

07/11/2003 Entry: "FEDERAL APPEALS COURT RULES NATIONAL BEEF CHECKOFF PROGRAM UNCONSTITUTIONAL AND UNENFORCEABLE"

CHRIS CLAYTON, OMAHA WORLD-HERALD: "Beef: It's what's for dinner" may be going the way of Wendy's old slogan "Where's the beef?" if a [July 9] court ruling stands.

In a ruling described as potentially having "far-reaching implications for the beef industry," a federal appeals court ruled that the national beef checkoff is unconstitutional and unenforceable. The ruling jeopardizes national advertising for the beef industry, known mainly for the "Beef: It's what's for dinner" campaign.

U.S. Agriculture Secretary Ann Veneman said she was disappointed in the court's decision. The Bush administration maintained that the checkoff helped boost consumer demand for beef. Without advocating an outright appeal, Veneman said her department would consult with the U.S. Department of Justice on the next steps.

The case was pushed by disgruntled livestock producers and the Livestock Marketing Association, which resented the U.S. Department of Agriculture forcing producers to pay a \$1-per-head fee on all cattle sold nationwide.

The lawsuit was mainly a fight against the USDA program, but the Nebraska Cattlemen joined the case as an intervening defendant, said Greg Ruehle, vice president of the group, who noted that the Nebraska Cattlemen is not funded by the checkoff.

"The checkoff is a great complement to what we do in terms of dollars available for promotion and research," Ruehle said. "The reason we joined the suit as an intervening party was to give a voice to producers who support the checkoff."

Calling the checkoff critical for protecting the beef industry, the president of the National Cattlemen's Beef Association announced that the group would continue to defend the checkoff up to an appeal to the Supreme Court.

"Without the checkoff and its 'Beef: It's what's for dinner' consumer promotions, the beef industry would not be as successful as it is today," said Eric Davis, president of the National Cattlemen.

The decision by a three-judge panel of the 8th U.S. Circuit Court of Appeals upheld a ruling last summer by a federal district judge in South Dakota. The suit came after the USDA refused to recognize a petition campaign calling for a national referendum on the checkoff.

While ruling against the checkoff, the appeals court ordered that the collections remain in effect while the government and cattle groups decide whether to have a full panel of 8th Circuit appeals judges hear the case.

Created by the USDA, the beef checkoff is one of 15 federal checkoff programs used to promote agricultural products with fees from producers.

In recent years, groups have pushed challenges and petitions trying to overturn both the beef checkoff and the pork checkoff, known for "Pork: The other white meat." The pork checkoff is facing its own court challenges in another federal circuit.

The beef checkoff generated about \$86 million nationally that is split between the Cattlemen's Beef Promotion and Research Board and state groups such as the Nebraska Beef Council. About half the money collected is used for advertising.

In its arguments, the Bush administration maintained that the checkoff was government speech immune from First Amendment scrutiny, akin to a government agency representing the people. The appeals court ruled that the government's interest in protecting the beef industry isn't sufficient to infringe upon the rights of producers who do not wish to have the Beef Council speak for them.