

## **06/23/2002 Entry: "Federal Judge Rules Beef Checkoff 'Unconstitutional and Unenforceable'"**

LMA NEWS

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Federal judge rules beef checkoff 'unconstitutional and unenforceable'; LMA gratified producers' rights upheld

KANSAS CITY, MO. – Livestock Marketing Association President Billy Perrin said, "We are gratified the Court chose to uphold the Constitutional rights of beef and dairy producers paying the mandatory beef checkoff. The decision affirms a producer's right to free speech, and the right to promote his own product."

Perrin's comments came after South Dakota Federal District Court Judge Charles B. Kornmann ruled June 21 that the Beef Promotion and Research Act and checkoff "are unconstitutional and unenforceable" because they violate the First Amendment of the U.S. Constitution.

Judge Kornmann enjoined any further collection of the \$1 per head checkoff after July 15, 2002 Perrin said key elements of the Court's ruling include:

...Beef producers cannot be compelled to finance advertising programs with which they disagree. The Court said the Constitution requires that beef advertising be paid for "only from assessments paid by producers who do not object to advancing the generic sale of beef and who are not coerced into doing so against their wills."

Several individual plaintiffs in LMA's lawsuit objected to checkoff-financed advertising, claiming the ads made no distinction between U.S. and foreign beef.

...Claims made by the Cattlemen's Beef Board and the government, that checkoff programs constitute government speech, are contradicted by several years of so-called "producer communications."

The Court found that "All of these so-called 'producer communications,' which were prepared with checkoff funds, stress to the producers that the Beef Board is a 'producer-controlled, independent Board.' They stress to the producers that the beef checkoff is an 'industry-run program,' that 'cattlemen run the program,' ...

“Nowhere in any of the ‘producer communications,’” the Court found, “does it even hint that the Board is accountable to the (U.S. Department of Agriculture) or that the speech being paid for by the producers is that of the federal government.”

In a further rejection of the defendants’ “government speech” argument, the 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.”

The Court’s ruling, Perrin said, “confirms that producers will be able to use their money to promote the beef they produce, in the way they want, in association with people whose beliefs they share. It’s now up to the industry to come together to discuss a voluntary program, which we can all support.”

LMA began a petition drive in 1998, to obtain a producer referendum on the checkoff. LMA later filed a lawsuit in South Dakota federal district court challenging the U.S. Department of Agriculture’s process to validate those petitions.

The matter became a constitutional challenge to the checkoff following the Supreme Court’s decision last year ruling that the mushroom checkoff was unconstitutional.

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