

## **Witness Testimony for June 13 hearing “Where’s the Beef?”**

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### **My Background and Story as it relates to Meat Processing:**

I don't have the blessing of living on a hundred year old family farm, my heritage is full of displaced farmers. My immigrant grandfather settled in California and married into an agricultural family. They farmed the fertile soils in southern California until urbanization forced them to move further north. This farmland is now known as Los Angeles, and to be precise, the Hollywood studios. Moving up into California's Central Valley, they built irrigation canals and helped establish cities. Today, on the site of my great grandfather's farmhouse, stands a ChuckECheeses. Giving up on California, my grandfather moved to Kansas, where his wife's family was from. Unfortunately, they tried to start farming in the 1980s, which was really poor timing. Even worse, they chose sheep ranching. The banker who lent them the money for the flock also told them he was including enough money to buy a shovel to bury the sheep when they died. That shovel was put to use. Not to be discouraged by the farming failures of the previous four generations, my oldest brother, and subsequently all of the younger siblings were bitten by the farming bug.

Finally, my 40 year old parents, in a move perceived as a mid-life crisis, were able to move their family of six children to a farmstead. Since we were starting farming with no money and little experience, we knew that we would have to farm differently in order to survive. The only practical option seemed to be by focusing on sustainable farming. Today, 22 years later, all eight family members remain actively involved in the farming operation, which has grown to include 6 companies, 50 employees and 18 different enterprises. Among these efforts are two separate slaughter facilities, both USDA inspected.

### **Impact of 2020 Meat Crisis:**

By the first of April, 2020, the closure of multiple corporate slaughterhouses combined with the nation's panic over meat supply trickled down to our tiny USDA beef slaughter facility.

Farmers operating cattle finishing feedlots suddenly had live animals with nowhere to send their livestock, as the big processors shut down. Yet continually feeding these animals with no promise of return was not an option for farmers, either. They were calling any and every butcher, trying to get their livestock tucked into a freezer so they'd stop eating corn. For about a week, my plant received 300 calls daily from desperate farmers and scared consumers. This astronomical volume of calls was impossible to answer. The calls we could answer, we had everything from farmers crying to cussing, desperate to find solutions. As service providers, our entire mission is to solve others' problems by providing solutions. Answering the phone all day long, only to tell desperate people that we are unable to assist them, was soul-crushing.

The only people that weren't panicking were our existing retail customers. They knew we were both the farmer and the butcher, so there was no panic-buying, no meat hoarding. Our

customers had confidence in our ability to continue to feed their families. It was this confidence, this level of trust, that strengthened us and helped us push through those crazy days.

You'd think that 2020 was enough, but then small plants got hit with the labor of 2021, and in 2022, I fully experienced the impact of government overreach and over regulation across multiple federal agencies.

The one experience that both surprised and scarred me, was with the FSIS. For 17 years I've operated small inspected slaughter facilities, 15 of them have been with the USDA. I don't like drama, and over the years have developed my skills so as to maintain a professional relationship with inspection staff while ensuring quality processing services to my community. I had, of course, heard of other plant operator's horror stories of run-ins with inspection staff, but I always dismissed them as either they were looking for drama or had been lackadaisical in keeping their plant operating to standards. I've now changed that opinion. It's only a matter of time until a small plant has some big drama with inspection staff. It's only the laws of probability at work until some inspection staff member seizes upon an opportunity to create havoc in your business. And when that event happens, it can damage you and your business significantly.

In 2021, I noticed an increase in FSIS aggression towards small plants, which was more noticeable since the previous year, small meat plants were the heroes of national food security. But I tried to gloss past those friction points, preferring to focus on the major pain point of labor recruitment.

However, in 2022, there was a new FSIS supervisor in the area, eager to impress after having been embarrassed in their previous job position. Small plant owners in the region soon began sharing horror stories of their aggressive nature that resulted in retained products and delayed production. I was determined to lay low and play it safe. Unfortunately, a mechanical failure in my product chillers raised my profile, and my plant was in the crosshairs.

Mechanical failures are not uncommon in processing facilities. I responded quickly and appropriately to the deviation in order to maintain product safety. However, in the eyes of the FSIS supervisor, such an incident had never before occurred in the history of poultry slaughter, and every minutia must be examined. If this was in a large slaughter plant, such an incident would have been resolved in less than 24 hours. Unfortunately, this took 90 days to resolve.

