

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN PORK PRODUCERS)
ASSOCIATION, INC.; NATIONAL PORK)
PRODUCERS COUNCIL; PETE)
BLAUWIEKEL; BOB BLOOMER; and)
HIGH LEAN PORK, INC.; CALIFORNIA)
PORK PRODUCERS ASSOCIATION;)
INDIANA PORK PRODUCERS)
ASSOCIATION, INC.; KENTUCKY PORK)
PRODUCERS ASSOCIATION, INC.; NEW)
YORK PORK PRODUCERS CO-OP, INC.;)
and OHIO PORK PRODUCERS COUNCIL)

Plaintiffs/Intervening)
Cross-Defendants,)

v.)

CAMPAIGN FOR FAMILY FARMS,)
RODNEY SKALBECK, JAMES DALE)
JOENS, RICHARD SMITH, RHONDA)
PERRY, LAWRENCE E. GINTER, JR., and)
STAN SCOTT SCHUTTE)

Defendant-Intervenors/)
Cross-Complainants,)

v.)

ANN VENEMAN, Secretary, United States)
Department of Agriculture, and KENNETH)
CLAYTON, Acting Administrator,)
Agricultural Marketing Service,)

Cross-Defendants.)

Case No. 1:01 CV-34

Hon. Richard Alan Enslin

DEFENDANT-INTERVENORS/
CROSS-COMPLAINANTS'
SUPPLEMENTAL ANSWER
AND AMENDED
FIRST SUPPLEMENTAL
CROSS-CLAIM

I. ANSWER TO FIRST AMENDED COMPLAINT

Defendant-Intervenors, Campaign for Family Farms, Rodney Skalbeck, James Dale Joens, Richard Smith, Rhonda Perry, Lawrence E. Ginter, Jr. and Stan Scott Schutte, (“Defendant-Intervenors”), deny every allegation of the First Amended Complaint of Plaintiffs, Michigan Pork Producers Association, Inc., National Pork Producers Council, Pete Blauwiel, Bob Bloomer and High Lean Pork, Inc., (“Plaintiffs”), unless admitted or qualified below:

1. As to paragraph 1, admit that Defendant-Intervenors allege that the settlement agreement entered into by Plaintiffs and Government Defendants is beyond the scope of the Secretary’s authority. On May 2, 2001, the Court granted Defendant-Intervenors’ Motion for Leave to File a Supplemental Answer and Cross-Claim against Government Defendants.

Defendant-Intervenors are without knowledge or information sufficient to form a belief as to the truth of the remainder of paragraph 1.

2. As to paragraph 2, admit that the National Pork Board provides some funding for state pork producer organizations. Defendant-Intervenors are without knowledge or information sufficient to form a belief as to the truth of the remainder of paragraph 2.

3. As to paragraph 3, admit that the National Pork Producers Council (“NPPC”) receives most of the balance of its funding from the Pork Checkoff. Defendant-Intervenors are without knowledge or information sufficient to form a belief as to the truth of the remainder of paragraph 3.

4. As to paragraphs 4 through 6, Defendant-Intervenors are without knowledge or information sufficient to form a belief as to the truth of paragraphs 4 through 6.

5. Admit paragraphs 7 through 9.

6. As to paragraph 10, Defendant-Intervenors admit that it would be proper venue if the Michigan Pork Producers Association and Pete Blauwiekel reside in the Western District of Michigan. Defendant-Intervenors are without knowledge or information sufficient to form a belief as to the truth of the remainder of paragraph 10.

7. As to paragraph 11, admit that Congress enacted the Pork Act, that an initial referendum was held among pork producers, and that a majority of the U.S. pork producers that voted did vote in favor of instituting a mandatory pork checkoff. Defendant-Intervenors affirmatively allege there is no basis for Plaintiffs' implied allegation that in that referendum 77.5 percent of all U.S. pork producers voted in favor of the mandatory pork checkoff when only 44,953 votes were cast in that referendum, a small percentage of the nation's pork producers at the time of that referendum. Since that referendum in 1988 the number of hog operations has substantially diminished. From 1993 to 2000 alone, the number of U.S. farms with one or more hogs declined by over 60 percent from 218,060 to 85,760, according to USDA.

