 803 F.3d 809, 818 (6th Cir. 2015) ("[A] statute of limitations begins to run . . . when the plaintiff can file suit and obtain relief . . . for the injury upon which [his] action is based.") (citations omitted).

Here, the No Showback policy has been in effect for over a decade, and the Scar Rule and challenged inspection procedures have been around since the 1970s.

The No Showback Rule was issued in 2010. In 2010, a document released by the Agency titled "2010 Points of Emphasis" provided for a "No Showback" policy. Approximately two years later, the No Showback policy was published in 9 C.F.R. § 11.25. That regulatory provision was vacated for reasons unrelated to the No Showback policy it required, and the policy has been applied since its inception in 2010. *See Contender Farms, L.L.P. v. U.S. Dep't of Agric.*, 779 F.3d 258, 274 (5th Cir. 2015); *see also SHOW, Inc. v. U.S. Dep't of Agric.*, No. 4:12-CV-429-Y (N.D. Tex. April 22, 2015) (Final Judgment).

The Scar Rule was first promulgated in 1979 and has been in effect for over 46 years.[5] Similarly, the challenged inspection procedures, 9 C.F.R. §§ 11.4 and 11.21, were first enacted in 1972 and 1979, respectively. *See* 37 Fed. Reg. 2,426 (Feb. 1, 1972); Horse Protection, 56 Fed. Reg. 13,749 (Apr. 4, 1991); *see also* 44 Fed. Reg. 25,172 (Apr. 27, 1979); Horse Protection Act, 77 Fed. Reg. 33,607 (June 7, 2012). The Association began hosting the Celebration in 1939.[6] The Association has thus been subject to each of

[5] 9 C.F.R. § 11.3 was enacted in 1979 and amended to its current, operative form in 1988, see Prohibition Concerning Exhibitors of Horses, 44 Fed. Reg. 25,172 (Apr. 27, 1979); Horse Protection Regulations, 53 Fed. Reg. 14,778 (Apr. 26, 1988).

[6] The Association's website explains that the first Celebration was held in 1939 and has been held every year since, without interruption. *See* https://twhnc.com/home/about-the-celebration/, last visited July 18, 2025.

the regulations and policy they now challenge for more than six years, and the Association's challenge to these actions are therefore time-barred.

Similarly, Plaintiff Mills allowed to be entered, for the purposes of showing, horses that had been determined non-compliant with the HPA on at least four occasions outside the six-year limitation period.[7] DiVincenti Decl. ¶¶ 8-11. First, on August 23, 2014, Plaintiff Mills' horse was determined sore and referred to event management for disqualification. DiVincenti Decl. ¶ 8. Second, on September 2, 2015, Plaintiff Mills' horse was determined sore and non-compliant with the Scar Rule, and referred to event management for disqualification. DiVincenti Decl. ¶ 9. Third, on October 16, 2015, Plaintiff Mills' horse was determined sore and non-compliant with the Scar Rule and referred to event management for disqualification. DiVincenti Decl. ¶ 10. And fourth, on June 30, 2016, Plaintiff Mills' horse was determined sore and referred to event management for disqualification. DiVincenti Decl. ¶ 11. Accordingly, Mills has been subject to each of the challenged regulations and the No Showback policy since at least 2014, well outside the APA's statute of limitations.

Likewise, Plaintiff Gould has been showing horses under the challenged HPA regulations and No Showback policy for more than six years. On August 30, 2015, Plaintiff Gould presented a horse for exhibition that was determined sore and referred to event management for disqualification. DiVincenti Decl. ¶ 13. On June 3, 2016, Plaintiff

[7] Defendants attach as an exhibit the declaration of Louis DiVincenti, which is cited as "DiVincenti Decl. at __."

Gould entered a horse that was determined to be sore and non-compliant with the Scar Rule, and referred to event management for disqualification. DiVincenti Decl. ¶ 14.

