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Agriculture Committee  
February 12, 2008

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[LB1113 LB1174]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, February 12, 2008, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1113 and LB1174. Senators present: Philip Erdman, Chairperson; Annette Dubas, Vice Chairperson; Ernie Chambers; Merton "Cap" Dierks; Don Preister; Russ Karpisek; Vickie McDonald; and Norman Wallman. Senators absent: None. []

SENATOR ERDMAN: Good afternoon, ladies and gentlemen. Welcome to the hearing on the Agriculture Committee on February 12, 2008. Before we get started this afternoon, I'll go through a little housekeeping to make sure you're aware of our process this afternoon and what's been agreed to. I'll also introduce the members of the committee and the staff and direct you to the folks that may be able to answer questions if you would have any and also outline what assistance we can provide you this afternoon. My name is Philip Erdman. I've been elected by the Legislature to chair the Agriculture Committee. I'll introduce the members of the committee regardless of where they're sitting or whether they're here or not so that you're aware who is on the committee. To my far right will be Senator Ernie Chambers from Omaha. Next to him will be Senator Don Preister from Omaha. Next to him is Senator "Cap" Dierks who is currently in the hot seat, if you will. Next to Senator Dierks is Rick Leonard, the research analyst for the Ag Committee. To my immediate left is Melissa Lunsford. She's the committee clerk. She'll be tracking the history you're making today by participating in this hearing, and so we want to make sure that we get your name spelled right and take care of all those issues and she'll handle that. Next to Melissa is Senator Dubas. Senator Dubas is Vice Chair of the committee. She's from Fullerton. Next to Senator Dubas will be Senator Russ Karpisek. Senator Karpisek is from Wilber. Next to Senator Karpisek is Senator McDonald from St. Paul. And on the far end over there is Senator Norm Wallman. Senator Wallman is from Cortland. Just so that you're aware, those of you that are in the room, congratulations--you got a seat. Those of you that are in the room that would still like a seat, we do have an overflow room in Room 1023, which is at the west entrance of the Capitol. And so if you'd like to participate that way, you're more than welcome to do that, In addition, these hearings are broadcast over the Legislature's closed circuit system to all of the legislative offices as well. So there are rooms for overflow if you want to come and go. You're welcome to do that. Our process this afternoon for LB1174, which is the first bill that we'll be hearing, Senator Dierks's bill, we have allocated an hour of prepared testimony for proponents; an hour of prepared testimony for opponents; a half hour of prepared testimony for neutral. And questions that may be asked by the committee will be outside of that. And so that will allow each side the same opportunity as far as the amount of time. The introducer of the bill, Senator Dierks, has worked with a group of proponents and has given me a list, and we will generally follow that. Organizations that are on the other side of LB1174 have worked with Jay Rempe of the Farm Bureau and Jay, I believe, is here. If you're here to testify in opposition and would like to do that, I believe they still have a couple of spots

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under their allotted time. And then there will be individuals here testifying in a neutral capacity. And I will caution you today that if you're testifying in a neutral capacity, you very well need to be in neutral capacity. You need to be here to share observations or perspectives. I will not tolerate anybody that would like to come up in a neutral testimony and contradict somebody that they had heard prior. That's not the purpose of neutral testimony in this committee or in any other committee. And so the general purpose of a neutral testimony is to provide information, observations, or for those individuals that truly do not have a position on the legislation would like to share information with the committee. All individuals that are seeking to testify today will be generally limited to four minutes unless otherwise agreed to by their groups that have organized their testimony. We also have individual, Dr. Rick Welch, is on the phone. He will also be sharing observations with us after the second testifier. So we're doing our best to accommodate this discussion. Before we get to Senator Dierks's opening, we also have two pages. Tim Freburg from Holdrege is a political science major and Kristen Erthum from Ainsworth is also a political science major. They are here to assist you. If you have copies of your testimony that you'd like to have distributed to the committee or if you have your testimony and you didn't make enough copies, they'd be happy to get copies of that and distribute that to the committee as well. And that's Tim and Kristen and, again, they'd be happy to assist you. I believe they're assisting us right now with some responsibilities and so they will be back shortly. With that, I have a timer or will have a timer, and we will keep track of the testimony up here at the desk, and we will announce the amount of time remaining as appropriate so that everyone is aware of where we're at. Senator Dierks is the principal introducer of LB1174. Your time will not count against either side. As the introducer, you're welcome to share with us your perspective, explanation of LB1174. []

SENATOR DIERKS: (Exhibit 1) Thank you, Mr. Chairman, members of the committee. My name is Cap Dierks, that's spelled C-a-p D-i-e-r-k-s. I'm very pleased to be here today to introduce LB1174. There are many good reasons to pass LB1174. One is that it honors the will of Nebraska voters. A majority of our citizens told us, through the ballot process, in 1982 that they wanted protections for family farmers and ranchers. They were seeking to stop large corporations from purchasing agricultural lands in our state. After 25 years of challenges, the federal courts finally threw this constitutional amendment out on a technicality. I am seeking through legislation to reinstate the principles of Initiative 300 into our state statutes. LB1174 takes into account concerns made by the courts regarding the Commerce Clause and the Americans with Disabilities Act. LB1174 defines a family farm or ranch on page 4, lines 15 and 19 as existing within or outside of Nebraska. This we believe takes care of any Commerce Clause problems. Day-to-day labor and day-to-day management can take place in Nebraska or some other state if it contributes to the agricultural production activities of the farm or ranch. This bill also takes into account persons who are prevented from providing day-to-day labor and day-to-day management because of physical or mental impairment that substantially limits major life activities. These changes can be found on page 5, lines

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9-14 and page 9, lines 1-8. I want to limit my testimony because we have a big day ahead of us and many others want to talk with the Ag Committee. I thank you in advance for your time and attention to this very major piece of legislation. With that, I'll pause and take questions if you have them and reserve the right to close on the legislation. [LB1174]

SENATOR ERDMAN: Thank you, Senator Dierks. Any questions for Senator Dierks from the committee? They're going to let you off easy, Cap. [LB1174]

SENATOR DIERKS: I believe that Dr. Welsh is on the line now to testify next, Phil. [LB1174]

SENATOR ERDMAN: Okay. I've got, and you can correct me if I'm wrong, Cap, I've got Roger McEowen from Iowa State, followed by Dr. Rick Welsh. Is that... [LB1174]

SENATOR DIERKS: Why don't you switch them so Dr. Welsh, because he's already on the phone, I believe. [LB1174]

SENATOR ERDMAN: That is correct. Okay. We will make that modification. Dr. Welsh, can you hear me? [LB1174]

RICK WELSH: I can. [LB1174]

SENATOR ERDMAN: Very well. We have, as you have just heard the opening by Senator Dierks on LB1174, and as I have before me and hopefully this has been shared with you as well, I have allocated approximately eight minutes for your testimony. And again, as I said earlier, your...if there are questions of you, those will not count against that time, but you'll have eight minutes of prepared time that you can share your observations and research with the committee. And you can begin now. [LB1174]

RICK WELSH: (Exhibit 2) Okay, thank you very much. I wish to thank the Nebraska State Legislature for inviting me to speak today as well as Chuck Hassebrook and the hard-working, committed staff at the Center for Rural Affairs for helping to arrange this testimony. I have followed the debate surrounding corporate farming bans or anticorporate farming laws for many years. I find the subject matter and the laws themselves very intriguing and have devoted a significant part of my research program to understanding their effects. In many ways, my work on the effects of anticorporate farming laws is linked to a central problem within the sociology of agriculture and rural sociology. This is the link between the health and welfare of rural communities and the characteristics of the farms that surround them. I have published five peer-reviewed articles and one report on farm structure and rural community welfare and the effects of anticorporate farming laws. And my testimony today is drawn largely from that scholarly literature. Walter Goldschmidt is an anthropologist who in the 1940s made the finding

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that communities surrounded by large-scale farms fared poorly on a number of important social indicators when compared to communities surrounded by small- to moderate-sized farms. Since Goldschmidt, a plethora of studies have been undertaken to attempt to replicate or refute his findings. The majority of the studies provide at least some support for Goldschmidt's original findings. The impetus for Goldschmidt's research and the follow-on studies is the effort to understand the nature and impacts of structural change in U.S. agriculture on rural communities. That is, since early in the twentieth century U.S. agriculture has been characterized increasingly by a loss in farm numbers, increasing average farm scale, increases in the use of hired labor on farms, vertical integration of farming with off-farm businesses, and increases in contract farming. These changes have been uneven across time and place, but in general have characterized the development of U.S. agriculture in the twentieth and early twenty-first centuries and have caused some observers to argue that agriculture is industrializing. The potential for industrial-style farming to displace the traditional family labor farm with other organizational forms has caused public concern within and outside rural America. In addition to generating scholarship, concerns over structural change in U.S. agriculture have generated public policy. As you are aware, nine Midwestern states have adopted laws that restrict corporate involvement in agriculture. The laws, called anticorporate farming laws, vary from state to state, but in general are intended to hobble or restrict corporate involvement in agriculture in order to protect family farm agriculture. For example, Minnesota's anticorporate farming law specifically states that it is in the interest of the state to promote and protect: "the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family." Anticorporate farming laws are not necessarily intended to slow down or impede many of the changes occurring in U.S. agriculture. Rather, the laws are designed to regulate or proscribe the entry of particular types of organizational forms based on ownership arrangements, most commonly nonfamily corporations, into production agriculture. This is accomplished through actions such as restrictions or regulations on ownership of farmland or downward vertical integration of livestock processing with production. Today I have been asked to speak about the studies my colleagues and I have undertaken concerning these laws and related topics. In one study I found that higher percentages of nonfamily corporate farms within a county are associated with higher average cash gains per farm, but lower percentages of farms earning those cash gains while partnerships are positively associated with higher cash gains per farm and higher percentages of farms earning those cash gains. This effect is independent of farm region and size and other important variables. Their findings provide support for efforts to influence ownership arrangements within agriculture by state government. In another paper, my colleagues and I found that the relative restrictiveness of a state anticorporate farming law affected (1) the percentage of nonfamily corporate farms (2) the percentage of land under nonfamily corporate management in the state. Passing restrictive laws has a negative effect on these variables and relaxing a law influences them positively. Therefore, anticorporate farming

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laws are effective vehicles for managing the degree of corporateness of a state's farm sector to the extent that it is considered desirable. And in a 2003 study, we discerned links between the presence of such laws and their degree of restrictiveness and the level of geographic concentration of a state's hog production. In states with anticorporate farming laws, especially more restrictive ones such as Nebraska's law, hog production tended to be more geographically dispersed. The literature on this topic finds a clear link between extremely concentrated production and enhanced environmental risk from nutrient surpluses as well as release of antibiotics and resistant pathogens into the environment. Finally, in a 2005 study, my colleague, the late Thomas Lyson, and I found that limiting the industrialization of agriculture through anticorporate farming laws can have positive impacts on rural communities. Specifically, agriculture-dependent counties within anticorporate farming states were more likely to have lower poverty and unemployment rates and a higher percentage of farms earning cash gain than such counties in states without these laws. This dovetails with the literature that links industrialized farming with negative effects on rural community welfare. Findings in this literature indicate that a polarized class structure is created in rural communities dominated by a few very large farms. This situation is exacerbated when the farms are owned by nonfamily corporations or the types of organizations restricted by anticorporate laws. In fact, in one study we found that the size of the farm is not as important as ownership arrangements when measuring the link between farm structure and rural community welfare. When we controlled on whether corporate ownership arrangements were restricted, we found in some cases that counties with greater numbers of larger family-owned farms had lower poverty and higher employment. Therefore, the most important variable is not farm size, but whether a farm is a nonfamily corporation of some type or not. Farmers and their allies in the Midwest have known this for a long time and enacted laws in the '70s and early '80s that allowed family farms to expand in size and sophistication but without losing more locally centered control over production decisions and ownership of important productive assets. Anticorporate farming laws are beneficial to rural communities because they cement control over key aspects of the farming operation within the family farm household, and thereby keep control more within the community. In these situations, managerial decisions concerning things like pay, employment, and environmental management are more localized and are often made subject to local norms and expectations. In many cases, these types of social regulations are more effective than formal state regulations at encouraging positive outcomes for rural communities linked to the agricultural sector. Thank you very much, and I've provided a copy of my remarks to Dan Owens of the Center for Rural Affairs. [LB1174]

SENATOR ERDMAN: Thank you, Dr. Welsh. We have a few members that have joined us: Senator Preister and Senator Chambers are now with us. Are there questions for Dr. Welsh? I have a couple if...Senator Dierks, did you have questions? [LB1174]

SENATOR DIERKS: No. [LB1174]

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SENATOR ERDMAN: Okay. In your testimony, and you're well aware of the situation we find ourself in Nebraska with the federal district court as well as the Eighth Circuit's ruling on Initiative 300. I don't believe what page this is, it's the second to last page that you spoke of the importance of the locally centered control over production decisions and the importance of local norms and expectations. As I understand our process or at least what we believe the direction that we have to go to comply with the ruling of the court and to be somewhat...to have an opportunity to make that case at least that we are complying with the Commerce Clause issues, technically we would allow non-Nebraska family farms to qualify under this act. Are you aware in your research of any similar provisions in other states? And do you have any direction as far as us as what we see the same benefit of a family farm or family-owned operation even if they're not locally centered? [LB1174]

RICK WELSH: Right. In general our studies controlled on corporate restrictions on farming. And so if these situations were allowed previously, that is if family farms could be registered in one state but operate in multiple states, then it would have been part of that database. So to the extent that they were allowed under these laws, it would have been included in the analysis. But more directly, that would be one aspect of these laws is that the degree to which you maintain control within a household and within a community of important production decisions and important assets, then you do tend to create a situation in which farmers or anybody under those circumstances are part of the social fabric. And therefore, they will have a tendency to tend to meet local norms and expectations. So if a situation in which a family farm is in an adjoining state and then they also farm in Nebraska, it would depend on the exact circumstances. But if I'm picturing it correctly, that those people would be operating the farm and part of the local community to some extent, not...what you want to avoid is a situation where the owners and the decision makers are far removed from the community in a capital city or a major metropolitan area making decisions that are wholly removed from the local context. [LB1174]