8. As to paragraph 12, deny that the Pork Checkoff Program funds are allocated to benefit many U.S. pork producers and that checkoff funds are allocated through a democratic process. Defendant-Intervenors affirmatively allege that some Pork Checkoff Program funds are allocated to harm many U.S. pork producers. Admit the remainder of paragraph 12 including the structure of the National Pork Board as described except that Defendant-Intervenors are without knowledge or information sufficient to form a belief as to the truth of the alleged effect of the settlement agreement.

9. Admit paragraph 13.

10. As to paragraph 14, admit that Defendant-Intervenor Campaign for Family Farms turned in petitions with more than 19,000 names seeking a referendum on the termination of the

Pork Checkoff Program. Admit that USDA announced it would undertake a verification process. Defendant-Intervenors are without knowledge or sufficient information to form a belief as to the truth of the remainder of paragraph 14.

11. As to paragraph 15, admit that Secretary Glickman ordered a referendum. Defendant-Intervenors affirmatively allege that the Secretary's order was for a binding referendum and that Plaintiffs use of the word "survey" is inaccurate and a misstatement of Secretary Glickman's February 25, 2000, announcement and subsequent statements as well as the referendum rule issued on July 13, 2000, in the Federal Register. Admit the remainder of paragraph 15.

12. As to paragraph 16, admit that the Secretary relied in part on authority under 7 U.S.C. § 4812. Deny that this authority was used to order a "survey" or that this authority is "alleged."

13. Deny paragraph 17 and subparagraphs a through c.

14. As to paragraph 18, admit that Government Defendants conducted a referendum using County Farm Service Agency Offices. Defendant-Intervenors are without knowledge or sufficient information to form a belief as to the truth of the remainder of paragraph 18.

15. As to paragraph 19, admit that Secretary Glickman announced that a majority of pork producers had voted to terminate the checkoff, and that the Pork Checkoff Program would be terminated. Admit that there was some delay in the count and that USDA issued some press releases and further instructions to FSA offices to review certain votes. Defendant-Intervenors are without knowledge or sufficient information to form a belief as to the truth of the remainder of paragraph 19.

16. Admit paragraph 20 with the clarification that the Court's extension of the temporary restraining order was based on parties' consent which included amendments to the original temporary restraining order.

17. As to paragraph 21, Defendant-Intervenors admit that Plaintiffs and Government Defendants entered an agreement termed a settlement agreement as attached as Exhibit A to the First Amended Complaint. Defendant-Intervenors are without knowledge or sufficient information to form a belief as to the meaning of this settlement agreement as alleged in paragraph 21. Defendant-Intervenors were not included in settlement negotiations and vehemently oppose the settlement agreement.

18. As to paragraph 22, on May 2, 2001, the Court granted Defendant-Intervenors' Motion for Leave to File a Supplemental Answer and Cross-Claim against Government Defendants. Defendant-Intervenors' Cross-Claim creates an actual controversy with Government Defendants. Defendant-Intervenors deny that their Cross-Claim is groundless.

19. Defendant-Intervenors adopt by reference its answers to paragraphs 1 through 22 in answer to paragraph 23.

20. Deny paragraph 24.

21. As to paragraphs 25 and 26, on May 2, 2001, the Court granted Defendant-Intervenors' Motion for Leave to File a Supplemental Answer and Cross-Claim against Government Defendants. Defendant-Intervenors' Cross-Claim raises a controversy between Defendant-Intervenors and Government Defendants.

22. Deny paragraph 27.

23. Admit paragraph 28.

II. AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to mitigate damages, if any.
2. Any other matter constituting an avoidance or affirmative defense.

WHEREFORE, Defendant-Intervenors request that the Court:

1. Dismiss Plaintiffs' First Amended Complaint with prejudice.
2. Award Defendant-Intervenors costs and attorneys' fees.
3. Grant Defendant-Intervenors other just relief.

