

## How will the court rulings on livestock checkoffs affect checkoffs for crops?

The story of the recent court decisions ruling that the beef and pork checkoffs were unconstitutional does not necessarily stop there. First, the USDA and the other parties to the lawsuit have not announced whether or not they will appeal the rulings so it is not clear whether the rulings will stand or be overturned on appeal. The second question is the applicability of the rulings to some of the seed and grain commodity checkoffs.

Before wrestling with the second question let's review the nature of the ruling in the beef and pork lawsuits. Although the opponents of the two checkoff programs have voiced a wide range of grievances against the programs, the legal ruling turned on very narrow grounds. Concern about whether or not the research agenda financed by checkoff dollars supported the interests of large producers vs. small producers was not taken into consideration by the judges making the rulings.

Rather, the issue at stake was whether or not the use of checkoff dollars for advertising (advertising that the checkoff opponents objected to) constitutes coerced speech and thus a violation of the First Amendment. The judge ruled that it was. In addition, the court decreed that such promotional activities cannot be severed from other activities included in the legislation, allowing for the retention of the research and education programs funded by checkoff funds while ending the promotional activities. The judge ruled that the legislation contained no clause that allowed some portions of the law to remain in effect if other portions were found to be unconstitutional.

One of the key points in making the determination that the programs involved coerced speech is that they did not allow producers who objected to the programs to

obtain a refund of the checkoff fees. Presumably, if a law contained a refund provision it would have passed muster and would not have been ruled unconstitutional.

Now what about crop checkoff programs? Looking at both wheat and corn programs we find several differences between them and the two meat programs that are under fire. Both programs are established by laws in the various states and secondly most, if not all, allow for producers to file for refunds. Short of a court ruling, on the surface it appears that both these programs are not vulnerable to the challenges that brought about adverse rulings on the beef and pork checkoffs.

The soybean and cotton checkoff programs are similar to the beef and pork programs in that they do not currently contain refund provisions. A refund provision was a part of the soybean checkoff program until 1993. It was dropped because few of the surveyed soybean producers supported keeping the refund provision. At present no court challenges have been filed on the soybean checkoff. In 1991, the cotton program eliminated provisions for producers to request refunds. It is our understanding that a lawsuit has been filed challenging the cotton checkoff program.

One thing for sure, it is not over yet. Appeals could continue to weave their way through the court system, right up to the Supreme Court, and further lawsuits may be filed. Stay tuned.

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