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Testimony of David A. Domina In Opposition to L.B. 942
Agriculture Committee. February 18, 2014.

Brief Witness Biography.

David A Domina:

Lawyer. Significant Anti-Trust experience against Meat Processing Firms.
Nebraskan Who Provides Legal Services to Nebraska Producers.

Author of Peer Reviewed Publications Concerning Livestock Markets:

Domina, David, & Taylor, C. Robert, *The Debilitating Effects of Concentration on Markets Affecting Livestock,* 15 Drake Ag Law J 61 (2010);

Taylor, C. Robert, & Domina, David, *Restoring Economic Health to Contract Poultry Production* (OCM & For US DOJ Hearings 2010);

Domina, David, & Taylor C. Robert, *Restoring Economic Health to Beef Markets,* (OCM & For US DOJ Hearings 2010);

Invited Panelist, *Joint US DOJ, USDA Hearings on Livestock Industry,* Ft. Morgan CO (Aug 2010; attending by US Attorney General, and US Secretary of Agriculture).

Domina, David A., Proving Anti-Competitive Behavior in A U.S. Courtroom, *Journal of Agricultural and Food Industrial Organization, 2006, vol. 4, issue 1.*

Invited Speaker: Est. 50 Forums on Agriculture Markets. NE, SD, KS, IA, CO, MT, CA, NM, MO, TX, TN, VA

These credentials are provided as context for the testimony offered.

L. B. 942 Should Not Be Enacted.

L.B. 942 should not survive Committee hearings. Packers should not own livestock before animals are purchased for slaughter. They should not be permitted to control the entire vertical sequence from breeding to eating, or from feeding the animals, to rendering them to be consumed by humans. This basic policy was established by the United States Congress in 1921. Briefly, Congressional policy divided livestock production from meat processing in this basic way:

Livestock Producers:	Breed, Feed, & Sell Live Animals
Meat Processors:	Kill, Render, Divide & Sell Meat & By Products
Service Providers:	Transport, Chill, Provide market reports & Sell at Retail

Producers are at great risk when this basic structure is compromised. Producers are small businesses, far flung in diverse locations, not organized, and without market power to deal with overreaching Processors or Service Providers. L.B. 942 threatens basic structure by combining actual animal ownership with the already overly pervasive market power of the Meat Processors. This act would eliminate a market for livestock and reduce growers to independent contractors, and not independent business persons.

The market for butcher weight hogs is threatened by potential Processor ownership of swine. L.B. 942 is a threat to producers engaged in the swine business, and to swine investment across Nebraska. L.B. 942 would allow thorough "chickenization" of the swine industry. No one will be immune; not even the largest producers. This is why:

1. **Vertical Integration.** The swine industry largely resembles the chicken industry. This was a subject of intensive study in 2010. Things have worsened during the past 3+ years. The swine industry is increasingly integrated vertically. This means ownership and control of essentially all aspects of production in the vertical chain, from genetics, to the sows, to 14 lb. introductory nursery weight pigs, to processed swine carcasses, are controlled by pork meat packers and processors. The swine industry is not quite as vertically integrated as poultry, but it is catching up rapidly. The final straw in this process would be Processor owned swine.

2. **Pork Producers Have Been Ravaged.** In numbers of family farms, and in social welfare terms, the number of pork producers has been ravaged. As the Secretary of Agriculture frequently notes, 9 of 10 pork producers have been lost during the past 20 years. Pork is now factory produced, in CAFOs, and not on family farms. In Nebraska, for example, swine loans were once staples of agricultural bank lending. Now, hog loans are rare aberrations. This is because there are so very few hog

producers left. Iowa, the nation's largest pork producing State, has only 10% as many persons who own hogs today as it had in 1990. Huge producers have replaced families. And, they are captive to unique, sole placement, contracts with Processors. These Producers with huge capital investments that require decades to pay off, must content with five year, or shorter, contracts with Processors to sell their market-weight animals.

2.1. Remaining Producers will be decimated… and reduced to mistreated, expendable worker status. They will become "Growers" not Producers, and contract "employees", not independent business persons.

2.2. Processor-owned pigs will allow Processors to give or withhold rewards.

2.3. Large capital costs will be sunken by Growers. Growers will be trapped between long terms mortgages, and short term feeding contracts that do not provide the payout term required by the long term debt.

2.4. Processors will control both good and unsatisfactory replacement swine. They will be distributed to growers based on Processor favoritism.

2.5. Growers will be subjected to a "tournament" payment system that rewards the lowest cost producer. This means Growers will be forced to compete against one another for a pool of available funds for livestock for their single delivery point or plant.