SENATOR ERDMAN: And I think that's logical. My follow up to that would be if we have a family farm in California that would qualify, as I understand at least the direction that we've been given by the court and maybe some direction from legal experts, in order for us to provide a benefit or the protection that we previously had under I-300, we have to also afford other family farms that qualify in other states of that similar benefit. Is there a...whether they're in a capital city or whether they're in another state and just simply operate in Nebraska, there potentially could be that impact. But is it fair to characterize your research that the overwhelming benefit or the benefit would be, whether it's overwhelming is probably subjective, but the benefit would be that we would then still be providing that opportunity for Nebraska family farms? [LB1174]

RICK WELSH: Right. It would be a situation in which you were preventing the

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displacement of family farms with corporate farms and the integration and coordination that's taken place in other states and the effect that that's had on rural communities. So it would be...it's actually considered two separate effects. One would be a localized effect from operating within a community, but there's an effect of just not being corporate also. And what that effect is, I think, is that noncorporate entities in agriculture have difficulty competing with corporate entities for a lot of reasons. And having partly to do with structural change in the processing sector and the degree of concentration that's been occurring, they're just at a disadvantage on trying to maintain a competitive or to be able to bargain with them over contract terms and other types of arrangements. And so by keeping it noncorporate, by not allowing corporations to integrate into production, we're essentially protecting family farm agriculture and gaining most of the benefits that we measured. [LB1174]

SENATOR ERDMAN: Okay. Other questions for Dr. Welsh? Senator Dubas. [LB1174]

SENATOR DUBAS: Thank you, Senator Erdman. Thank you, Dr. Welsh, for your testimony today. There is a line of thought that corporate farming bans have outlived their purpose. Times have changed. Financial realities have changed. Access to capital, being able to partner with neighbors and other farmers are really a necessary part of farming and ranching today. What would your response be to that? [LB1174]

RICK WELSH: Well, I agree that being able to partner with other farmers and ranchers is...can be a beneficial thing. I think that generally that would be allowed as long as they're organized as a cooperative or some other type of entity, at least that's my understanding. And it's not really...these laws, and they shouldn't really be aimed at preventing farmers from coordinating their activities amongst themselves. What they should be aimed at is keeping the large-scale firms in the processing sector and other input sectors from integrating directly into production. Because at that point, supply chains become set, it becomes more difficult for family farms to enter markets or to compete on price and to even discern what the prices are. And it's because those supply chains become so opaque and because the drivers of the supply chains are very large businesses with deep pockets and the ability to operate nationally and internationally. But it just makes it very difficult for family farms to compete against them. Now do I think they've outlived their usefulness? I guess I don't think so. In fact, I don't think so because there are many reasons why firms, agribusiness firms, would want to source their product in Nebraska and from Nebraska farmers. And these bans will allow them to do that, but without actually gaining ownership of important productive assets. I still think that that will attract private investment, and it will allow Nebraska agriculture to flourish. In fact, I think it will...my research shows that it will benefit rural communities in agriculture. I don't think that...things have changed and we're not living in the 1970s or the early '80s when these were passed. But things haven't changed so much that you should allow corporate integration into production. Because if you do that, then you're essentially pushing family farmers out. They may stay in as

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contractors, franchise owners, and those kinds of arrangements, but they won't be semi-independent or autonomous, small to moderate to even larger size business owners, which is what rural communities really need. [LB1174]

SENATOR DUBAS: Thank you. [LB1174]

SENATOR ERDMAN: Thank you, Senator Dubas. Any other questions for Dr. Welsh? I don't see any. Thank you, sir, for your testimony and for your interest. We appreciate you making an effort to be here, and we will probably disconnect you at this point, but we do appreciate your willingness to be here. [LB1174]

RICK WELSH: Well, thank you very much. [LB1174]

SENATOR ERDMAN: Thank you, sir. We will now proceed to Roger McEowen, I think I've said that right, Roger. No? I apologize. You can correct that. When you do come forward, I forgot to mention this earlier, please state and spell your name for the record before you begin. That way we have that on the transcript. [LB1174]

ROGER McEOWEN: (Exhibit 3) My name is Roger McEowen, M-c-E-o-w-e-n, and I'm the Leonard Dolezal Professor in Agricultural Law at Iowa State in Ames, Iowa, and director of the Center for Agricultural Law and Taxation. Thank you, Mr. Chairman. Mr. Chairman, Senators, I appreciate the opportunity to express a few views on the dormant Commerce Clause and its application to corporate farming laws. I'll limit my remarks to two points. First a few comments on the dormant Commerce Clause and why what the Eighth Circuit has done should be important to you as policymakers. There's something much broader than simply corporate involvement in agriculture that is going on here, and you should be very concerned about it. Legislation attempting to limit corporate ownership of farmland dates back to the late nineteenth century. Minnesota adopted legislation in 1887 and Nebraska in 1891. Several other states enacted legislation in the early 1930s as a reaction to the problems agriculture faced during the Great Depression. And as you know, Nebraska in 1982 adopted a constitutional amendment prohibiting further purchase of farmland and the establishment of farming operations by nonfamily farm corporations or limited partnerships. The provision did not restrict individuals, general partnerships, or family farm corporations. The various state laws were never designed to slow down or prevent structural change in agriculture, but rather control the organizational form of farming operations based on ownership arrangements. The restrictions grew out of rising concern across the country that several key sectors of the U.S. economy were becoming controlled by a few large firms and multinational corporations. Those were the same concerns that resulted in the passage of the Sherman Act in 1890, the Clayton Act in 1914, the Packers and Stockyards Act in 1921, and the Robinson-Patman Act in 1936. From the late 1800s through the entire 1900s, not a single court at either the state or federal level held that a state's corporate farming law was unconstitutional. Indeed, the U.S. Supreme Court in

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1945 concluded that corporate farming restrictions do not violate the privileges and immunities clause of the constitution or the due process or equal protection clause of the 14th Amendment. So why such a sudden sea change shift in the Eighth Circuit? The answer involves the so-called dormant Commerce Clause, a clause that cannot be found in the constitution, but is a judicially created doctrine that several U.S. Supreme Court justices don't believe in and that special interest groups have utilized to achieve an outcome in the courts that they could not obtain in state legislatures. But there's a broader issue involved that tends to go unnoticed, and I'm convinced that the groups that have lobbied for the elimination of I-300 don't even recognize it as an issue. We've seen this problem in agriculture recently with some farm organizations arguing that certain agricultural checkoff programs, marketing programs, are beyond First Amendment challenge because they constitute government speech. While a minority of the Supreme Court agreed with that particular point, enough of them agreed to rule together to form a majority opinion in order to get the desired result as Justice Ginsburg stated. Subsequent federal courts have expanded the government speech doctrine into other areas that I'm sure the lobby groups never anticipated. Who knows how far the federal government will be able to reach under the guise of government speech? A similar phenomenon is occurring with respect to anticorporate farming laws. Special interest groups have used the judicial system to find an agreeable court to create law where there is none with the result of a further expansion of the federal government into what should be purely a state matter. The outcome is that elected state legislators are stripped from establishing policy for their own citizens. So what is the dormant Commerce Clause? It's a constitutional law doctrine that says Congress' power to regulate commerce among the several states implicitly restricts state power over the same area. In general, the Commerce Clause places two main restrictions on state power--(1) Congress can preempt state law merely by exercising its commerce clause power. (2) The Commerce Clause itself, absent action by Congress, restricts state power. In other words, the grant of federal power implies a corresponding restriction of state power. The second limitation has come to be known as the dormant Commerce Clause because it restricts state power even though Congress' commerce power lies dormant. The rationale behind the Commerce Clause is to protect the national economic market from opportunistic behavior by the states--to identify protectionist actions by state governments that are hostile to other states. Generally, the dormant Commerce Clause doctrine prohibits states from unduly interfering with interstate commerce. The U.S. Supreme Court has developed two tests to determine when state regulation has gone too far. Under the first test, states are generally prohibited from enacting laws that discriminate against interstate commerce. Under the second test, the court balances the burden on interstate commerce against the state's interest in its regulation. But let me be clear on one point. The court has never held that discrimination between instate and out-of-state commerce, without more, violates the dormant Commerce Clause. Instead, the court has explained that the dormant Commerce Clause is concerned with state laws that both discriminate between instate and out-of-state actors that compete with one another and harm the welfare of the

national economy. Thus, a discriminatory state law that harms the national economy is permissible if instate and out-of-state commerce do not compete. Conversely, a state law that discriminates between instate and out-of-state competitors is permissible if it does not harm the national economy. Unfortunately, the court has been careless in applying this antidiscrimination test and in many cases, neither of the two requirements--interstate competition or harm to the national economy--is ever mentioned. The reason interstate competition goes unstated is obvious. In most cases, the instate and out-of-state actors compete in the same market. But the reason that the second requirement, harm to the national economy, goes unstated is because the court has incorrectly, in my opinion, assumed the issue away. Specifically, the court assumes that discrimination between instate and out-of-state competitors necessarily harms the welfare of the national economy, making the second requirement superfluous. The court simply assumes that free competition among rational economic actors will necessarily improve the national economy. In other words, the court assumes that individuals can have no impact on the results of the market and that the rational pursuit of individual self-interest will result in society being better off. But that is an incorrect assumption and it's the primary reason we have antitrust laws and the real reason behind why some states have taken action to enact corporate farming laws. The application for us today is that in some cases states act strategically, that is, they act in response to the anticipated behavior of other states. In these situations, it is incorrect for any court to build economic assumptions about free competition into its dormant Commerce Clause antidiscrimination test. In these cases, state discrimination between instate and out-of-state competitors may actually improve national welfare. With that much said, in recent years the most conservative justices on the Supreme Court have argued for the complete elimination of the dormant Commerce Clause. Former Chief Justice Rehnquist and Justices Scalia and Thomas believe that not only is there no textual basis, but the dormant Commerce Clause actually contradicts and therefore directly undermines the constitution's carefully established textual structure for allocating power between federal and state sovereigns. In a dissent joined by Rehnquist and Scalia, Justice Thomas concluded: "The negative Commerce Clause has no basis in the text of the Constitution, makes little sense, and has proved virtually unworkable in application." It remains to be seen how the recent appointees to the court would view the issue, but it is not at all clear that if the Supreme Court were to take the case, and they've already denied to hear it, the court would uphold the appellate court. But if the court were to take the case and ultimately agree with the Eighth Circuit's analysis in the I-300 case, it would lead to an expansion of the federal government, a reduction of the role of state legislatures to set policy for their citizens, and push us further down the path of globalization. So it's no wonder that the more conservative members of the court oppose the doctrine. [LB1174]

SENATOR ERDMAN: Roger, I'm going to have to stop you there. Why don't we do this. There will be time for questions, but the time that's been allotted was about eight minutes. I recognize that you haven't gotten through the guts of it. I don't want you to read to me the process that went into your analysis, but can you summarize what the

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analysis that you've done regarding how this fits under Nebraska--I think you've laid very good groundwork as far as the response of the court. [LB1174]

ROGER McEOWEN: Well, the problem you have to deal with as legislators in Nebraska is dealing with an Eighth Circuit where it's basically roll of the dice, depending upon the panel of judges that you get as to how they will come out with respect to dormant Commerce Clause litigation. Indeed the Eighth Circuit has contrary opinions by the same court given different panel of judges on the same issue, upholding a Missouri livestock price reporting law which the majority of the panel of those judges were Reagan appointees, but at the same time striking down laws in South Dakota and Nebraska where a majority of those panel of judges were appointed by either President Carter or President Clinton. So you've got the political dichotomy of the court with the more conservative justices saying there is no such thing as a dormant Commerce Clause. This is a state's rights issue. It's not for the federal government to step in. But with the opinion that you have to deal with right now in terms of crafting legislation to deal with this case, you are left in a situation where the court has a very strange construction of the dormant Commerce Clause. And it makes it very difficult as legislators to try to comport with what the court is saying when the U.S. Supreme Court would likely probably not even agree with it if they would decide to take one of these cases. With that much said, I do believe that the attempt that has been made in LB1174 does comport with the current analysis of the Eighth Circuit. Now I don't agree with the analysis of the Eighth Circuit, but that's what you have to deal with. I think you've done a good job at least initially in putting that together. I know others today will talk about the specific detail of the language. That's not my task today, but my task is to point out to you you've got a broader issue to deal with here as state legislators than just the corporate farming legislation. You've got creep coming in by the Eighth Circuit into areas that will allow the federal government to in effect take away legislative authority of your legislature as well as other state legislatures that deal with similar problems. [LB1174]

SENATOR ERDMAN: Thank you, Roger. Any other questions of Mr. McEowen? Did I get that right? Sorry about that. I don't see any, appreciate your testimony being written. That gives us a good basis to go back and follow up on the cases you referenced and your testimony. Appreciate you making the trip over. [LB1174]

ROGER McEOWEN: Thank you very much. [LB1174]

SENATOR ERDMAN: Thank you. Our next testifier is Michael Stumo. Michael is on his way up and, Roger, I'm making sure you did that, did you fill out a testifier sheet? Okay. Just go ahead and stick that in there. Thank you, sir. And we're right on schedule. We're just shy of 16 minutes so far, and we had allotted 16 minutes for the first two testifiers. Michael, if you'll state your name and spell it for the record and then you're free to begin your testimony. [LB1174]

