

No. 03-1411

In the United States Court of Appeals
for the Eighth Circuit

SMITHFIELD FOODS, INC.; MURPHY FARMS, LLC; and
PRESTAGE-STOECKER FARMS, INC.,

Plaintiffs-Appellees,

vs.

THOMAS J. MILLER, Attorney General of the State of Iowa, in
his Official Capacity,

Defendant-Appellant.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
Hon. ROBERT W. PRATT, Judge

**Supplemental Brief of *Amici Curiae* Iowa Citizens for
Community Improvement, Missouri Rural Crisis Center,
Land Stewardship Project, Illinois Stewardship Alliance,
Citizens Action Coalition of Indiana, Campaign for Family
Farms, and National Family Farm Coalition in Support of
Defendant-Appellant Thomas J. Miller and in Support of
Reversal of the Judgment Below**

Susan E. Stokes
David R. Moeller
FARMERS' LEGAL ACTION GROUP, INC.
1301 Minnesota Building
46 East Fourth Street
St. Paul, Minnesota 55101
Telephone: 651-223-5400
Facsimile: 651-223-5335
Attorneys for *Amici Curiae*

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eighth Circuit Rule 26.1A, Iowa Citizens for Community Improvement, Missouri Rural Crisis Center, Land Stewardship Project, Illinois Stewardship Alliance, Citizens Action Coalition of Indiana, and National Family Farm Coalition are all not-for-profit corporations. The Campaign for Family Farms is an unincorporated association.

s/ David R. Moeller

DAVID R. MOELLER
Attorneys for *Amici Curiae*

Dated: October 16, 2003

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
ARGUMENT	2
I. THE PURPOSE OF THE IOWA BAN ON PACKER LIVESTOCK OWNERSHIP DOES NOT VIOLATE THE COMMERCE CLAUSE.....	2
A. This Court Must Consider the 2003 Changes in Iowa Code § 9H.2.	2
B. The Text of Iowa Code § 9H.2 Demonstrates That It Does Not Violate the Commerce Clause.	4
C. Iowa Code § 9H.2 is Facially Neutral and Does Not Discriminate Under the Commerce Clause.	10
CONCLUSION	12

TABLE OF AUTHORITIES

Cases

<i>American Meat Inst. v. Barnett</i> , 64 F. Supp. 2d 906 (D.S.D. 1999).....	6
<i>Asbury Hosp. v. Cass County</i> , 326 U.S. 207 (1945).....	12
<i>Chemical Waste Mgmt., Inc. v. Hunt</i> , 504 U.S. 334 (1992)	8
<i>Coleman v. Lyng</i> , 864 F.2d 604 (8th Cir. 1988)	3
<i>Cotto Waxo Co. v. Williams</i> , 46 F. 3d 790 (8th Cir. 1995)	8, 9
<i>CTS Corp. v. Dynamics Corp. of Am.</i> , 481 U.S. 69 (1987).....	10
<i>Diffenderfer v. Central Baptist Church</i> , 404 U.S. 412 (1972)	2
<i>Exxon Corp. v. Governor of Maryland</i> , 437 U.S. 117 (1978)	10
<i>Fusari v. Steinberg</i> , 419 U.S. 379 (1975).....	2
<i>Hall v. Beals</i> , 396 U.S. 45 (1969).....	2
<i>Hampton Feedlot, Inc. v. Nixon</i> , 249 F.3d 814 (8th Cir. 2001).....	11
<i>Hughes v. Oklahoma</i> , 441 U.S. 322 (1979).....	9
<i>Hunt v. Washington State Apple Advertising Comm’n</i> , 432 U.S. 333 (1977)	8
<i>Le Mars Mutual Ins. Co. of Iowa v. Bonnecroy</i> , 304 N.W.2d 422 (Iowa 1981)	6
<i>Maine v. Taylor</i> , 477 U.S. 131 (1986)	8
<i>Minnesota v. Clover Leaf Creamery Co.</i> , 449 U.S. 456 (1981)	11
<i>Northern States Power Co. v. United States</i> , 73 F.3d 764 (8th Cir. 1996).....	5
<i>Omaha Nat’l Bank v. Spire</i> , 389 N.W.2d 269 (Neb. 1986).....	12
<i>Oregon Waste Sys., Inc. v. Dep’t of Env’tl. Quality</i> , 511 U.S. 93 (1994).....	8, 10
<i>Perry v. Commerce Loan Co.</i> , 383 U.S. 392 (1966)	5
<i>Pike v. Bruce Church, Inc.</i> , 397 U.S. 137 (1970)	7

