

*R-CALF, USA'S CONSTITUTIONAL CHALLENGE
TO THE BEEF CHECKOFF IN MONTANA*

David S. Muraskin

Food Project Attorney, Public Justice, P.C.

J. Dudley Butler

Butler Farm & Ranch Law Group

Attorneys for R-CALF USA



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Status of Suit

- *Filed* May 2, 2016.
- Government *moved to dismiss or stay* the case August 4, 2016.
- R-CALF, USA *opposed* that motion and *moved for summary judgment*, or, at the least, a *preliminary injunction* August 24, 2016.
- Government's *response due* September 14, 2016.
- R-CALF, USA then gets an *opportunity to respond*.



Objective of Suit



- Seeks declaratory judgment that administration of Beef Checkoff in Montana violates the First Amendment.
- Seeks injunction preventing money from going to the Montana Beef Council unless a producer *first affirmatively consents* to make those payments.
- Test case. Government agrees.

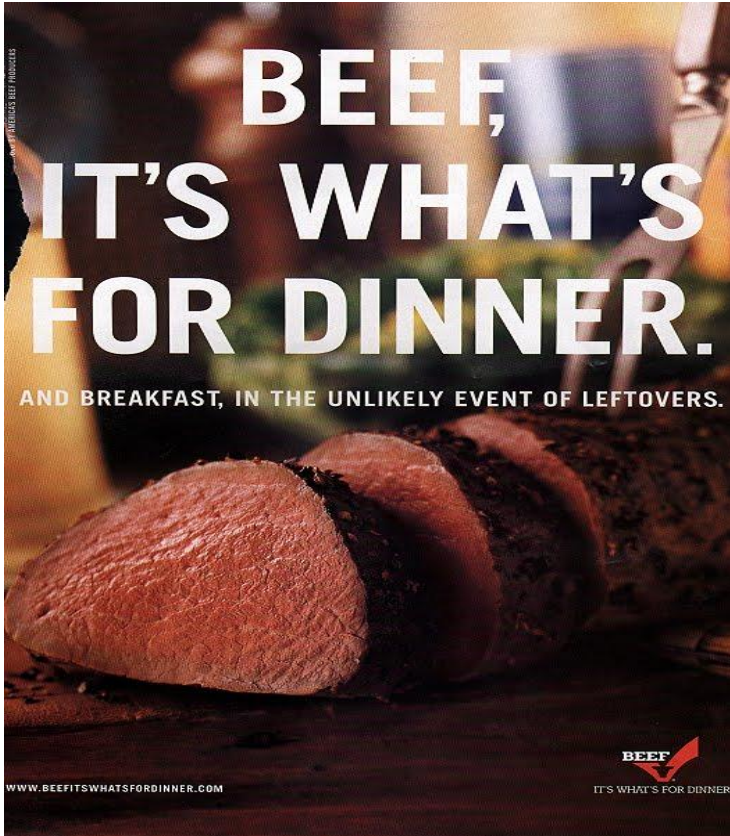
Original (Mushroom) Checkoff Suit

- “Just as the First Amendment may prevent the government from prohibiting speech, the Amendment may prevent the government ... from compelling certain individuals to pay subsidies for speech to which they object.” *United States v. United Foods, Inc.*, 533 U.S. 405, 410 (2001)(citations omitted).
- “[M]andated support” of a private entity to generate speech to which the payer objects “is contrary to the First Amendment.” *Id.* at 413.