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MICHAEL STUMO: Yes, Senator. My name is Michael Stumo, S-t-u-m-o. I'm with the Organization for Competitive Markets, which is a national farm and rural group that works on agricultural antitrust and markets and pricing issues as well as international trade issues. And I thank you, Senator Erdman and the Ag Committee, for allowing me here to testify. I'd like to state initially on behalf not only of our Nebraska members but our members outside Nebraska that we're looking at Nebraska to continue the leadership it has in protecting the free markets, the choice, the opportunity to innovate by independent producers because other states have taken a different path than Nebraska has in the past. And the quantitative results have been very negative, very drastic. By not taking the path that your state has taken and that we hope you continue to take, we see major agricultural states with market closures, with no choice, with very few people controlling large amounts of the production there. And so the resilience of your ag production sector here is really quite astounding. Not only are you the number one red meat producer in the country, but you've really spread out who produces that so people in St. Paul, Nebraska, Burwell, Albion, Ainsworth can all share in that rather than merely coming out of the university of Lincoln to face either employment...being an employee, not having the opportunity to produce or to move out of agriculture. So it's really quite clear that you've set the tone and the lead. There are rules that every sector must play by. I like to go 85 miles an hour. Here in Nebraska on a bright sunny day in a straight road, I think I can be really safe and I can do just fine. But there are rules that say I have to go either 55 or 65 as the case may be. So I have that. I have a personal preference and I think I'll do just fine at 85, but there's a broader public purpose of car wrecks, for example, that tend to statistically increase under certain circumstances. Similarly with football, one of your linebackers may be very good and would really like to take out that quarterback. But it's roughing the passer if he's already thrown the football or clipping or holding. There are rules and there's reasons for it and it keeps the game fair and it keeps it right. You have a reverse, longstanding, converse regulation in banking here in Nebraska where you discriminate against me coming in and owning and starting up a bank as an individual. I have to be a corporation. I can't be an individual and start up and own a bank so you're discriminating against me. Also insurance companies--I can't come to Nebraska or whether I'm a citizen or not, be in Nebraska or outside of Nebraska, as an individual and be an insurance company, sell insurance as an insurance company. You discriminate against individuals and allow only corporations to do that. So in this corporate farming law that you're discussing now, it's sort of the reverse of the banking and insurance. It's for other very longstanding, quantifiable, almost irrefutable social, economic, and cultural factors that have...we've seen the different labs here in Nebraska and Iowa, Minnesota versus places that don't have these types of laws, the benefits have been very good. If you, in fact, get rid of this corporate farming law or do not reinstate it post Eighth Circuit, you will see what happens, for example, in Texas where they have more cattle than you do. We just go by the 2002 ag census, 2.6 million cattle sold, you know, fat cattle; Nebraska 2.4 million. You know, those numbers, depending on how you cut them, but the trends are right,

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Texas number one in beef. They had...you had, oh, about double. Well, shoot, for feedlots over 100 head, Nebraska has 1,660 in '02. Texas just had 466 so about a third. So a bigger beef sector, but two-thirds less feedlots than you have. So if you look around, if you had followed, for example, the trend of Texas and let's say they were saying, well, we need to have these types of entities to access credit and access markets and to liability protection and all that, well, you held your own in red meat production that time and they had more producers go out of business. So two out of three of the cattle feeders that you know of on that path would be out of business. Which ones would you choose? But you have them in business. Some have gone out, but not as many. You've done a good job. Ditto with hogs. North Carolina produces more hogs than you do. When I say Nebraska is number one in red meat production, I think you probably know, but it's combination beef and pork. So North Carolina sold 11.2 million fat hogs according to the '02 USDA ag census--Nebraska 7.5 million, so about 40 percent less pigs you sold because North Carolina really ramped up. How many hog farmers did you have? Let's just go with them over 500 head because you know your decent commercial operation 500 and above, you had over 1,000, you know, 1,070 according to the ag census independent producers. You know how many North Carolina had? One hundred twenty-nine, 90 percent less independent producers and 140 integrators that did the vast majority of them because Smithfield is the only game in town and they're the biggest hog owner in the country. They have a million sows which produce 21 million pigs in this country. They don't go by supply and demand at the marketplace to scale up or scale down because they're selling to retail. It's not what the hog price is. They're marching to a different drum. And when they take over, when they come to Nebraska and buy your pigs, they come back the next week and buy your pigs and the next week and they keep buying them. When they buy the farm, they don't buy it next week. They don't give it up. It's gone. And that's why it's so hard for this market closure to get in once it's all vertically integrated because you're not part of the club anymore. You're outside. You're part of this vertical structure or you're not. You're either in or you're out. So that's why we're seeing market closure. We still can get price reporting in Nebraska because there's enough packers that compete and enough producers to sell to. You go to Colorado, you can't get a beef price report for Colorado because you have so little competition that the USDA rules say, well, by disclosing the price we're disclosing the price that one packer pays, which is proprietary information. [LB1174]

SENATOR ERDMAN: Michael, your time is unfortunately up. But I would imagine that there may be questions so let's see how that plays out. Are there questions for Mr. Stumo? Mike, let me ask you just a couple clarifications. [LB1174]

MICHAEL STUMO: Yes, Senator. [LB1174]

SENATOR ERDMAN: The proportional decline for Texas feedlots or feeders versus Nebraska did we start about the same number and see they're at 460-some feedlots;

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we're at 1,161 over 100. Do we know where we started over that same period of time to get an estimate of how it tracks? And I think your logic...but can you help me go back? [LB1174]

MICHAEL STUMO: I don't know the number of where they started. I knew they had quite a few, you know, back three, four decades ago. You look at Kansas, which is a sister state really to Nebraska, and you have doubled the number of feedlots over 2,500 head that Kansas does. And they have a weak corporate farming law; you don't. But you can judge the similarities just by your own experience there, but I can't give you a start point. [LB1174]

SENATOR ERDMAN: Okay. Talk to me about, and I'm not familiar with Smithfield's organization or other similar entities, but technically family farm acts is in North Carolina raising hogs, they would be allowed under what we're instructed or at least have been given guidance by the court as to what we would generally have to do to comply with that. Is there a remedy that you have seen or is there direction that you may give us in that area? Because technically as I understand what we're asked or what we're somewhat obligated to do, you know, that family farm or if it would be a family farm in some other state that has a large entity would still be eligible to come into Nebraska and literally operate, you know, farrow to finish, the whole operation if it's pigs or an operation including row crops and livestock. [LB1174]

MICHAEL STUMO: That's correct. [LB1174]

SENATOR ERDMAN: You know, any thoughts on that? Are there entities, and again, I don't know if Smithfield is family operated or how they're organized, but are there... [LB1174]

MICHAEL STUMO: They're a publicly traded company. [LB1174]

SENATOR ERDMAN: Okay. Are there entities out there that are technically family owned that we should be aware of that may potentially be eligible under this law, should it go forward? Obviously, they would be eligible regardless if we did anything, but... [LB1174]

MICHAEL STUMO: I suspect that there are. You're going to screen out...if you choose this approach and the most constitutionally firm approach to get these broad economic social cultural goals for your Nebraska citizens, we will have, you know, some family farms that qualify under the criteria elsewhere that will be able to come here. Some may see that as a benefit, some may not. They would tend to not be the dominant firm in their sector. One thing I study a lot and very concerned about is processors taking over the production side because it's nice to have the demand on the demand side and the supply on the supply side. That's what free markets are and let them fight it out every

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day and get a price coming up out of that. When the demand, which is the packers, jumps over and controls the supply, then they start mucking up and having, you know, price manipulation risk and playing with the prices. So I think it...I don't have a clear picture of whether there would be any, you know, detriment under a pure play kind of a corporate farming statute like I-300 was. I think the leakage or the slippage for the, you know, making it non-Nebraska family farm corporations is certainly an acceptable and a minimal risk, but I can't say for sure. [LB1174]

SENATOR ERDMAN: Okay. Thank you, sir. Other questions? I don't see any. Thank you, sir, appreciate you coming. [LB1174]

MICHAEL STUMO: Thank you, sir. Yes, sir, Senator. [LB1174]

SENATOR ERDMAN: Our next testifier in support of LB1174 is Joe Fryman. And we're right at 24 minutes of our hour of allocated time on the proponent side. And before you begin, Joe, hold on one second here. I think it's somewhat self-policing, but I forgot to mention that if you have a cell phone and it's set to ring can you turn the ringer off, please. It's a benefit to everybody I think, but I noticed there was about a half a dozen people that immediately reached for their cell phones and turned them off as well so we appreciate that. And also there's a sheet, there should be, I think some have already signed it, that if you are here and wish to state your position formally you can fill out that regardless of whether you get to testify and we will make that part of the public record as well. It should be at one of the back doors if you haven't already filled that out. Thank you, Joe, for your patience. Go right ahead. [LB1174]

JOE FRYMAN: (Exhibit 4) Good afternoon, Senator Erdman and members of the Agriculture Committee. My name is Joe Fryman, J-o-e F-r-y-m-a-n, and I am president of Nebraska State Grange. I'm here today on behalf of the Grange to ask for your support of LB1174 to ask you to urge your colleagues to support it also. The Grange has been an advocate for the family farmer since 1867, the same year Nebraska became a state. Efforts such as these are not new to the Grange. It's been said even within these very halls that the family farm and family farmers are dead. If this is true, I bring you greetings and words from the grave, as I am a family farmer from Washington County. In fact, there are quite a few of us family farmers out there in Washington County and throughout the state. I'm pretty sure we make up the vast majority of farmers in Nebraska. I believe the majority of the people in Nebraska like it that way. They said so in the 1980s when they voted to adopt Initiative 300, and I have no reason to believe they've changed their mind. We supporters of family farms are not asking for a pity party. We're asking to be treated fairly and to be able to compete on a level playing field, taking complete responsibility for our financial decisions as we would like all to do. In the Grange's opinion, I-300 was good for Nebraska. As we all know, concerns about disabilities and out-of-state property ownership, which are dealt with in LB1174, led to court decisions adverse to I-300. Some folks felt they were being

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discriminated against. Well, I and others also feel discriminated against when laws give some folks advantage over us and our family operations. The granting of limited liability to some entities solely on the basis of their business structure puts Nebraska family farmers at a disadvantage. When we, as family farmers, sign our names on the bank notes, we pretty much have unlimited risk as opposed to the corporate investor who wants to limit his or her losses. I suppose if I were an outside investor I, too, would like a free insurance policy that guaranteed downside risk while preserving upside profit potential. You will hear many facts and figures during this debate. But when the smoke clears and we get down to the fundamental issues, the decision boils down to whether you believe in and choose to support and encourage family farms in Nebraska and what they contribute to our communities and society or do you really believe the family farm is dead and let's just move on? Let's be careful of what we wish for. We may get it. I hope you will see fit to support us, the family farmers of Nebraska, and LB1174. Thank you. [LB1174]

SENATOR ERDMAN: Thank you, Joe. Any questions for Mr. Fryman? I don't see any, sir. Thank you very much. Next testifier is Norma Hall. Norma, if you'll come forward, please. We'll get Tim to pass that out for you. [LB1174]

NORMA HALL: (Exhibit 5) Senator Erdman and members of the Agriculture Committee, I am Norma Hall, N-o-r-m-a H-a-l-l, from Elmwood, Nebraska. I'm going to divert a little bit from what I handed out to you on a different take on the family farm, with some additional comments. I have lived on a family farm all of my life except for a short time that my husband served in the Air Force. I appear before you today representing the members of Women Involved in Farm Economics, WIFE. From the inception of the idea to protect Nebraska farm and ranchlands from nonfamily corporate ownership, WIFE has been supportive. Without the protection of I-300, WIFE supports LB1174. Who will own the farm and ranchlands of Nebraska? Will entities own the water rights also? If we are truly concerned about the viability of our rural communities, then we need to legislate some type of protection. Farmers and ranchers who have money will spend it locally if those services are available. In the rural towns, and I visited with the manager from Stutheit Implement, excuse me, Stubbendick Implement at Syracuse on Monday. He said that they are buying used...many farmers are coming in buying used equipment. Whether it is positive or negative, many landowners are receiving higher cash rent. With the infusion of money, rural business owners are also profiting. We look at that as building up the rural communities. And Governor Heineman we've heard many, many times say, rural Nebraska is important to this state. There are many examples of individuals purchasing land which will not be used for production of agriculture products. The land has become a priority for investments and prices are rising on acres available. Farmers are being priced out of the market because of this competition. Land prices continue to escalate which would be of little concern for an entity that has unlimited funds to purchase the land. If rural communities are important to Nebraska's future, I urge you to pass LB1174 out of this committee. Thank you for the

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opportunity to appear before you today. [LB1174]

SENATOR ERDMAN: Thank you, Norma. Any questions for Ms. Hall? I don't see any. Thank you, ma'am. [LB1174]

NORMA HALL: Thank you. [LB1174]

SENATOR ERDMAN: Next testifier is Brian Brandt. [LB1174]

BRIAN BRANDT: Thank you, Mr. Chairman. Shall I begin? [LB1174]

SENATOR ERDMAN: Yeah, go ahead and state your name, spell it for the record, and then you can begin. [LB1174]

BRIAN BRANDT: My name is Brian Brandt, B-r-i-a-n B-r-a-n-d-t. I don't have a large prepared testimony. It seemed like you get a lot of that so I'm more some comments. I spoke one other time. That was at the other I-300 hearing. I'll tell you real quickly who I am, what it is that I liked about I-300, and what it is that I fear about not having I-300. I'm 46 years old. I live at Plymouth, Nebraska. I farm about 600 acres. In Nebraska, we farrow and finish about 15,000 hogs, calve out about 150 cows, and we feed a couple hundred head of cattle. I have five partners in two Kansas operations with an additional 4,000 sows and we feed those hogs. I suppose in the world of small farms we're a little big, but in the world of hogs we're very small. And that's...hogs is pretty much what we do. Our total operations encompass about 22 employees. I think we own five...I know we own five locations, I didn't add it all up, but we rent about 55 locations across Kansas and Nebraska, people who contract finish for us. What I like about I-300 is quite simply, and I've had this discussion with people who are on both sides of it, I think most of the people that I talk to, whether they're for or against it, we agreed on two things. It's been good for me as an individual. The one thing that I have to look at is what my competitive advantage as a producer is. I cannot compete with the largest corporations on raw capital and staying power. However, my cost of production is lower, is absolutely lower. The advantage that I have being in Nebraska, we have access to water, feed. And to characterize it pretty closely, when I haul hogs into my local packing plant at night, which is in Mr. Karpisek's district, my average freight runs about 60 miles. We run our own trucks. It costs me about \$1.50 a head to deliver them. The night shift is predominantly the packer's own hogs, that's what it is. The closest haul that they have is 200 miles out of Iowa. Some of those hogs come as far as Milford, Utah. I don't know what the freight to Milford, Utah, is but it's a lot. I would suspect that their minimum freight is \$4 a head; their maximum freight is around \$8 a head. The difference in freight alone will probably keep me in business. So for purely selfish reasons, I-300 will probably allow me to survive. The things that I fear about the lack of I-300 quite openly are competition from Cargill, Tyson, Smithfield. The things that I fear from them are not their efficiencies. Their cost of productions are much higher than mine. The problem is

