

Amnesty International Seeks Rehearing of Conflicts Minerals Case Based on Recent First Amendment Ruling

August 27, 2014 | Client Update | 2-minute read

Amnesty International filed a supplemental brief to its late May petition for rehearing of the conflict minerals case, based on the *American Meat* decision from late July, which we previously discussed [here](#).

Amnesty argues that the opinion in *American Meat* expressly overruled a portion of the conflict minerals decision, and made clear that the court in the conflict minerals litigation erred in failing to apply the First Amendment standard for review set forth in *Zauderer*. The court had declined to apply *Zauderer* in the conflict minerals dispute since the SEC had not claimed that the rule was related to the government interest of preventing consumer deception. Subsequently, the *American Meat* court expressly overruled the view that *Zauderer* is limited to disclosures based on “an interest in correcting deception.”

Amnesty claims that the government has a legitimate interest in providing investors and consumers with information that is critical to their investing and purchasing decisions, and the conflict minerals disclosure is constitutional because it is both “purely factual and uncontroversial” within *Zauderer*’s scope. According to Amnesty, references to “DRC conflict free” is factual as the plaintiffs do not dispute that there is conflict in the DRC or that armed groups (as defined in the statute) are financed by the sale of conflict minerals. In addition, Amnesty states that the controversy over the rule is based on whether companies bear responsibility for the conflict or the disclosure requirement is effective to address the conflict, which are both “irrelevant” in determining whether the disclosure itself is controversial.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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