

TWIN FALLS, WEDNESDAY, NOVEMBER 4, 2009 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**IDAHO DAIRYMEN’S ASSOCIATION,)
INC., an Idaho non-profit corporation; THE)
IDAHO CATTLE ASSOCIATION, INC., a)
Idaho non-profit corporation,)
)
Plaintiffs/Appellants,)
v.)
)
GOODING COUNTY, a body politic and)
corporate of the State of Idaho,)
)
Defendants/Respondents.)**

Docket No. 35980

Appeal from the District Court of the Fifth Judicial District of the State of Idaho,
Gooding County. Hon. R. Barry Wood, District Judge.

Givens Pursley, LLP, Boise, for appellants.

Gooding County Prosecuting Attorney, Gooding, for respondent.

This Court is asked to determine the validity and constitutionality of a few provisions within a newly enacted ordinance that regulates Confined Animal Feeding Operations (“CAFOs”). Respondent, Gooding County, adopted Ordinance No. 90 (“the Ordinance”) on or about June 12, 2007. Shortly thereafter, on October 9, 2008, Appellants, the Idaho Dairy Association, Inc. and the Idaho Cattle Association, Inc., filed a Complaint for Declaratory and Injunctive Relief, challenging the constitutionality and validity of provisions within the Ordinance. Subsequently, Appellants filed a Motion for Summary Judgment, and on October 28, 2008, the district court entered an order denying Appellants’ motion for summary judgment and, *sua sponte*, granted summary judgment in favor of Respondent. Appellants now appeal the grant of summary judgment.

Appellants argue four issues on appeal to this Court. Appellants claim county regulation of water quality at CAFOs has been impliedly preempted by the State, and as a result, certain provisions within the ordinance that were designed to regulate water quality are void. Appellants also argue that provisions within the Ordinance violate the dormant commerce clause, and that they violate CAFO owners’ and operators’ substantive due process rights. In addition, Appellants and Respondent ask for attorney fees and costs incurred in the action.