

Cornhusker Economics

Cooperative Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
University of Nebraska – Lincoln

U.S. Supreme Court Rejects Amendment E Appeal

On August 19, 2003 the Eighth Circuit Federal Court of Appeals ruled that South Dakota's constitutional "Amendment E" restricting corporate farming violated the Interstate Commerce Clause of the U.S. Constitution. *South Dakota Farm Bureau v Hazeltine*, 340 F3d 583 (8CA 2003). On May 3, 2004 the U.S. Supreme Court rejected the State of South Dakota's appeal of the *Hazeltine* ruling. Because Amendment E is similar to Nebraska's Initiative 300 (I300), the Supreme Court decision allowing the *Hazeltine* decision to stand suggests that I300 may be vulnerable to a similar legal challenge.

Adopted in 1998, Amendment E was challenged by South Dakota feedlots that fed livestock owned by out-of-state business entities whose livestock ownership would violate Amendment E. These plaintiffs contended that Amendment E violated the Federal Interstate Commerce Clause because it prevented out-of-state business entities from owning livestock in South Dakota. In its opinion, the Court of Appeals took note of statements by Amendment E supporters that the amendment would prevent Murphy Farms and Tyson Foods (both out-of-state corporations) from operating swine production facilities in South Dakota. The Appeals Court interpreted these statements as reflecting a discriminatory bias against out-of-state corporations. The Court ruled that this discriminatory intent by itself violated the Federal Interstate Commerce Clause, making Amendment E unconstitutional.

Surprisingly, the Court of Appeals did not analyze the actual language of Amendment E. If it had, the Court could have realized that Amendment E treated South Dakota non-family farm corporations identically with non-South Dakota non-family farm corporations,

Market Report	Yr Ago	4 Wks Ago	5/7/04
Livestock and Products,			
Average Prices for Week Ending			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$79.26	\$86.22	\$92.00
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	90.14	104.00	111.60
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	96.80	110.36	119.42
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	125.18	140.01	146.96
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	44.00	44.00	58.25
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	*	*	*
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	102.47	113.20	123.74
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	107.00	*	*
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	192.65	193.15	186.78
Crops,			
Cash Truck Prices for Date Shown			
Wheat, No. 1, H.W. Omaha, bu	3.37	4.06	4.08
Corn, No. 2, Yellow Omaha, bu	2.37	3.10	2.91
Soybeans, No. 1, Yellow Omaha, bu	6.25	9.71	10.47
Grain Sorghum, No. 2, Yellow Kansas City, cwt	4.32	5.64	5.09
Oats, No. 2, Heavy Minneapolis, MN, bu	1.73	1.93	1.86
Hay,			
First Day of Week Pile Prices			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	125.00	150.00	150.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	72.50	55.00	55.00
Grass Hay, Sm. Square, Good Northeast Nebraska, ton	117.50	87.50	87.50
* No market.			



UNIVERSITY OF NEBRASKA-LINCOLN, COOPERATING WITH THE COUNTIES AND THE U.S. DEPARTMENT OF AGRICULTURE

University of Nebraska Cooperative Extension educational programs abide with the non-discrimination policies of the
University of Nebraska-Lincoln and the United States Department of Agriculture.



and concluded that no economic discrimination existed against out-of-state corporations (the same is true for I300).

One of the important legal issues in *Hazeltine* is whether campaign statements regarding a law are sufficient by themselves to make that law unconstitutional. The U.S. Supreme Court has ruled that courts may consider such campaign statements and other indications of what lawyers refer to as legislative history in determining whether there is an intent to discriminate against interstate commerce. However, these campaign statements are typically only one of several factors which the courts must consider in determining whether the law is discriminatory. In *Hazeltine*, the Eighth Circuit Court of Appeals considered **only** the campaign statements of Amendment E supporters, and did not analyze whether Amendment E in fact did discriminate against out-of-state economic interests. My very preliminary legal research suggests that the U.S. Supreme Court has not yet ruled that campaign statements alone are sufficient to invalidate a state law for violating the commerce clause. If this preliminary legal research is correct, the Supreme Court could in the future accept a similar appeal (for example of a Federal Appeals Court ruling that I300 is unconstitutional) to determine whether campaign statements alone are legally sufficient to declare a state law unconstitutional, without having to further consider whether or not the law in fact unlawfully discriminates against out-of-state economic interests.

Since *Hazeltine* was not overruled by the Supreme Court, I300 is vulnerable to a similar legal challenge. If I300 opponents follow the same approach successfully pursued in *Hazeltine*, they would need to provide evidence that I300 supporters made campaign statements indicating an intent to discriminate against out-of-state economic interests. The author does recollect that one dimension of the pro-I300 campaign was an attempt to prevent out-of-state corporations (like the Prudential Insurance Company) from owning or operating Nebraska farms or ranches. If these and similar statements could be documented, the I300 challengers might successfully challenge the constitutionality of I300. If the Federal Courts followed the *Hazeltine* reasoning, such documentation could by itself be sufficient to invalidate I300.

Beyond the campaign statement issue, out-of-state business entities (such as out-of-state corporate meat packers) could argue that I300 discriminates against

packers by not allowing them to own livestock and have it custom-fed in Nebraska, the same allegation feeders successfully used in *Hazeltine*. This would give the Eighth Circuit an opportunity to reconsider its *Hazeltine* opinion. One hopes that Federal Courts would give this issue more thoughtful consideration than it received in *Hazeltine*. If this occurred, the Federal Courts could easily conclude that out-of-state corporate meat packers are subject to the same livestock ownership restrictions as in-state corporate meat packers, so no discrimination exists.

In any event, the ultimate outcome of a *Hazeltine* legal challenge to I300 is uncertain, but any I300 legal challenge is certain to generate plenty of controversy.

J. David Aiken, (402) 472-1848
Professor, Water & Agricultural Law Specialist
daiken1@unl.edu