

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Turtle Island Foods, SPC v. Locke Thompson

No. No. 19-3154, United States Court of Appeals for the Eighth Circuit (March 29, 2021)

SUMMARY

****Eighth Circuit | First Amendment – Commercial Speech | Missouri Meat Labeling Law | Preliminary Injunction | Standing**** The Eighth Circuit affirmed the denial of a preliminary injunction against a Missouri statute criminalizing the misrepresentation of plant-based products as meat. The court held that the plaintiffs (Tofurky and Good Food Institute) failed to show a likelihood of success on the merits because their labels clearly disclosed the products were plant-based, vegan, or vegetarian, and thus were not misleading under the statute. The court also found that the plaintiffs had standing and their pre-enforcement First Amendment claim was ripe, but the "arguably proscribed" standard from **Susan B. Anthony List** applies only to standing, not to the merits of a commercial speech challenge under **Central Hudson**.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Melloy; Colloton; Kelly
JURISDICTION	Federal
DECIDED	March 29, 2021
DOCKET	No. 19-3154
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from denial of preliminary injunction
STANDARD OF REVIEW	Denial of preliminary injunction reviewed for abuse of discretion; legal conclusions reviewed de novo.
PRECEDENTIAL VALUE	Published
PARTIES	Turtle Island Foods, SPC (doing business as The Tofurky Company) and The Good Food Institute, Inc. v. Locke Thompson, in his official capacity as Cole County Prosecuting Attorney and on behalf of a defendant class of all Missouri Prosecuting Attorneys; State of Missouri (Intervenor)

TOPICS

first amendment

free speech

standing

statutory interpretation

constitutional law

commercial

appellate procedure

PRACTICE AREAS

Constitutional Law, Civil Procedure, Appellate Practice

QUESTIONS PRESENTED

1. Whether Plaintiffs have standing and their claim is ripe for review.
2. Whether the district court applied the wrong legal standard (*Susan B. Anthony List v. Driehaus*) in evaluating likelihood of success on the merits of the First Amendment claim.
3. Whether the district court interpreted the scope of the Statute too narrowly when determining that the Statute does not prohibit Plaintiffs' speech.

HOLDINGS

1. Plaintiffs have standing because they allege an intention to engage in conduct arguably proscribed by the Statute and there is a credible threat of prosecution. The claim is ripe because it presents a legal question and involves the chill of protected expression.
2. The district court correctly applied the *Central Hudson* test for commercial speech, not the *Susan B. Anthony List* standard, which governs standing, not merits.
3. On the limited record, the district court did not err in concluding that the Statute does not prohibit Plaintiffs' speech because the labels submitted clearly indicate that the products are plant-based, so they are not misrepresenting their products as meat.
4. Because Plaintiffs failed to show likelihood of success on the merits, they also failed to show irreparable harm, and the district court did not abuse its discretion in denying the injunction on that basis.

KEY QUOTATIONS

"In a pre-enforcement suit such as this, 'a plaintiff satisfies the injury-in-fact requirement,' and thus has standing, 'where [it] alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.'" (at 6-7)

*"the district court was correct to not apply *Susan B. Anthony List* outside the standing context. Instead, the court properly determined Plaintiffs' claim was governed by *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980), which provides the test for analyzing the constitutionality of laws burdening commercial speech."* (at 9)

"the district court acted within its discretion in reading the Statute as not prohibiting Plaintiffs' commercial speech." (at 10)

FACTUAL BACKGROUND

The Statute criminalizes misrepresenting a product as meat that is not derived from livestock or poultry. Plaintiffs sell plant-based meat alternatives and use meat-related terminology (e.g., 'slow-roasted chick'n') but clearly label their products as plant-based, vegan, or vegetarian. They fear prosecution under the Statute and brought a pre-enforcement challenge.

PROCEDURAL HISTORY

Plaintiffs filed a civil rights action under 42 U.S.C. § 1983 challenging the constitutionality of Missouri Revised Statutes § 265.494(7). They moved for a preliminary injunction and class certification. The district court certified the class and denied the preliminary injunction, concluding that Plaintiffs had not shown a substantial likelihood of success on the merits because the Statute does not prohibit their commercial speech. Plaintiffs appealed.

DISPOSITION

affirmed

CASES CITED

- Susan B. Anthony List v. Driehaus, 573 U.S. 149 (2014)
- Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289 (1979)
- Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1980)
- Minn. Citizens Concerned for Life, Inc. v. Swanson, 692 F.3d 864 (8th Cir. 2012)
- Johnson v. Minneapolis Park & Recreation Bd., 729 F.3d 1094 (8th Cir. 2013)
- Powell v. Ryan, 855 F.3d 899 (8th Cir. 2017)
- Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109 (8th Cir. 1981)
- Watkins Inc. v. Lewis, 346 F.3d 841 (8th Cir. 2003)
- Lankford v. Sherman, 451 F.3d 496 (8th Cir. 2006)
- Laclede Gas Co. v. St. Charles Cnty., 713 F.3d 413 (8th Cir. 2013)
- Planned Parenthood Minn., N.D., S.D. v. Rounds, 530 F.3d 724 (8th Cir. 2008)
- Brown v. Medtronic, Inc., 628 F.3d 451 (8th Cir. 2010)
- Braden v. Wal-Mart Stores, Inc., 588 F.3d 585 (8th Cir. 2009)
- Const. Party of S.D. v. Nelson, 639 F.3d 417 (8th Cir. 2011)
- 281 Care Comm. v. Arneson, 638 F.3d 621 (8th Cir. 2011)
- Republican Party of Minn., Third Cong. Dist. v. Klobuchar, 381 F.3d 785 (8th Cir. 2004)
- Roberts v. Van Buren Pub. Sch., 731 F.2d 523 (8th Cir. 1984)
- Turtle Island Foods v. Soman, 424 F. Supp. 3d 552 (E.D. Ark. 2019)
- Zanders v. Swanson, 573 F.3d 591 (8th Cir. 2009)
- Glenn v. Holder, 690 F.3d 417 (6th Cir. 2012)
- Powell v. Noble, 798 F.3d 690 (8th Cir. 2015)

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