Because Plaintiffs Mills and Gould began showing horses subject to the challenged regulations and policy more than six years ago, they cannot bring a facial challenge to those agency actions here, seeking to vacate them or enjoin the agency from enforcing them. In other words, any right of action Plaintiffs Mills and Gould had to facially challenge the regulations "first accrued" more than six years ago and therefore is barred by the APA's statute of limitations. *See* 28 U.S.C. § 2401(a). Thus, Plaintiffs Mills and Gould's facial challenges are also time-barred.

Plaintiffs Gould and Mills may allege that their claims accrued beginning in 2022 when the challenged disqualifications occurred. (Doc. 10 at 8.) Defendants do not dispute that portions of Plaintiffs' claims challenging their specific disqualifications on as an-applied basis are timely or that Plaintiffs may raise arguments concerning the validity of the applicable regulations in seeking to overturn their specific disqualifications. *See Gen. Land Off. v. U.S. Dep't of Interior*, 947 F.3d 309, 318 (5th Cir. 2020). But "[d]ifferent legal wrongs give rise to different rights of action," and the statute of limitations must be independently satisfied for each right of action. *Herr*, 803 F.3d at 820.

Plaintiffs Gould and Mills cannot show that they could not have brought a legal right of action to facially challenge the regulations or policy under the APA within the limitations period. And the Association certainly cannot. Accordingly, while the non-Association plaintiffs may raise arguments concerning the validity of the regulations as

part of their challenge to specific disqualifications, they may not claim that the long-existing Scar Rule, inspection procedures, and No Showback policy are facially invalid as to the entire industry or seek to vacate the regulations or policy industry-wide. *See CASA, Inc*., 145 S.Ct at 2554, 2557 ; *Corner Post, Inc.* 603 U.S. at 816–17 (addressing when "the limitations period for 'facial' APA challenges begins"). In other words, merely because a facial claim is defined in part by "the relief that would follow" if that claim succeeds, *see John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010)—*i.e.*, that the claim seeks to vacate the entirety of a rule—that does not mean that the claim is excused from the statute of limitations. *See Ondrusek v. U.S. Army Corps of Eng'rs*, 123 F.4th 720, 736 (5th Cir. 2024) (explaining that the district court should consider the statute of limitations period for APA claims where plaintiff alleges an agency acted unlawfully). Once the challenged agency action becomes final and invades a party's legally protected interest, the party's right to redress that injury accrues, *see Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 882–83 (1990), and § 2401(a)'s six-year clock begins. *See Corner Post*, 603 U.S. at 816–17; *Gen. Land Off*., 947 F.3d at 318 (explaining that a cause of action accrues when a plaintiff is first able to file suit and obtain relief).

2. Plaintiffs' challenge to the No Showback policy is unlikely to succeed on the merits.

Even assuming *arguendo* that Plaintiffs' challenge to the No Showback policy were timely filed, it is not likely to succeed on the merits. The HPA requires show management to "disqualify any horse from being shown or exhibited (1) which is sore or (2) if the management has been notified by a person appointed in accordance with [the]

regulations . . . or by the Secretary that the horse is sore." 15 U.S.C. 1823(a); *see also* 15 U.S.C. 1824(3)-(6). Section 1821(3)(D) defines the term "sore" "when used to describe a horse," as:

> 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. (emphasis added).

This definition of "sore" includes practices that, as a result, "can reasonably be expected to cause a horse to suffer." The definition of "sore" encompasses the use of non-compliant action devices, substances, and shoeing which can reasonably be expected to cause a horse to suffer. A horse that is "sore" need not be presently suffering, as long as the horse "can reasonably be expected" to "suffer physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving." *Id.* Plaintiffs have not sufficiently shown that they are likely to succeed on their argument that the No Showback policy exceeds statutory authority or is arbitrary and capricious.

The No Showback policy prevents horses that are determined sore, as defined in 15 U.S.C. § 1821(3)(D), or that were found to bear prohibited substances or devices from being shown or exhibited from competing in the remaining classes of a horse show. It is

authorized by 15 U.S.C. § 1823(a), therefore, does not exceed statutory authority.[8] It is rationally connected to the agency's authority to administer the Act because it is necessary to deter individuals from showing horses that are sore or from utilizing prohibited substances or devices. DiVincenti Decl. ¶¶ 19-20; *see* 15 U.S.C. § 1822(5); *see also* 15 U.S.C. § 1823(e). Neither the Agency nor show management can know how long a horse found sore will remain sore. However, the Act does not require knowledge of this fact to disqualify sore horses from the remaining events during a show. The statute requires management to disqualify horses that are sore from "being shown or exhibited," and leaves the issue of the length of the disqualification to the agency.

