

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**AMERICAN GAMEFOWL BREEDERS  
ALLIANCE and VERNA CLARET,**

Appellants,

v.

**UNITED STATES DEPARTMENT OF  
AGRICULTURE,**

Appellee.

Civ. No. 06-1322

**BRIEFING ORDER**

Appellants, the American Gamefowl Breeders Alliance and Verna Claret, filed an action in the U.S. District Court for the Western District of Louisiana seeking declaratory and injunctive relief against the enforcement of the Federal Animal Fighting Enterprise Act of 2006 (“AFEA”),<sup>1</sup> which adds certain prohibitions to the animal fighting-related provisions of the Animal Welfare Act, 7 U.S.C. § 2156. Appellants are an individual who breeds, sells, and fights gamefowl in states without laws prohibiting cockfighting, and an organization representing gamefowl breeders. Appellee is the U.S. Department of Agriculture, which has primary investigatory and enforcement responsibility for the provisions at issue. 7 U.S.C. § 2156(e).

Appellants filed their action after the AFEA’s effective date, and the law has not been enforced against them. Appellants’ sole claim is that the AFEA is facially invalid and cannot be lawfully enforced because Congress exceeded its authority under the Commerce Clause of the U.S. Constitution in enacting the AFEA. After Appellants filed their complaint, the parties agreed to proceed upon expedited cross-motions for summary judgment. Appellants moved the

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<sup>1</sup> The AFEA is a fictional statute created for the purposes of this Competition.

Court to permanently enjoin enforcement of the AFEA, and Appellee moved for summary judgment on the grounds that Appellants' claim was not sufficiently ripe to support the Court's exercise of jurisdiction, or, in the alternative, that the AFEA is a valid exercise of Congress's authority. In the summary judgment proceedings, Appellee conceded that Appellants would meet the requirements of Article III standing were the AFEA actually enforced against the Appellants. However, Appellee argued that Appellants' claim was not sufficiently ripe to support the District Court's exercise of jurisdiction, because any threat of enforcement against Appellants is too remote and speculative.<sup>2</sup> The District Court found Appellants' claim to be ripe, but upheld the AFEA as a valid exercise of Congress's power under the Commerce Clause. From an order granting Appellee's motion, Appellants appeal.

Each party is directed to brief the following questions:

1. Did the District Court err in holding that the Appellants' claim is ripe?
2. Did the District Court err in holding that Congress acted within its authority under the Commerce Clause in enacting the Animal Fighting Enterprise Act of 2006?

The parties are limited in their briefs to these issues, but are not limited to the arguments for their positions upon which the District Court relied. Although the Court of Appeals may ordinarily raise Article III standing *sua sponte*, the parties are not to brief or argue Article III standing here. For purposes of briefing and argument, parties may only cite legal authorities dated prior to November 6, 2006. Evidence to support or contradict the findings in Section 1 of the AFEA may not be referenced.

SO ORDERED.

November 6, 2006.

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<sup>2</sup> Although some courts, including prior panels of this Court, have conflated the ripeness inquiry and the injury-in-fact component of Article III standing, *see Reeves v. McConn*, 631 F.2d 377, 381 (5th Cir. 1980), the better practice, and the one that will be followed by this Court in this matter, is to treat ripeness as a prudential consideration apart from constitutional standing requirements. *See Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 346-47 (1936) (Brandeis, J., concurring) (characterizing ripeness as prudential); *see also* Gene R. Nichol, Jr., *Ripeness and the Constitution*, 54 U. CHI. L. REV. 153, 174 (1987) (clarifying that “[a] finding of actual or threatened injury sufficient for purposes of article III, there[fore], is a first step. . . . The ripeness standard . . . operates as an additional hurdle. . . [which] carries the banner of prudence rather than power.”) (internal citations omitted).