

clause, the standard is this. If the effect, if the infringement is incidental and evenhanded, and the benefits to the state outweigh the burden placed on interstate commerce, the act is constitutional. If, however, the benefits to the state or to the people do not outweigh the burden, then it is unconstitutional. And what we have here is the admission by all parties that we have at least an incidental burden on interstate commerce. However, the advocates of 889 will tell us, as does an Attorney General's Opinion, that there is sufficient benefit to the state to override that infringement. However, if you examine the language of the Supreme Court decision, previously interpreting existing language, there is a very, very important nugget to take into account and that is the Supreme Court of Nebraska has weighed this issue and said, in effect, that there is no benefit to the consumer by having outstate manufacturers register. It appears in the language in the PPG industry's case, at page 233, and it states: "To hold otherwise than that holding which was that only instate manufacturers selling to Nebraska farmers should register their products. To hold otherwise than that, in other words, to hold that outstate manufacturers should be registered only makes the entire act a meaningless exercise in futility and...and here is the important part, serves no purpose in providing consumer protection". In other words, the Supreme Court in weighing this issue has told us very clearly their perception that there is, in fact, no benefit to the state in consumer protection by seeing that outstate manufacturers register pursuant to 889. If there is no benefit and if there is, as all parties admit, an incidental burden on interstate commerce, the test is clearly met. In fact, there is going to be a burden on interstate commerce. There is no benefit, and therefore the U.S. Constitution is violated. Now, I am not going to hold out to you that I am assured that that will happen in a court of law. What I do tell you is that a fair reading of the history of this case of the decision in the PPG industry's decision would lead one to conclude that there is a very serious cloud on the constitutionality of LB 889. If that is the case, I think we need to move more deliberately than the body is at this time and we should at least pause and reflect on 889 at this point and perhaps consider its merits over the course of the summer and have it reintroduced next year. I intend to vote against LB 889 because of the constitutional cloud that exists on that measure.

SPEAKER MARVEL: Senator Haberman.

SENATOR HABERMAN: Mr. President and fellow colleagues,