3. Defendants maintain that Plaintiffs' due process challenge to USDA's method of disqualifying horses is unlikely to succeed on the merits.

Plaintiffs allege that USDA's rules violate the Due Process Clause because they fail to provide any pre-deprivation mechanism for review. As the Court is aware, the plaintiffs in *TWHNCA* made similar arguments to those that Plaintiffs make herein. In that case, the plaintiffs challenged a final rule published on May 8, 2024 (89 Fed. Reg. 39194) ("the 2024 Rule") that would have amended, *inter alia*, the HPA regulations in 9 C.F.R. Part 11, alleging that the 2024 Rule failed to provide adequate due process to horse owners and trainers, in violation of the APA (5 U.S.C. § 551 *et seq*.) and the Fifth

[8] Additionally, section 1824 prohibits in *any* horse show the showing, exhibiting, or entering (for the purpose of showing or exhibiting) of a horse which is sore or wears or bears any prohibited equipment, device, paraphernalia, or substance.

Amendment. In response, the Agency argued that the 2024 Rule satisfied due process.[9] However, this Court rejected that argument and held that pre-deprivation review is required and was not adequately provided by the 2024 rule.[10] Without conceding the issue, Defendants acknowledge that the Court's prior reasoning suggests a likelihood of success on the merits as to Plaintiffs' due process claims here, as the 2024 Rule contained an additional, post-deprivation review process not provided by the current regulations implemented under the HPA.[11] Defendants note, however, as explained below, any relief must be limited to the Plaintiffs in this action.

4. Plaintiffs' challenge to the Scar Rule is unlikely to succeed on the merits.

In its prior ruling in *TWHNCA*, this Court held that the 2024 Rule's "Dermatologic Conditions Indicative of Soring" ("DCIS") provision, designed to replace the Scar Rule, failed to provide adequate due process. Although this Court found fault with the Scar Rule, the parties did not brief the lawfulness of the Rule. Here, Plaintiffs have not sufficiently shown that they are likely to succeed on the merits of their argument that the

[9] *See TWHNCA*, Doc. No. 45 (Defendants' Consolidated Brief in Support of their Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment) at pp. 41-47.

[10] In holding that "the lack of genuine pre- and post-deprivation review in the 2024 Rule fails to provide adequate due process," this Court vacated, along with other provisions, the 2024 final rule's pre- and post-deprivation disqualification review processes.

[11] The 2024 Rule permitted the custodian of a horse to appeal a disqualification within 21 days of the date the disqualification was received (to be codified at 9 C.F.R. § 11.5). *See TWHNCA*, 765 F. Supp. 3d at 545.

Scar Rule (a) exceeds statutory authority, (b) is arbitrary and capricious, and (c) is void for vagueness in violation of the Due Process clause.

While USDA has made efforts to modernize the Scar Rule, it does not exceed statutory authority. Section 1828 (15 U.S.C. § 1828) authorizes the Secretary to issue rules and regulations "as he deems necessary to carry out the provisions of this chapter." Under this authority, the Scar Rule was promulgated to identify horses that have been subjected to soring practices. *See also* 15 U.S.C. § 1825(d)(5) (noting that "a horse shall be presumed to be a horse which is sore if it manifests abnormal sensitivity or *inflammation* in both of its forelimbs or both of its hindlimbs") (emphasis added). The Scar Rule falls squarely within this mandate. *See* 9 C.F.R. § 11.3 (specifying various criteria for determination of soring, including "pathological evidence of inflammation," bilateral granulomas, or "other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair"). *See also* 43 Fed. Reg. 18514, 18519 (Apr. 28, 1978) (discussing reasoning for rule relating to hair loss and noting that "[t]he chances are extremely remote that any horse would ever injure both forelegs in an identical manner with resulting identical scars in the anterior or posterior pastern area of each foreleg").

