



Capital Press File

A lawsuit challenging state beef council promotions has been rejected by the 9th U.S. Circuit Court of Appeals.

9th Circuit rejects challenge to beef promotions

By **MATEUSZ PERKOWSKI**
Capital Press

Promotions funded by state beef councils aren't an unlawful form of compelled speech, even if third parties are paid to produce the advertisements, according to a federal appeals court.

The 9th U.S. Circuit Court of Appeals has determined that such promotions are government speech, not private speech that's forcibly subsidized in violation of the U.S. Constitution's First Amendment.

While people can't be required to subsidize private speech, the government's own speech isn't subject to this prohibition because it's "subject to democratic accountability" through the political process.

The Ranchers-Cattlemen Action Legal Fund, or R-CALF, challenged the legality of promotions issued by state beef councils, which are partly funded by "check-off" dollars collected from ranchers.

R-CALF claimed that state beef councils support advertising that's contrary to the interests of independent beef producers and isn't protected as "government speech," since it doesn't reflect the government's actual views and is often created by third parties.

The 9th Circuit has now rejected that argument, upholding an earlier ruling that concluded state beef council promotions are ultimately under the

authority of USDA — even when third parties develop the advertisements without pre-approval from the agency.

Promotions that are pre-approved by USDA and explained in budgets submitted to the agency effectively receive "final approval authority" from the federal government, so they're "therefore plainly government speech," according to the 9th Circuit.

Even third-party promotions that aren't subject to pre-approval are "effectively controlled" by USDA because Congress envisioned that industry nonprofits would implement promotions under the beef checkoff program, the ruling said.

Federal regulations still require third-party promotions to "strengthen the beef industry's position in the marketplace" without mentioning brands or trade names, using deceptive practices or influencing government policies, the ruling said. The USDA also reviews state beef council expenses and can participate in their board meetings.

Though R-CALF claimed such "safeguards are insufficient," the deciding factor is that the government has the "ability to control speech, even when it declined to do so," the 9th Circuit said. The USDA can "decertify" state beef councils from using checkoff dollars if it disagrees with how those funds are spent, providing "unquestioned control" over that money.

Region's tree fruit growers assess damage from late June heat wave

By **SIERRA DAWN MCCLAIN**
Capital Press

Six weeks after June's heat wave scalded the Pacific Northwest, tree fruit growers are assessing the damage.

Cherry growers lost about 20% of their crop and faced rattled markets. Apple growers estimate the industry may have lost up to 10% of the crop to sunburn and are concerned the heat may also impact apple size and storability. Pear growers, though less worried about sunburn, are also concerned about fruit size.

"The cherry season was pretty horrible," said Dave Taber, an Oroville, Wash., grower.

Due to the triple-digit heat, according to B.J. Thurlby, president of Northwest Cherry Growers, the industry lost about 20% of its crop. According to the association's most recent report, through July 28, growers had shipped 17.6 million 20-pound boxes, about 21% fewer than the six-year average.



Courtesy of Charles Lyall

Heat-damaged apples from the record-breaking June heat wave.

Many growers, attempting to outrun the heat, picked large volumes of cherries that were small and immature with low sugar content and tried to sell them to wholesalers and retailers.

"It slowed the whole market domestically and worldwide," said Taber of Oroville. "The sunburn was bad, but I think it hurt even more to have people push too hard to sell fruit."

Several other growers agreed, saying retailers and consumers generally weren't happy with this year's fruit.

"I'm pretty sure it did drive the market down,"

said Frank Lyall, a grower in Grandview, Wash.

The apple crop also suffered.

Sean Gilbert, a Yakima-area grower, estimated the crop will see roughly 10% less fruit packed due to sunburn but said it's premature to make accurate predictions.

"It's too early to know the final damage," he said.

Several growers across central Washington, ranging from Kennewick in the south to Oroville in the north, threw out similar sunburn loss figures: 5%, 7%, 10%. The most common

estimate was 10%.