In a domino-ing chain of events that got increasingly more ludicrous, the FSIS staff went on a rampage, retaining lots of slaughtered poultry for three successive weeks. The easy way out of this mess would have been to toss the birds and take an insurance claim. But I knew these birds were food safe and fit for human consumption. To a sustainable farmer, willingly destroying 14,000 pounds of good, clean food is sacrilegious. I knew it would cost my business dearly, but that was a hill that I was willing to die on. And cost me it did. My mental stability and 10 years of my salary. At multiple points in this 90 day ordeal, I questioned why I was still a butcher. Why was I willing to subject myself to such emotional abuse? Although my personal farm and business does not require USDA inspection services, I felt responsible for the farming community who relies on the inspection services I provide. Producers from six states come to my poultry facility, and I had that burden of guilt that, in saving myself, I would damage hundreds of other farms. I couldn't live with that thought, so we pushed on.

My breaking point came in the third week. I was positive that everything had gone perfectly and there was no possible way that they could pick apart my food safety practices. Yet, first thing in the morning, at 10:30 am, I was informed that birds would be retained. Shocked, I asked what the basis was. One of the Doctors at the regional offices sent down the reason, and it was so ludicrous that I laughed. The citation they were suggesting was akin to being given a speeding ticket when you were going 10 miles under the speed limit. I responded that it was impossible for them to cite me for such, and that, until they could produce the papers, I would continue to operate. As the day went on, they scrambled to find some justification for their suggested actions, but continued to place retain tags on my lots to prevent shipment. As the farmers started arriving, the FSIS staff prevented them from collecting their product, although I had yet to receive any documentation on why the product couldn't be shipped. A full 8 hours after my initial conversation with the FSIS, they finally emailed me papers citing their allegations, none of them were what was originally cited. It was at this point that I completely broke down. Even when I did things perfectly, they were still retaining the product. Even when there was no scientific or legal justification, they were preventing shipments. At that point I fully realized how un-American the food inspection service was. My accusers were also my judge and jury, and I was voiceless.

In the succeeding months, this lack of representation became more apparent. Every step I would take to resolve the situation would be ignored or else accused of falsification of documents. Every test, every food safety expert, every scientific journal that I would produce they would dismiss. My formal education concluded in the eighth grade. Yet I was expected to hold my own in hours long discussions with three or more FSIS personnel who had degrees in DMV and Phd microbiologists. Yet I was confident in my data, as I was using testing methods and journal articles that the FSIS themselves used. However, they would attack my sources and claim mis-application of data with such poor logic that I was astounded. One meeting was only concluded when the regional department head of microbiology openly lied and said that the FSIS didn't use that testing protocol.

It wasn't just me getting openly lied to by the FSIS. The FSIS even dared to lie in the Congressional inquiries lodged by my farmer clients. Daily I received calls from the farmers who weren't getting their chickens back. Their customers and feed vendor were after them, and here I was, withholding their product while saying that it was safe, but we were just working through things with the USDA. The farmers wanted to call the FSIS offices and give them a piece of their minds, but I begged them not to. I feared that, if the inspection service knew how much that these birds meant to my clients, they would realize the extent of their power and refuse to negotiate with me. The farmers submitted Congressional inquiries, but the FSIS just blew them off. The Congressmen were told that the issue had been "resolved" yet all 3,000 of my birds were still retained.

I used every industry resource that I knew of, and finally, industry professionals as well as organizations such as the Kansas Farmers Union and the National Sustainable Agriculture Coalition were able to reach the desk of the FSIS Administrator.

It was only when the word of this unnecessary drama reached the ears in DC, that the FSIS hastily delivered a conclusion, issuing a two sentence order of condemnation for the retained birds. I looked at my stack of 50 pages of scientific documentation, testing, and

research articles that supported my conclusion that the product was safe, as compared to their two sentences. I refused to accept the condemnation order until they could provide scientific documentation of their conclusions. This order was rescinded, but the birds were not all released until the FSIS Administrator himself came out for a personal plant visit.

This experience really opened my eyes to the lack of processor representation in the food safety inspection service. All of my attempts to resolve this matter early and calmly were rebuffed, instead the small issue had to first swell into a mountain until it could attract the attention at the nation's headquarters to be resolved. Not only did this almost drive my plant out of business, but we never received any apology from the FSIS for allowing such unnecessary drama to grow.