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that they can make \$400 million a quarter on their sweetener plants, their processing, and the other things. They can quite simply outlast me. Right now we're losing a tremendous amount of money on production, more than I ever thought would be possible, because of the price of feed. I can't outlast people who have that type of income flow. The other thing that I fear is that they have access to some things that I don't. One of them would be things like LB775 job creations, tax abatement, real estate tax abatement. Those are privileges that I don't enjoy. One of the things that I am a strong proponent of I-300 looking ahead, even at 46 years old, I'm looking towards my retirement. I have two children, neither of whom will farm. I have a young man who's worked for me since he was 16. He started out like most kids in high school baling hay, moving irrigation pipe. He had an aptitude for hogs and he enjoys it. He took over my...we have a semitrailer wash that washes all of our livestock trailers. He in turn hired the kids from high school to run it. He supervised it. When he turned 18, he got his Class A CDL that day. He drives the trucks, he manages our contract growers, and he had an aptitude. Last year he went through the zoning process in Saline County and he was approved to build a livestock building, which he did. He navigated the NRCS, he got the EQIP money, he did the DEQ thing, and I cosigned his note. It's a \$364,000 building and he contract feeds for me. The idea as he goes forward is he wants to build a second building. Over ten years he'll have the equity in those two buildings to buy out one of my operations. He's a scholar. He's at the University of Nebraska right now as a freshman, a straight A student, and one of the few kids who I've ever met who not only has the grades but the hands-on experience and the work ethic to succeed. And I've told him many times that he probably could make a six figure income managing a hog farm and his future is bright. And he always replies the same way--I don't want to work for one, I want to own one. [LB1174]

SENATOR ERDMAN: Brian, your time is about up. I'll go ahead and let you summarize. [LB1174]

BRIAN BRANDT: No, that's fine. That's all I had to say. [LB1174]

SENATOR ERDMAN: You said it better than most people that read it so we appreciate you being here. Any questions for Mr. Brandt? Senator Dubas. [LB1174]

SENATOR DUBAS: Thank you, Senator Erdman. Thank you, Brian, for bringing your experience to us. I guess I'll ask you a similar question that I asked Dr. Welsh. You know, the thought is that, you know, I-300 has outlived its usefulness and actually presents some barriers as far as farmers working with other farmers, other people like that to access the capital to make themselves competitive with maybe the larger corporations. So what would your response be to that? [LB1174]

BRIAN BRANDT: Probably the short and funny response but it's the honest truth, I can borrow more money than I can probably pay back. We really don't have any trouble

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accessing capital. Our Kansas companies, because we bought them intact, one of them is a C corporation, and we left it as a C corporation because it allowed all of our operating permits to stay the same. The state of Kansas said do not your change your entity because you'll have to reapply for your operating permits. As a C corp, an LLC, and I operate my Nebraska farm as an individual, in all cases my loan covenants are the same. Our ability to borrow money and my liability to that money is identical. So I personally don't think that there is any restrictions to capital in my opinion. [LB1174]

SENATOR DUBAS: So do you see in your operations in Kansas versus your operations in Nebraska advantages or disadvantages to the way they're... [LB1174]

BRIAN BRANDT: No. There are no...honestly, there are no advantages or disadvantages. The greatest advantage to Kansas is that it has 40 percent of the real estate tax rate that the state of Nebraska does. That's the biggest advantage to being in Kansas. We only bought those...I worked for Continental Grain for 20 years. And when I was working for Continental Grain, I was familiar with those farms. When they came up for sale, I worked with them. I sold several farms and we bought a couple. We're the kind of people who buy old stuff. We don't build new. That's just who we are. There wasn't anything old for sale around me so we bought the stuff down there. But in terms of operating it, I would rather be in Nebraska because we're closer to the packer. The freight is huge at the price of diesel fuel. Water is going to be more of an issue. We have more access to water here. We actually have at 138 miles south of where I live in Geary County, Kansas, we actually have trouble with getting enough water to water our sows. So it's a problem. [LB1174]

SENATOR DUBAS: Thank you. [LB1174]

SENATOR ERDMAN: Thank you, Senator Dubas. Senator Karpisek. [LB1174]

SENATOR KARPISEK: Thank you, Senator Erdman. Thank you, Brian. The one thing that you touched on that we keep hearing from both sides is you've got someone coming behind you and it sounds like maybe someday going to take over your operation. [LB1174]

BRIAN BRANDT: Yeah. You know, it's sort of a funny thing. It wasn't planned hard, but this young man didn't have an opportunity, and I didn't have an heir. And it could be a good fit. [LB1174]

SENATOR KARPISEK: And that's perfect. I guess that's been the argument by the anti-I-300 is we can't make this work without you incorporating, LLCing with him. But it seems that you're doing it. [LB1174]

BRIAN BRANDT: I have an LLC, I have a C corp, and I operate as an individual. And I

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honestly cannot find one difference or advantage that there would be to any of the above. At some point if you're going to help somebody, the only way you're going to do it, you have to step up and take a risk. You have to cosign. You have to give them something. You have to give something up below market values. That's the only way that you can do it. Creating an LLC doesn't magically create more capital or more income or some special thing that doesn't exist. [LB1174]

SENATOR KARPISEK: I think the point has been what if I get divorced or he gets divorced or something happens tragic, they get sick and we're partners. It could drag us both down. [LB1174]

BRIAN BRANDT: But the problem with that argument is, if you're an LLC, at the size of LLC that I am, our wives and my partners' wives and all of us had to sign as individuals to guarantee. When you're a small entity or a small corporation, you are still an individual. You will guarantee all those loan covenants as you would as an individual. But if you're Smithfield, Tyson, ADM, or Cargill, you probably won't have all the same liabilities. The bank covenants are so restrictive that they will take all of those small companies down to the individual level anyway. So you haven't escaped anything. [LB1174]

SENATOR KARPISEK: Thank you, Brian. Thank you, Senator Erdman. [LB1174]

SENATOR ERDMAN: Thank you, Senator Karpisek. Other questions? I don't see any. Thank you, sir, appreciate you coming. Next testifier is Dan Owens, Center for Rural Affairs. Dan, somehow you drew the short straw and you got two minutes. [LB1174]

DAN OWENS: Well, I'll be brief. [LB1174]

SENATOR ERDMAN: You might want to take that up with Mr. Hansen or whoever shorted you. [LB1174]

DAN OWENS: (Exhibit 6) Mr. Chairman, Senators of the Agriculture Committee, thank you for the opportunity to testify today in favor of this important bill. My name is Dan Owens, D-a-n O-w-e-n-s. I represent the Center for Rural Affairs. I'm here to express the strong support of the Center for Rural Affairs for LB1174. I would particularly like to thank Senator Dierks, Chambers, Dubas, Karpisek, Preister, and Wallman for sponsoring LB1174. I would also like to thank Chairman Erdman and research analyst, Rick Leonard, for their assistance. In 1982, Nebraska voters went to the polls and approved Initiative 300, a constitutional amendment to promote family scale farming and ranching in the state of Nebraska. Initiative 300 stood for 25 years as the will of the people of Nebraska before being struck down by a federal court in the fall of 2006. LB1174 would maintain the intent and effects of Initiative 300 while addressing the federal court's objections restoring laws that benefit the health of family farms, ranches,

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and rural communities. LB1174 would also restore measures directly approved by the people of Nebraska. The primary role of our government is to further the public interest and pass laws that benefit citizens and communities. It is in that spirit LB1174 was written. Government confers liability limits on certain forms of business organizations, and it is the responsibility of government to ensure those benefits further the public interest. LB1174 is an appropriate and positive response to the unfair advantages certain types of corporate operations have in the agricultural sector. LB1174 also ensures the benefits of incorporation are reserved for the types of farming and ranching operations that most benefit rural communities. As you have heard time and again, appropriate corporate farm restrictions have been shown to benefit rural communities and family farms and ranches. Thank you for this opportunity, and I welcome any questions you may have. [LB1174]

SENATOR ERDMAN: Thank you, Dan. Any questions for Mr. Owens? You did very well. Thank you, sir. Next testifier in support, Vern Jantzen. [LB1174]

VERN JANTZEN: Good afternoon, Chairman Erdman, members of the committee. My name is Vern Jantzen, V-e-r-n J-a-n-t-z-e-n. I am a dairy farmer from Jefferson County, and I am here to testify today in support of LB1174. I am a strong supporter of the ideals of Initiative 300 in terms of what it can do to keep the playing field level. You've heard testimony already this afternoon about some of the things we need to do to borrow money--the liability factor, the names that have to be signed and so forth. And I think that protection that is in LB1174 would, in terms of what I have to compete with against a large corporation and some of the advantages that they have, is very beneficial to me. I am...I don't know what the right verb is, I guess I'm a little dismayed and disappointed and I'm not...and I guess baffled by the fact that over the last 20 years so many people have left the dairy industry. And it becomes to the point then where I am concerned about whether there will be the businesses that I need to keep me going. I have to have people provide supplies for me. I have to...when my machinery doesn't work, I have to have somebody that I can call that will come and fix it. I'm not the world's best mechanic. And so as if we don't make some kind of concerted effort to try and keep the smaller players in play here in the state, I am concerned about what will happen in terms of the processing plants, the milk processing plants whether they will stay or go to a place where there is more milk, whether the businesses that work with dairy farmers will stay or go. And some of the testimony we've heard already, what happens if you go the large route and have mega dairies? There has been some effort made in the past to invite those kind of situations to come to the state. And I think if you study those out there are some social ramifications in terms of the...where they spend their money and where they get their services, and what kind of people they employ and the impact that has on the local community. And so I would just encourage you to try and work through some of the restrictions that the court may have found that they think are necessary and try and come up with a way to move us forward with some protection in the future. Thank you. [LB1174]

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SENATOR ERDMAN: Thank you, Vern. Any questions for Mr. Jantzen? Don't see any. Thank you, sir, appreciate you coming back. The next testifier is Jim Cunningham. [LB1174]

JIM CUNNINGHAM: (Exhibit 7) Senator Erdman and members of the committee, good afternoon. For your record, my name is Jim Cunningham, spelled C-u-n-n-i-n-g-h-a-m. I'm executive director of the Nebraska Catholic Bishops' Conference and testify on its behalf in support of LB1174. Our conference's support for the principles embodied in Initiative 300 and in LB1174 does not go all the way back to that law that was enacted in 1891 that you heard about, but it does go back to the mid 1970s and it has been consistent ever since then, including support for Initiative 300 as both a petition drive and a ballot question. For the conference, this was a matter of social justice, fairness in competition, and social policy with a significant moral dimension involving a way of life and the common good. That was our position then and it continues to be our position and motivation today. And also I would be remiss if I did not express for this public record how highly we have valued our longstanding association with the advocates on these important viewpoints. The conference's position on Initiative 300 and this effort to retain it in principle stems from support for the traditional concept of owner-operated family farms and ranches, for a family-based food production system, and for principles related to ownership of land and stewardship of natural resources. It is also based upon concern over the concentration of land ownership in fewer and fewer hands and the risk that nonfamily investment motivated corporations and absentee ownership will dominate production agriculture. And it is based upon concern for maintaining the culture and values of rural communities, in many of which and so often the presence of churches and religious beliefs is deeply rooted. To put it most simply and in conclusion, Mr. Chairman, we agree with the overall thrust of the legislative findings set forth in the preamble of LB1174, in particular subsection 2. We think these are compelling and encouraging of the right public policy direction. They justify advancement of this bill to the full Legislature. Thank you for your time and attention. [LB1174]

SENATOR ERDMAN: Thank you, Jim. Any questions for Mr. Cunningham? I don't see any. Thank you, sir. [LB1174]

JIM CUNNINGHAM: Thank you, Senator. [LB1174]

SENATOR ERDMAN: Next testifier in support, I've got Ken, I can never pronounce it right, Ken Mass, Ken Moss (phonetic). I always pick it the one way, Ken, and say it wrong so you'll come up. David, you'll be next. Go ahead. [LB1174]

KEN MASS: Senator Erdman, members of the committee, my name is Ken Mass, M-a-s-s. I represent the Nebraska AFL-CIO and here today in support of LB1174. The State AFL-CIO has been on record since 1982 in support of the Initiative 300. It went

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through. Our members statewide supported that and we're here today in support again of the family farmers in your struggle against corporate greed. We, in the labor movement, understand corporate greed. We fight it on a daily basis. And corporate greed basically has destroyed communities, destroyed business throughout the state and throughout the United States, of going offshore, going somewhere else. So in short and sweet, we are here and we ask the committee to support LB1174. Thank you. [LB1174]

SENATOR ERDMAN: Ken. Any questions for Mr. Mass? I don't see any. Thank you, sir. [LB1174]

KEN MASS: Thank you. [LB1174]

SENATOR ERDMAN: Now David Wright. And I'll go ahead and give the next person a head's up. I have Conrad Grothen. Conrad, you'll follow David if you're here. [LB1174]