III. CROSS-CLAM AGAINST GOVERNMENT DEFENDANTS

A. Nature of the Cross-Claim

1. Defendant-Intervenor/Cross-Complainants' first cause of action in this cross-claim against Government Defendants Ann Veneman, Secretary, United States Department of Agriculture (USDA); and Kenneth Clayton, Acting Administrator of the Agricultural Marketing Service (AMS), asserts that Government Defendants are required by law to terminate the Pork Promotion, Research, and Consumer Information Order, 7 C.F.R. Part 1230 (hereinafter the "Pork Checkoff Program") based on the majority vote of producers and importers supporting such termination in the referendum conducted by USDA in August and September 2000. Thus, Government Defendants did not have the legal authority to enter into the February 28, 2001, settlement agreement with Plaintiffs in which USDA agreed not to take any action to terminate the Pork Checkoff Program in response to this referendum.

2. Defendant-Intervenor/Cross-Complainants' second and third causes of action in this cross-claim against Government Defendants asserts that the Pork Promotion, Research, and Consumer Information Act violates their First Amendment rights to freedom of speech and freedom of association.

B. Jurisdiction and Venue

3. Jurisdiction over this cross-claim is conferred on the Court by 28 U.S.C. § 1331. This first cause of action seeks review of agency action under the Administrative Procedure Act, 5 U.S.C. § 501, *et seq.* Defendant-Intervenors/Cross-Complainants are suffering legal wrong because of the challenged agency action and are adversely affected and aggrieved by the

challenged agency action within the meaning of 5 U.S.C. § 702. Defendant-Intervenors/Cross-Complainants seek to have the challenged agency action held unlawful and set aside as not in accordance with law pursuant to 5 U.S.C. § 706. The second and third causes of action seek declaratory and injunctive relief that will end the producer assessments that fund the Pork Checkoff Program because such government-compelled assessments violate the First Amendment's rights to freedom of speech and freedom of association. This is an action for declaratory judgment under 28 U.S.C. § 2201, et seq. and Fed. R. Civ. P. 57 and for an injunction prohibiting continuation of the Pork Checkoff Program and prohibiting continued collection of the producer assessments funding that program.

4. Venue is proper in this District as pled by Plaintiffs' Complaint and admitted by Defendant-Intervenors' Answer to Plaintiffs' Complaint.

C. Parties

1. Defendant-Intervenors/Cross-Complainants

5. Defendant-Intervenor/Cross-Complainant Campaign for Family Farms (CFF) is an informal association of family farm and community membership organizations from several states, including the Land Stewardship Project (Minnesota), Iowa Citizens for Community Improvement, Missouri Rural Crisis Center, and the Illinois Stewardship Alliance, which advocate on behalf of independent hog producers. After conducting a year-long aggressive petition campaign, in May 1999 CFF submitted a petition to the Secretary of Agriculture with more than 19,000 signatures calling for a referendum on the termination of the Pork Checkoff Program. After the petitions were submitted, then-Secretary Dan Glickman conducted a pork producer and importer referendum on termination of the checkoff program. CFF was extensively involved throughout the referendum process, commenting on the agency's rules and policies for conducting the referendum and actively campaigning to get producers to vote for termination in

that referendum. CFF's member organizations have many pork producer members who are compelled to pay assessments that fund the Pork Checkoff Program. Many of these pork producer members object to the speech and expression funded through the Pork Checkoff Program. They object to being compelled to pay for generic or branded-product advertising for pork and pork products, consumer-information, and research conducted by the Pork Checkoff Program, all of which promote pork in a manner that is in opposition to their desire to distinguish their pork based on superior or unique quality, method of production and marketing, and/or their own branded products, and which is contrary to their interests. They also object to being compelled to associate with National Pork Producers Council, state pork producers associations, and the National Pork Board through the compelled checkoff assessments.

6. Defendant-Intervenor/Cross-Complainant Rodney Skalbeck is a pork producer from near Sacred Heart in Renville County, Minnesota, who signed the petition calling for a referendum to terminate the Pork Checkoff Program. Mr. Skalbeck voted for termination of the Pork Checkoff Program in the referendum conducted by USDA in August and September 2000. As a pork producer he has been paying the Pork Checkoff Program assessments for many years. He will be forced to continue to pay these assessments until this program is terminated as a result of the majority vote for termination in the referendum. Mr. Skalbeck is also a member of the Land Stewardship Project, which in turn is a member of the Campaign for Family Farms. Mr. Skalbeck objects to the speech and expression funded by the Pork Checkoff Program. He also objects to being compelled to associate with National Pork Producers Council, state pork producers associations, and the National Pork Board which receive the mandatory checkoff assessments he pays.

