

## Livestock checkoff programs: What does the future hold?

Supporters of livestock checkoff programs have taken massive hits recently. On Friday, October 17, 2003, the 8<sup>th</sup> U.S. Circuit Court of Appeals declined to hear an appeal on an earlier ruling by a three judge panel that the national beef checkoff program was unconstitutional.

Just days later, on October 22, 2003., the 6<sup>th</sup> U.S. Circuit Court of Appeals upheld an October 2002 ruling by a federal court judge that the pork checkoff is unconstitutional. The decision on the pork case follows a national referendum in which a majority of producers voted to end the program. Before the program was ended, the administration in Washington changed and Secretary of Agriculture Ann Veneman negotiated a restructuring of the pork program, leaving the checkoff in place.

Both cases rely on a 2001 case concerning the mushroom checkoff. In that case the U.S. Supreme Court ruled that the checkoff was unconstitutional because its use of money for generic advertising was deemed to be coerced speech in violation of the First Amendment right of free speech. While the opposition to the beef and pork checkoff programs runs deeper than free speech issues, it was on that basis that the courts made their decisions.

In the October 2002 ruling, the Hon. Richard Alan Enslen wrote, "In short, whether this speech is considered on either philosophical, political or commercial grounds, it involves a kind of outrage which Jefferson loathed. The government has been made

tyrannical by forcing men and women to pay for messages they detest. Such a system is at the bottom unconstitutional and rotten."

Enslen began his ruling with the following quote from Thomas Jefferson, "[T]o compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." Jefferson wrote this as part of an act establishing religious freedom in Virginia and prohibiting state support for churches.

In both the beef and the pork cases the government and the supporters of the checkoffs have not exhausted their appeals. In the case of the beef checkoff the next step is the U.S. Supreme Court. For pork it is the full sixth circuit court of appeals or the Supreme Court.

As of this writing, the USDA has not announced whether or not it will appeal the rulings. However, it would be surprising if the rulings were not appealed to the Supreme Court. An overhanging question is how will these rulings affect other commodity checkoff programs? We will discuss these and other issues in future columns.

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