<i>Rosenstiel v. Rodriguez</i> , 101 F.3d 1544 (8th Cir. 1996), <i>cert. denied</i> , 520 U.S. 1229 (1997).....	2
<i>Ruthven Consol. School Dist. v. Emmertsburg Community School Dist.</i> , 382 N.W.2d 136 (Iowa 1986).....	6
<i>Security Bank Minnesota v. Commissioner</i> , 994 F.2d 432 (8th Cir. 1993).....	5
<i>Smithfield Foods, Inc. v. Miller</i> , 241 F. Supp. 2d 978 (S.D. Iowa 2002).....	3, 7
<i>South Dakota Farm Bureau v. Hazeltine</i> , 202 F. Supp. 2d 1020 (D.S.D. 2002)	11, 12
<i>South Dakota Farm Bureau, Inc. v. Hazeltine</i> , 340 F.3d 583 (8th Cir. 2003), <i>petition for en banc filed</i> (8th Cir. Sept. 17, 2003) (No. 02- 2366).....	4
<i>State ex rel. Webster v. Lehdorff Geneva, Inc.</i> , 744 S.W.2d 801 (Mo. 1988).....	12
<i>U & I Sanitation v. City of Columbus</i> , 205 F.3d 1063 (8th Cir. 2000).....	10
<i>United States v. Vig</i> , 167 F.3d 443 (8th Cir. 1999)	5
<i>United Waste Sys. of Iowa, Inc. v. Wilson</i> , 189 F.3d 762 (8th Cir. 1999).....	10
<i>Waste Sys. Corp. v. County of Martin</i> , 985 F.2d 1381 (8th Cir. 1993)	7, 9

Statutes

Iowa Code § 9H.2	passim
------------------------	--------

Treatises

Sutherland Statutory Construction, Vol. 2A (6th ed. 2000).....	5, 6
---	------

INTRODUCTION

The Iowa ban on packer livestock ownership, Iowa Code § 9H.2, as amended by the Iowa legislature during its 2003 session, does not violate the dormant Commerce Clause. In 2003 the Iowa legislature enacted multiple changes to Iowa Code § 9H.2, including amending the section setting forth the purpose of Iowa's law. This Court asked the parties to address the impact the recent changes to Iowa Code § 9H.2 have on the dormant Commerce Clause challenge in the instant case, including whether any issues presented under the prior law have been mooted and whether this court can consider the impact of the new law in the first instance. *See* No. 03-1411, Order of Oct. 10, 2003. This supplemental brief of *Amici Curiae* Iowa Citizens for Community Improvement, Missouri Rural Crisis Center, Land Stewardship Project, Illinois Stewardship Alliance, Citizens Action Coalition of Indiana, Campaign for Family Farms, and National Family Farm Coalition,¹ specifically addresses the changes in the purpose clause of Iowa Code § 9H.2, unnumbered paragraph 1.

The purpose of Iowa's ban on packer ownership of livestock now reads as follows:

The purpose of this section is to preserve free and private enterprise, prevent monopoly, and also to protect consumers by regulating the balance of

¹ *Amici Curiae* previously filed a Brief in this case on April 22, 2003, that was accepted for filing.

competitive forces in beef and swine production, by enhancing the welfare of the farming community, and also by preventing processors from gaining control of beef or swine production.