7. Defendant-Intervenor/Cross-Complainant James Dale Joens is a pork producer from near Wilmont in Nobles County, Minnesota, who signed the petition calling for a referendum to terminate the Pork Checkoff Program. Mr. Joens voted for termination of the Pork Checkoff Program in the referendum conducted by USDA in August and September 2000. As a pork producer he has been paying the Pork Checkoff Program assessments for many years. He will be forced to continue to pay these assessments until this program is terminated as a result of the majority vote for termination in the referendum. Mr. Joens is also a member of the Land Stewardship Project, which in turn is a member of the Campaign for Family Farms. Mr. Joens objects to the speech and expression funded by the Pork Checkoff Program. He also objects to being compelled to associate with National Pork Producers Council, state pork producers associations, and the National Pork Board which receive the mandatory checkoff assessments he pays.

8. Defendant-Intervenor/Cross-Complainant Richard Smith is a pork producer from near Wilmont in Nobles County, Minnesota, who signed the petition calling for a referendum to terminate the Pork Checkoff Program. Mr. Smith voted for termination of the Pork Checkoff Program in the referendum conducted by USDA in August and September 2000. As a pork producer he has been paying the Pork Checkoff Program assessments for many years. He will be forced to continue to pay these assessments until this program is terminated as a result of the majority vote for termination in the referendum. Mr. Smith is also a member of the Land Stewardship Project, which in turn is a member of the Campaign for Family Farms. Mr. Smith objects to the speech and expression funded by the Pork Checkoff Program. He also objects to being compelled to associate with National Pork Producers Council, state pork producers

associations, and the National Pork Board which receive the mandatory checkoff assessments he pays.

9. Defendant-Intervenor/Cross-Complainant Rhonda Perry is a pork producer from near Armstrong in Howard County, Missouri, who signed the petition calling for a referendum to terminate the Pork Checkoff Program. Ms. Perry is also a member of and the program director for the Missouri Rural Crisis Center, which is one of the member organizations of the Campaign for Family Farms. Ms. Perry voted for termination of the Pork Checkoff Program in the referendum conducted by USDA in August and September 2000. As a pork producer she has been paying the Pork Checkoff Program assessments for many years. She will be forced to continue to pay these assessments until this program is terminated as a result of the majority vote for termination in the referendum. Ms. Perry sells hogs through Patchwork Family Farms, which is an economic development project of the Missouri Rural Crisis Center. Patchwork Family Farms markets pork raised by Missouri family farmers who use sustainable production practices. Ms. Perry objects to the speech and expression funded by the Pork Checkoff Program. She also objects to being compelled to associate with National Pork Producers Council, state pork producers associations, and the National Pork Board which receive the mandatory checkoff assessments she pays.

10. Defendant-Intervenor/Cross-Complainant Lawrence E. Ginter, Jr. is a pork producer from near Rhodes in Marshal County, Iowa, who signed the petition calling for a referendum to terminate the Pork Checkoff Program. Mr. Ginter is also a member of Iowa Citizens for Community Improvement, which is one of the member organizations of the Campaign for Family Farms. Mr. Ginter voted for termination of the Pork Checkoff Program in the referendum conducted by USDA in August and September 2000. As a pork producer he has been paying the

Pork Checkoff Program assessments for many years. He will be forced to continue to pay these assessments on any hogs he raises until this program is terminated as a result of the majority vote for termination in the referendum. Mr. Ginter objects to the speech and expression funded by the Pork Checkoff Program. He also objects to being compelled to associate with National Pork Producers Council, state pork producers associations, and the National Pork Board which receive the mandatory checkoff assessments he pays.

