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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

<p>RANCHERS-CATTLEMEN ACTION LEGAL FUND, UNITED STOCKGROWERS OF AMERICA, <i>Plaintiff,</i></p> <p>v.</p> <p>TOM VILSACK, IN HIS OFFICIAL CAPACITY AS SECRETARY OF AGRICULTURE, AND THE UNITED STATES DEPARTMENT OF AGRICULTURE, <i>Defendants.</i></p>	<p>Case No. CV-16-41-GF-BMM-JTJ</p> <p>PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT</p>
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#	Fact	Supporting Evidence
<i>Plaintiff's Standing</i>		
1	Plaintiff, the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (“R-CALF”), is a non-profit, membership-based organization, headquartered in Montana, who’s voting members are comprised exclusively of independent, domestic cattle producers.	Exhibit 1, Decl. of Bill Bullard ¶¶ 3-4; <i>see also</i> R-CALF, About Us, http://www.r-calfusa.com/about-us/ .
2	R-CALF’s voting members are located in 42 states and include 375 independent Montana cattle producers.	Exhibit 1, Decl. of Bill Bullard ¶ 5.
3	R-CALF’s mission is to ensure the continued profitability and viability of independent, domestic cattle producers, and it engages in regular political advocacy before Congress and federal agencies to advance this mission.	<i>Id.</i> ¶¶ 7-8.
4	One of R-CALF’s core beliefs is that domestic beef raised under the United States’ rigorous standards is preferable to beef from elsewhere. It encourages its members to engage in campaigns that urge consumers to buy USA beef. Therefore, one of its core purposes is to work to counter messages that all beef, regardless of its origin, is equally desirable.	<i>Id.</i> ¶¶ 9-11.
5	To carry out this purpose, R-CALF has engaged in a variety of political advocacy, including meeting with executive branch and congressional personnel, and offering written comments on federal policies, regarding how Beef Checkoff funds should be used.	<i>Id.</i> ¶ 12; <i>see also id.</i> ¶ 10.
6	Because the Montana Beef Council (“MBC”) is a private entity that is not politically accountable to Montana beef producers, R-CALF has had to employ	<i>Id.</i> ¶¶ 13-14.

	different methods to influence the MBC and its expenditures.	
7	In order to promote its members' interests with the MBC, R-CALF has diverted resources to try to exert different types of pressure on the MBC.	<i>Id.</i> ¶¶ 16-17.
8	R-CALF issued press releases and statements to its members regarding the MBC's activities.	<i>Id.</i> ¶ 16.
9	R-CALF believes these advocacy methods are less effective at influencing how the Beef Checkoff money is spent than advocacy before national, public bodies.	<i>Id.</i> ¶¶ 18, 21.
10	R-CALF would spend less money and effort on influencing the MBC if the MBC did not retain and use Beef Checkoff funds paid by R-CALF's members. Instead, R-CALF would devote more resources to its national-level political activity, which R-CALF believes would better advance its mission.	<i>Id.</i> ¶¶ 19-21.
11	Ron Korman, Maxine Korman, Jack Owen and Craig Randall (collectively the "R-CALF Member Declarants") are all cattle producers who have raised and currently raise cattle in the State of Montana.	Exhibit 2, Decl. of Ron Korman ¶ 3; Exhibit 3, Decl. of Maxine Korman ¶ 3; Exhibit 4, Decl. of Jack Owen ¶ 3; Exhibit 5, Decl. of Craig Randall ¶ 3.
12	Ron and Maxine Korman have been voting, dues-paying members of R-CALF since 1998. Jack Owen has been a voting, dues-paying member of R-CALF since 1998. Craig Randall has been a voting, dues-paying member of R-CALF since 2003. All four continue to be voting, dues-paying members in good standing.	Exhibit 2 ¶¶ 1-2; Exhibit 3 ¶¶ 1-2; Exhibit 4 ¶¶ 1-2; Exhibit 5 ¶¶ 1-2.
13	Ron Korman has sold cattle in Montana since the 1970s. Maxine Korman has sold cattle in Montana since 2005. Jack Owen has sold cattle in Montana since at least 1987. Craig Randall has sold cattle in	Exhibit 2 ¶ 4; Exhibit 3 ¶ 4; Exhibit 4 ¶ 4; Exhibit 5 ¶ 4.