Plaintiffs complain that a horse may be disqualified under the Scar Rule if it shows "excessive loss of hair." But the statute defines as "sore" a horse that may "reasonably be expected to suffer, physical pain or distress" (15 U.S.C. § 1821(3)), and the USDA has authority to issue regulations implementing that definition, which it has done through the Scar Rule. Plaintiffs have not made a sufficient showing that the Scar Rule applies to

wounds that are not reasonably expected to cause a horse to suffer in accordance with the statutory definition. And the National Academy of Sciences study to which Plaintiffs point does not undermine the reasonableness of the Rule. While the study concluded that "[t]he scar rule language needs to be based on what can accurately be assessed by a gross examination, which ideally would only be performed by an experienced equine practitioners," Nat'l Acads. of Scis., Eng'g, & Med., A Review of Methods for Detecting Soreness in Horses 85 (2021), https://doi.org/10.17226/25949 ("NAS Report"), Plaintiffs have not shown that USDA is calling Scar Rule violations for conditions that are *not* assessed by a gross examination. The study further recommends that the Agency revise the Rule to include the following conditions as violative of the Scar Rule: "areas of loss of hair," "swelling, redness, excoriation, erosions, ulcers, seeping of fluids, or signs of a response to chronic injury such as epidermal thickening or presence of scale." *Id.* at 86. Whatever the merit of these suggested improvements, these conditions are, in fact, the criteria USDA assesses in the existing Scar Rule as they relate to signs of inflammation contemplated by the statute as presumptive of soring.

Plaintiffs also argue that the Scar Rule is unconstitutionally vague. A regulation is only void for vagueness if it fails to provide "people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits" or if it "authorizes or even encourages arbitrary and discriminatory enforcement." *See, e.g.*, *Hill v. Colorado*, 530 U.S. 703, 732 (2000); *see also McClelland v. Katy Indep. Sch. Dist.*, 63 F.4th 996, 1013 (5th Cir. 2023) (summarizing this standard), *denying cert.*, 144 S. Ct. 348 (2023) (Mem). Plaintiffs fall well short of demonstrating that the Scar Rule is so vague as to fail to

provide adequate notice of what is prohibited. Moreover, to prevail on their facial vagueness challenge, Plaintiffs must demonstrate that the provision "is impermissibly vague in all of its applications." *See McClelland*, 63 F.4th at 1013. It is a "heavy burden," and courts have only allowed facial vagueness challenges "sparingly" and "as a last resort." *See Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 548 (5th Cir. 2008) (quoting *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998)). Plaintiffs make no attempt to mount such a showing.

On the contrary, the Rule is highly specific and has guided both industry and inspectors for decades. *See Rowland v. U.S. Dep't of Agric.*, 43 F.3d 1112, 1116 (6th Cir. 1995) ("Even if we were to consider the rule in light of the USDA's comments during promulgation, there is no basis upon which the Secretary's decision could be considered 'arbitrary, capricious, or manifestly contrary to the statute.'"). Courts have recognized that "specific regulations cannot begin to cover all of the infinite variety of" regulated conduct, and that "[b]y requiring regulations to be too specific [courts] would be opening up large loopholes allowing conduct which should be regulated to escape regulation." *See Ray Evers Welding Co. v. Occupational Safety & Health Review Comm'n,* 625 F.2d 726, 730 (6th Cir. 1980); *accord Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972) (indicating that regulations need not achieve "mathematical certainty" or "meticulous specificity," and may instead embody "flexibility and reasonable breadth").