11. Defendant-Intervenor/Cross-Complainant Stan Scott Schutte is a pork producer from near Stewardson in Shelby County, Illinois, who signed the petition calling for a referendum to terminate the Pork Checkoff Program. Mr. Schutte is also a member of Illinois Stewardship Alliance, which is one of the member organizations of the Campaign for Family Farms. Mr. Schutte voted for termination of the Pork Checkoff Program in the referendum conducted by USDA in August and September 2000. As a pork producer he has been paying the Pork Checkoff Program assessments for many years. He will be forced to continue to pay these assessments until this program is terminated as a result of the majority vote for termination in the referendum. Mr. Schutte objects to the speech and expression funded by the Pork Checkoff Program. He also objects to being compelled to associate with National Pork Producers Council, state pork producers associations, and the National Pork Board which receive the mandatory checkoff assessments he pays.

2. Government Defendants/Cross-Defendants

12. Defendant Ann Veneman is the Secretary of the United States Department of Agriculture. Defendant Kenneth Clayton is the Acting Administrator of USDA's Agricultural Marketing Service. These Government Defendants are responsible for implementation and administration of the Pork Checkoff Program according to statutory and regulatory authority,

including those regulations related to the referendum on termination conducted by USDA in August and September of 2000. These Government Defendants are also responsible for overseeing the actions of the National Pork Board related to the Pork Checkoff Program.

D. General Allegations

13. The Pork Promotion, Research, and Consumer Information Act of 1985, as amended, provides the statutory authority for the Pork Checkoff Program. 7 U.S.C. §§ 4801, et seq. Pursuant to the procedures set out in the statute, USDA's Agricultural Marketing Service issued the Pork Promotion, Research, and Consumer Information Order, 7 C.F.R. Part 1230.

14. The Pork Checkoff Program requires that every person producing porcine animals pay a certain percentage of the sale proceeds for those animals to the National Pork Board (NPB). 7 U.S.C. § 4809(a) and 7 C.F.R. § 1230.71. These producer assessments, commonly known as pork checkoff funds, are used by the NPB to pay for promotion, research, and consumer information regarding porcine animals, pork, and pork products and for administration of the checkoff program. 7 U.S.C. § 4809(c)(3)(B) and 7 C.F.R. §§ 1230.60 and 1230.72. Historically, the vast majority of the pork checkoff funds have been granted to the National Pork Producers Council (NPPC) and its state affiliates to conduct promotion, research, and consumer information programs. Producers pay tens of millions of dollars into the pork checkoff fund annually.

15. The Secretary of Agriculture appoints the members of the National Pork Producer Delegate Body from nominations made by state pork producer associations. 7 U.S.C. § 4806. The Secretary of Agriculture then appoints the members of the NPB from nominations received from this National Pork Producer Delegate Body. 7 U.S.C. § 4808. The NPB collects pork checkoff assessments and administers the order and the program it embodies. 7 U.S.C.

§§ 4808(b) and 4809, 7 C.F.R. §§ 1230.58 and 1230.71. The Secretary of Agriculture approves budgets and project plans for the use of the checkoff funds submitted by the NPB and generally oversees the NPB's administration of the program. 7 U.S.C. § 4808(b).

16. Former Secretary of Agriculture Dan Glickman called for and conducted a pork producer and importer referendum on termination of the Pork Checkoff Program. This referendum was conducted according to final agency rules issued after notice and comment. These final referendum rules are found at 65 Fed. Reg. 43,498-43,525 (July 13, 2000) (to be codified at 7 C.F.R. Part 1230, Subpart E). Pork producers and importers were allowed to vote in this referendum from August 18, 2000, through September 21, 2000.

17. The final referendum rules require termination of the Pork Checkoff Program upon the majority vote for termination by the producers and importers voting in the referendum. 65 Fed. Reg. 43,498, 43,509 (July 13, 2000) (to be codified at 7 C.F.R. § 1230.622(b)). The agency's contemporaneous explanation of this rule makes it absolutely clear that the Pork Checkoff Program and the producer assessments funding it must be terminated upon a majority vote favoring termination in this referendum:

The Pork Checkoff Program would be terminated if a majority of producers and importers voting the referendum favor termination.

* * *

Assessment collection under the Order would be terminated not later than 30 days after the date it is determined that termination of the Order is favored by a majority of the producers and importers voting in the referendum.