	Montana since the 1970s.	
14	All four R-CALF Member Declarants have definite and imminent plans to sell cattle in the State of Montana again.	Exhibit 2 ¶ 6; Exhibit 3 ¶ 6; Exhibit 4 ¶ 6; Exhibit 5 ¶ 6.
15	Since the inception of the federal Beef Checkoff program, the R-CALF Member Declarants have paid the Beef Checkoff assessment of \$1 per head of cattle sold each time they have sold cattle in Montana.	Exhibit 2 ¶ 5; Exhibit 3 ¶ 5; Exhibit 4 ¶ 5; Exhibit 5 ¶ 5.
16	The R-CALF Member Declarants all intend to pay the Beef Checkoff assessment for all future sales of cattle in the State of Montana.	Exhibit 2 ¶ 6-7; Exhibit 3 ¶ 6-7; Exhibit 4 ¶ 6-7; Exhibit 5 ¶ 6-7.
17	The R-CALF Member Declarants object to their money going to and being used by the private MBC.	Exhibit 2 ¶ 8; Exhibit 3 ¶ 8; Exhibit 4 ¶ 8; Exhibit 5 ¶ 8.
18	The R-CALF Member Declarants object to the MBC's promotional campaigns that fail to distinguish and/or promote USA beef as opposed to beef raised in any other country	Exhibit 2 ¶¶ 9-10; Exhibit 3 ¶¶ 9-10; Exhibit 4 ¶¶ 9-10; Exhibit 5 ¶¶ 9-10.
19	The R-CALF Member Declarants believe their interests are better served by promotions that encourage consumers to distinguish and/or purchase USA Beef.	Exhibit 2 ¶¶ 10-11; Exhibit 3 ¶¶ 10-11; Exhibit 4 ¶¶ 10-11; Exhibit 5 ¶¶ 10-11.
20	The R-CALF Member Declarants joined R-CALF in part to support its efforts to ensure the Beef Checkoff dollars are spent in a manner that better serves their interests.	Exhibit 2 ¶ 12; Exhibit 3 ¶ 12; Exhibit 4 ¶ 12; Exhibit 5 ¶ 12.
21	The R-CALF Member Declarants believe R-CALF is less effective at influencing the behavior of the private MBC than R-CALF is at influencing a politically accountable entity.	Exhibit 2 ¶ 13; Exhibit 3 ¶ 13; Exhibit 4 ¶ 13; Exhibit 5 ¶ 13.
22	The R-CALF Member Declarants would prefer all of their Beef Checkoff assessments to go to and be used by the federal Cattlemen's Beef Promotion and Research Board.	Exhibit 2 ¶ 14; Exhibit 3 ¶ 14; Exhibit 4 ¶ 14; Exhibit 5 ¶ 14.

<i>The Beef Checkoff and Qualified State Beef Councils</i>		
23	Congress passed the Beef Promotion and Research Act (“Beef Checkoff”) in order to “financ[e] ... and carry[] out a coordinated program of promotion and research designed to strengthen the beef industry’s position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.”	7 U.S.C. §§ 2901(b), 2904; Mem. in Supp. of Gov.’s Mot. to Dismiss, Dkt. No. 19-1 (“MTD”) 3.
24	Pursuant to the Act, in what is known as the Beef Order, the Secretary of Agriculture (“the Secretary”) promulgated regulations for the Beef Checkoff program.	7 U.S.C. §§ 2901(b), 2903; 7 C.F.R. Pt. 1260; MTD 3-4.
25	Under the Beef Checkoff, domestic cattle producers must pay \$1 per head of cattle sold to finance beef promotion and research, and the expansion of the beef market.	7 U.S.C. §§ 2901(b), 2904(8)(C); MTD 5.
26	The Beef Checkoff statute and regulations created two administrative entities to manage the Beef Checkoff at the federal-level: the Cattlemen’s Beef Promotion and Research Board (“Beef Board”), and the Beef Promotion Operating Committee (“Beef Committee”).	7 U.S.C. § 2904(1)-(5); 7 C.F.R. §§ 1260.141-1260.151, 1260.161-1260.169.
27	The Beef Board reviews and approves the Beef Committee’s budget, and is responsible for certifying qualified state beef councils.	7 U.S.C. § 2904(4)(C); 7 C.F.R. § 1260.181; MTD 4.
28	The Beef Committee develops the “plans or projects of promotion and advertising, research, consumer information, and industry information, which shall be paid for with assessments collected by the [Beef] Board.”	7 U.S.C. § 2904(4)(B); MTD 4.
29	Members of the Beef Board are appointed by the Secretary. The Beef Board then elects ten of its members to serve on the Beef Committee. The Secretary may	7 U.S.C. §§ 2904(1)-(2), (4)(A); 7 C.F.R. §§ 1260.141, 1260.161, 1260.213.

