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Contact:

Bill Bullard, R-CALF USA - 406-252-2516; r-calfusa@r-calfusa.com

Aidan O'Shea, Public Justice - 202-861-5240; aoshea@publicjustice.net

Momentum Against Unconstitutional USDA Checkoff Program Continues With Ninth Circuit Ruling

Affirms lower court injunction against collection of checkoff funds in Montana without consent

The United States Court of Appeals for the Ninth Circuit today [upheld](#) a lower court ruling that the USDA's Beef Checkoff program is being administered in a way that interferes with ranchers' First Amendment rights, and that the government should be enjoined from collecting funds for the program without rancher consent.

The Beef Checkoff is a federal tax that compels producers to pay \$1 per head every time cattle are sold, half of which is used to fund the advertisements of private state beef councils, like the Montana Beef Council. The Montana Beef Council is a private corporation whose members include representatives of the largest multinational beef packers.

The plaintiff in the case is independent rancher organization the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA). Public Justice is lead counsel in this constitutional challenge.

The court wrote in its [opinion](#) that "the district court did not abuse its discretion by finding that the instant assessment likely violated R-CALF USA's First Amendment rights." The preliminary injunction upheld by the Ninth Circuit today enjoins Agriculture Secretary Sonny Perdue from compelling Montana ranchers to subsidize the private speech of the Montana Beef Council without first obtaining the affirmative consent from the rancher-payees.

"Today's ruling ensures that for the first time in over three decades Independent Montana cattle producers have a choice as to whether to continue funding a private message that essentially says that beef is beef regardless of where the cattle from which the beef was derived was born or raised. That generic message is contrary to the interests of Montana ranchers who want to capitalize on the superior beef products that are produced from their high quality, USA-produced cattle," said R-CALF USA CEO Bill Bullard.

The Montana Beef Council promotes the message that there is no difference between domestic beef produced under U.S. food safety laws and beef produced in foreign countries. It has paid for advertisements for the fast-food chain Wendy's, for example, to promote hamburgers that use North American beef, meaning beef that can come from anywhere on the continent, but not necessarily Montana or even the United States.

Before the appellate court in early March, Public Justice's David Muraskin argued that the government needs to take more steps to control the Montana Beef Council if it wanted to compel ranchers to fund its message. Unless the government actually

appoints the council and reviews its activities, the First Amendment prevents ranchers from being forced to fund the private council's speech. Domestic ranchers have the right to fund a message they believe in, or at least one for which they can hold their government accountable.

"The Ninth Circuit's decision today means that yet another set of federal judges has ruled that the government cannot compel independent ranchers to fund the speech of multinational corporations. This ruling may only apply to Montana, but the momentum towards reform of the entire Beef Checkoff system is clear," said David Muraskin, a Food Project Attorney at Public Justice.

In addition to its lead counsel David Muraskin, R-CALF USA is also represented in its checkoff case by J. Dudley Butler, of the Farm and Ranch Law Group, and Bill Rossbach of Rossbach Law, P.C. in Missoula, Montana.

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R-CALF USA (Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America) is the largest producer-only cattle trade association in the United States. It is a national, nonprofit organization dedicated to ensuring the continued profitability and viability of the U.S. cattle industry. For more information, visit www.r-calfusa.com or, call 406-252-2516.

Public Justice pursues high impact lawsuits to combat social and economic injustice, protect the Earth's sustainability, and challenge predatory corporate conduct and government abuses. For more information, visit PublicJustice.net.