

CAUGHT IN THE CROSSFIRE OF JOHANNES AND JANUS: THE FUTURE OF FEDERAL AND STATE CHECKOFF PROGRAMS
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Executive Summary

Checkoff programs, also commonly referred to as commodity research and promotion programs, mandate that a per-unit assessment on specific agricultural commodities be collected from producers, typically by purchasers at the point of sale, so that those funds can be used to promote and provide research and information for that commodity. Commonly recognized examples of promotional activities supported from checkoffs are “Got Milk?”, “Beef. It’s What’s For Dinner”, and “Pork. The Other White Meat.” The USDA Agricultural Marketing Service oversees the nearly two dozen federal checkoff programs, ranging from pork, dairy, beef, and soybeans to fresh cut flowers, honey, and watermelons. Collectively, these programs have funded billions of dollars in promotion, public and private sector research, and other industry promotion activities around the country to promote various agricultural commodities.

Checkoff programs have endured many legal challenges at the state and federal levels over the past decades. While this session focuses on the current and ongoing First Amendment-related challenges to checkoff programs, other challenges have focused on issues such as trademark and contract issues and freedom of information act requests. In the First Amendment-based actions, challengers argue that the requirement that they pay mandatory assessments in accordance with a checkoff program unlawfully forces them to pay for speech that they do not support. Since 1997, the U.S. Supreme Court has issued several decisions pertaining to the constitutionality of checkoff programs. Additionally, Court decisions in the public union dues context have raised questions about the impact those decisions could potentially have on federal and state checkoff programs. This session discusses those decisions in light of current and ongoing litigation involving the national beef checkoff.