3. **Integrated Decisions.** Processors now integrate nearly all decisions affecting swine production, direct the course of action in all key areas of production, largely manipulate the sourcing for nursery weight pigs by imposing varying criteria, and control the number of swine a processor can deliver to market by constraining and compelling the numbers of deliveries through one-sided, non-negotiable contracts. Increasingly, Processors dictate physical size of production facilities, equipment specifications, and locations or placements of finishing facilities. Ownership of the swine will greatly reduce Grower choices. There will no longer be an option to own swine or to lease barns.

3.1. Grower control will worsen.

3.2. Plant closures will literally bankrupt Growers at once; their source of swine will be cut off and they will have no optional source of pigs or delivery point.

3.3. "Chickenization" will take its course.

4. **Current Swine Contracts**. In swine, the dominant business arrangement permits the producer to own the swine but commands the animals be contracted to the meat Processor when they are acquired for the nursery unit as infants. The swine producer must deliver a minimum number, but not more than a maximum number, of pigs or breach the Producer's contract with the Processor. Dead swine belong to the producer. So do live ones exceeding the contracted number. Environmental issues associated with excrement and waste is dumped on producers.

5. **Capital Investment Demands.** Processor representatives routinely impose demands on each Grower concerning the kind, type, and nature of the nursery and finishing facilities. Processor representatives may call on the facilities to demand compliance. The Producer has no choice but to contract the swine because the spot market is so unreliable and so thin it provides no assurance as an alternative to contract swine production. The present Producer who does not forward contract may find himself without a way to dispose of his animals when they are market ready. The one who does greets a day of reckoning when the Processor demands new capital investment, rejects swine grown from piglets acquired from a now-disapproved source, changes the carcass specifications, or finds other faults. If these fates are escaped, the hog producers must take what the Processor offers at contract renewal time because the barns the animals occupy remain mortgaged and useless for any other purpose. The Producer "owns" title to assets that are nearly wholly committed to, and controlled by, the Processor.

   5.1. Under Processor ownership this is even worse as a Grower with a large debt and a life-controlling investment has only one source for pigs to grow and one source for marketing.

   5.2. Processor control completely eliminates livestock markets. It assures gripping Processor control over Growers.

   5.3. The financial circumstances of the Grower become wholly subject to the whim and business caprice of the Processor.

   5.4. The Grower is subject to abuse by Processor representatives who can give or withhold contracts based on entirely subject's motivations.

6. Processor Ownership is bad for the Labor Force. All this Concentration has not *expanded* the US labor force; it has contracted the labor force. One major reason concentration occurs is to achieve perceived labor efficiencies. In testimony before the Federal Trade Commission, Steven C. Salop, a Georgetown University professor testified nearly 20 years ago about this phenomenon in poultry:

> It is clear that the motivation and effect of many mergers is to reduce costs and improve products. Mergers involve the real asset integration that is associated with increases in efficiency. [1]

Prof. Salop argued for a dynamic welfare standard that considers more than corporate efficiencies at the costs of the labor force, Growers and consumers.

> Dynamic welfare standards can be formulated by extending the static welfare standards to this dynamic environment. A dynamic version of the PCW standard, for example, would balance any consumer harms flowing from short run price increases with consumer benefits from price decreases in the longer run resulting from diffusion of the merger-induced cost reductions to other competitors. Application of an appropriate discount rate to future time periods ensures that greater weight is given to relatively more certain, short run effects.[2]

7. "Chickenization" is pernicious. It breaks and denies work satisfaction, subverts private ownership, defeats entrepreneurship, leads to corporate abuse, causes bankruptcies, breaks up marriages, and leads to suicides. This is widely known.[3]

8. Nebraska should not revise its law to simplify the debilitation that is extraordinarily likely to follow disruption of the long-recognized-as-essential checks against abusive behavior by meat processors. Processors should not be permitted to own swine.

9. L.B. 942 should not be voted out of Committee.

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[1] Nov 2, 1995 Testimony of Steven C Salop, http://www.ftc.gov/opp/global/saloptst.shtm
[2] *Id.*
[3] See, *The Business of Broilers* (PEW Charitable Trust 2012) http://www.pewenvironment.org/uploadedFiles/PEG/Publications/Report/Business_of_Broilers_Report_The_Pew_Charitable_Trusts.pdf; Hauter, Wenowah, *Foodopoly* (Amazon 2011) http://books.google.com/books?id=LnOkNbVFu5kC&pg=PT137&lpg=PT137&dq=Taylor+Robert+economist+poultry+growers&source=bl&ots=SfSf0eMw7X&sig=fAr84zE855YTDrdgRkJVHYf9nBI&hl=en&sa=X&ei=T1gDU-z_M4ryyAHBxoCgDg&ved=0CE4Q6AEwBg#v=onepage&q=Taylor%20Robert%20economist%20poultry%20growers&f=false; Leonard, Chris *Meat Racket* (Simon & Schuster 2014).