DAVID WRIGHT: (Exhibit 8) Holy smokes. Does everybody's palm sweat when they sit here? (Laughter) Man. Anyway, my name is David Wright, D-a-v-i-d W-r-i-g-h-t. Chairman Erdman, members of the Ag Committee, I'm here representing the Independent Cattlemen of Nebraska. We come before you today in strong support of LB1174. One of the founding principles of our organization was to see that Nebraska economic driver, agriculture, remains in the hands of independent operators and families that built and nurture it. Most of our members represent multiple generations of family ownership and operations of Nebraska ranches and farms. Multiple years of low returns compared to input and land costs have put a strain on every operation in the state. Without the provisions of this bill, the prospect of unlimited ownership of our land and assets by multinational corporations may accelerate the demise of family-owned agriculture business in this state. Without LB1174, there will be a potential danger that our cattle feeding sector will begin to resemble that of the southern Plains--a corporate dominated, vertically integrated system that allows for little, if any, price discovery. If we lose the Nebraska open trade, the remainder of the cash market will become so thin it may become useless. The repercussions of this loss will be far reaching and irreversible as corporate head offices will then decide price levels for all classes of livestock. We feel this bill is also adequate in addressing the constitutional issues that lead to the demise of its predecessor, Initiative 300. By allowing family farm corporations based in other states with other activities engaged in day-to-day labor and management to farm and own farmland and assets in Nebraska, any conflicts with the Commerce Clause of the U.S. Constitution should be resolved. I-300, which was approved by the majority of Nebraskans, stood as a stalwart assurance for our farmers and ranchers for 25 years. Its opponents claimed dire consequences for the competitiveness of this state's agriculture, but let's look at some facts. As of the spring of 2007, Nebraska was the number one state for commercial red meat production; number two for all cattle and calves; number three in corn, grain sorghum, and dry edible bean production; number

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five in soybean production; and number six in hog production, all without the need for a nonfamily corporate involvement. There are numerous organizational schemes available that can be used for ownership transfer or family involvement in an operation that still met the criteria spelled out in LB1174. Let's face it. It's not the business structure that is the limiting factor for the next generation. It's the profit potential. It would also seem unlikely that allowing corporate ownership of property in Nebraska would have desirable long-term effects. Initially, those who wish to sell out might see additional opportunities. However, if our concern is truly with keeping young people in business, they may be froze out as multinational corporations gobble up any available land and assets. [LB1174]

SENATOR ERDMAN: David, you got about 30 seconds. [LB1174]

DAVID WRIGHT: Okay. I guess I'd just like to say that when you see the closings of West Point, the closings in Norfolk, and the closings down in Imperial, Kansas, it bothers me that if corporate agriculture is here that if they don't make a profit they just quit and lock up the doors and leave our communities stranded. Thank you. [LB1174]

SENATOR ERDMAN: Okay, thank you, David. Any questions for Mr. Wright? Senator Dubas. [LB1174]

SENATOR DUBAS: Thank you, Senator Erdman. Thank you, David, for coming to visit with us today. As a producer, what's your biggest challenge to keeping your business viable and profitable? [LB1174]

DAVID WRIGHT: Well, input costs are very steep right now. And then the prices that I get for my calves when I sell them. I can try to control the input costs to the best of my ability, but, you know, I only have so many resources to work with. If I don't generate enough of a profit to expand, which would be desirable, and I have a son that would really like to come home and ranch, but it's profitability is what our biggest deterrent is. [LB1174]

SENATOR DUBAS: Thank you. [LB1174]

DAVID WRIGHT: Thank you. [LB1174]

SENATOR ERDMAN: Thank you, Senator Dubas. Other questions? Don't see any. Thank you, sir. Conrad, you are up followed by David Hansen. [LB1174]

CONRAD GROTHEN: Distinguished Senators, my name is Conrad Grothen. I live at Juniata, Nebraska, and I am representing the American Corn Growers. My colleagues have stated viewpoints and policies that are far better than what I can do. And I just want to go on the record saying that American corn growers has supported

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family-based agriculture and they think that I-300 is sound public policy and that's basically it. Thank you. I'd defer my time to other speakers. [LB1174]

SENATOR ERDMAN: Very good, Conrad. Thank you. Hold on, let's see if there's any questions. I don't think there are because I don't know who we'd ask them to. Thank you, sir. David Hansen, you're next. [LB1174]

DAVID HANSEN: (Exhibit 9) My name is David Hansen, H-a-n-s-e-n. I farm on a modest-sized farm east of Anselmo, Nebraska, and I'm here on behalf of myself as well as the Custer County Sustainable Agriculture Society. Senator Erdman and members of the Agriculture Committee, on this, the 199th birthday of Abraham Lincoln, it is worth noting a statement he made on September 30, 1859, in a speech to the Wisconsin State Agriculture Society. He said: The ambition for broad acres leads to poor farming. It was not for frivolous reasons that the people of Nebraska in 1982, by a margin of 56 percent to 44 percent of the vote, adopted Initiative 300. Walter Goldstein did some research in the 1940s in California on two communities: Dinuba, which was surrounded by modest and small-sized farms, family farms, and Arvin, which was surrounded by larger industrial farms. Despite the similarity in the sizes of the economies of those two towns, Dinuba had more churches, more schools, more civic organizations, more parks, and a more democratic decision-making process in their government as opposed to Arvin where corporation boards and executives pretty much run the government. This has become known as the Goldstein hypothesis. And lest we think that 60 years ago we should just write it off, that study was updated about 30 years later as the two communities were studied again, and the characteristics of the two communities were still present. Another merit of family farms and ranches is that they are better stewards of the environment. Some years ago I attended a conference at Boys Town when they had a farm and Bob Steffens, the manager, arranged for a conference on agriculture. One of the speakers at that conference was a Dr. Herbert Koeph (phonetic) as I recall. And I shall never forget the words he said: The best fertilizer for the soil is the feet of the owner and operator. [LB1174]

SENATOR ERDMAN: David, you have about 30 seconds. [LB1174]

DAVID HANSEN: My wife and I have operated a farm for about 320 acres for 26 years and we spend time walking around on that farm and make decisions on those observations. People on family farms and ranches will do a better job of being stewardships of the environment and better citizens for the community than corporations with absentee ownership and executives who make decisions in suites far removed with the primary goal of acquiring broad acres and greater profits for the stockholders. [LB1174]

SENATOR ERDMAN: David, I'm going to have to ask you to stop. I know you only have one sentence left but we can read that. But before you leave your seat, let's see if

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there's any questions? Any questions from the committee? Very good. Appreciate you coming down. Thank you for your testimony. [LB1174]

DAVID HANSEN: Thank you. [LB1174]

SENATOR ERDMAN: Thank you for your testimony. Our next testifier, I have Harry Muhlbach. Harry, I've got you down for two minutes. We've got about ten minutes left. I also have Don Reeves who would like to testify, and I'm going to squeeze Don in after you, and then John Hansen will be our final proponent testifier. And before we get to that point, again if you're here and want to share your...if you have letters or information you would like to be included in the record, we would be happy to take that from you. After all of the proponent testifiers have completed, if you would like to sign the sheet, that should be located at either door, that would notify your support or opposition to the bill should you not have gotten the opportunity to testify, we would welcome you filling that out, as well, and we will add that to the record, as well. Harry, you are recognized to... [LB1174]

HARRY MUHLBACH: (Exhibit 10) Okay. My name is Harry Muhlbach, spelled H-a-r-r-y, last name Muhlbach, M-u-h-l-b-a-c-h. I'm going to read my testimony but I have one comment to make before I start. And I was going to ask the committee to think out of the box a little bit. We need to think...what I mean, is down the road 100 years from now what we want Nebraska to look like, and I want to make one comment. When President Roosevelt was president during the '30s, his number one goal was to have 15 different entities working on a project, rather than one, and that came about in the '30s. And so now I'll proceed to read this. I am a family farmer. My family has farmed in Nebraska for over 100 years. This bill will help stabilize the erosion of the rural Nebraska, as it states on the sign, The Good Life. Family farms, ranchers, rural communities, small rural businesses, etcetera, may get a chance to stay in rural Nebraska for many generations to come. Another good reason is that when a corporation does things that hurt a community financially, they're not accountable. They put money ahead of everything else. I hear all the time from large operations think that they can't pass their operations on to family members. In reality, they are trying to take advantage of the corporate laws--loopholes. Banks, large organizations, large business corporations, developers, and etcetera, can take a lot of money out of a community, making it hard for family farms and ranchers to compete and stay viable in their operations. Also, some of these same types of businesses can artificially drive up real estate. Banks, large corporations, development corporations, and etcetera, can take tax deductible income while increasing real estate taxes on smaller operations. Another reason this bill is important, when the stock market is in a decline, investors turn to buying real estate. [LB1174]

SENATOR ERDMAN: Harry, you've got about 15 seconds. [LB1174]

HARRY MUHLBACH: Okay. I just...I will go ahead and finish reading this. Something

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else that may be needed in this bill is to allow counties with a friendly livestock zone. We have to make sure that the counties that have already designated as friendly livestock. The other parts would be we also need to also for energy producing corporations that need investor money--ethanol, biodiesel, wind generating. These energy companies are about more than Nebraska. It's about the country's energy independence. But they do not need to own the land needed to produce the raw materials. This bill is like Seward's Ice Folly. It will be good for Nebraska in the long run. Any questions? [LB1174]

SENATOR ERDMAN: Thank you, Harry. Any questions for Mr. Muhlbach? I don't see any. Thank you, sir. Don, why don't you come forward? I believe I have your testifier's sheet here. I'll give this to Melissa. I've got 53 and a half minutes, so we've got about six and a half minutes. Mr. Hansen informs me that he needs at least three and a half. So I'm going to hold you to right at three, and see if he can get it done in three and a half because that's what he asked for, so we're going to give him what he asked for. [LB1174]

DON REEVES: I'll try to be finished in a minute. Chairman and members of the committee, I am Don Reeves, R-e-e-v-e-s, from Central City, and I'm here as chairman of the Center for Rural Affairs. I won't add to the substantive testimony of Dan Owens and some of the earlier experts have given. I simply want to add the weight of the board of directors, the Center for Rural Affairs, and the thousands of supporters we have across the state to the weight of the testimony in support of LB1174. I also would bring in what I count as body language from about 40 people who are in the overflow room, and it seemed to me that nearly all those would support LB1174. Thank you. [LB1174]

SENATOR ERDMAN: Thank you. Before you run off, let's see if there's any questions. Any questions for Don? I don't see any. Thank you, sir. Do I dare ask, John, before we get to you, if there's anyone else, because there are a few extra minutes here that...? I'll take that as the answer. John, you'll have... [LB1174]

LOU ALLGAYER: I would like to testify as a proponent. [LB1174]

SENATOR ERDMAN: Proponent. John, can we allow this gentleman to squeeze in ahead of you? Or would you like to go first and then...? Because I'll hold you to four minutes. [LB1174]

JOHN HANSEN: No, he'll be...how many minutes do we have left? [LB1174]

SENATOR ERDMAN: We've got six total. [LB1174]

JOHN HANSEN: Okay, then yes, let's let him in first if that would be all right, Mr. Chairman. [LB1174]

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SENATOR ERDMAN: That's very benevolent of you. You're up, young man. And maybe you don't know Mr. Hansen, but I do, and if he gets started it's hard to get him stopped sometimes, (laughter) so I'm glad that he gave you the opportunity to go when he did. [LB1174]

LOU ALLGAYER: I'll be very brief. I'm just...my name is Lou Allgayer. The last name is A-l-l-g-a-y-e-r. I am from Elmwood. I'm just here to bring you up to date on some history that probably a lot of you people don't remember, and that's when they started Initiative 300. In the early '80s we had a large insurance company come into the community in the Platte Valley, and bought up a lot of land, and they were going to be good stewards and good for the community. But when they got established, they didn't buy any fertilizer locally. They had it shipped in by the railcar loads. They didn't buy any seed locally. They bought it all from one big company from another...they all went direct. So, in turn, if we don't support this bill, we'll have large corporate farming with a lot of people that are employees at a minimum wage, and we'll lose all the financial benefits that we have from each individual running our operations. [LB1174]

SENATOR ERDMAN: Thank you, Lou. Any questions for Mr. Allgayer? I don't see any. [LB1174]

LOU ALLGAYER: Thank you very much. [LB1174]

SENATOR ERDMAN: Thank you, sir. Appreciate it. [LB1174]

LOU ALLGAYER: Thank you, sir. [LB1174]

SENATOR ERDMAN: Now you're up, John. You've got four minutes. [LB1174]

JOHN HANSEN: (Exhibit 11) Mr. Chairman and members of the committee, for the record my name is John K. Hansen, H-a-n-s-e-n. I'm president of the Nebraska Farmers Union, and appear before you today as their president; also as vice chair of Friends of the Constitution. And Jon Bailey, who was going to be here and testify today, was not able to attend because of a family medical situation. So it is my pleasure to be before the committee. I have passed out information for the committee. Would just...I think it is instructive to take a look at all of those organizations at the state and the national level, that weighed in, in defense of I-300 in its legal battles. There was a total of 61 entities that did so. There were five states. There were at least six or more national organizations, a whole host of folks. And the common theme for all of those entities is that they all, regardless of whether they're state or whether they're national organizations, are organizations that have a vested stake in family farm owner/operator agriculture. So the amount of support for I-300 continues to be strong here and across the country. I also distributed the handouts that we distributed to our members between