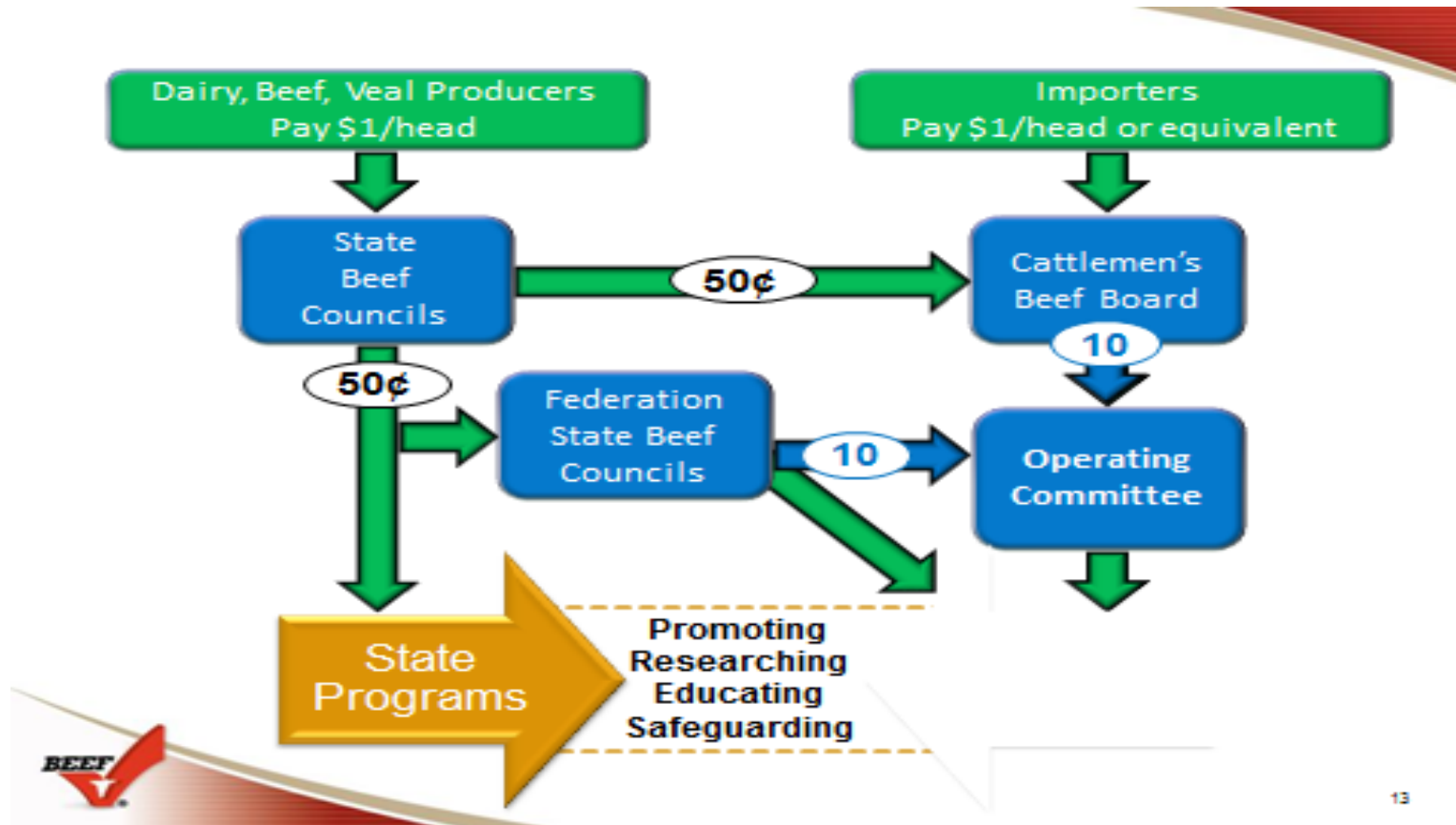
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Federal-Level Beef Checkoff Suit



- “Citizens *may* challenge compelled support of *private speech*, but have no First Amendment right not to fund *government speech*.” *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 562 (2005) (emphasis added).
- “The message set out in the beef promotions is from beginning to end the message established by the Federal Government.” *Id.* 560