	remove any member of either body.	
30	The Secretary approves the budget set by the Beef Board, and any decision to withhold “disbursement” of funds until a later date. A representative of the Secretary attends all Beef Board meetings.	7 U.S.C. §§ 2904(4)(C), (9); Compl. Ex. A, Dkt. No. 1-1, at 11.
31	The Secretary also approves all plans and projects developed by the Beef Committee.	7 C.F.R. § 1260.169.
32	A qualified state beef council is an entity that carries out the same plans and projects for beef promotion developed by the Beef Committee, but in a particular state.	7 U.S.C. §§ 2901(b), 2902(14); 7 C.F.R. § 1260.115; MTD 4-5.
33	Qualified state beef councils are also authorized to collect the Beef Checkoff assessment in their state, on behalf of the Beef Board.	7 C.F.R. § 1260.181; MTD 4-5.
34	To become a qualified state beef council, the entity must: (1) certify that it will engage in the same kind of beef promotion activities as the Beef Board and Beef Committee, (2) submit a report indicating how it will collect and process federal assessments, (3) certify that it will collect the federal assessments in its respective state and ensure compliance by producers, (4) certify that it will remit the assessment funds due to the board, (5) certify that it will submit annual reports of the assessments collected and remitted, and (6) not use Beef Checkoff funds for improper, unfair, or deceptive practices or acts.	7 C.F.R. § 1260.181(b).
35	The Beef Checkoff statute and regulations grant producers a credit of up to 50 cents per head of cattle for their contributions to a state beef council against their contributions to the Beef Board. In other words, the regulations permit state beef councils to retain up to 50% of the federal assessment they collected from producers to fund the state beef council’s promotional activities.	7 U.S.C. § 2904(8)(C); 7 C.F.R. § 1260.172(a)(3); MTD 6.

36	Essentially all state beef councils that collect Beef Checkoff assessments automatically send 50% to the Beef Board, and retain the other 50%, even if there is no state law requiring producers to contribute to the councils and without any affirmative consent from producers to keep that money. In other words, the councils automatically deem 50 cents of every dollar collected a “voluntary contribution” from producers and the federal government “credits” this amount towards the producers’ \$1 federal assessment.	7 U.S.C. § 2904(8)(C); 7 C.F.R. § 1260.172(a)(3); MTD at 6; Compl. Ex. C, Dkt. No. 1-3, at 2.
37	Currently, the Beef Checkoff statute and regulations do not provide any means for producers to direct their payments from the state beef councils to the federal Beef Board.	7 U.S.C. § 2904; 7 C.F.R. Pt. 1260; Exhibit 6, Polly Ruhland, <i>Obligation to Redirect Assessments Upon Producer Request if Not Precluded by State Law</i> (July 29, 2016), http://www.beefboard.org/library/files/redirection-memo-072916.pdf (“Ruhland Memo”); MTD 7.
38	In 1995, the Department of Agriculture removed language from the Beef Checkoff regulations that required state beef councils to remit the full value of a producers’ assessment to the Beef Board if the producers so requested and applicable state law permitted it.	Soybean Promotion, Research, and Consumer Information; Beef Promotion and Research; Amendments To Allow Redirection of State Assessments to the National Program; Technical Amendments (“Beef Order Amendment”), 81 Fed. Reg. 45984, 45986 (June 15, 2016); MTD at 7.
39	Though this language was removed from the regulations, the Department of Agriculture has represented that it is “already” its policy that producers can request that all of their assessment funds be directed to the Beef Board. The only record	Beef Order Amendment, 81 Fed. Reg. at 45986; Ruhland Memo; MTD 6-7.

	of this policy the Department has cited is a statement issued on July 29, 2016.	
40	On July 15, 2016, the Department of Agriculture issued a notice of proposed rulemaking (“NPRM”) to amend the Beef Checkoff regulations and formalize the Department’s “policy” of allowing producers to request that their full assessments be directed to the Beef Board.	Beef Order Amendment, 81 Fed. Reg. at 45986; Ruhland Memo; MTD 6-7.
41	The Department of Agriculture has “request[ed]” that state beef councils honor this proposal while the rule is finalized.	Ruhland Memo.
42	The NPRM proposes to add language into the Beef Checkoff regulations explaining that—in states such as Montana, that do not require contributions to their respective state beef councils under state law—producers may choose to have the full amount of their assessment sent to the Beef Board. The same is true under the new policy memo.	Beef Order Amendment, 81 Fed. Reg. at 45986; Ruhland Memo; MTD 6-7.
43	Under the policy and the proposed rule a producer must complete paperwork to opt out of contributing to his/her respective state beef council after each month in which the producer pays the Beef Checkoff and wishes to send his/her full amount of the assessment to the Beef Board.	Beef Order Amendment, 81 Fed. Reg. at 45986; Ruhland Memo
44	Under the policy and the proposed rule, state beef councils will still collect Beef Checkoff funds from producers, and will still hold those funds until and unless the state beef council determines that the producers have successfully opted-out of funding the state beef council.	Beef Order Amendment, 81 Fed. Reg. at 45986; Ruhland Memo.
45	Under the policy and the proposed rule, producers must submit an opt-out request by the 15th day of the month following the relevant sale of cattle for which the producer has paid the Beef Checkoff and	Beef Order Amendment, 81 Fed. Reg. at 45986; Ruhland Memo.