### **Current Top Challenges for Very Small Meat Processors, Inspected and Exempt:**

*The following perspective is my own, but was not developed by existing in a bubble in rural Kansas. My perspective gains balance by networking among my community of farmers and eaters, my customer list of 2,000 butchering clients, and participation in the following organizations: American Association of Pastured Poultry Producers, Niche Meat Processors Association, Kansas Farmers Union, Sustainable Agriculture Research and Extension, National Sustainable Agriculture Coalition, American Association of Meat Processors, National Farmers Union.*

These challenges are listed in the order of predominance, but it's Item Three that typically gets named if a butchery closes shop. A failing business doesn't like to cite reasons that sound as if they are controllable, hence, the blame is shifted to the faceless giants of The Government and Those Big Corporations. However, Items One and Two are what slowly weaken a business until one bad season of profitability becomes the straw that breaks the business.

#### **#1, Access to Labor:**

This is nothing new, everyone is short workers in America. However, small meat plants face some unique challenges: Of course, machines are replacing humans in many positions. While a flush of government backed funds have assisted many processors in attaining equipment they otherwise couldn't afford, there's only a limited number of machines that can reduce the need for a small plant's skilled or unskilled labor. Machines only work in uniform situations. The livestock processed by small slaughter facilities is typically anything but uniform, as they source from hundreds of farms, each with different genetics and production systems.

For those positions not possible to replace with machines, money is of little assistance. An aggressive recruitment strategy does little good when there simply isn't any experienced small plant butchers out there to hire. Further, trying to take experienced help from either

grocery stores or mega slaughterhouses is also not effective, as their experience in these fields simply do not translate. Therefore, most small meat processor's labor is trained in-house.

Currently, the American unemployment rate is 3.7%. It is said that the bottom 10% of the workforce is considered "unemployable" due to physical, mental or personal challenges that make it extremely difficult for those individuals to retain jobs. My average wages are 25 % above the county average, revealing that I'm a very competitive employer. My workforce is ten times more diverse than the county statistics. And yet, the best pool of willing workers are those that I cannot employ: Underage Americans and Immigrants.

### **Underage Americans:**

The US labor laws do not recognize any differentiation in slaughter facility size and the risks that change with it. Small plants, in the eyes of the USDOL, are deemed just as dangerous as a mega-processing facility, and get slapped with the label "hazardous workplace".

Small plants across America are still predominantly family based businesses, yet the DOL considers it a child labor violation if the owner's child is sacking groceries or opening doors for customers in the retail shop.

The kill floor in a small plant is also deemed too dangerous for a minor to clean, by the mere nature of its name. There's no recognition given to the fact that the small plant "kill floor" is often just an empty room with washable walls and drains.

Most small family business owners involve their children in the operations early on, in the hopes that this work will pique the child's interest and they decide to carry the business into the second generation. In a small slaughter or processing business, this isn't supposed to happen. Essentially, involving your child ( paid or unpaid) in nearly any task prior to age 18 is a child labor violation. And after age 18, well, we all know how unmotivated most teenagers are at that age, especially if it's their parents as the boss. Thus, small meat plants miss the window of opportunity to train up their most likely successors.

Think for a moment of the bind that puts me in as a small business owner: I can't hire my own blood child to work in my business, but it's okay if I hire illegal workers. According to the Homeland Security Memo on 10/12/2021, the Policy Statement 065-06, de facto permission has been granted to hire unregistered immigrants, provided we treat them well and pay fairly. Fortunately or Unfortunately, rural Kansas doesn't have a high number of illegal migrants, so that's not a labor pool that I can access.

### **Immigrants:**

Immigrants are an attractive labor pool because they are motivated workers, a character trait very difficult to find in the current American workforce.

Legally importing temporary foreign workers is an option for some butchers. The H2B visa is for seasonal workers, which some butchers could apply for if they have significantly

busier segments of their year. If you have built your business so that the demand is steady years around, this option isn't applicable. After an employer has spent a couple thousand in filing fees and paperwork preparation, only 20% of the H2B submissions were granted this year, even though the annual cap on H2B visas has temporarily been increased for 2023.

H2A visas are not capped, but are strictly for agriculture. Butchering is not considered agriculture if you don't raise the livestock you are processing. There are no other visa classes that are applicable for small meat processors.

