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THIRD DISTRICT, OREGON

COMMITTEE ON WAYS AND MEANS

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TRADE

SELECT REVENUE MEASURES

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July 23, 2008

Secretary Ed Schafer
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Secretary Schafer,

We are writing today to express concern over the Department of Agriculture's (USDA) approval of the expenditure of \$3 million by the American Egg Board to influence California citizens to vote against a state ballot initiative. The ballot initiative at issue is entitled the Prevention of Farm Animal Cruelty Act, and has been approved by the California Secretary of State for the upcoming 2008 election.

As you know, the American Egg Board (AEB) is a federal commodity promotion program that receives legislatively mandated check-off funds from egg producers under the Egg Research and Consumer Information Act (ERCIA). As a federal commodity promotion program, the AEB is strictly prohibited from using its funds for political purposes, including for the purpose of influencing voters in an election.

In November 2007, the AEB unanimously approved a motion to reserve \$3 million to combat the ballot initiative. Communications between USDA and AEB officers, provided to us by Californians for Humane Farms (CHF), the sponsor of the initiative, clearly indicate that the funds set aside by this motion are intended to be used to defeat the ballot initiative. In fact, internal USDA communications, also provided by CHF indicate that some members of the agency, including staff members of the USDA's Agricultural Marketing Service charged with overseeing the AEB's budget and activities, are aware of the political purpose for which the motion was approved. By example, agency staff members have stated that the AEB check-off funds are intended to be used to "supplement" current efforts "to defeat the measure." Copies of these communications are attached hereto.

The ERCIA requires that the AEB submit an annual budget to the USDA each year for approval, and no AEB activities using federal check-off funds may be undertaken without prior USDA approval (7 U.S.C. § 2707(c), (d)). Further, it is the duty of the Secretary of Agriculture in approving or rejecting the AEB's annual budgets, and any revisions thereto,

to enforce the prohibition on political spending. Yet, despite the apparent intentions of the AEB to use \$3 million for the purpose of defeating the ballot initiative, the USDA approved a revised 2008 budget including this expenditure as a "special project" at the beginning of this year.

Congress has specifically prohibited commodity promotion programs from using check-off funds to promote such activities. The ERCIA (P.L. 93-428), under which the AEB was chartered, explicitly proscribes any use of AEB check-off funds "for the purpose of influencing governmental policy or action" 7 U.S.C. § 2707(h). Moreover, in 1996, Congress applied similarly broad prohibitions on political activity to all commodity promotion programs through the Commodity Promotion, Research, and Information Act (P.L. 104-127), which proscribes any use of check-off funds "for the purpose of influencing any legislation or governmental action or policy" 7 U.S.C. § 7414(d).

In its Guidelines for Oversight of Research and Promotion Boards, the Agricultural Marketing Service has defined "influencing governmental policy or action" as including any action intended to "affect the outcome of proposed policy or regulation," and defined "influencing legislation" as including "any attempt to affect the opinions of the general public or any segment thereof concerning legislation." It is clear that when it passed the motion to reserve \$3 million of its annual budget for a special project related to animal welfare, the AEB intended that this money be used for the purpose of affecting the opinions of voters concerning the Prevention of Farm Animal Cruelty Act, and thereby ultimately defeating the ballot initiative.

We are also concerned that AEB's campaign to defeat the ballot initiative appears to include direct assistance to egg industry trade groups opposed to the measure. The communications between USDA and AEB officers previously cited specifically include a reference to a request from the United Egg Producers concerning "what they can say on their billboards" that they plan to produce using the AEB check-off funds. The USDA's oversight of the AEB includes the duty to prevent such collusion between the AEB and any private entity, to ensure that federal check-off funds are not used to influence legislation or other governmental policy. The ERCIA prohibits the AEB from allowing third-party use of federal check-off funds unless the use is consistent with statutory limitations on the AEB's use of the funds, and the third-party use of the funds is first subject to the approval of the USDA 7 U.S.C. § 2707(g).

Commodity promotion programs are not industry trade groups; they are quasi-governmental bodies created by the Congress to promote the marketability of certain commodities. As such, these entities may not attempt to influence the outcome of proposed legislation, even if the legislation will affect the industry they serve. No federal check-off funds given to these programs by statutory mandate are permitted to be used for the purpose of influencing governmental policy or action, including affecting citizen votes on state-approved ballot initiatives, whether used directly by the commodity promotion program itself or by third-party industry groups.

For these reasons, we believe it is incumbent upon the USDA to rescind its approval of the revision to the AEB's 2008 budget that included provision for the expenditure of the \$3 million approved by the AEB's November 2007 motion.

Thank you for your consideration of this matter of utmost importance. If we can be of any assistance to you or your administrators and staff, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Earl Blumenauer". The signature is fluid and cursive, with the first name "Earl" being more prominent and larger than the last name "Blumenauer".

Earl Blumenauer
Member of Congress

Cc:

Michael B. Mukasey
Attorney General of the United States