S.F. 341, 80th Gen. Assem., 1st Sess. (Iowa 2003) (effective May 9, 2003) (2003 language underlined). This amended language demonstrates the Iowa legislature's legitimate state function in balancing competition in agriculture, preserving family farms, and regulating beef and swine processors.

ARGUMENT

I. THE PURPOSE OF THE IOWA BAN ON PACKER LIVESTOCK OWNERSHIP DOES NOT VIOLATE THE COMMERCE CLAUSE.

A. This Court Must Consider the 2003 Changes in Iowa Code § 9H.2.

This Court must conduct its analysis of the statute in its presently existing form, as amended, not the law that was in effect at the time of the original judgment to ensure that the matter has not become moot. *Fusari v. Steinberg*, 419 U.S. 379, 387 (1975); *Diffenderfer v. Central Baptist Church*, 404 U.S. 412, 414 (1972); *Hall v. Beals*, 396 U.S. 45, 48 (1969). In *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1548 (8th Cir. 1996), *cert. denied*, 520 U.S. 1229 (1997), this Court held that its appellate review of a First Amendment challenge to a statute must take place “in the light of the Minnesota statute as it now stands, not as it stood when the judgment below was entered.” Therefore, this Court should consider Smithfield's Commerce Clause challenge in light of the amended version of Iowa Code § 9H.2,

which includes additional purpose language and no longer exempts cooperatives adhering to this law.

The removal of the exemption for cooperatives does make moot a significant portion of the basis for the district court's decision and Smithfield's Commerce Clause challenge. The district court rejected Iowa's argument that cooperatives are a different type of entity that enjoy differential treatment under federal law and also rejected arguments that the cooperative exemption language can be severed from the rest of Iowa Code § 9H.2. *Smithfield Foods, Inc. v. Miller*, 241 F. Supp. 2d 978, 990-91 (S.D. Iowa 2002). With the 2003 amendments, the Iowa legislature made moot the issues related to the cooperative exemption. *See Coleman v. Lyng*, 864 F.2d 604 (8th Cir. 1988) (FmHA's appeal was moot because Congress enacted legislation).

The amendment to the purpose section underscores that the remainder of Smithfield's challenge is without legal merit and should be overturned. While Smithfield would have this Court imply additional language to Iowa's purpose text (*See Br. Appellee at 35*) that suggestion ignores the plain language of the law, including to "enhance the welfare of the farming community." Iowa Code § 9H.2. This purpose language is not favoritism for Iowa family farmers, but instead the farming community, regardless of geographic location. Smithfield may not like it

that the Iowa legislature’s purpose is to preserve family farms, but that does not mean Iowa Code § 9H.2 violates the Commerce Clause.

B. The Text of Iowa Code § 9H.2 Demonstrates That It Does Not Violate the Commerce Clause.

The purpose of Iowa Code §9H.2 is reflected in the statute itself. The plain language of the statute — both at the time the district court considered it and as it now reads — establishes that the statute does not discriminate against interstate commerce and therefore does not violate the Commerce Clause. The district court in the instant case erroneously looked at statements and publications of Iowa officials to find a discriminatory purpose rather than following established precedent for determining legislative intent. *Smithfield Foods*, 241 F. Supp. 2d at 992-93.²

The Supreme Court and this Court have repeatedly held that, in interpreting the purpose of laws, courts are not to go beyond the language of the law itself if the language is clear. As the Supreme Court stated: “There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the

² A recent decision of the Eighth Circuit also incorrectly followed this same approach in finding that South Dakota’s constitutional initiative prohibiting corporations from owning farmland or engaging in farming was enacted with a discriminatory purpose, failing to analyze the actual text of the law enacted by South Dakota voters. *South Dakota Farm Bureau, Inc. v. Hazeltine*, 340 F.3d 583, 592-97 (8th Cir. 2003), *petition for en banc filed* (8th Cir. Sept. 17, 2003) (No. 02-2366).

legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation.” *Perry v. Commerce Loan Co.*, 383 U.S. 392, 400 (1966). The Eighth Circuit has emphasized this principle, holding that when “statutes are straightforward and clear, legislative history and policy arguments are at best interesting, at worst distracting and misleading, and in neither case authoritative.” *Northern States Power Co. v. United States*, 73 F.3d 764, 766 (8th Cir. 1996); *see also United States v. Vig*, 167 F.3d 443, 448 (8th Cir. 1999) (“Unless exceptional circumstances dictate otherwise, when the terms of a statute are unambiguous, judicial inquiry is complete.”); *Security Bank Minnesota v. Commissioner*, 994 F.2d 432, 436 (8th Cir. 1993) (“As in all cases of statutory interpretation, we must start with the text of the statute.”).