And yet, the number of people who have entered this nation illegally, with no background checks or proof of funds, exceeds the number of legal immigration entries by 2:1 in 2022. Unfortunately, the only immigration topic that politicians on both sides of the aisle talk about is illegal immigration. In all of their searches for the "root causes" of the increase in illegal immigration, they have conveniently forgotten to look at the existing legal immigration laws and consider if that's a contributing factor. I know many illegal entrants who only pursued that route after they had exhausted the legal means, but found the system so slow and broken that taking the risks with illegal entry became attractive. American politicians apparently prefer illegal immigration as it gives the nation an exploitable workforce and dependent constituents.

### **Legislation:**

The USDA has announced several grants in the last three years, most of whom are aimed at encouraging more new and existing plants to gain USDA certification.

While the government gets blamed for a lot of things as an excuse to hide our individual incompetence, there are certainly times when over-regulation happens and the resulting fallout creates closures of small meat processors.

To put it in perspective:

### **FSIS Mission Overreach:**

FSIS has been delegated by the USDA, who was tasked by Congress, to inspect meat, poultry and egg products so that adulterated or misbranded products don't enter Commerce. Yet the FSIS has, for 30 years, a self-declared mission to prevent foodborne illness and protect public health. If the FSIS is truly to be a public health agency, it should be under the authority of the US DHHS, not the USDA.

What's the problem with extra folks on board looking out for the public good? Everyone wants to look relevant or important, which leads to unnecessary regulations or processes for the food producers and processors that contribute little to no improvement in public health or safety.

Additionally, the FSIS leaves the burden of proof up to the plant operator. While this sounds good, the trouble is that the FSIS gets to decide what is acceptable proof and what isn't. The FSIS culture works under a presumption of guilt, unlike the American judicial system. As I unfortunately experienced last year, when deviations occur, the product is presumed contaminated, even if there's no evidence to support such presumptions. The plant operator is then challenged to prove that adulteration or misbranding did not occur. In the mega plants, the corporation simply flies their company expert in to negotiate with the FSIS. In small plants, it's operators like me, with little to no formal food safety education that must respond to the FSIS concerns. Even when an operator reaches out to industry experts to help create a response, the FSIS is not obligated to accept any other evidence. It's curious to me that the nation's food supply, which is a critical component of national security, functions under such un-American tenants as presumption of guilt and lack of fair representation.

When federal agencies self proclaim, and then bully-enforce missions and standards outside their authorized scope of work, you have these scenarios develop:

The FSIS has currently Proposed Salmonella Performance standards in poultry that proposes to roll out an extensive, multipoint salmonella testing program, from live birds to pre and post chill carcasses. Not only would this proposed testing dramatically increase the small processors costs and regulatory burden, but According to the proposal, all of this is necessary to reduce the rate of consumer Salmonella infections by only 3,000 yearly. In a desperate attempt to stay relevant, the FSIS Salmonella proposal is just a shotgun blast at a distant and undefined target. There are over 2,300 salmonella serotypes, of which only 2 serotypes are responsible for half of the human illness from salmonella. The Proposed Salmonella Performance Standards do not differentiate by serotype, instead, their testing includes all serotypes of Salmonella, which is a naturally occurring microbe in our environment and in all poultry.

### **FSIS Culture of Aggression towards Small Plants:**

#### ***Opposing Priorities between USDA and FSIS:***

The USDA states that one of their priorities is to increase the number of USDA inspected meat processing plants across the nation. However, the FSIS, like nearly every other employer at the moment, is understaffed. While of course it would be problematic to admit that their shortage of inspection staff limits the capabilities of FSIS to provide adequate inspection services, it is not an overreach to suggest that this shortage does create a conflict of priorities between the USDA and the FSIS. Small plants take a lot of inspection manpower. The inspectors placed in small plants must be knowledgeable about a wide variety of regulations due to the wider variety of animals processed in non-mechanized plants.

In Montana, some processors have been waiting for three years to be accepted into USDA certification, because the FSIS district there cannot source the manpower to provide inspection services to the rural plants. Unfortunately, these plant owners are made to feel as if this is their own fault, due to the bullying tactics of FSIS Dr Legg, who made national news for his unacceptable behavior towards small plants years ago, yet still retains his position.

In Missouri, a state of the art, four million dollar beef slaughter plant was built, and staffed with experienced butchers as well as nationally recognized HACCP experts. Yet, in the first year of operation, FSIS aggression in this textbook perfect plant, drove away some of their top managers before the FSIS Administrator got involved.

