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Federal Court Invalidates Initiative 300

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CORNHUSKER ECONOMICS

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Institute of Agriculture & Natural Resources
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Market Report	Yr Ago	4 Wks Ago	12/16/05
<u>Livestock and Products,</u>			
<u>Weekly Average</u>			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	\$84.62	89.75	94.19
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb	120.70	133.74	135.82
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb	105.51	*	118.05
Choice Boxed Beef, 600-750 lb. Carcass	140.19	151.40	158.28
Western Corn Belt Base Hog Price Carcass, Negotiated	64.99	56.50	57.59
Feeder Pigs, National Direct 45 lbs, FOB	61.51	61.00	57.33
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	73.15	65.70	66.01
Slaughter Lambs, Ch. & Pr., 90-160 lbs., Shorn, Midwest	95.87	88.87	84.00
National Carcass Lamb Cutout, FOB	242.26	246.33	243.70
<u>Crops,</u>			
<u>Daily Spot Prices</u>			
Wheat, No. 1, H.W. Omaha, bu	3.41	*	*
Corn, No. 2, Yellow Omaha, bu	1.75	1.67	1.86
Soybeans, No. 1, Yellow Omaha, bu	2.28	2.18	5.66
Grain Sorghum, No. 2, Yellow Columbus, cwt	2.59	5.43	2.48
Oats, No. 2, Heavy Minneapolis, MN , bu	1.82	1.88	2.18
<u>Hay</u>			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton	115.00	117.50	120.00
Alfalfa, Large Rounds, Good Platte Valley, ton	62.50	37.50	65.00
Grass Hay, Large Rounds, Good Northeast Nebraska, ton	57.50	52.50	52.50
* No market.			

On December 15, 2005, the U.S. District Court for Nebraska (Judge Camp) ruled that Article 12 Section 8 of the Nebraska Constitution, popularly known as Initiative 300, violated federal law. The court ruled that I300, which regulates corporate farming, violated the Interstate Commerce Clause and the Americans with Disabilities Act.

What did the court do? The Federal District judge ruled that I300 violated two provisions of federal law without holding a trial first.

How does I300 violate federal law? The residence and daily labor requirements violated the Interstate Commerce Clause, while the daily labor requirement violated the Americans with Disabilities Act (ADA). The Federal Court determined that requiring people to either live on the family farm or ranch, or else provide daily labor and management on the farm or ranch essentially required people to live on or near the farm, which would exclude most non-Nebraskans. The court also determined that the daily labor requirement violated the ADA in it would be difficult or impossible for disabled persons to provide daily labor for a farm or ranch.

Was this a surprise? Not really. Once the Federal Courts invalidated South Dakota's Amendment E (which was a modest rewrite of I300), it was only a matter of time before they also invalidated I300.

What happens next? The Nebraska Attorney General will appeal the District Court's decision to the 8th Circuit Court of Appeals. I expect the Eighth Circuit to uphold Judge Camp's decision in every respect. The last appeal would be to the U.S. Supreme Court, which



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I would expect the court to deny. This would take at least two years, three years if the Supreme Court agreed to hear the case.

Is I300 still enforceable until all the appeals have been taken? Yes it is, assuming the Nebraska Attorney General meets all the court appeals deadlines.

If Judge Camp's decision is not reversed, can some version of I300 be reenacted and be legal? Possibly. If both the daily labor requirement and the residency requirement are lifted, some type of corporate farming restriction might be constitutional. The prohibition on livestock ownership and agricultural land ownership by non-family farm corporations would also need to be removed. Of course, at this point the corporate farming restrictions would be very mild and would not significantly restrict investor participation in non-family farm operations.

If Nebraska policymakers wanted to retain the daily labor, residency, livestock ownership and agricultural land ownership restrictions, these restrictions could only be applied to Nebraskans. Also, any such restriction would have to be lifted if any out-of-state person or business was involved. So these restrictions would be very easily avoided by simply, for example, giving one share of corporate stock to someone living outside of Nebraska. So the regulations would not restrict anyone who did not wish to be restricted.

So, this is probably the end of the line for I300. I would say so, certainly in anything resembling its present form.

I300 has been challenged in court before, why was this challenge successful? In the last several years the federal courts have started taking a harder line on state regulations that impact or interfere with interstate commerce. This has been a significant legal change from 1982, when I300 was adopted. If I300 opponents thought they could have gotten it invalidated under the Interstate Commerce Clause earlier than now, I have no doubt that they would have tried to do so sooner. Also, the ADA was enacted in 1990, and this new branch of civil rights law has been slow in developing.

What did I300 accomplish? First, it stopped the ill-advised development of Sandhills ranches into wall-to-wall center-pivot farms. Ironically, most of those investor-financed pivots have been replanted to grass and are now enrolled in the Federal Conservation Reserve Program. Second, I300 significantly slowed the development of large swine facilities in Nebraska in the mid- to late 1980s. This gave large livestock opponents enough time to allow nearly 50 Nebraska counties to

adopt zoning regulations intended to control or prevent large livestock developments.

If I300 is finally declared unconstitutional, what will the likely impacts be? First, remember that this isn't likely to occur for at least two years. But if Judge Camp's ruling is not overturned on appeal, the end of I300 will legally facilitate livestock development in Nebraska. Not necessarily large swine confinements (although if economic conditions are favorable, livestock developers might look for either an unzoned county, or a livestock-friendly county to locate in). More likely is the development of networked livestock operations among local farmers, such as some ranchers banding together to establish a cattle feedlot, etc. But these localized developments would also be subject to county zoning restrictions.

Farm business planning and estate planning would also be simplified. More farmers would use limited liability companies (LLCs) to legally structure their business. Off-farm heirs would be able to put inherited farm property into an LLC without meeting I300 residency or farm labor requirements.

Is this the end of state regulation of corporate farming? Probably not, but that remains to be seen. The other states with corporate farming requirements don't have I300's daily labor requirement. So a "family farm corporation" could be established if a family member is engaged in simply managing the farm. This is a pretty easy requirement to meet – usually simply following the crop or livestock markets would qualify as management. So corporate farming laws in other states haven't had the restrictive effect that I300 has had in Nebraska. The absence of a daily labor requirement similar to I300's may be enough of a difference to allow other state corporate farming bans to avoid a court challenge. In addition, I300 restricts corporate ownership of livestock, another unique feature. Only Iowa has a similar requirement, and the only entities restricted are large packers. That feature of the Iowa corporate farming law is vulnerable to legal attack. Otherwise, if a state's corporate farming requirements can be easily satisfied (as is true in most cases), few legal challenges to those restrictions are likely to arise.

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