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the Center for Rural Affairs and Nebraska Farmers Union, so you can see what it is that we were helping provide information on. We also have, as a part of the testimony, the Nebraska ag rankings. Number one in commercial red meat production in 2006, number one in commercial cattle slaughter, going on down the line. Where is the damage? These...I-300 helped create this data and we also have an ownership structure that is much more economically beneficial, environmentally responsible, socially beneficial than Texas or Kansas. Thank you very much. We not only are competitive but we do it right. And, in fact, we're one generation ahead in terms of being able to reach out and meet consumer expectations. And if you look at any of the data in the surveys, increasingly large numbers of consumers want to know where their meat came from and where the products that they grew came from, and they also prefer that it comes from family farmers owner/operators, rather than some vertically integrated and industrialized factory-type system. So we are ahead of the game in Nebraska. What do producers actually think out in the country? Here is an April/May 2004 Platte County ag survey, which all of the ag organizations participated in. And as you can see, it was distributed to every landowner in the county and producer in the county. And when you looked at it, "Are you in favor of I-300, Nebraska's corporate farming ban?" Yes, 83 percent. That's Platte County, Nebraska. And...I mean, when we do attitude surveys, we continue to find, whether it's the State Fair or wherever it is when we do surveys, overwhelming support on the part of producers--ag producers, bona fide producers, members of the rural community. The last handout is the concentration of ag market, April 2007. This is a damning piece of research. And what it says is, is that the ag sector continues to get less and less competitive, more and more consolidated, and that it is also increasingly vertically integrated. And so while we have a federal regulatory meltdown that is going on, where our federal antitrust enforcement has become virtually dysfunctional, one of the things the states can do that is very effective are laws just like the one that we're looking at here today. And that helps buffer the in action on the part of the federal government to deal with antitrust issues. This process has been a very long road in terms of where we've been at in the legal defense of I-300. The bill that we have before you today, we believe represents a good-faith effort to deal with the Commerce Clause issues, and in anticipation of any Americans with Disabilities Act issues, to deal with them. My organization and the advocates of LB1174 are more than willing to work with the committee to do anything and everything that we can do to help make this bill as technically appropriate and correct as it can be. But the overriding public policy issue is who do we want to grow our food and fiber? And if we come down on the side of our traditional, independent family farmer owner/operator system, then it is entirely appropriate that the state of Nebraska set its own standards, chart its own course, and once again come down, as the people did in 1982, in favor of family farm agriculture. And what this does is help put us on a more level playing field. And with that I would be glad end and answer any questions in the off chance that I might be able to do so. [LB1174]

SENATOR ERDMAN: Thank you, John. Any questions for Mr. Hansen? I gave you an

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extra 19 seconds. Let me ask you this, John. Where we're at in this process: We've obviously been through an interim hearing, LR93; some of the money that we received from the Legislature to help do some research, which the university assisted us with, which a lot of the organizations that you work with assisted us with. We had town hall meetings or public hearings. We've had stakeholder meetings. I guess the candid question for you and your organization to consider is, is LB1174 the best solution or are there alternatives that you would consider? And for an example, I think the very first question that was asked of any testifier on LR93, was to Mr. Hassebrook. It was a question that I asked about allowing unrelated Nebraska farmers, folks that have their boots on the ground, to be able to have a similar opportunity to maybe that they may have in Kansas or other states that have a qualified exemption for those individuals. Is that on the table? Is that a matter of discussion, or are we settled on LB1174, as introduced, as the best opportunity to present to the Legislature, and ultimately as public policy for the state? [LB1174]

JOHN HANSEN: Well, I would say that what we tried to do is honor the language of I-300 as much as possible, and to deal with Commerce Clause issues and to honor the will of voters and bring back a piece that was as close to that as we could. But before we did that, we did explore other ideas, including the one you suggested, whether you deal with Commerce Clause issues as LB1174 does, by making it crystal clear that a family farm corporation, wherever it exists, is qualified to operate in Nebraska to deal with the Commerce Clause issues. And there's some real pluses but also some real minuses to doing that approach. And it was clear that the Eighth Circuit Court, when they made their judgment, went out of their way to say that they were not ruling on that issue. What they said in their ruling was that they didn't think that despite the Nebraska Attorney General's claims to the contrary, that that was the way it was being enforced. And they said they were going to hang their hat on the ballot language that was Secretary of State put on I-300 in 1982 as the defining intent. So relative to that issue, you know, any time you pass a law there's pluses and there's minuses, that's just the way it is, and there certainly are some with the approach that we've chosen. And likewise, if we would go down the path of limiting shareholders, stockholders in a corporation that were not related, we looked at that. And there's some pluses to that and there's some minuses to that, and then, quite frankly, we had a very robust discussion within our members over which approach was better. And, frankly, we were not able to shop that idea around to other organizations in the ag community, and find any of the other major players who were interested in doing that if we made that change it would cause them to get on board and support the bill. So as a result of that, unless their positions have changed, the rule of thumb is, when you're trying to make changes, if you're going to make changes and give away parts of things that you want, you ought to get something in return. So if we make those changes and we don't bring anybody on board, why, we've just given away the part of the store for nothing. [LB1174]

SENATOR ERDMAN: And I guess my question isn't to ask you to do that, but whether

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or not you would be open to that? I think that was the question. There has to be at least a rational basis for what we do. One may make the argument, and we may hear this coming up, that the state doesn't have a compelling interest in protecting a family farm in North Carolina while at the same point disenfranchising two unrelated Nebraskans who are actually engaged in agriculture. I think that's always this discussion has been about where you draw the line, and I don't know that generally the debate has been on if you draw the line. Now we're to the point of, if you draw the line because of the actions of the court. But I guess what I'm looking for from you, and we've had conversations, we have offered, at least I have in my capacity as Chair of the committee, to work with whoever to make sure that the bill is in the best form possible, independent of the policy discussion that's before us. Is there an interest in pursuing those discussions or are we to the point where we have to choose which direction we go, and it's a time for choosing? [LB1174]

JOHN HANSEN: Well, I guess, Mr. Chairman, my assessment would be that the nature of the opposition comments that are yet to come are going to tell us a little bit about where they're at, but the only bill that's really dealing with this issue relative to the Eighth Circuit Court opinion setting aside I-300, this is the only bill up. And I took it that some of the other players who have different ideas, the fact that they brought no bill, had no bill introduced in their behalf, as an alternative approach, in a way, said that they weren't necessarily open to negotiation. But we, of course...we're so fair and reasonable and easy to get along with (laughter), we just amaze ourselves. [LB1174]

SENATOR ERDMAN: How did I know that we would end with you, patting yourself on the back? (Laughter) [LB1174]

JOHN HANSEN: I thought maybe I should do it on the off chance that others might not. [LB1174]

SENATOR ERDMAN: Well, we appreciate the...and obviously, for all the proponents, we appreciate the interest that was shown at our hearings and our stakeholder meetings and the discussions that we've had. And obviously this discussion will continue, and hopefully it will be meaningful; at least that's my goal. So appreciate you being here. [LB1174]

JOHN HANSEN: Thank you, Mr. Chairman. And... [LB1174]

SENATOR ERDMAN: I'll take that 20 seconds away from you next week when you show up. [LB1174]

JOHN HANSEN: Thank you. And I would say that being the keeper of the list is not a way to win friends or influence people, and that the number of folks that we had... [LB1174]

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SENATOR ERDMAN: I want it to be clear that you were the...you were the reason that people... [LB1174]

JOHN HANSEN: ...wanting to testify, we could have done twice this many. [LB1174]

SENATOR ERDMAN: Absolutely. Thank you, sir. We will now proceed to opponent testifiers. Before we do that, some of you may be wondering if you can distribute information to the committee. I'll ask either Tim or Kristen if you have information you would like to give to the committee, to go ahead and have either one of them distribute that to the committee. Again, if you are in this hearing room or if you're in 1023 and you'd like to sign the testifier's sheet, I will encourage you to send a representative down here. I'll have...why don't we do this? Tim, can you do me a favor? Can you find one of those sheets that we have and take that down to 1023 to make sure the people in the overflow room have an opportunity to sign that? I think Melissa has one for you if want to borrow that. And we'll get that opportunity there. And now we will move to the opponent testifiers. And just as Mr. Hansen was the keeper of that list, we have a list of ten individuals so far that wish to testify in opposition...excuse me, 11. There is room for a few additional ones, and so when we get through this list, if you're here to testify in opposition, depending upon if time is available we will allow that, but not to exceed the time that was given to the proponent testifiers as was agreed to before the hearing. First testifier, Mr. Michael Kelsey, followed by Scott Spilker. And again, if you'll state your name and spell it for us, that will make sure that we have a correct record. And again, each member of the opponent, unless otherwise has been agreed to, will receive four minutes to testify. [LB1174]

MICHAEL KELSEY: (Exhibit 12) Senator Erdman and members of the Agriculture Committee, my name is Michael Kelsey. That is M-i-c-h-a-e-l K-e-l-s-e-y. I serve as executive vice president for the Nebraska Cattlemen and I am here representing the association today, providing testimony in opposition to LB1174. This issue has been discussed at length within our association. At our annual meeting in November of last year, there was considerable time spent debating this issue in council, committee, board, and full membership forums. Our membership adopted policy that addresses this issue and I would like to share that with you this afternoon. Nebraska Cattlemen's fundamental goals include the protection and perpetuation of the free enterprise system for the Nebraska beef cattle industry. We feel that the act of legislatively imposing limitations on an industry based upon another party's business structure would limit the ability to conduct business and impair commerce. Nebraska Cattlemen feel strongly that restrictions and limitations should not be placed on the ability of Nebraska cattle producers from marketing their services and property in such a way that is financially beneficial to them. And as a final piece of our policy, Nebraska Cattlemen urge the careful consideration and avoidance of any legislation that would effectually isolate Nebraska and thus hinder the ability of Nebraska cattle producers to compete with other

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states who do not have the same legislative limitations and/or restrictions. There is no doubt that the data clearly shows that Nebraska's rural population is declining. From 1982 until 2006, rural county population has declined by more than 3 percent, while the three largest and arguably urban counties have increased by 23 percent, 35 percent, and 57 percent. There are many debatable variables that have contributed to this population demographic trend. Smaller family size, diverse career interests and capital investment challenges all play a role, as well as many other factors. Collectively, we must consider and employ strategies that preserve our rural way of life, specifically agriculture production, and pertinent to our members, food production. Nebraska Cattlemen policy is very clear on the strong support of strategies to assist and promote young farmers and ranchers to become involved in food production, however, we prefer to focus on incentives rather than limitations and/or restrictions. A great example of this is the young rancher assistance program, is the new 100-cow curriculum at Nebraska College of Technical Agriculture in Curtis. Under Dean Weldon Slight and his faculty and his staff, this program is a cutting-edge strategy to prepare, and may I say empower young people to become beef producers. It is my understanding that Dean Slight is working on a 100-cow dairy curriculum, as well, that would entail the same goals and empowering young people, and that's a fantastic thing. Dean Slight's leadership should serve as an example to us to create programs and strategies that support the involvement of young people in production agriculture. Beyond the issue of promotion of family involvement, there are a couple of questions that we have regarding LB1174. Section 4(1) requires the Secretary of State to monitor purchases of agricultural land and farming and ranching operations by entities. It can be debated that in order for the Secretary to achieve this, he or she must also monitor purchases by nonentities. If this is the case, then fundamentally Nebraska Cattlemen believe it is very concerning for government to be monitoring in this way the purchases of land and operations. While Nebraska Cattlemen respectfully oppose the passage of LB1174, we have been and will continue to be very open to working with any and all entities including the Nebraska Legislature to further the involvement of young people and families in beef production. Thank you for this opportunity to provide testimony, and I too would attempt to answer any questions. [LB1174]

SENATOR ERDMAN: Thank you, Michael any questions for Mr. Kelsey? Senator Dubas. [LB1174]

SENATOR DUBAS: Thank you, Senator Erdman. Thank you, Mr. Kelsey, for being here, and I would agree with you wholeheartedly that we need to do everything we can to encourage and incent producers to not only stay in business but bring other people into business. And I think for the most part everybody in this room would probably agree. We just maybe have some philosophical differences as to how to get there. So I guess my basic question would be--you are in opposition to this bill for a variety of reasons--do you think we need any type of legislation along this line, or would you just prefer to see the things that we do be more in the incentive direction? [LB1174]

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MICHAEL KELSEY: That's a very good question, Senator Dubas, and I appreciate you asking that. We had a great deal of discussion on that issue. And while we were not approached by other entities respectively, there was some discussion that we had internally: is there any type of legislation. At the present time we don't have ideas, and that kind of goes against our fundamental core if we don't bring problems without a solution, and so we apologize in that sense. I think it's important, and maybe what concerns us most about this particular piece is, and one of the things is the isolation of Nebraska. Right now, there's well over two dozen feedyards in the state of Kansas that are for sale, and none of those entities are being purchased by anyone, let alone corporations. It doesn't seem like there's a fair bit of aggressiveness on the corporate sides to become involved in the ownership status, specifically of land and of those permanent assets, if you will. So we are wondering if this may be going too far at this point in time, and again then if we fall back upon our fundamental philosophy of the free enterprise system. That's the best I can do with your question. Again, we've looked at and we don't have any ideas for possible legislation at this time. [LB1174]

SENATOR DUBAS: Okay. Thank you. [LB1174]

SENATOR ERDMAN: (Exhibit 13) Thank you, Senator Dubas. Other questions? I don't see any. Thank you, sir. I do have a letter, and I don't have them on the list as testifying today so I'll read that into the record now. I have a letter from the Nebraska Chamber of Commerce and Industry in opposition to LB1174 as introduced. The next testifier. Scott. [LB1174]

SCOTT SPILKER: (Exhibit 14) Yes, I'm Scott Spilker, S-p-i-l-k-e-r. I've got some written testimony here. Chairman Erdman, members of the committee, I'm a livestock and grain producer from Gage County. I am president of the Gage County Farm Bureau. I'm in Senator Wallman's district. I'm here today on behalf of the Farm Bureau Federation to offer testimony in opposition to LB1174. First of all, I want to state up-front that Farm Bureau strongly supports family-owned and operated farms and ranches in Nebraska. Family-owned farms and ranches are critical for the future of rural Nebraska and in efforts to bring young producers into production agriculture. Clearly, the future of our farmers and ranchers depends on their ability to remain competitive and profitable. In order to do so, we believe producers must have the opportunity to utilize business organizations to attract capital, to respond rapidly to a changing marketplace, and to bring young farmers into the operation. Farm Bureau opposes LB1174 for a number of reasons, but we do so primarily because it does not allow unrelated family farmers, such as myself and a neighbor, to join together under organizational structures to meet today's challenges of modern agriculture. Farmers and ranchers must be able to work together to develop new products, capture niche markets, add value to their commodities, and not to have to overcome significant costs and hurdles to limit the exposure of their operation or farm assets. The ability to enter into a limited liability