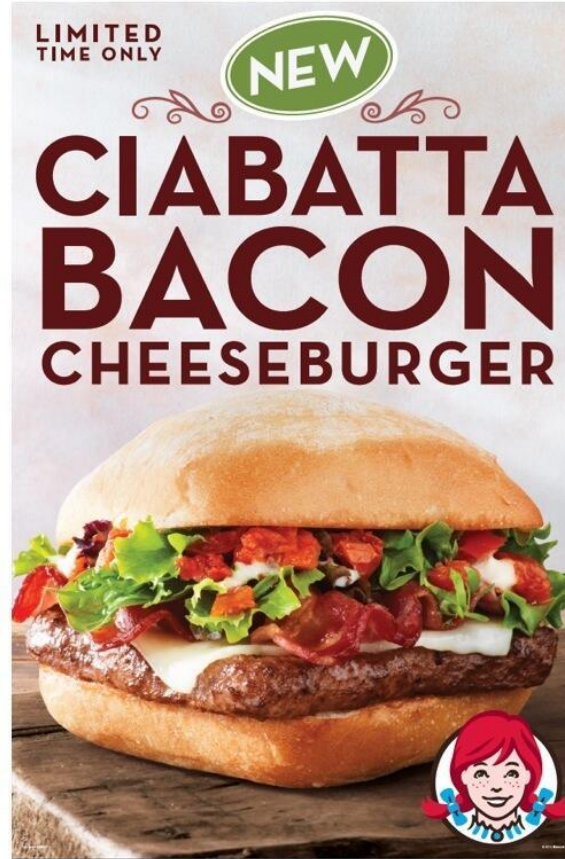
Our New Approach



Why Montana?

Montana Beef Council
entirely private corporation.

No state checkoff or state
supervision.



Board directly connected
with NCBA.

Future similar plans.

Government's Response

Notice of Proposed Rulemaking,
81 Fed. Reg. 45984 (2016).

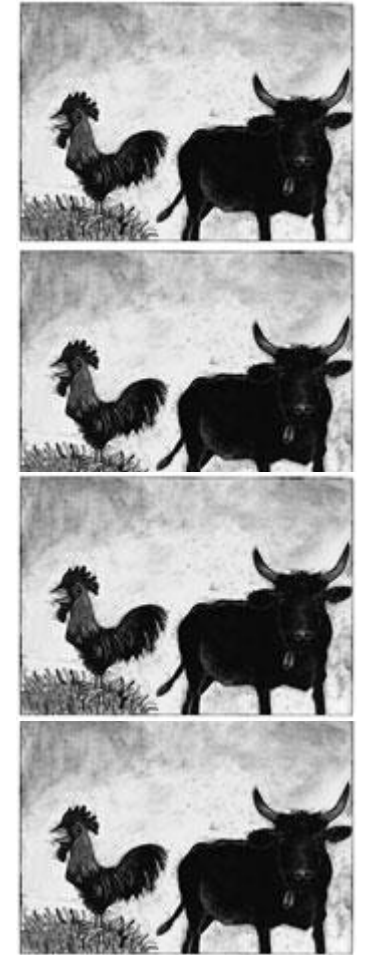
- Can opt-out, but councils still take money.
- Producer must submit request *every* month.
- State beef council can take 60-days to approve paperwork.
- Council gets money for > 100 days.



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Our Response

- Where the First Amendment does not permit an “extract[ion] ... from [an] unwilling” participant “there is no way to justify the additional burden of imposing [an] opt-out requirement.” *Knox v. Serv. Employees Int’l Union, Local 1000*, 132 S. Ct. 2277, 2292-93 (2012). “First Amendment does not permit” a private entity to “extract a loan” to fund speech even if it “is later paid back in full.” *Id.* at 2292-92.
- There must be “affirmative consent” *before* the money is turned over to a private entity to fund private speech. *Id.* at 2296



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Other Developments

- Booker-Lee Legislation, S. 3201.
 - Prohibits contracting with lobbyists.
 - Prohibits conflicts of interest.
 - Prohibits anticompetitive activity.
 - Requires disclosure of expenditures.
- Lee Legislation, S. 3200.
 - Makes checkoffs voluntary.



David S. Muraskin

Public Justice, P.C.

dmuraskin@publicjustice.net

publicjustice.net

(202) 861-5245

Twitter: @DavidMuraskin

Facebook: /publicjustice

J. Dudley Butler

Butler Farm & Ranch Law Group

JDB@FarmandRanchLaw.com

(662) 673-0091

Facebook: /FarmAndRanchLaw

R-CALF, USA is also being represented by Bill Rossbach, of Rossbach Law P.C.

Missoula, MT

(406) 543-5156



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