	wishes that money to go to the Beef Board. The state beef councils then have 60 days to “respond” to such requests. Thus, even if a producer fully complies, a state beef council could hold the assessment funds of a given producer for up 105 days if the assessment was paid on the first day of a given month.	
<i>The Montana Beef Council and its Speech</i>		
46	The MBC is the qualified state beef council for the state of Montana.	7 C.F.R. § 1260.315; Montana Beef Council, About Us, http://www.montanabeefcouncil.org/aboutus.aspx ; MTD 8.
47	The MBC is a private corporation organized under the laws of the State of Montana.	Exhibit 7, Montana Sec’y of State, Certificate of Existence for Montana Beef Council.
48	As a qualified state beef council, the MBC must use Beef Checkoff funds to develop and implement “plans or projects for promotion, research, consumer information and industry information ... designed to strengthen the beef industry’s position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.”	7 U.S.C. §§ 2901(b); 7 C.F.R. § 1260.181(b) (cross-referencing 7 C.F.R. § 1260.169).
49	The MBC is funded by so-called “voluntary” contributions from producers taken from the assessment mandated by the Beef Checkoff. There is no assessment imposed by the State of Montana on beef producers.	MTD 5-6, 8-9.
50	The MBC’s expenditures in fiscal year 2015 only included: (1) international marketing programs, (2) domestic marketing programs, (3) retail programs, (4) food services, (5) promotional programs, (6) advertising, (7) beef safety, (8) education, (9) producer communications, and (10) administration expenses.	Compl. Ex. G, Dkt. No. 1-7, at 1.

51	The MBC is made up of twelve board members, of which Plaintiff has been able to confirm five are currently directly connected to the National Cattlemen's Beef Association.	Exhibit 1, Decl. of Bill Bullard ¶ 15.
52	The MBC's promotion activities are all determined and directed by its board.	<i>Montana Beef Checkoff Directors Set Work Plan for Upcoming Fiscal Year</i> (Sept. 29, 2015), https://mtbeef.org/montana-beef-checkoff-directors-set-work-plan-for-upcoming-fiscal-year/ .
53	No provision of the Beef Checkoff statute or regulation empowers the Secretary or any other federal officer to appoint or remove members of the MBC.	<i>See</i> 7 U.S.C. § 2904; 7 C.F.R. § 1260.181.
54	The only regular federal oversight of the MBC provided for in the Beef Checkoff statute or regulations is that the MBC must submit the annual report of all funds remitted to it under the Beef Checkoff program.	7 U.S.C. § 2904; 7 C.F.R. § 1260.181.
55	No Montana law or regulation requires producers to divert 50% of their Beef Checkoff assessments to the MBC.	MTD 8-9.
56	The MBC does not seek affirmative consent from Montana producers to retain or use 50% of the funds it collects under the Beef Checkoff.	Beef Order Amendment, 81 Fed. Reg. at 45985-45986; Ruhland Memo.
57	The MBC has used money collected under the Beef Checkoff to fund a promotional partnership with the fast food chain Wendy's.	NorthernAg.NET, <i>Fun MT Beef Council & Wendy's Partnership</i> (Feb. 21, 2014), http://www.backup.northernag.net/AGNews/tabid/171/articleType/ArticleView/articleId/8961/Fun-MT-Beef-Council-Wendys-Partnership.aspx .

58	Wendy's uses North American beef, which is distinct from United States beef. The latter can come from any producer on the continent, whereas the former must be raised by domestic producers.	Wyatt Bechtel, <i>Wendy's Maintains Focus on Quality Beef from North America</i> . Ag Web (Feb. 19, 2016), http://www.agweb.com/article/wendys-maintains-focus-on-quality-beef-from-north-america-naa-wyatt-bechtel/ .
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RESPECTFULLY SUBMITTED this 24th day of August, 2016.

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