B. Plaintiffs cannot demonstrate a substantial threat of irreparable injury.

Even if Plaintiffs' challenges were not barred by the statute of limitations, and regardless of likelihood of success on the merits, Plaintiffs cannot demonstrate a

substantial threat of irreparable harm—the most important prerequisite for the issuance of a preliminary injunction—as they must in order to obtain injunctive relief from this Court. *See Spectrum WT v. Wendler*, 693 F. Supp. 3d 689, 711 (N.D. Tex. 2023) (citation omitted). At the outset, Plaintiffs cannot show irreparable harm from past violations; rather, their arguments for preliminary injunctive relief appear to go only toward putative prospective injury. The most recent of the challenged rules and policies have been in effect for at least 15 years. Plaintiffs have not shown that the Scar Rule, the challenged inspection regulations, or the No Showback policy have had an adverse effect on the popularity of the Association's horse shows and/or the compensation they receive from those shows. Plaintiffs have offered no more than speculation that irreparable harm will occur to support the assertion that emergency relief is necessary. For its part, the Association cannot show that, if the Agency is enjoined from enforcing these rules, their horseshows would attract more stakeholders, including but not limited to more horses, trainers, owners, exhibitors, or any other stakeholder. And although Defendants do not object to Plaintiffs' request to obtain a ruling on this motion prior to the August 2025 Celebration, the Association certainly cannot make that showing for the August 2025 Celebration horseshow because attendance and participation stakeholders at the Celebration in just a few weeks will not be altered if the agency is enjoined from enforcing these well-established rules. By contrast, enjoining regulations that have long governed the industry in the weeks before the industry's largest event is more likely to disrupt that event and cause confusion to inspectors and show participants alike. Although the Association asserts that there has been a reduction in ticket sales and drop

in entries at the Celebration (Doc. 10 at 9), the Association has not shown that the drop in ticket sales and entries are caused by the challenged rules rather than other societal or unknown factors, including whether other animal shows and competitions have suffered similar declines.

Plaintiffs Gould and Mills[12] also cannot show that they will suffer irreparable harm if an injunction does not issue. They have successfully shown horses for years under these rules. *See* DiVincenti Decl., ¶¶ 7-17. There is nothing more than speculation that their horses may be disqualified at future events, much less at the Celebration in August. Indeed, so long as their horses are not found to have violated the HPA's anti-soring provisions in the future, they will not lose any revenue or opportunities to show their horses. Additionally, in order for Plaintiffs Gould and Mills to suffer irreparable harm at future events if the current disqualification process is not enjoined, horses that they own or train would not only need to be entered in more than one class, but they would also need to be found sore and disqualified.

Accordingly, any claim that Plaintiffs will suffer irreparable harm if an injunction does not issue is purely speculation, and therefore insufficient to meet the exacting requirements for a preliminary injunction.

[12] Despite Plaintiff's claims of USDA's arbitrary determinations that horses are sore, USDA inspectors consistently found Plaintiff Mills' horse "I'm Tebo" to be sore on at least three occasions over a two-year period between 2014 and 2016. DiVincenti Decl., ¶ 18.

C. Plaintiffs cannot demonstrate that the threatened injury outweighs harm to the Agency or will not disserve the public interest.

The last two factors that Plaintiffs must demonstrate weigh in their favor—the public interest and the balance of equities—merge when the government is the opposing party. *Texas*, 740 F. Supp. 3d at 545. Plaintiffs claim that they "will each suffer irreparable injury in the absence of an injunction." (Doc. 10 at 25.) However, as discussed above, this claim is purely speculative. They have successfully shown horses for years under these rules. *See* DiVincenti Decl., ¶¶ 7-17. On the other hand, the harm to Defendants from an injunction would be substantial.

The No-Showback policy serves to further the HPA's remedial purposes of preventing the soring of horses and ensuring fair competition. DiVincenti Decl., ¶ 19. Without the No-Showback policy, there would be diminished deterrence for noncompliance. *Id.* Inspectors only weigh action devices on post-show inspections. *Id.* Therefore, if the custodian of a horse with a noncompliant action device were simply allowed to replace the device and show the horse in the next class, custodians might use noncompliant action devices hoping that they will not be caught, but knowing that if the noncompliant device is identified, at worst, they will be forced to use a compliant device and still be allowed to show. *Id.* The No-Showback policy also deters the use of masking agents to conceal soring of a horse. DiVincenti Decl., ¶ 20. For example, if a horse determined to be sore could withdraw from the inspection area and re-present for another inspection to be shown in a subsequent class, custodians would be incentivized to

use numbing or masking agents in an attempt to conceal the soring and to prevent the horse from exhibiting pain when being inspected the second time. *Id.*