Some growers said Honeycrisp and some club varieties, including Cripps Pink, or "Pink Ladies," experienced the worst sunburning.

Harvest is beginning for Galas, an early variety, and growers say visible damage isn't as bad as they anticipated. But many are worried about internal flaws.

"Sunburn is not the only factor out there," said Todd Fryhover, president of the Washington Apple Commission. "These warm temperatures will probably have some impact on fruit storability long-term."

He said an immediate 10% loss sounds "very reasonable," but more losses may accrue over time if fruit doesn't store well.

Some apple varieties also may run one-half to two sizes small due to the heat, industry experts say. Some growers, including Charles Lyall, Frank Lyall's brother who grows in Mattawa, say sizing so far looks "reasonable," but other growers say their fruit appears small.

Risk of large fires to stay high into fall

By **BRAD CARLSON**
Capital Press

The risk of large fires will remain high through November in much of the West thanks to widespread drought, dry fuels and above-normal temperatures, the National Interagency Fire Center predicts.



Jim Wallmann

With more than 95% of the West in drought, timber, brush and grass are "exceptionally dry," said Jim Wallmann, meteorologist with the NIFC-tied National Interagency Coordination Center. Some recent rainfall helped, "but we would need something much longer-duration than we've seen to really make a large impact on the rest of the fire season."

A strong start to the monsoon season returned fuels to normal moisture levels in Arizona, New Mexico and parts of Colorado, he said.



Oregon Department of Forestry

A firefighting tanker makes a retardant drop near Sisters, Ore., on July 11. Meteorologists say the threat of wildfires will remain into fall.

Near-term risk in the Four Corners region should drop to normal or below normal.

But in much of the West, "every fuel type is available right now given the drought," Wallmann said. Fire-ready fuel is available "from California right up through Oregon and Washington, through Idaho and into Montana and Wyoming."

Temperatures were well above normal in July across the West and Northern Plains.

Wallmann said

above-normal fire potential is expected through August in Northern California, Oregon, Washington, Idaho, Montana and into the Dakotas and part of Minnesota.

Exceptional drought and "any potentially strong wind events, which become more frequent in August" are among reasons, he said.

Large-fire risk should lessen gradually in the northern U.S. as fall unfolds, and return to normal by November.

"But for much of California, we are expecting

above-normal potential to remain through November due to a delayed start to their rainy season," Wallmann said.

NIFC said climate outlooks indicate warmer-than-normal conditions are likely for much of the continental U.S., especially the West, into fall. The drought is likely to expand and intensify.

Most California mountains and foothills should have above-normal potential for large fires through September, with areas prone to offshore winds likely to retain above-normal potential into October and November in the state's south, the report said.

NIFC said risk is above normal in most of the Northwest through September due to dry fuels and persistent drought. A return to normal is expected this month in western Washington and in September in southeast Oregon.

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2019 TOYOTA TACOMA PU
VIN = 5TFZC5AN8K172927
Amount due on lien \$1515.00
Reputed owner(s)
SHRIEF SALAMA
RED CANOE CREDIT UNION

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2885 NATIONAL WAY WOODBURN, OR
2015 NISSAN ROGUE UT
VIN = 5N1AT2M8F8C805136
Amount due on lien \$1535.00
Reputed owner(s)
ARANDA ROSALBA
AM MOTORS

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2016 RAM 1500 PU
VIN = 3C6RR7L7G6G364867
Amount due on lien \$1555.00
Reputed owner(s)
JAMIE MICHAEL WILKINSON

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2018 KIA FOR 4D
VIN = 3KPF4A76JE199276
Amount due on lien \$1555.00
Reputed owner(s)
DEANN ELIZABETH KIGHT
MARION/POLK SCHOOLS CREDIT UNION

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2013 TOYT HGH UT
VIN = 5TDBK3EH4DS279099
Amount due on lien \$1555.00
Reputed owner(s)
DENNIS MICHAEL PADILLA
CLACKAMAS FEDERAL CREDIT UNION