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organizational structure with neighbors and nonimmediate family would greatly improve producers' chances for success. I might add right here that I actually am involved in an LLC in Kansas with four Nebraska producers and five Kansas producers. We fail to see how LB1174 would serve the state's public interest by allowing out-of-state qualified farm corporations to own land and farm in Nebraska without ever having to set foot in the state, while at the same time restricting the activities of lifelong Nebraskans. I think, Senator Erdman, you alluded to this in your comments to John Hansen. How do rural communities benefit by allowing a qualified family corporation, say a corporation in Florida that produces oranges, to allow them to own land and farm in Nebraska, while not allowing unrelated Nebraska farmers who want to incorporate, the same opportunity? How does a Nebraska farmer benefit by allowing, say, a Cargill or a Koch Industries, which are both large, family-held, out-of-state corporations who could conceivably qualify as a family farm corporation under this bill, to own land and farm in Nebraska, while not allowing similar opportunities to unrelated farmers who live and work in Nebraska, under a limited liability structure? We encourage the committee and Legislature to focus on policies...I ask you here maybe to think out of the box a little bit...that can encourage and help those of us in production agriculture succeed rather than focus so much on restricting activities. Agriculture is Nebraska's number one business. We've heard that all afternoon. Nebraska needs to champion production agriculture as not merely viable, but a desired profession; and to promote Nebraska as a place where ag producers are held in high regard in our communities. It is critical for Nebraska to develop strategies that retain and attract young and bright, energetic, forward-thinking producers to our state. The best place to start is to emphasize and promote the attractive features and the future possibilities of ag production. The Legislature, you guys can play a part in keeping us competitive in this rapidly changing marketplace. Many medium-sized farming operations, like myself, need to grow in order to remain viable. Their ability to grow is limited by poor access to capital, and proposals like LB1174 that limit the ability to form limited liability organizations only make it harder. Finally, we have concerns whether LB1174 could withstand another legal challenge. As you know, I-300 was found to violate the Commerce Clause and the Supremacy Clause of the constitution, both by the Federal District Court and the Eighth Circuit Court of Appeals. The state argued before the Eighth Circuit Court that I-300 could be saved from invalidation by interpreting it to allow out-of-state family farm corporations to own farmland in Nebraska. The court rejected that interpretation. Our fear is that passage of LB1174 would again find the state in court, facing lengthy costly court proceedings for which nobody would benefit except the attorneys. For these reasons, Nebraska Farm Bureau Federation opposes LB1174. I would be happy to answer any questions.  
[LB1174]

SENATOR ERDMAN: Thank you, Scott. Any questions for Mr. Spilker? Senator Wallman. [LB1174]

SENATOR WALLMAN: Thank you, Chairman Erdman. Thank you for coming, Scott.

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[LB1174]

SCOTT SPILKER: You bet. [LB1174]

SENATOR WALLMAN: I appreciate your testimony, and do you think we as a legislative committee have to be worried about, you know, where you can market your animals in the future, larger and larger packing plants? [LB1174]

SCOTT SPILKER: Well, as you know, we have great packing capacity in the state. And a fear of mine is that, you know, if we don't keep animal agriculture in Nebraska, will we lose that packing capacity? So I think that is a concern. [LB1174]

SENATOR WALLMAN: Thank you. Thank you, Chairman. [LB1174]

SENATOR ERDMAN: Thank you, Senator Wallman. Senator Dubas. [LB1174]

SENATOR DUBAS: Thank you, Senator Erdman. Thank you, Mr. Spilker, for coming today. I guess I would ask you a question along the lines that I asked Mr. Kelsey. Do you think it's better for us to approach this from an incentive or...an incentive-based approach rather than a restrictive-based approach? [LB1174]

SCOTT SPILKER: Yes, I think very much so, and I think Farm Bureau would support that approach very much. [LB1174]

SENATOR DUBAS: And have you or anybody that you know or that you're aware of taken advantage of the absence of I-300 to maybe set up some different business models or do some things differently than you could have under I-300? [LB1174]

SCOTT SPILKER: There have been some people that have talked about it, but I think, you know, with this bill now being presented, there's some questions as to whether, you know, they would be able to operate under the new parameters. So I think there's some discussions about people forming some LLCs, unrelated producers. You know, agriculture is moving into an era where, you know, am I going to be able to afford a \$300,000 combine by myself? You know, I think these are questions we have to ask ourselves, and how is this going to work 10, 20 years from now if we can't work together as unrelated farmers? You know, it almost discriminates against a small farmer...or not a small farmer but a small family, you know, say, only one brother versus a number of brothers that could possibly, you know, form a family LLC, if I only have one brother and maybe he doesn't want to farm, maybe he wants to do something else. [LB1174]

SENATOR DUBAS: You encouraged and invited us to think outside of the box, and I think that's important. We need to be doing that. Do you have any ideas or suggestions of what types of things we could do to encourage family farmers and ranchers?

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[LB1174]

SCOTT SPILKER: I really don't have specifics, but just as an example, look at how the ethanol industry expanded with the, you know, with the incentives of the EPIC fund and what it did in Nebraska. You know, it's grown to be a huge business. And what if we could do something like that for family agriculture, some kind of an incentive versus a restriction? [LB1174]

SENATOR DUBAS: Thank you very much. [LB1174]

SENATOR ERDMAN: Thank you, Senator Dubas. Other questions for Scott. Scott, let me ask you a couple questions. There appear to be two logical alternatives to LB1174 as I see it, or complements maybe is probably the way to put it, and that is an exemption or a qualified entity such as what Kansas has. And, of course, Kansas has some interesting ideas about how their law is actually applied, because as I understand it, counties can opt out of their law, and there are some other flexibilities they have, but just simply focusing on the idea of allowing unrelated producers, Nebraskans, bona fide farmers to be able to take advantage of it. The second option would be something similar, and this may come up in some of the later testimony with some of the recent cases that came up regarding Pig Pro and other entities that producers were seeking beyond general partnerships, but a more cooperative effort, if you will, a nonstock cooperative idea, to be able to provide the opportunities that they felt was in the best interest of their family farm. And again, these were family farm operations. Has your organization discussed any of those ideas? I know that a lot of ag organizations had met after we had our stakeholder meetings and had your annual meetings and such. Generally, did any of those topics come up? Have you, as an organization, discussed those ideas since LB1174 has been introduced, and if you have, can you give me a lay of the land of where the organization that you were representing, where they lie? [LB1174]

SCOTT SPILKER: We actually haven't since this has come up. Our annual meeting was in December. And our main issue is the nonrelated family farmers being able to band together to form LLCs. That's the main issue that we...the problem we have with this bill. [LB1174]

SENATOR ERDMAN: Okay. Other questions for Scott? I don't see any. Thank you, sir. The next testifier is Russ Vering. Following Russ, we'll have Geoff Ruth. I hope I've got that right. Russ, again, if you'll state your name and spell it for us before you begin, and we'll give you about four minutes. [LB1174]

RUSSELL VERING: (Exhibit 15) Good afternoon. I wanted to thank you this afternoon for hearing my concerns on LB1174. My name is Russell Vering, R-u-s-s-e-l-l V-e-r-i-n-g. I'm the owner of Central Plains Milling LLC of Howells, Nebraska. I have

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been involved in livestock agriculture for more than 15 years. Our family has been involved in the business of swine production on different levels for more than 30 years. In fact, I remember my father, Reynold, discussing Initiative 300 with other producers when it was first installed more than 20 years ago. I was in high school at that time. In the mid-'90s, our business began to expand--I was involved at that time, just graduating from college here at the University of Nebraska--grow in feed manufacturing. We continued to think nationally and globally in the expansion of our business. We worked hard on getting out-of-state businesses to move to Nebraska. We came very close, only to find that I-300 blocked our path--our path to selling more Nebraska corn, Nebraska soybeans, vet supplies, and trucking, our path to building more buildings, employing more people, providing livestock to our instate packers, and finally blocking our path to expanding our family business. I-300 reduced our ability to continue growing in 2000. However, we found ways to survive in Nebraska; our jobs and families depended on it. Nebraska has not been on a level playing field in respect to acquiring new business in agriculture. I-300 has limited our progress in livestock within the state. As long as the law was enforced, many ag-related family businesses and corporations chose states such as Iowa, Minnesota, South Dakota, Kansas, and Missouri for their locations. Thousands of jobs, families, and our economy depends on other ag businesses choosing Nebraska as a place to do business. We've shut our doors in this state to new business. We have shut our doors to property tax revenue, income tax revenue, and positive economy support. Today, ag jobs require education and technology. Higher-paying jobs in management, economics and marketing have been delayed by this law. Nebraska's ag youth is leaving this state and taking jobs in other states where agriculture is not limited. We need to say yes to our youth and provide higher-paying jobs here in Nebraska, and that means saying no to corporate farming limitations. We need to provide opportunity for young veterinarians, nutritionists, economists, and those young adults who choose a career in agriculture. I am speaking out today because I believe in the hardworking men and women who care about our state and represent us in our Unicameral. I thank you for your dedication to our political process, and I ask that you say no to corporate limitations on agriculture. And at this point I'd take any questions. [LB1174]

SENATOR ERDMAN: Thank you, Russell. Any questions for Mr. Vering? Russ or Russell, how do you like to be referred? [LB1174]

RUSSELL VERING: Russ. [LB1174]

SENATOR ERDMAN: Russ. All right, Russ, let me ask you a little bit. Your operation is somewhat diversified. You're representing, as I understand it, the Pork Producers here today. I'm assuming that you have a hog operation or your family does? Is that...? [LB1174]

RUSSELL VERING: Yes. We've owned livestock, cattle and hogs. [LB1174]

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SENATOR ERDMAN: Okay. As I read Section 3 of the bill, and you don't have this before you. I'll tell you what it says and then you can comment; because of the way that I'll ask the question, it'll be clear. It says, "Contracts for the care or feeding of livestock signed less than one year prior to the effective date of this act, but only through a period ending one year after such date;..." So it limits the length of the contracts that may be signed for livestock in the state of Nebraska. Give me some idea of what a typical contract that you may be operating under might entail for any livestock, whether it's specifically hogs or other livestock that your family may raise. [LB1174]

RUSSELL VERING: Thank you. I'm glad that you asked that question. It's something that I wanted to bring up. Within the limitations of financing through the facilities that are built, customers of ours have wanted to build facilities and have built facilities in the past. Most of the recommendations of the bank and requirements of the bank on the loan documents are a five- to seven-year contract. So with this being a situation with the corporate farming law, it would actually limit the ability of some growers to actually build buildings for corporations or maybe out-of-state groups that maybe would feed livestock here in Nebraska. [LB1174]

SENATOR ERDMAN: Okay. And then let me follow up with that. If you have a loan document or other contracts in place that specify a period of time which would exceed this law, we would be impairing or at least have the appearance of impairing that contract. What...are there penalties, or have you ever run into a situation, in terminating that contract, what the penalties are or what the situation might be, or can you speak to that? [LB1174]

RUSSELL VERING: Well, give the situation in the industry right now with the liquidation that's happening in the hog market because of the increased input costs with the ethanol and biofuels, it would really jeopardize the situation that a lot of people are in, that are contract growers. There is a...the market or the numbers of swine are decreasing at this point in time, and so there are more facilities available which will increase competition across the country as far as that goes. So I do believe that it would create a lot of jeopardy for those people that would possibly lose a contract due to the limitations of this law. [LB1174]

SENATOR ERDMAN: Okay. Other questions for Russ? I'm sorry; I almost called you Scott there. Living in the past; sorry about that. I don't see any. Thank you, Russ. Appreciate you coming down. [LB1174]

RUSSELL VERING: Thank you for your time. [LB1174]

SENATOR ERDMAN: Next testifier, I have Geoff Ruth, followed by Brandon Hunnicutt. And we'll have Tim get those for you, Geoff. [LB1174]

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GEOFFREY RUTH: (Exhibit 16) Thank you, Mr. Chairman. My name is Geoff Ruth from Rising City. It's G-e-o-f-f R-u-t-h. I'm a seventh generation farmer, would be considered a small farmer from Rising City, Nebraska. I also serve as the director of the Nebraska Soybean Association, and I am here to speak on behalf of our organization in opposition to LB1174, a bill to restrict entity ownership of agricultural land and farm ranch operations. A resolution adopted by the voting delegates at the Soybean Association's annual meeting states, it is our belief the Nebraska farmers should have the ability to utilize all available legal business structures. The language in LB1174 appears to limit certain business structures. Today, in agriculture, farmers face big challenges in everything we do. One of the greatest challenges is creating opportunities, especially for young and beginning farmers such as myself. I have been farming full-time since 2005, upon graduating from UNL with a business degree in agricultural business. My hope is to be able to pass on our family farm to the next generation by utilizing all available business structures. For beginning farmers such as myself, acquiring a land base large enough to support an operation is becoming increasingly difficult. While I do farm with my father currently, I may need to look outside my immediate family structure at some point in the future. To restrict the opportunity to partner with a nonfamily member and forming a partnership or limited liability corporation creates further impediments for young people wanting to return to the farm. It is clear that the recent increases in commodity prices are bringing many nonfarm investors to agriculture, and forming a business relationship with nonfamily investors is preferable to simply getting caught up in the escalating cash rent battle that is being established with neighbors, a battle that beginning farmers simply cannot enter. Let's give young farmers the opportunity to create a business partnership that allows them to be competitive. Many small- to medium-sized farms across the corn belt are finding it advantageous to form business partnerships with nonfamily neighbors, allowing them to remain in the occupation that they love. We don't limit who a businessman in our rural communities can partner with to open a hardware store, coffee shop, or small manufacturing plant. In fact, we incentivize it. Why should agriculture be uniquely penalized and placed at a competitive disadvantage? Under LB1174, you restrict activities that help agriculture grow in our rural communities. Economic growth, be it large or small, agricultural or business, mean a great deal to our farming communities and the state of Nebraska. The rapidly increasing costs of farming today greatly increase the financial risk and allow producers to create business structures to manage that risk which will enhance competitive business farmers in an increasingly global marketplace. In closing, the Soybean Association continues to embrace family farming and ranching. They are the backbone of our state now and in the future. Let's not restrict what they can do to grow a successful business. Let's instead look to opportunities that help all producers like myself to continue to be full-time farmers. Thank you. And if you have any questions. [LB1174]

