

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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SAFARI CLUB INTERNATIONAL)	Case No. 11-cv-01564(BAH)
)	
Plaintiff,)	(consolidated with cases 1:12-cv-00194-
)	BAH and 1:12-cv-00340-BAH)
v.)	
)	SAFARI CLUB INTERNATIONAL’S
KEN SALAZAR, <i>et al.</i>)	OPPOSITION TO MOTION FOR
)	RECONSIDERATION OF DENIAL
Defendants.)	OF INTERVENTION
)	
)	

Safari Club International (“Safari Club”) opposes the Motion for Reconsideration of Denial of Intervention filed by the Humane Society of the United States (“HSUS”) and Born Free USA (“Born Free”). In its Memorandum Opinion of March 23, 2012, this Court correctly denied intervention as of right to HSUS and Born Free on the basis that the two organizations failed to demonstrate the requisite interest and imminent impairment of that interest required for intervention as of right. HSUS and Born Free ignored two opportunities to provide documentation of their alleged interest in information pertaining to the take of U.S. members of the scimitar-horned oryx, dama gazelle and addax (three antelope species) and alleged imminent harm from Safari Club’s success in this litigation.¹ Not until after the Court denied their

¹ The Court’s Memorandum Opinion of March 23, 2012 (“Memorandum Opinion”) (Dkt. No. 41) noted that after the filing of SCI’s Motion for a Preliminary Injunction and the consolidation of the two additional cases brought by Plaintiff Exotic Wildlife Association *et al.*, “at least part of the relief sought in these consolidated cases is to find invalid the [January 5, 2012] Final Rule and set aside the case-by-case permitting process to which the proposed intervenors obtain information critical to their missions. Indeed, that is the relief sought in the pending preliminary injunction motions filed by SCI and EWA, which seek to set aside the Final Rule and keep in place the *status quo* Captive-bred Exemption.” Memorandum Opinion at 15. For purpose of

intervention did these two groups finally decide to submit declarations to express a current interest and purported imminent harm related to obtaining information about the three antelope species.²

In asking the Court to reconsider its finding that the organizations lack standing to support their intervention as of right, HSUS and Born Free try to rely on the case of *McConnell v. FEC*, 540 U.S. 93, 233 (2003), but fail to address the fact that this Court did not deny their intervention solely on the basis of their failure to demonstrate standing. Instead this Court also determined that HSUS and Born Free failed to offer documentary proof of the requisite interest and impairment of that interest necessary for intervention as of right. Memorandum Opinion, at 17 (Dkt. No. 41) Although the *McConnell* opinion may have addressed the need for an intervenor with interests identical to those of the original defendant to demonstrate standing, that opinion did not obviate the intervenor-applicant's obligation to demonstrate its own legally protected interest in the action and a potential impairment of that interest. Fed. R. Civ. P. 24(a)(2); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731-32 (D.C. Cir. 2003).

When Safari Club challenged the imminence of the impairment of their interests, HSUS and Born Free chose to rely on four-year old declarations that they had submitted in a previous lawsuit. In contrast, defendant-intervenor applicant Defenders of Wildlife at least submitted an updated declaration (to correct the fact that the author of their four year old declaration no longer

clarification, Safari Club's suit does not challenge the legality of the Final Rule and does not seek to keep in place the Captive-bred exemption. Safari Club's suit challenges the legality of the underlying regulation classifying the U.S. captive herds of the three antelope species as endangered. Safari Club's preliminary injunction motion seeks a stay of the enforcement of endangered status for the three antelope species.

² Safari Club maintains its position that none of the intervenors or intervenor applicants has demonstrated sufficient interest or imminent harm to that interest to justify their right to intervene in Safari Club's challenge to the legality of the U.S. Fish and Wildlife Service's inclusion of the three antelope species in the endangered classification for the species in the wild.

worked for their organization). As a result, this Court correctly found that “[t]he absence of any evidence in the record regarding the “imminence” of the injury to HSUS or Born Free USA is fatal to their ability to establish standing or their satisfaction of the second and third factor for intervention of right requiring a showing that they have a sufficiently current interest which would be impaired should plaintiffs prevail in this action.” Memorandum Opinion at 17.

Only now that the Court has denied their intervention have HSUS and Born Free submitted new declarations attesting to the present accuracy of their original four year-old statements. Nothing in these new declarations explains why HSUS and Born Free could not have provided those statements at the time that they moved for intervention, or at the latest, at the time that they filed their reply briefs. HSUS and Born Free are no different than every other unsuccessful litigant that would like a “do over” when they fail to submit evidence to carry their burden of proof. Such remedial advocacy does not serve the interests of judicial efficiency and fairness. HSUS and Born Free have not given this Court any reason to admit these untimely declarations or reconsider its ruling.

Apart from relying on their inadequate showings of interest or imminent harm, this Court rejected intervention for another reason not addressed in HSUS and Born Free’s Motion for Reconsideration. By relying on the *McConnell* case to demonstrate that their lack of standing should not prevent them from intervening, HSUS and Born Free imply that their interests are “identical” with those of the Federal Defendants. *See* 540 U.S. at 233 (“we need not address the standing of the intervenor-defendants, whose position here is *identical* to the FEC’s”) (emphasis added). However, in their Motion to Intervene, HSUS and Born Free offered a contradictory argument, explaining why the Federal Defendants could not adequately represent them in this case due to the disparity in their interests in the three antelope species. Memorandum in Support

of Motion to Intervene as Defendants by Defenders of Wildlife, the Humane Society of the United States and Born Free USA, at 20. (Dkt. No. 13) Regardless of whether HSUS and Born Free's interests are identical to those of the Federal Defendants, they are certainly identical with those of intervenor Defenders of Wildlife – demonstrated by the fact that HSUS and Born Free moved to intervene jointly with Defenders of Wildlife and chose to be represented by the same counsel. Under those circumstances, this Court correctly determined that HSUS and Born Free will be adequately represented in this litigation by Defenders of Wildlife. Memorandum Opinion at 18 n.9.³

This Court correctly denied intervention to HSUS and Born Free. HSUS and Born Free cannot remedy their failure to make a timely demonstration of interest and imminent harm to that interest nor can they deny that their interests are adequately represented by the party with whom they chose to jointly move for intervenor status. Safari Club respectfully requests that this Court deny HSUS and Born Free's Motion for Reconsideration.

Dated this 30th day of March 2012.

Respectfully submitted

/s/ Anna M. Seidman

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³ Although this Court considered the adequacy of Defenders of Wildlife's (and Friends of Animals') representation of HSUS and Born Free in the context of its analysis of HSUS and Born Free's ability to participate as permissive intervenors, the same analysis applies to intervention as of right.

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the Opposition to Motion for Reconsideration and Proposed Order to be served on all parties via the court's ECF system:

Dated this 30th day of March, 2012.

Respectfully submitted

/s/ Anna M. Seidman

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)	BAH and 1:12-cv-00340-BAH)
v.)	
)	PROPOSED ORDER
KEN SALAZAR, <i>et al.</i>)	
)	
Defendants.)	
)	
_____)	

IT IS HEREBY ORDERED that the Expedited Motion for Reconsideration of Denial of Intervention by the Humane Society of the United States and Born Free USA is **DENIED**.

Dated this _____ day of _____, _____.

U.S. District Court Judge