

02/16/2003 Entry: "Federal Appeals Court to hear 'government speech' argument March 10 in beef checkoff case"

Federal Appeals Court to hear 'government speech' argument March 10 in beef checkoff case

The appeal of Livestock Marketing Association's suit challenging the constitutionality of the beef checkoff has been scheduled for argument on March 10, before the U.S. Court of Appeals for the 8th Circuit.

Oral arguments before a three-judge panel are scheduled to begin at 9 a.m., in St. Paul, Minn.

The principal issue raised on appeal by the Cattlemen's Beef Board and an intervenor, Nebraska Cattlemen, Inc., is their argument that the checkoff program constitutes government speech, and is therefore not subject to First Amendment guarantees of freedom of speech and association.

The defendants are appealing the June, 2002 decision by Federal District Court Judge Charles Kornmann. In his decision, Kornmann ruled the checkoff was "unconstitutional and unenforceable."

In rejecting the defendants' "government speech" argument, the District Court said, "Common sense tells us that the government is not 'speaking' in encouraging consumers to eat beef. After all, is the 'government message' therefore that consumers should eat no other product or at least reduce the consumption of other products such as pork, chicken, fish or soy meal? The answer is obvious."

LMA officials noted that the week of March 10 will be a significant one for commodity checkoffs. In addition to the beef checkoff appeal on the 10th, on the 14th oral arguments in a challenge to the constitutionality of the pork checkoff will be heard by the U.S. Court of Appeals for the 6th Circuit, in Cincinnati, Ohio.

A principal argument raised by defenders of the pork checkoff in that appeal is that the checkoff is also "government speech."