No one at FSIS will share with the small plant owner that many of the large plants are Category Three in the **Salmonella Performance Standards**, instead giving the small plant owner the impression that Category Two can mean suspension of Inspection services.

The FSIS prefers to hold small plants accountable to undefined standards, so that the agency can arbitrarily decide if a plant is operating acceptably.

The latest buzzword used upon small plants is "Statistical Process Control". A plant must demonstrate that they have process control, or else the FSIS will threaten to withdraw inspection services. However, the FSIS conveniently has no official definition of this phrase. When research is made into the origin and definition of the phrase "Statistical Process Control" we find that it is the work of a research professor who clearly states that Statistical Process Control is impossible to achieve in operations with high variables. Small plants are nothing but highly variable, yet we are being pressured into achieving the statistically unachievable.

### **No Mediation or Representation for Plants:**

Lack of Representation for small plant operators is a major concern with regards to small plant sustainability. A plant can be profitable and have a good record with the food safety inspection service, yet at any time, an incident could happen that can drive this plant out of business. While it's almost impossible to have a risk management plan for such an incident, I have attempted to do so after my recent experience. I'm fully aware that, at any time, I could have my federal inspection services withdrawn, and in an attempt to secure the employment of my staff and enhance the food security of my community, I have created a plan should this reoccur.

Despite much discussion over the years, the FSIS remains one of the few federal agencies with no Ombudsman. Considering that this agency is responsible for a large portion of the nation's food security, this fact should be deeply concerning.

In light of the FSIS culture of Aggression and inability to admit wrongdoing, creating an Ombudsman for the FSIS is not likely to be effective.

Instead, I would propose that a Mediation Board be created to assist small plants in resolving issues quickly, professionally and without drama. As an employer, I view it as incredibly inefficient that my simple issue last year had to reach the desk of the USDA Undersecretary and

the FSIS Administrator to be resolved. The Administrator has over 500 employees. If I was in that position, I would be incredibly annoyed that my staff was not empowered to resolve such petty issues at a much lower level.

A Mediation Board could be comprised of independent representatives across the areas that most small plants find friction: i suggest a university-based Food Processing Authority, an independent consultant on Animal Welfare, an independent expert in Microbiology, a private HACCP Consultant and an HR representative from the FSIS who is familiar with the expected appropriate conduct of FSIS employees.

A distressed plant operator could reach out to this board when they have issues with FSIS inspection staff, and a fair mediation process can be undertaken to professionally resolve conflicts.

### **Over-Inspection**

What's the problem with inspection if we are doing what we are supposed to? The best illustration of what the inspection level is like in my facilities is to compare it to you driving around with a police officer in your passenger seat.

By comparison, the inspection in high speed slaughter plants is like an officer standing in a subway station and observing passing trains for any individuals on America's Most Wanted list.

The problems with over- inspection is simply the laws of probability. The more inspection occurs, the more issues will be discovered. This in and of itself isn't a problem, but it creates unfairness, essentially holding small plants to higher standards than the mega processors. This over-reporting then creates another issue, as small plant's records will have more recorded incidents, therefore giving the impression that small plants have more food safety issues than mega plants.

### **Profitability:**

The consolidation in meat processing is problematic for the profitability of livestock growers and the sustainability of small meat processors.

However, the value-chain for small and mid level meat processing has slowly disappeared over the last 40 years, and it can't be rebuilt overnight. Simply trying to bust up the corporate integrators market share by legal means will be pointless unless the value chain of supporting services is rebuilt for the small and mid level processors.

Rendering:

The mega processor's competitive advantage lies less in the volume that they have and more in the fact that, as a result of their volume, they still have access to profitable markets for their waste streams.

Thirty years ago, small plants made most of their profit margin from selling the hides and offal to renderers. Today, this income stream has flipped to the other side of the balance sheet and is a significant expense for plants. The disappearance of small meat processors is directly proportional to the disappearance of their profitable offal markets.

For small plants to become both profitable and competitive, the markets for their waste must return. Protein meal, collagen production, pet foods and renewable energy are all options for small plant waste rendering. While small scale options for these do exist, they are, of course, costly.

Overall I'm not a supporter of long term subsidies, it does appear that, in order for this market segment to return, subsidies will be beneficial in jump starting the process. However, these rendering options will not be beneficial to plant sustainability if their business plan is built upon obtaining free waste from processors.