

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<u>AVOCADOS PLUS INC., et al.,</u>)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 02-1798 (GK)
)	
MIKE JOHANNNS, Secretary of)	
Agriculture, et al.,)	
)	
Defendants.)	
)	

O R D E R

Plaintiffs are seven importers of Hass avocados for distribution and consumption in the United States.¹ Defendants are Mike Johanns, Secretary of Agriculture (the "Secretary"); A.J. Yates, Administrator of the Agricultural Marketing Service ("AMS"); the U.S. Department of Agriculture ("USDA"); Robert Bonner, Commissioner of Customs and Border Protection; and the U.S. Customs Service (collectively, the "Defendants"). The Jerome J. Stehly and Christina M. Stehly Living Trust of November 30, 1999 and Charley Wolk (collectively, the "Intervenors") have intervened in support of the Defendants.

Plaintiffs challenge the Hass Avocado Promotion, Research, and Information Act of 2000, 7 U.S.C. §§ 7801 et seq. (the "Avocado Act" or "Act"), alleging that it violates their First Amendment

¹ The individual Plaintiffs are Avocados Plus, Incorporated; LGS Specialty Sales, Limited; J & K Produce, Incorporated; J. Bonafede Company, Incorporated; J.L. Gonzalez Produce, Incorporated; La Hacienda Brands, Incorporated; and Sonora Produce, Incorporated.

rights to freedom of speech and freedom of association.

This matter is now before the Court on the Intervenor's Motion to Dismiss or, in the Alternative, for Summary Judgment [Dkt. #71], the federal Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment [Dkt. #73], and Plaintiffs' Motion for Summary Judgment [Dkt. #74]. Upon consideration of the Motions, Oppositions, Replies, and the entire record herein, and for the reasons set forth in the accompanying Memorandum Opinion, it is hereby

ORDERED that the Intervenor's Motion is **granted in part and denied in part**, the federal Defendants' Motion is **granted in part and denied in part**, and Plaintiffs' Motion is **denied**. Specifically, summary judgment is granted in Defendants' favor on Plaintiffs' facial First Amendment claims. Summary judgment is denied on Plaintiffs' as-applied challenge; and it is further

ORDERED that Defendants shall be permitted to take one deposition regarding the validity of Plaintiffs' survey and may submit expert affidavits in opposition to Plaintiffs' expert.

March 15, 2006

/s/

Gladys Kessler
United States District Judge

Copies to: attorneys on record via ECF