The reason the purpose language is the best way to determine intent is the inherent unreliability of the type of evidence that the district court utilized in the instant case. As a leading treatise on statutory interpretation states, in the legislative arena, “[r]eferences to the motives of legislators in enacting a law are uniformly disregarded for interpretative purposes except as expressed in the statute itself.” Sutherland Statutory Construction, Vol. 2A, § 48.17 at 481 (6th ed. 2000). To extract the purpose of Iowa Code § 9H.2 from select officials who may have diverse reasons for participating in a legislative process is improper. *See, e.g.*,

American Meat Inst. v. Barnett, 64 F. Supp. 2d 906, 916 (D.S.D. 1999) (“Extrinsic evidence of legislative intent is not admissible.”); *Ruthven Consol. School Dist. v. Emmertsburg Community School Dist.*, 382 N.W.2d 136, 140 (Iowa 1986) (“[W]e will not consider a legislator’s private interpretation of the statute, even if the legislator was actively engaged in drafting and enacting the legislation.”).

The Iowa Supreme Court has noted that, in analyzing a statute:

Rules of statutory construction are to be resorted to only when the terms of the statute are ambiguous. Precise and unambiguous language is given its plain and rational meaning as used in conjunction with the subject considered. Thus, it is not for the court to speculate as to the probable legislative intent apart from the wording used in the statute. The court must look to what the legislature said rather than what it should or might have said.

Le Mars Mutual Ins. Co. of Iowa v. Bonnecroy, 304 N.W.2d 422, 424 (Iowa 1981) (citations omitted). The district court in this case skipped over the unambiguous language describing the purpose of Iowa Code § 9H.2, and wrongly considered extraneous sources of legislative intent.³ The additional language added by the Iowa legislature in 2003 reinforces the nondiscriminatory purpose of the law, reaffirming that the law is intended to balance competition in agriculture, preserve

³ The statement of State Senator Iverson, in the Iowa Governor’s report, and other information relied on by the district court are at most mere legislative history, and even that level of usage is suspect. *See, e.g.*, Sutherland Statutory Construction, Vol. 2A, § 48.15 at 477-78 (6th ed. 2000) (cautioning against the use of statements by sponsors of legislation).

family farms, and regulate beef and swine processors. On its face, the intent is not to discriminate against Smithfield or any other out-of-state corporation.

As justification for evaluating external sources to determine the purpose of Iowa's law, the district court relied on the following statement in *Waste Sys. Corp. v. County of Martin*, 985 F.2d 1381, 1387 (8th Cir. 1993):

When considering the purpose of a challenged statute, [the] Court is not bound by the name, description or characterization given it by the legislature or the courts of the State, but will determine for itself the practical impact of the law.

Smithfield Foods, 241 F. Supp. 2d at 992. The district court, however, took this statement out of context. The court in *Waste Systems* made that statement not as a justification for considering legislative history (which it did not do), but rather in the context of determining whether the statute had a discriminatory effect. The district court also erred when it viewed Iowa Code § 9H.2 using "strict scrutiny" based solely on its flawed finding of discriminatory intent. Because Iowa's law is not discriminatory on its face or in effect, the court should have applied the balancing test set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

While the district court initially set forth the correct analysis for analyzing a challenge to a state statute under the dormant Commerce Clause, it applied the test incorrectly. The district court correctly noted that dormant Commerce Clause challenges are subject to a two-tiered analysis. First, the court determines if the statute discriminates against interstate commerce. *Oregon Waste Sys., Inc. v. Dep't*

of Env'tl. Quality, 511 U.S. 93, 99 (1994). If the challenged statute discriminates against interstate commerce “either on its face or in practical effect,” it burdens interstate commerce directly and is subject to strict scrutiny. *Maine v. Taylor*, 477 U.S. 131, 138 (1986); *Cotto Waxo Co. v. Williams*, 46 F.3d 790, 793 (8th Cir. 1995).

