

Friends of Animals

May 18, 2016

Mark Langer
Clerk of Court
United States Court of Appeals for the District of Columbia Circuit
333 Constitution Ave. NW
Washington, DC 20001

Re: *Friends of Animals v. Jewell* (D.C. Cir. No. 15-5223)
Panel: Rogers, Srinivasan, Millet; Oral Argument held May 16, 2016
Response to Appellee's May 17, 2016 Submittal of Supplemental Authority

Dear Mr. Langer:

Pursuant to Federal Rule of Appellate Procedure 28(j), Appellant Friends of Animals respectfully submits the following response to Appellee's May 17, 2016 Submittal of Supplemental Authority:

The additional case law provided by the Appellee adds nothing new to the arguments already presented by the parties in their briefs and in oral argument. Friends of Animals does not refute that "Article III standing requires a concrete injury even in the context of a statutory violation" and that such injury must also be particularized to the plaintiff. *Spokeo, Inc. v. Robins*, 578 U.S. --- (May 16, 2016) (Slip Op.) at 9.

There is a difference between Congress providing a petitioner the right to sue for general violations of an Act and providing a petitioner with means of enforcing a statutory provision that certain information be publically disclosed. It is in the latter situation, as with Section 4 of the Endangered Species Act, that Congress creates a right to information, the deprivation of which can constitute concrete injury-in-fact for standing purposes. In *Spokeo*, the Supreme Court did not call this into question, but affirmed that the "**'inability to obtain information' that Congress had decided to make public is sufficient injury to satisfy Article III.**" *Id.* at 10 (citing *Federal Election Comm'n v. Akins*, 524 U.S. 11 (1998)) (emphasis added).

The Supreme Court's decision in *Spokeo* in regards to the respondent's standing is not instructive in this case because the alleged violations of the Fair Reporting Act at issue in *Spokeo* did not involve a mandate that specific information be disclosed. Rather, *Spokeo* claimed a violation of the requirement that consumer reporting agencies "follow reasonable procedures to assure maximum accuracy of consumer reports. . ." Slip Op. at 3. This does not create a right to information similar to 16 U.S.C. § 1533(b), which requires the Secretary to "promptly publish" a specific response within 12-months of Friends of Animals' petition. See *Friends of Animals Resp.*, Doc. 1607149 at 9, 11 (discussing the difference between general violations of the Endangered Species Act and a violation of mandatory duty to disclose information found in 16 U.S.C. § 1533(b), and discussing differences between a procedural injury and the deprivation of information).

Respectfully Submitted,

/s/Jennifer Best

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2016, I electronically filed the foregoing Response to Supplemental Authority with the clerk of the court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Jennifer Best
Jennifer Best