

June 13, 2023

The Honorable Thomas Massie
Chairman
Subcommittee on the Administrative State,
Regulatory Reform, and Antitrust
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Henry “Hank” Johnson, Jr.
Member
Subcommittee on the Administrative State,
Regulatory Reform, and Antitrust
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Chairman Massie and Representative Johnson:

Thank you for calling this important hearing on “Where's the Beef? Regulatory Barriers to Entry and Competition in Meat Processing.”¹ We share your concerns regarding barriers to entry in the meat processing industry and the negative impacts felt by America’s farmers and ranchers. We also welcome this opportunity to provide the Subcommittee with our input on how best to facilitate entry into processing, expand our national capacity, and build strong supply chains that deliver positive results for our producers and consumers.

Our organizations believe extreme levels of concentration in our livestock and poultry industries serve as an almost insurmountable barrier to the establishment and success of independent processors. Today, the four largest processors in each sector control 70% of the market for hogs, 62% for sheep and lambs, and 85% for cattle.² This dominance has given the largest meatpacking corporations considerable market power that they regularly utilize to increase their market position at the expense of small and mid-sized processors, livestock and poultry producers, and consumers.³ Any approach to facilitate increased processing capacity must include a serious evaluation of the competitive landscape in these industries and proposals to address the monopoly power of their largest participants.

¹ House Committee on the Judiciary, Subcommittee on the Administrative State, Regulatory Reform, and Antitrust, “Where's the Beef? Regulatory Barriers to Entry and Competition in Meat Processing,” June 13, 2023 <https://judiciary.house.gov/committee-activity/hearings/wheres-beef-regulatory-barriers-entry-and-competition-meat-processing>.

² Mary K. Hendrickson, et. al, “The Food System: Concentration and Its Impacts,” May 6, 2021 (Report prepared for Family Farm Action Alliance) https://farmaction.us/wp-content/uploads/2021/05/Hendrickson-et-al.-2020.-Concentration-and-Its-Impacts_FINAL_Addended.pdf.

³ Farm Action, “Comment by Farm Action on the Agricultural Marketing Service’s Proposed Rule concerning Inclusive Competition and Market Integrity Under the Packers and Stockyards Act, RIN 0581-AE05” Jan. 17, 2023 <https://farmaction.us/wp-content/uploads/2023/01/P-S-Act-Market-Integrity-Comment-1.17.23.pdf>.

We have been encouraged by the approach taken by both the White House and Congress over the last few years. The Biden administration has made promoting competition in our food system—particularly in livestock and poultry markets—a key priority.⁴ To that end, they have pledged to invest \$1 billion into our nation’s meat processing capacity, and have so far awarded approximately \$375 million in grants for infrastructure, facility improvements, capacity expansion, and technical assistance.⁵

However, we remain concerned that these investments could be better targeted. As Senator Joni Ernst raised to Secretary Tom Vilsack at a March 16, 2023 Senate Agriculture Committee Hearing, approximately \$69 million of that \$375 million invested into processing capacity went to projects owned by billionaires while many smaller operators who arguably needed the investment more were rejected.⁶

This year, a real opportunity exists to build on these investments and use the farm bill to make meaningful changes to our food system by promoting competition and supporting all producers. To facilitate stronger processing capacity, resilient food systems, and improved outcomes for our livestock and poultry producers, we must seriously evaluate the competitive landscape in processing markets and make real changes to support independent processors and combat monopoly power. To that end, we recommend the following reforms:

- Include the Opportunities for Fairness in Farming Act (H.R.1249/S.557) in this year’s farm bill, which will establish necessary guardrails for checkoff programs that will ensure producers’ dollars are used for research, development, and marketing, as required by statute.⁷
- Strengthen the Packers and Stockyards Act, protect the United States Department of Agriculture’s (USDA) rulemaking process, and encourage USDA to move quickly to finalize their remaining rules.
- Reform our labeling regime to ensure consumers are able to act on their well-documented preference for domestic meat products.⁸ Congress should encourage the Food Safety and

⁴ Exec. Order No. 14036, “Promoting Competition in the American Economy,” July 9, 2021 <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

⁵ United States Department of Agriculture, “Biden-Harris Administration Announces First Round of Historic Investments to Increase Competition and Expand Meat and Poultry Processing Capacity,” Nov. 2, 2022 <https://www.usda.gov/media/press-releases/2022/11/02/biden-harris-administration-announces-first-round-historic-investments-to-increase-competition-and-expand-meat-and-poultry-processing-capacity>.