The district court relied on *SDDS, Inc. v. South Dakota*, 47 F.3d 263, 267 (8th Cir. 1995), in which this Court applied strict scrutiny to invalidate a South Dakota referendum under the Commerce Clause. *Smithfield Foods*, 241 F. Supp. 2d at 986. The referendum at issue in *SDDS* in fact had a discriminatory effect on out-of-state interests, and the court found it was enacted with a discriminatory purpose. *SDDS*, 47 F.3d at 270-71. The *SDDS* decision, however, confusingly stated that discriminatory purpose alone can trigger strict scrutiny, relying on cases that applied a strict scrutiny standard. *Id.* at 268. The courts in those cases found the statutes in question to either discriminate on their face (*see Chemical Waste Mgmt., Inc. v. Hunt*, 504 U.S. 334, 342-43 (1992) (“The Act’s additional fee facially discriminates against hazardous waste generated in the United States other than Alabama”)) or to discriminate in effect. *See Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333, 352-53 (1977) (statute had the “practical effect” of discriminating against Washington apple growers and dealers while leaving North Carolina apple producers unaffected); *Waste Sys. Corp.*, 985 F.2d at

1386-87 (ordinance discriminated on its face and in effect). *SDDS* therefore is misleading by implying that strict scrutiny can be triggered either by a finding of discriminatory effect *or* by a finding of discriminatory purpose. *SDDS*, 47 F.3d at 268. None of the cases relied on by *SDDS* actually applied a strict scrutiny standard solely because of a finding of discriminatory purpose; rather, the purpose of the legislation at issue in those cases was discussed *after* a finding that the legislation in fact discriminated on its face or in effect, in order to determine whether or not the statute satisfied strict scrutiny.

The district court's approach puts the cart before the horse. The test established by the Supreme Court and applied in this Circuit is that, in order to save a discriminating statute under the strict scrutiny standard, a state must show "that the statute serves a legitimate local purpose unrelated to economic protectionism and that the purpose could not be served as well by nondiscriminatory means." *Cotto Waxo*, 46 F.3d at 790, *citing Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979). The inquiry into the purpose of the legislation accordingly comes *after* the finding that the statute discriminates on its face or in effect; discriminatory purpose is not a stand-alone basis for applying strict scrutiny in the first place.

As shown above, however, courts are first supposed to consider the text of the law before considering the legislative history. Legislation often may be

supported by proponents whose individual motivation may not comport with the motives of those who ultimately pass it. However, because the plain language of Iowa Code § 9H.2 is unambiguous and does not discriminate against interstate commerce, the district court applied the wrong standard and the decision below should be reversed.

C. Iowa Code § 9H.2 is Facially Neutral and Does Not Discriminate Under the Commerce Clause.

Iowa Code § 9H.2, as amended, does not discriminate on its face or in effect: it forbids all corporations — regardless of where they are located — from processing hogs and cattle. “For purposes of the dormant Commerce Clause, ‘discrimination’ means ‘differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.’” *U & I Sanitation v. City of Columbus*, 205 F.3d 1063, 1067 (8th Cir. 2000) (quoting *Oregon Waste Sys.*, 511 U.S. at 99). “The fact that the burden of a state regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce.” *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 126 (1978); *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 88 (1987) (upholding an Indiana corporate takeover law that applied to all hostile tender offers even though its application would fall most often on out-of-state companies); *see also United Waste Sys. of Iowa, Inc. v. Wilson*, 189 F.3d 762, 767 (8th Cir. 1999) (“If

taken to an extreme, every state regulation would have some minimal effect on interstate commerce.”).

