



Iowa General Assembly

2003 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

THE CONSTITUTIONALITY OF THE FEDERAL BEEF CHECKOFF

Filed by the United States Court of Appeals
July 8, 2003

Livestock Marketing Association et al v. United States Department of Agriculture (USDA), Nos. 02-2769/2832

<http://www.ca8.uscourts.gov>

Background. The United States Court of Appeals for the 8th Circuit considered a case involving a federal statute referred to as the Beef Promotion and Research Act (“the Beef Act”) (see 7 U.S.C. sec. 2903 et seq.) authorizing the United States Secretary of Agriculture to promulgate a Beef Promotion and Research Order requiring beef producers and beef importers to pay an assessment commonly called a “checkoff” for purposes of supporting programs to promote beef and beef products, and to sponsor-related research and education projects (such as the “Beef. It’s What’s for Dinner” advertising campaign).

District Court Proceedings. The Livestock Marketing Association (LMA), the Western Organization of Resource Councils (WORC), and several individual cattle producers filed suit on December 29, 2000, in federal district court in South Dakota. The district court found the Beef Act to be an unconstitutional violation of the plaintiffs’ First Amendment free speech right because it coerced American beef farmers and cattle ranchers to pay in part for certain advertising to which they objected. LMA based its suit on a U.S. Supreme Court decision in 2001 (United States v. United Foods Inc., 533 U.S. 405 (2001)) that a mushroom checkoff violates the First Amendment rights of mushroom growers.

Appellate Decision. On appeal the USDA argued that the beef checkoff should be construed as an extension of the government’s own right of free speech under the “government speech doctrine” and equated the Beef Board with a governmental agency. However, the Court of Appeals rejected USDA’s position and concluded that the mandated assessment triggers a First Amendment analysis. The Court went on to determine that the government’s interest could not justify an infringement upon LMA’s constitutional right of free speech. The Court stated:

[W]e conclude that the government’s interest in protecting the beef industry by compelling all beef producers and importers to pay for generic beef advertising is not sufficiently substantial to justify the infringement on appellees’ First Amendment free speech right.

The Court of Appeals affirmed the decision of the district court. The district court’s order finding the Beef Act to be unconstitutional is stayed until the USDA decides whether to request a rehearing by the full panel of circuit court judges, and could remain stayed until the U.S. Supreme Court decides whether to hear the case.

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