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Rural Iowans can again sue hog factories

by R. Ben Stone, ACLU-IA Executive Director

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ACLU-IA's six year quest to restore property rights ends with Iowa Supreme Court ruling in today's Gacke decision.

Iowa's statutory protection for concentrated animal feeding operations finally bit the dust today with a new ruling by the Iowa Supreme Court.

Invoking the rarely used "inalienable rights" clause of the Iowa Constitution, the court restored the right of rural Iowans to go to court to defend their property interests regarding neighboring hog confinements.

Civil libertarians, family farm groups and environmentalists hailed the decision, which lifted a near total ban on nuisance suits against animal feeding operations that pollute or spoil adjoining properties.

"Justice smells sweet" said Ben Stone, executive director of the American Civil Liberties Union of Iowa. "After years of struggle, rural Iowans have regained their right to fight back in defense of their way of life. And you can bet they will do just that" he added.

"This is a huge victory for family farmers and rural residents who have had to put up with the stench and other problems with factory farms," said Marilyn Anderson, a rural Story County board member with Iowa Citizens for Community Improvement. "This ruling will help us hold them accountable" she added.

"This ruling affirms what we've known all along - animal factories that pollute our air and water, destroy rural quality of life, and threaten public health deserve to be held accountable. And now, they will be," said Tarah Heinzen, Sierra Club conservation organizer.

The ruling, which came in an American Civil Liberties Union of Iowa case, pitted Joseph and Linda Gacke, Iowa farmers, against Pork Xtra, LLC., which built a hog confinement facility on adjoining property. With their quality of life and normal use of their property destroyed by airborne pollution, the Gackes' sued in spite of an Iowa law that gave

animal feeding operations immunity for creating such a nuisance. The Gackes proved that the hog operation was a serious nuisance and received a judgment compensating them for their past suffering and the loss of the value in their homestead property.

Pork Xtra appealed the judgment which came only after the trial judge threw out the Iowa Statute giving animal feeding operations immunity from nuisance claims. Pork Xtra argued that an earlier Iowa Decision in *Bormann v. Kossuth County Board of Supervisors*, should be overturned. *Bormann* only applied to a small number of concentrated animal feeding operations that had been established in formally designated "agricultural zones," but the statute in *Bormann* was similar to the provision under challenge in the Gacke appeal.

In today's decision the Iowa Supreme Court not only declined to overturn its prior decision in *Bormann*, but also found that additional grounds existed to hold the entire immunity provision unconstitutional. The Court noted that the Gacke's were property owners long before the nuisance was established next door, and that they were being asked to bear the entire brunt of the operation without possibility of compensation and without any benefit to themselves.

The Court's opinion goes on to hold that the immunity statute violates Article I, Section 1 of the Iowa Constitution which provides in part that all persons "have certain inalienable rights-among which are those of ...enjoying and defending life and liberty, **acquiring, possessing and protecting property**, and pursuing and obtaining safety and happiness."

"It has been rare for the High Court of any state to invoke this clause", says ACLU-IA Legal Director Randall Wilson, who served on the case along with the Gacke's local trial attorney Thomas Lipps of Algona, Iowa. "You can count the Iowa decisions invoking this clause on the fingers of one hand," Wilson said.

As a result of the decision today it is no longer possible for agribusiness lawyers to go to the federal courts for a different result, Wilson said.

Iowa CCI is a grassroots organization with 2,100 members who having been helping to lead the fight against factory farms for the past decade.

Summary of opinion and link to full decision at:

http://www.judicial.state.ia.us/supreme/opinions/20040616/summary.asp?search=02-0417#_1