News Release

Washington Legal Foundation
Advocate for freedom and justice®
2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302

FOR IMMEDIATE RELEASE **October 15, 2004**

HIGH COURT URGED TO BAR COMPELLED COMMERCIAL SPEECH

***(Veneman v. Livestock Marketing Ass'n,* No. 04-1164)**

The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to bar the federal government from forcing beef producers to provide financial support for advertising with which they disagree.

In a brief filed in Veneman v. Livestock Marketing Association, WLF argued that the First Amendment protects not only the right to speak but also the right not to speak, and that forcing someone to provide financial support for private speech with which he disagrees violates his First Amendment rights.

"Restrictions on compelled speech should not be relaxed simply because, as here, the speech being compelled is commercial in nature," said WLF Chief Counsel Richard Samp after filing WLF's brief. "If the government wishes to convey a message, it should do so with its own tax revenues, not by forcing individuals to support speech by private groups," Samp said.

Veneman is a challenge to a Department of Agriculture program (the "Beef Order") that requires all beef producers and importers to fund a generic advertising campaign ("Beef. It's What's for Dinner") administered by a committee of producers. Many producers object to the advertising campaign, particularly to advertisements indicating that beef is fungible. These producers contend that their beef is superior to other beef on the market, and the government-mandated generic advertisements thus undermine their efforts to market their beef based on its superior quality. A federal appeals court in St. Louis struck down the Beef Order as a violation of the First Amendment rights of dissenting producers. The Supreme Court has agreed to review that decision.

This case marks the third occasion in recent years on which the Supreme Court has reviewed First Amendment challenges to agriculture marketing orders. In *Glickman v. Wileman Brothers* (1997), the Court upheld a program that required producers of California peaches, plums, and nectarines to fund generic advertising. Four years later, the Court in *United States v. United Foods* struck down a largely indistinguishable program that required mushroom producers to fund generic advertising. In the wake of *United Foods,* lower federal courts have struck down a wide variety of agricultural advertising programs, including advertising for milk ("Got Milk"),

pork ("It's the Other White Meat"), and Washington apples. The Supreme Court likely granted review in *Veneman* to resolve the confusion caused by its apparently conflicting decisions in *Glickman* and *United Foods*.

In its brief urging the Court to strike down the Beef Order, WLF argued that the First Amendment fully protects the right to refuse to speak, and that forcing someone to fund another's speech is constitutionally equivalent to forcing him to utter that speech. WLF cited Supreme Court precedents prohibiting schools from requiring school children to recite the Pledge of Allegiance, and prohibiting labor unions from requiring dissenting employees to pay any portion of the costs of the union's political activities. WLF's brief took particular exception to the Department of Agriculture's argument that a relaxed standard of First Amendment review is applicable when the compelled speech at issue is "commercial speech" (i.e., speech -- such as advertising -- that proposes a commercial transaction). While noting that the Supreme Court has applied a somewhat relaxed standard of review when the government is attempting to *suppress* commercial speech, WLF argued that the justifications for that relaxed standard of review are wholly inapplicable in the context of *compelled* speech.

WLF also urged the Court to reject the government's claim that the Beef Order is exempt from First Amendment review because the speech at issue is really the government's own speech. In support of that claim, the government notes that it exercises some degree of supervision over the committee of beef producers that carries out the beef advertising program. WLF argued that the "government speech" doctrine only exempts the government from First Amendment review when the speech at issue is funded by general tax revenues. WLF argued that because the ultimate decision whether to have a beef advertising campaign at all is left to private individuals, the speech at issue here cannot qualify as government speech.

WLF filed its brief on behalf of itself and the Allied Educational Foundation. WLF is a public-interest law and policy center with supporters in all 50 states. WLF devotes a substantial portion of its resources to free speech rights, both of individuals and of the business community.

* * *

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.