An injunction would also frustrate the public interest in preventing cruelty to animals. Should the USDA be barred from enforcing the Scar Rule and the No Showback policy, and from the method by which the USDA disqualifies horses, USDA's capacity to deter practices that cause a horse to suffer physical pain, distress, or inflammation. as a means to obtaining a competitive advantage in horse shows will be curtailed substantially. *See* 15 U.S.C. §§ 1822(2) and 1821(3)(D). Moreover, enjoining longstanding rules and practices with which the industry is deeply familiar portends the introduction of more harm to all participants, by introducing even greater lack of clarity than that of which Plaintiffs complain arising from the Scar Rule.

Finally, Defendants do not dispute that there are various policy concerns arising from the HPA for stakeholders, for USDA, and the public. But a universal injunction—as Plaintiffs seek—interferes with the decision-making processes that are designed to protect all stakeholders, not just those that litigate. *See CASA*, 145 S. Ct. at 2559–60 ("[T]he practice of universal injunctions means that highly consequential cases are often decided in a 'fast and furious' process of "'rushed, high-stakes, [and] low-information'" decisionmaking.").

Thus, should the Court grant preliminary relief, it should be limited to the named Plaintiffs and not apply across the industry. The Supreme Court recently clarified that federal courts lack authority to issue a universal injunction under the Judiciary Act. *See id*. at 2560. When a federal court enters a universal injunction against the Government, it

"improper[ly] intru[des]" on "a coordinate branch of the Government" and prevents the Government from enforcing its policies against nonparties. *Id*. at 2561. The reasoning of *CASA* cautions against Plaintiffs' request for industry-wide relief because it would entail this Court providing relief beyond strictly the parties in this case. In *CASA*, the Supreme Court held that injunctions "asserting the power to prohibit enforcement of a law or policy against anyone . . . likely exceed the equitable authority that Congress has granted to federal courts." *Id*. at 2548. It directed the lower courts that had issued the preliminary injunctions at issue to "move expeditiously" to make their injunctions "[no] broader than necessary to provide complete relief to each plaintiff with standing to sue." *Id*. at 2562–63. Indeed, it specifically rejected the attempt to use broad injunctions as a substitute for properly certified class actions: "[B]y forging a shortcut to relief that benefits parties and nonparties alike, universal injunctions circumvent Rule 23's procedural protections and allow 'courts to create de facto class actions at will.'" *Id.* at *3, *see id*. at 2556. That is particularly true here, where the associational plaintiff is seeking to secure an asynchronous injunction applying to the entire industry (or at least all that associate with it), without imposing the requirements of preclusion that would follow from a true class action. This sort of broad, industry-wide relief that the Plaintiffs seek is a nonstarter.

A "plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of [other] parties." *Warth v. Seldin*, 422 U.S. 490, 499 (1975) (citing *Tileston v. Ullman*, 318 U.S. 44 (1943) (per curiam)). Although this "general prohibition on a litigant's raising another person's legal rights" is

distinct from Article III's requirement that the plaintiff suffer a concrete and particularized injury, it serves many of the same important purposes. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004). In general, only the party afforded a given constitutional right "has the appropriate incentive to challenge (or not challenge) governmental action" in a way that genuinely furthers the right-holder's interests, "and to do so with the necessary zeal and appropriate presentation." *Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004). Moreover, adjudicating rights at the request of third parties could force courts to consider "questions of wide public significance" in an "abstract" setting removed from the concrete circumstances of the right-holders. *Id*.

Any relief should thus be limited. Plaintiffs offer nothing more than conclusory statements that the public interest and the balance of equities tip in their favor. (Doc. 10 at 25.) While Plaintiffs' alleged harms are speculative and uncertain, should an injunction issue, an injunction against longstanding rules and policies would disserve the public.

V. Conclusion

For the foregoing reasons, Plaintiffs' motion for a preliminary injunction should be denied.

Dated: July 23, 2025

Respectfully submitted,

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Certificate of Service

On July 23, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

s/ Mary M. (Marti) Cherry
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