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COPART OF WASHINGTON INC
2006 WDW71 29FT RT
VIN = 5HRFF262C013078
Amount due on lien \$1435.00
Reputed owner(s)
ROMIE & KATHLEEN THOMPSON
THOR CREDIT UNION

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2018 HD STR MC
VIN = 1HD4NCG18J1C508394
Amount due on lien \$1435.00
Reputed owner(s)
RUSSELL LEE WILLIAM
EDGEMARK SAVINGS BANK

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2010 ACUR ZDX UT
VIN = 2HNYB1H29AH000479
Amount due on lien \$1435.00
Reputed owner(s)
JONATHAN & TRACI SPRINGER
SELCO COMMUNITY CREDIT UNION

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2018 CHEV SLV PU
VIN = 1GC1KVEY4JF123518
Amount due on lien \$1455.00
Reputed owner(s)
JOHN EDWARD VITRO
CLACKAMAS FEDERAL CREDIT UNION

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2013 HOND CIV 4D
VIN = 19XFB2F81DE204512
Amount due on lien \$1515.00
Reputed owner(s)
MCKENZIE SUE HVAL

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2015 BMW X3 UT
VIN = 5UXWY3C52F0E97994
Amount due on lien \$1515.00
Reputed owner(s)
VENKATESWARA
RAO SUSARLA
FIRST COMMUNITY C.U

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2017 KIA SED VAN
VIN = KNDMB5C15H6333655
Amount due on lien \$1515.00
Reputed owner(s)
RUNA P & PASCAL A MEINERZHAGEN

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2885 NATIONAL WAY WOODBURN, OR
2018 JEEP CHEROKEE UT
VIN = 1C4RJFBG7J320420
Amount due on lien \$1515.00
Reputed owner(s)
GAIL M & WILLIAM D KOPSAFTIS
KAIPERM FED CU

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2017 HYUN SON 4D
VIN = 5NPE24AF6HH566317
Amount due on lien \$1435.00
Reputed owner(s)
MADISON RUSSELL & KIMBERLY FORD
CARMAX BUSINESS SERVICES LLC

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2016 TOYOTA RAV4 UT
VIN = 2T3BFREV2GW483125
Amount due on lien \$1515.00
Reputed owner(s)
MIE WINTER & JOSHUA SETTEL / COPART

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2017 DODG CVN VN
VIN = 2C4RDGCGXHR783648
Amount due on lien \$1515.00
Reputed owner(s)
PEDRO ANTONIO VALDOVINOS JASSO
WESTLAKE FINANCIAL SERVICES

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2885 NATIONAL WAY WOODBURN, OR
2018 HYUN TUCSON UT
VIN = KMBJ3CAL8JU761841
Amount due on lien \$1515.00
Reputed owner(s)
JACQUE & LARRY FALESCHINI
CAPITAL ONE AUTO FINANCE

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
1969 BOAT TRLR BT
VIN = J155059646
Amount due on lien \$1555.00
Reputed owner(s)
ABIGAIL SPRUNGER

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2008 CHEV SLV PU
VIN = 2GCEK19J381304375
Amount due on lien \$1555.00
Reputed owner(s)
JAMES M YOUNG

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2005 TOYT 4RU UT
VIN = JTEBU14R550073511
Amount due on lien \$1515.00
Reputed owner(s)
RILEY WARREN BARRICK

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COPART OF WASHINGTON INC
2885 NATIONAL WAY WOODBURN, OR
2013 BMW X3 UT
VIN = 5UXWX9C50D0A22993
Amount due on lien \$1515.00
Reputed owner(s)
CARMAX

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2885 NATIONAL WAY WOODBURN, OR
2019 SUBA IMP SW
VIN = 453GTAC67K3742800
Amount due on lien \$1515.00
Reputed owner(s)
KRISTINA OTT
ALLY BK

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2885 NATIONAL WAY WOODBURN, OR
2014 PORS CYN UT
VIN = WP1AC2A24ELA80737
Amount due on lien \$1515.00
Reputed owner(s)
WILLIAM L & DOROTHY A CHENEVICH