⁶ Senator Joni Ernst, “Ernst Calls Out Biden USDA’s Hypocrisy and Liberal Priorities,” March 16, 2023 <https://www.ernst.senate.gov/newsroom/press-releases/ernst-calls-out-biden-usdas-hypocrisy-and-liberal-priorities>.

⁷ The Opportunities for Fairness in Farming Act, H.R. 1249, 118th Congress (2023) <https://www.congress.gov/bills/118/congress/house-bill/1249>.

⁸ Kar H. Lim, et al., *U.S. Consumers’ Preference and Willingness to Pay for Country-of-Origin-Labeled Beef Steak and Food Safety Enhancements*, (2011); Joao E. Mutondo & Shida Rastegari Hennebery, *A Source-Differentiated Analysis of U.S. Meat Demand*, 32(3) *J. Agri. & Resource Econ.* 515 (2007); B.E. Mennecke, et al., *A Study of the Factors That Influence Consumer Attitudes toward Beef Products Using the Conjoint Market Analysis Tool*, 85(10) *Journal of Animal Science* 2639 (2007); J.R. Franken, J.L. Parcell, & G.T. Tonsor, *Consumers’ Willingness-to-Pay*

Inspection Service (FSIS) to quickly finalize their rule ending abuse of the “Product of the U.S.A.” voluntary label, and should pass the American Beef Labeling Act (S.52) to reinstate mandatory country of origin labeling for beef products.⁹

- Pass the Meat and Poultry Special Investigator Act of 2023 (S. 346) to grant USDA the authority they need to enforce a strengthened Packers and Stockyards Act.¹⁰
- As detailed in President Biden’s Executive Order, prohibit the tournament payment system in poultry processing to allow growers to benefit from their investments and end integrator’s abuse of poultry producers.¹¹
- Expand USDA support for small and midsized producers seeking to become vendors for USDA Foods so these investments in processing capacity are not immediately returned to dominant packers through failed ventures and sold facilities, as recommended by the Department of Agriculture’s report “Agri-Food Supply Chain Assessment: Program and Policy Options for Strengthening Resilience.”¹²

There are some changes to our inspection and regulatory regimes that could ease burdens on new entrants to processing markets. However, these regimes serve an important purpose in keeping workers and consumers safe, and we are concerned that approaches to allow producers to avoid these regulatory burdens might lead to less responsible processors ignoring these important protections. Instead, we urge the Committee to pursue policy shifts that will expand our inspection capacity, allowing processors to more quickly navigate the regulatory landscape and begin serving their communities. We believe that the Strengthening Local Processing Act (H.R. 945/S.354), would achieve this goal.¹³ This bipartisan, bicameral legislation would significantly increase state inspection ability, better tailor grants to small processors who most need them, and support real and lasting improvements to our domestic meat processing capacity. We support its inclusion in this year’s farm bill.

for Retail Branded Beef Products with Bundled Attributes, (2011); Wendy J. Umberger, et al., *Country-of-Origin Labeling of Beef Products: U.S. Consumers’ Perceptions*, 34 *Journal of Food Distribution Research* 103, 107 (2003).

⁹ Food Safety and Inspection Service, “Voluntary Labeling of FSIS-Regulated Products With U.S.-Origin Claims”: Proposed Rule (March 13, 2023) ;The American Beef Labeling Act of 2023, S.52, 118th Congress (2023) <https://www.congress.gov/bill/118th-congress/senate-bill/52>.

¹⁰ Meat and Poultry Special Investigator Act of 2023, S. 346, 118th Congress (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/346>.

¹¹ Exec. Order No. 14036, “Promoting Competition in the American Economy,” July 9, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

¹² United States Department of Agriculture, Agriculture Marketing Service, “USDA Agri-Food Supply Chain Assessment: Program and Policy Options for Strengthening Resilience, Feb. 2022, <https://www.ams.usda.gov/sites/default/files/media/USDAAgriFoodSupplyChainReport.pdf>.

¹³ Strengthening Local Processing Act of 2023, H.R. 945, 118th Congress (2023) <https://www.congress.gov/bill/118th-congress/house-bill/945>.

We would like to once again thank the Committee for holding today's hearing and for your careful attention to this critical issue. By implementing these necessary reforms and continuing to invest in independent processing capacity, we can remove barriers to entry for new market participants in our heavily concentrated meat and poultry markets. We look forward to working with you to fight for our nation's hardworking ranchers and meat processors, and to make these suggested reforms law.

Sincerely,

American Economic Liberties Project

Economic Security Project Action

Farm Action Fund

P Street

Public Citizen

Rural Coalition

RAFI-USA

Revolving Door Project