65 Fed. Reg. 43,498, at 43,498 and 43,501 (July 13, 2000).

18. On January 11, 2001, former Secretary of Agriculture Dan Glickman announced that a majority of the votes cast in the referendum conducted between August 18 and September 21,

2000, were against continuing the program. Exhibit A. Secretary Glickman directed USDA's Agricultural Marketing Service to terminate the order and program conducted under it, citing the agency's contemporaneous explanation of the final referendum rules which provides "the checkoff program will be terminated if termination is favored by a majority of those voting" and finding that the Pork Checkoff Program "cannot fulfill its stated purposes" or "achieve the objectives of the law." Exhibit A.

19. In an attempt to settle the original claims of Plaintiffs in this lawsuit, on or about February 28, 2001, USDA's Agricultural Marketing Service entered into an agreement with Plaintiffs by which, contrary to law, it agreed that "USDA will take no action to terminate the Pork Checkoff Program based on the January 11, 2001, announcement of then-Secretary Glickman and/or the survey and referendum discussed in that announcement." Exhibit B.

E. First Cause of Action: Decision Not to Terminate Pork Checkoff Program Must be Declared Unlawful and Set-Aside Pursuant to the Administrative Procedure Act

20. Paragraphs 1 through 19 are incorporated by reference.

21. Secretary Veneman's and the Agricultural Marketing Service's February 28, 2001, decision to not take action to terminate the Pork Checkoff Program is not in accordance with law, which must be declared unlawful and set aside pursuant to the Administrative Procedure Act, 5 U.S.C. § 706. This decision is in violation of the final referendum rule that requires termination of the Pork Checkoff Program upon a majority vote for such termination by those voting in the August 18 through September 21, 2000, referendum. 65 Fed. Reg. 43,498-525 (July 13, 2000) (to be codified at 7 C.F.R. Part 1230, Subpart E).

22. Because the Pork Checkoff Program must be terminated according to the final referendum rules, Government Defendants Secretary Veneman and AMS Administrator Clayton

did not have the authority to enter into the February 28, 2001, settlement agreement with Plaintiffs.

23. The individual pork producer Defendant-Intervenors/Cross-Complainants Rodney Skalbeck, Jim Dale Joens, Richard Smith, Rhonda Perry, and Lawrence E. Ginter, Jr., and the pork producer members of CFF organizations are directly harmed by Government Defendants' decision not to terminate the Pork Checkoff Program. These pork producers are directly harmed because they are required to continue to pay the checkoff assessments on all porcine animals they sell contrary to the final referendum rule that requires termination upon majority vote for termination in the August/September 2000 referendum. Had Government Defendants complied with the final referendum rules and terminated the Pork Checkoff Program, these producers would have been relieved of their obligation to pay these assessments.

F. Second Cause of Action: The Pork Checkoff Program Must be Terminated Because It Violates the First Amendment Free Speech Guarantees

24. Paragraphs 1 through 25 are incorporated by reference.

25. The United States Supreme Court recently issued its decision in United States v. United Foods, Inc., No. 00-276, 121 S. Ct. 2334 (June 25, 2001), holding that the Mushroom Promotion, Research, and Consumer Information Act, 7 U.S.C. §6101, et seq., is unconstitutional because it violates producers' First Amendment rights of free speech.

26. The United States Department of Agriculture in the United Foods case acknowledged that the Pork Checkoff Program is analogous to the mushroom program. Cert. Pet. at 13, United States v. United Foods, Inc., No. 00-276 (filed Aug. 18, 2000).

27. Production and marketing in the pork sector is analogous to that in the mushroom sector on all key elements addressed by the recent United States Supreme Court in its United Foods decision.

28. The Pork Promotion, Research, and Consumer Information Act of 1985, as amended, addresses only advertising, research, and consumer information programs. 7 U.S.C. §§ 4801, et seq. The Act does not regulate the pork industry in any manner other than providing for these programs. The promotion, research, and consumer information programs authorized by the Act are not ancillary to a more comprehensive program restricting pork producers' marketing autonomy. The Act expressly does not regulate prices, levels of supply, production levels, or in any other manner restrict competition in the pork production industry. See, e.g., 7 U.S.C. § 4801(b)(3).