Iowa’s ban on packer ownership of livestock is similar to other legislation found to be nondiscriminatory. In *Minnesota v. Clover Leaf Creamery Co.*, the Supreme Court rejected a dormant Commerce Clause challenge, finding that a Minnesota state statute banning the sale of retail milk in plastic, nonrefillable containers in order to conserve Minnesota’s natural resources “regulates evenhandedly by prohibiting all milk retailers from selling their products in plastic, nonreturnable milk containers, without regard to whether the milk, the containers, or the sellers are from outside the State.” 449 U.S. 456, 471-72 (1981) (internal quotes omitted) .

As the recent changes to the purpose language of Iowa Code § 9H.2 reinforces, such legislation is clearly an exercise of the state’s right to “determine the course of its farming economy.” See *Hampton Feedlot, Inc. v. Nixon*, 249 F.3d 814, 820 (8th Cir. 2001). The district court in *South Dakota Farm Bureau v.*

Hazeltine correctly stated:

It is within the province of the legislature to enact a statute which regulates the balance of competitive economic forces in the field of agricultural production and commerce, thereby protecting the welfare of its citizens comprising the traditional farming community, and such statute is rationally related to a legitimate state interest.

202 F. Supp. 2d 1020, 1049 (D.S.D. 2002), *aff'd on other grounds*, 340 F.3d 583 (8th Cir. 2003), *quoting State ex rel. Webster v. Lehndorff Geneva, Inc.*, 744 S.W.2d 801, 806 (Mo. 1988) (*citing Asbury Hosp. v. Cass County*, 326 U.S. 207, 214-215 (1945) and *Omaha Nat'l Bank v. Spire*, 389 N.W.2d 269, 283 (Neb. 1986)). Likewise, the purpose of Iowa's ban on packer ownership of livestock serves a legitimate state interest to enhance the welfare of the farming community and should be upheld by this Court.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Dated: October 16, 2003.

Respectfully submitted,

s/ David R. Moeller

Susan E. Stokes

David R. Moeller

FARMERS' LEGAL ACTION GROUP, INC.

1301 Minnesota Building

46 East Fourth Street

St. Paul, Minnesota 55101

Telephone: 651-223-5400

Facsimile: 651-223-5335

Attorneys for *Amici Curiae* Iowa Citizens for Community Improvement, Missouri Rural Crisis Center, Land Stewardship Project, Illinois Stewardship Alliance, Citizens Action Coalition of Indiana, Campaign for Family Farms, and National Family Farm Coalition

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2003, I served the foregoing Supplemental Brief of *Amici Curiae* Iowa Citizens for Community Improvement, Missouri Rural Crisis Center, Land Stewardship Project, Illinois Stewardship Alliance, Citizens Action Coalition of Indiana, Campaign for Family Farms, and National Family Farm Coalition upon counsel of record by causing two copies to be mailed to:

Thomas J. Miller,
Attorney General of Iowa
Gordon E. Allen,
Deputy Attorney General
Stephen H. Moline,
Assistant Attorney General
Hoover State Office Building
Second Floor
Des Moines, IA 50319

Harold N. Schneebeck
Brown, Winick, Graves, Gross
Baskerville & Schoenebaum
666 Grand Avenue, Suite 2000
Des Moines, IA 50309

Wallace L. Taylor
Attorney at Law
118 3rd Ave. S.E., Suite 326
Cedar Rapids, IA 52401

Richard Cullen
E. Duncan Getchell, Jr.
McGuireWoods, LLP
One James Center
901 East Cary Street
Richmond, VA 23219

Robert P. Malloy
Malloy Law Firm
P.O. Box 128
Goldfield, IA 50542

Eldon L. McAfee
Michael A. Wunn
Beving, Swanson, & Forrest, P.C.
321 East Walnut St., Suite #200
Des Moines, IA 50309-2048

s/ David R. Moeller
DAVID R. MOELLER
Attorney for *Amici Curiae*