

## Resources

### ***American Meat Institute v. United States Department of Agriculture: Country of Origin Labels and the First Amendment***

**August 27, 2014**

On July 29, 2014, the Federal District Court for the District of Columbia, sitting *en banc*, in *American Meat Institute v. United States Dept. of Agriculture*, ruled that the 2013 country-of-origin labeling (COOL) regulations mandating that meat producers disclose the countries in which food animals were born, raised, and slaughtered were reasonable and did not violate constitutional free speech protections. The Court rejected the preliminary injunction request by the American Meat Institute (AMI), on behalf of meat producers in the United States, Canada, and Mexico, challenging the 2013 regulations on the grounds that they violated the First Amendment.

The Court first determined that the 2013 COOL regulations do not exceed AMI's statutory authority, but contain reasonable interpretations and requirements for COOL labeling. The Court disagreed with AMI's arguments that the new regulations inappropriately alter production practices or are contrary to the plain language of the COOL statute.

Next, the Court considered whether the 2013 COOL statute violated the First Amendment. In an earlier case—*Zauderer v. Office of Disciplinary Counsel*— the U.S. Supreme Court was faced with a state law that required attorneys advertising contingent-fees to inform their clients that they “may have to bear certain expenses” if they lose. In deciding whether the law passed constitutional muster, the U.S. Supreme Court applied a rational basis standard, as opposed to the higher level of scrutiny that is generally used in commercial speech cases under *Central Hudson Gas & Electric Corp. v. Public Service Commission*. The U.S. Supreme Court reasoned that the lower standard of review was appropriate, because the statute required only the disclosure of “purely factual and uncontroversial information.”

AMI advocated for the application of the higher level of scrutiny to the 2013 COOL regulations, arguing that the rational basis standard used in *Zauderer* was appropriate only where Congress' stated interest was to prevent consumer deception. In a 9 to 2 decision, the D.C. Circuit Court rejected this position, finding that the rational basis test should be applied to any forced disclosure rule, whether or not Congress' interest was to prevent consumer deception or require the communication of factual information. Because the Court determined that Congress had a rational interest in providing consumers with information regarding the origin of meat products, and because this interest trumped AMI's free speech concerns, the Court upheld the 2013 COOL disclosure requirements.

The Court's decision continues a general tolerance of regulations requiring labeling language that communicates to consumers arguably useful information. Meat manufacturers will have to follow the more detailed 2013 regulations when applying COOL labels. While the case does not foreclose further challenge to the 2013 COOL regulations in a case not seeking a preliminary injunction, it clearly sends a signal that such a lawsuit would probably fail.

For more information about COOL or other food labeling requirements, please contact the author of this alert, David P. Graham (612-486-1521 or [dgraham@dykema.com](mailto:dgraham@dykema.com)), Jonathan S. Feld (312-627-5680 or [jfeld@dykema.com](mailto:jfeld@dykema.com)) or your Dykema relationship attorney.

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#### **Practice Areas**

Government Investigations and Corporate Compliance

Litigation

*American Meat Institute v. United States Department of Agriculture: Country of Origin Labels and the First Amendment (Cont.)*

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