

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

Teche Vermilion Sugar Cane)	
Growers Association Inc., et al.,)	
<i>Plaintiffs,</i>)	No. 6:23-cv-831-RRS-CBW
)	
v.)	
Julie A. Su, et al.,)	
<i>Defendants.</i>)	

Defendants’ Partial Motion To Dismiss

Defendants, through their undersigned counsel, hereby move to dismiss five plaintiffs for lack of standing, Count III of the Complaint for lack of jurisdiction and/or failure to state a claim upon which relief can be granted, and Count IV of the Complaint for failure to state a claim upon which relief can be granted. In support of this motion, Defendants state as follows.

Standing. Plaintiffs allege widespread injury should the Department of Labor’s (DOL) 2023 Final Rule for calculating Adverse Effect Wage Rates for certain categories of H-2A workers be allowed to stand. Article III standing requires an injury in fact that is concrete and particularized. Five of the plaintiffs in this case cannot show standing. American Sugar Cane League, which is suing in its own capacity, alleges standing not based on the hiring of H-2A workers but because it submitted a comment during the notice and comment period for the Final Rule. Gonsoulin Farms, Four Oaks Farm, and Townsend Brothers Farm, have not sought any H-2A labor certifications in 2023 that are subject to the higher wage rates of the Final Rule; rather, all of their certifications are for workers that are subject to the same hourly wage rate under the Final Rule as they are

under the prior rule. John Earles, in his individual capacity has not alleged any personal injury; rather, he owns Townsend Brothers Farm and another entity not in the lawsuit. Without an injury, these plaintiffs lack standing to pursue the claims and should be dismissed from the case.

Count III – Congressional Review Act. The Congressional Review Act requires “major rules” to be submitted to Congress 60 days before they take effect. Plaintiffs allege DOL failed to submit the Final Rule in time. But 5 U.S.C. § 805 specifically denies judicial review: “No determination, finding, action, or omission under this chapter shall be subject to judicial review.” 5 U.S.C. § 805. This Court has no jurisdiction over Plaintiffs’ claim. Even if this court had jurisdiction, the claim would fail on the merits. The Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget determines which rules are major rules. 5 U.S.C. § 804(2)(A). Here, the Administrator found the Final Rule was not a “major rule.” 88 Fed. Reg. at 12784. Count III must be dismissed under Fed. R. Civ. P. 12(b)(1) for lack of jurisdiction and/or 12(b)(6) for failure to state a claim upon which relief can be granted.

Count IV. Plaintiffs’ Regulatory Flexibility Act (RFA) claim fails to state a claim upon which relief can be granted. The Complaint alleges that DOL failed to conduct a final agency regulatory flexibility analysis pursuant to Regulatory Flexibility Act (RFA), 5 U.S.C. § 604(a)(5). But DOL was not required to complete a section 604 analysis because DOL certified the rule under section 605. *See* 5 U.S.C. § 605 (“Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a

substantial number of small entities.”). DOL had no requirement to create a final regulatory flexibility analysis under section 604, including an analysis of alternatives, and Plaintiffs’ claim otherwise fails to state a claim upon which relief can be granted. It must be dismissed under Fed. R. Civ. P. 12(b)(6).

Accordingly, and as set forth in more detail in Defendants’ accompanying memorandum of law, Defendants respectfully request that this Court dismiss Plaintiffs ASCL, Gonsoulin Farms, Four Oaks Farm, Townsend Brothers Farm, and John Earles for lack of standing pursuant to 12(b)(1), dismiss Count III for lack of subject matter jurisdiction and/or failure to state a claim pursuant to 12(b)(1) and/or 12(b)(6), and dismiss Count IV for failure to state a claim pursuant to 12(b)(6).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was filed electronically using the CM/ECF system and served on counsel of record via that system.

Dated: August 25, 2023

s/ Alexandra McTague
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