



SEC Petitions for Rehearing of First Amendment Issues in Conflict Minerals Case

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On May 29, 2014, the Securities and Exchange Commission petitioned the U.S. Court of Appeals for the District of Columbia Circuit for a rehearing of the First Amendment issues in the conflict minerals case. The SEC, however, asked the Court to hold the case for a rehearing or rehearing *en banc* until after the Court issues a decision in the *American Meat Institute v. United States Department of Agriculture* case.

The decision reached in *American Meat* has significant implications for the First Amendment claims asserted by the National Association of Manufacturers in the conflict minerals case. As we have mentioned, the American Meat case is addressing the longstanding precedent established in Zauderer v. Office of Disc. Counsel as to whether the government may compel disclosures of “purely factual and uncontroversial” commercial information for reasons other than preventing consumer deception. In *American Meat*, the Court could decide that compelled factual disclosures that are “reasonably related” to a government interest are permissible. A decision to the contrary would be more in keeping with the result the Court reached in the conflict minerals case, where the Court applied the intermediate standard of review (without deciding whether the highest level of review might apply). A decision along these lines would be more likely to maintain the status quo, namely, that companies are not required to label products as “DRC Conflict Free,” “DRC Conflict Undeterminable” or “Have Not Been Found to be DRC Conflict Free.”

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