29. In the pork sector there is no comprehensive statutory or regulatory program restricting marketing autonomy for pork producers. There are no marketing orders or other regulatory structures in the pork sector that displace aspects of independent business activities of pork producers to such an extent that they are expressly exempted from antitrust laws. There are no marketing orders or other regulatory structures that are characterized by collective action, rather than aggregated consequences of independent competitive choices of pork producers.

30. The pork production market has not been collectivized, subjected to uniform prices, or subjected to restrictions on supply. Pork producers are not bound together or required by law to market their product in a cooperative structure. Rather, pork producers exercise the freedom to market independently and competitively compete for markets for their livestock.

31. The Pork Promotion, Research, and Consumer Information Act does not serve a compelling government purpose sufficient to permit under the First Amendment compelling producers to pay for speech and expression to which they disagree.

32. It is a violation of pork producers' First Amendment rights to freedom of speech to be compelled pursuant to the Pork Promotion, Research, and Consumer Information Act to pay checkoff assessments that are used to underwrite and sponsor speech and expression to which they object.

33. The Campaign for Family Farms, on behalf of the pork producer members of its member organizations, generally objects to the content of the speech and expression included in the advertising, research, and consumer information programs paid for with producers' checkoff assessments. The individual pork producers who are defendant-intervenors/cross-complainants also object to the content of the speech and expression included in the advertising, research, and consumer information program paid for with their checkoff assessments. Defendant-Intervenors/Cross-Complainants object because the generic advertising, consumer information, and research programs paid for through the Pork Checkoff Program promotes pork in a manner that is in opposition to their desire to distinguish their pork based on superior or unique quality, method of production and marketing, and/or their own branded products, and which is contrary to their social and financial interests.

34. Defendant-Intervenors/Cross-Complainants are injured by the Pork Checkoff Program violation of their First Amendment right to freedom of speech.

G. Third Cause of Action: The Pork Checkoff Program Must Be Terminated Because It Violates Producers' Freedom of Association Rights Under the First Amendment.

35. Paragraphs 1 through 34 are incorporated by reference.

36. Defendant-Intervenors/Cross-Complainants object to association with the National Pork Producers Council, a private trade organization that has historically been the principal contractor for the National Pork Board and received the majority of the Pork Checkoff Program funds. Defendant-Intervenors/Cross-Complainants also object to association with some state pork producers associations that receive Pork Checkoff Program funds through contract with the National Pork Board and to association with the National Pork Board.

37. Defendant-Intervenors/Cross-Complainants object to many of the policies and programs advocated for and administered by the National Pork Producers Council, state pork producers associations, and the National Pork Board. They object to being compelled to associate with these organizations through mandatory assessments required by the Pork Promotion, Research, and Consumer Information Act.

38. The Pork Promotion, Research, Consumer Information Act violates Defendant-Intervenors/Cross-Complainants' right to freedom of association under the First Amendment to the United States Constitution in that it unlawfully compels them to associate with the National Pork Producers Council, state pork producer associations, and the National Pork Board through mandatory assessments that are paid to these organizations for pork promotion, research, and consumer education programs.

39. Defendant-Intervenors/Cross-Complainants are injured by the Pork Checkoff Program violation of their First Amendment right to freedom of association.

H. Prayer for Relief

WHEREFORE, Defendant-Intervenors/Cross-Complainants ask the Court to grant relief as follows:

A. A declaratory judgment that the Pork Checkoff Program must be terminated and that Secretary Veneman's decision not to take action to terminate the program based on the majority vote of the producers in the August-September 2000 referendum is unlawful.

B. A declaratory judgment that the Pork Checkoff Program violates the Defendant-Intervenors/Cross-Complainants' constitutionally guaranteed rights to freedom of speech and freedom of association under the First Amendment to the United States Constitution.

C. An injunction prohibiting the continuation of the Pork Checkoff Program and prohibiting collection of the producer assessments on all porcine animals sold that fund this program.

D. Other preliminary or permanent relief as the Court deems proper.

E. Award their costs and attorneys fees.

Dated: January 18, 2002

Respectfully submitted,

s/Lynn A. Hayes

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