SENATOR ERDMAN: Thank you, Geoff. Sorry for mispronouncing your last name. Any

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questions for Mr. Ruth? Geoff, talk to me about your operation a little more than just the fact that you're working with your dad or you began full-time after graduating from UNL. What type of operation do you have? [LB1174]

GEOFFREY RUTH: We run currently about 1,600 acres of corn and soybeans. I have one brother who is not involved in farming. He works out in Washington, D.C. And I have a father who probably will not continue to farm all his life. So I look...I am constantly looking for other outlets and avenues to grow my business, because it's something that I'm very passionate about, something that I want to do. There are some...being in the battle of trying to find acreages, it's hard to compete with people who have access to capital. Being a young guy with no collateral, it's really hard for a banker to sign a note to allow me to expand my business, so I've been looking towards other individuals to form corporations or limited liability corporations with, to access that capital. But I guess that's my situation. [LB1174]

SENATOR ERDMAN: No livestock, just row crop. [LB1174]

GEOFFREY RUTH: No livestock, correct. [LB1174]

SENATOR ERDMAN: Okay. Any other questions for Mr. Ruth? I don't see any. Thanks, Geoff. [LB1174]

GEOFFREY RUTH: Thank you. [LB1174]

SENATOR ERDMAN: The next testifier in opposition, I have Brandon Hunnicutt, followed by...I'm going to say this wrong, but it's Brad Koehn, I believe. [LB1174]

BRANDON HUNNICUTT: (Exhibit 17) Good afternoon. My name is Brandon Hunnicutt, B-r-a-n-d-o-n H-u-n-n-i-c-u-t-t, and I serve as vice president of the Nebraska Corn Growers Association. Our organization earlier submitted written testimony on LB1174 to this committee. Today, I want to discuss with you the negative impact that the passage of LB1174 could have on me personally, as well as on other farmers in my community. I farm in Hamilton County near Giltner. I currently farm with my dad, brother, and another gentleman. I've been farming for about ten years, and greatly enjoy what I do. My own entry into farming was somewhat unique. I wasn't sure I would be able to come back to the farm when I did, or even if I would get the opportunity to come back. I was fortunate in that a local gentleman was getting out of farming and was willing to rent us his ground. He knew that my dad wanted me to get involved in the farming operation. Since then we have also had the opportunity to rent other ground, mainly because of relatives getting out of farming due to age or other circumstances. Not all young people are as fortunate as I have been. Farming is a very capital-intensive business and it is getting more and more difficult for young people like myself to get involved and get started in it. An individual either needs to be from a situation where there is plenty of ground to get

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started or where others are quitting farming and are willing to rent the ground to a young farmer. In today's climate of high rents, high land prices, and high inputs, a young farmer doesn't necessarily have the same opportunity as a more established individual. It is not unfair, it is just the way business is done. It does, however, begin to prevent potential new and younger farmers from having the opportunity to farm. These are individuals who love the farm, who have a great desire to be involved in farming, and who have something to offer the farming and small-town community that is both beneficial and needed. These are the ones who want to live in our small communities and support the small schools, however we are losing them because of their inability to get into farming. In my area I have one friend who would like to farm but admits he does not have the financial resources to take over his father's operation. Another friend has taken over his father's small farm but because of the equipment situation and lack of acres he may never be able to expand. A third individual had to get out of farming and rent out his ground, not by choice but because of the economic situation that he found himself in. All three of these individuals will benefit from being able to enter into an LLC either together or by combining with a farming operation like my own or with someone else who is not related to them. This would allow them to be involved in the day-to-day operations if they wanted, or they could even stay with their current outside employment and not have as much day-to-day activity, if any. It gives them the freedom and latitude to do what they want with their own operation and with their own situation. It allows them to team up with those outside of their family. It would allow for better environmental, financial, and input decisions. However, under LB1174, none of this would be possible. We would be restricted from banding together to build our operations and work for common goals. If LB1174 passes, I foresee more and more young people not being able to come back to the farm, even with the current commodity prices. If we only allow related individuals to combine, it will mean fewer and fewer young people even have the opportunity to come back to the farm. Give us the ability to combine forces and I believe farms can become more profitable and more environmentally friendly, which will keep our rural communities vibrant. Thank you. [LB1174]

SENATOR ERDMAN: Okay, Brandon. Any questions for Mr. Hunnicutt? Senator Chambers. [LB1174]

SENATOR CHAMBERS: Mr. Hunnicutt, for clarification, did you say those three people left farming? [LB1174]

BRANDON HUNNICUTT: One of them left farming. One of them was able to come back due to his father's situation, being an elderly gentleman. And the third one, his dad will eventually get out but he doesn't have the financial resources to take over his farm which he would like to do. [LB1174]

SENATOR CHAMBERS: What became of the farm of the one who had to get out? [LB1174]

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BRANDON HUNNICUTT: He ended up renting out his ground to a neighbor, but like I said, that was more because he was...it wasn't out of choice, it was more out of force due to financial situations. [LB1174]

SENATOR CHAMBERS: I just wanted clarification. Thank you. [LB1174]

BRANDON HUNNICUTT: Okay. Thank you. [LB1174]

SENATOR ERDMAN: Thank you, Senator Chambers. Other questions for Brandon? I don't see any. Thank you, sir. [LB1174]

BRANDON HUNNICUTT: Thank you. [LB1174]

SENATOR ERDMAN: Appreciate your testimony. The next testifier in opposition, Brad Keen (phonetic). Is that right Brad? [LB1174]

BRAD KOEHN: Coin (phonetic). [LB1174]

SENATOR ERDMAN: Coin (phonetic). Sorry about that. And Bill Bevans will follow Brad. [LB1174]

BRAD KOEHN: (Exhibit 18) Chairman Erdman, members of the Agriculture Committee, my name is Brad Koehn, B-r-a-d K-o-e-h-n. I am the president of F&M Bank in West Point, Nebraska. I appear before you today on behalf of the Nebraska Bankers Association to testify in opposition to LB1174. The NBA has a long-standing position opposed to legislating restrictions on corporate farming activities either through our state's constitution or by statute. My written testimony references past court cases and Initiative 300, and our association's concerns with LB1174 as it relates to those, particularly the American Disabilities Act, as well as LB1174's response to interstate Commerce Clause issues. But after listening to the questions that you have posed this afternoon and prior testimony for the proponents as well as the opponents, I would prefer to spend my testimony time with you this afternoon sharing with you the economic realities of the agricultural industry today. In the written testimony, that begins on page 3 if you have that with you. First, I think it's important that I state, agriculture has evolved into an extremely capital-intensive industry. Without question, this is the fundamental economic fact that threatens the small family farm paradigm, rather than the threat of corporate farming. In fact, corporate investment in agriculture is actually an ally to the small farm because of the capital support provided through partnerships with small farms. I have included in my testimony an illustration of the capital requirements associated with a 3,000-head feedlot. Cuming County, where West Point is located, is very livestock intensive, and I put this in here again for illustrative and information purposes. But in summary, a 3,000-head feedlot which in our area is a small- to

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average-sized feedlot--it is nothing more than that--a total investment for the facility, the livestock inventory, and the sustaining land that's necessary to support the DEQ requirements, that total investment would approximate \$7.5 million. The equity required from that owner/operator would approximate \$2.2 million on a 3,000-head feedlot. That, in my opinion, and in our opinion in the banking industry, and certainly is, that's an intensive capital requirement. What corporate investment or any free alternative inventory ownership provides for our farm producers is alternatives which would allow corporate investors or any other investor to own the livestock inventory. That alone would reduce that capital requirement 34 percent or \$765,000. So the capital requirement would be reduced from \$2.2 million to \$1.4 million. [LB1174]

SENATOR DUBAS: You have 30 seconds, Mr. Koehn. [LB1174]

BRAD KOEHN: Okay. Thank you. The other thing I would like to point out is that we do have a specific example in our bank where one of our customer relationships, a positive impact that's resulted from the repeal of I-300. That is on page 4 and 5. What I would tell you is that entity was organized in the state of Iowa because of I-300. With repeal, they began doing business in our county. The total economic revenue to our county is \$23 million from that relationship, and that is detailed, again, in the testimony. It is for those reasons that we respectfully request that LB1174 be indefinitely postponed. [LB1174]

SENATOR DUBAS: Thank you, Mr. Koehn. Do you have copies of your testimony? We haven't received them yet. [LB1174]

BRAD KOEHN: I believe we do. Yes. [LB1174]

SENATOR DUBAS: Okay. If you want to get those to a page, then we can get those handed out. [LB1174]

BRAD KOEHN: Okay. Absolutely. [LB1174]

SENATOR DUBAS: Do we have questions for Mr. Koehn? Senator Chambers. [LB1174]

SENATOR CHAMBERS: Mr. Koehn, how long have you been with the bank? [LB1174]

BRAD KOEHN: I've been in this bank for nine and a half years. [LB1174]

SENATOR CHAMBERS: Has your bank foreclosed on any farming operations during that time? [LB1174]

BRAD KOEHN: I've had one. It was not a foreclosure but it was a voluntary sale. One,

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and I'd have to... [LB1174]

SENATOR CHAMBERS: You wouldn't say that had anything to do with I-300 though, or would you? [LB1174]

BRAD KOEHN: No, sir. No. [LB1174]

SENATOR CHAMBERS: Okay. That's all I would have. Thank you. [LB1174]

SENATOR DUBAS: Other questions for Mr. Koehn? I would have one. As a farmer, I have a close relationship with my banker, so I know that you are an important part of our operation. I guess I would just ask you, we've brought up this afternoon that we need to look at ways to incent our producers rather than perhaps put restrictions on them. Do you see things that the banking industry could do to incent individual producers? [LB1174]

BRAD KOEHN: And I would like to point out, as well, as others have, I think that's a very good observation that you raise, Senator Dubas. I think that the banking industry certainly should participate in programs, as they do now, but in others. And quite honestly, that's where our association would like to see, if anything would develop, it would develop incentives as opposed to restrictive legislation. I know that there are programs, for example, in other states, one in particular I think is referred to at the link deposit program where actually state funds are invested in the state-insured banks at a reduced interest rate, and then the bank in turn uses those funds and lends out to beginning or small farm...I think it's predominately a beginning farmer program...at reduced rates and relaxed terms. Those are the type of things that I know our industry would support, would embrace. But it needs to be a cooperative effort. [LB1174]

SENATOR DUBAS: So to your knowledge, has your industry taken any real leadership position or willingness to go out front in trying to establish these types of programs, or...? [LB1174]

BRAD KOEHN: To my knowledge, it's being formulated but that's about all I can speak to. [LB1174]

SENATOR DUBAS: Okay. Thank you very much. Other questions? Seeing none, thank you. [LB1174]

BRAD KOEHN: You're welcome. Thank you. [LB1174]

SENATOR ERDMAN: Thank you, Senator Dubas. Other questions? None? Okay. Bill Bevans, I have you as the next testifier, followed by Walt Radcliffe. [LB1174]

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WILLIAM BEVANS: (Exhibit 19) Good afternoon, Mr. Chairman and members of the committee. My name is William Bevans, B-e-v-a-n-s, and I'm here representing the Nebraska Poultry Industries, and most of my testimony relates to language concerns in LB1174, so I want to make it clear up front that the Poultry Industries preference would be not to have the bill passed. We believe it's the wrong approach, as some other people have stated here. I thought, first, since the poultry industry is viewed as one of the more integrated models in agriculture, that I would give you a brief little synopsis of who we are just to let you know how we kind of function. The poultry industry in Nebraska represents a large egg processing segment which obtains eggs for processing from area farmers who sell their eggs to the processors primarily on a contractual basis. The processors provide service people to aid in the production process, and facilitate the operations in various ways, but the egg producers are independent family farms. And I found in the industry, in both the chicken industry, boiler, egg, and turkey, that while there are some company-owned farms, primarily the model that the corporations' processors would prefer is to contract with independent family farmers. The Nebraska Poultry Industry also represents a unique and successful broiler industry. The broiler processing company produces some of its broilers on company-owned farms, but most of the broilers are raised on family-owned farms which contract to sell their product to the company. The Nebraska poultry industry also represents a turkey processing cooperative company owned and operated by the member turkey growers. Grower-owned turkey processing companies represents a small part of the national turkey industry, but there are several of them across the country. In these operations, the growers are involved in the production and marketing of turkeys and take all the risk of the enterprise from farm to fork. I am a Nebraska turkey grower involved in this enterprise. And one example that's...or actually a couple examples I can relate concerning our operation is our plant, processing plant, which is at Gibbon, Nebraska, direly needs more production to keep the plant running efficiently. We've tried to get interest, people interested in putting up turkey barns, and because we cannot, because we don't have the financial wherewithal to offer them a floor contract, meaning a guaranteed price to cover their feed costs, we can't find any producers that can get a bank to lend them the money to put up the facilities. And so that's where having a corporate entity in place can offer those kinds of contracts and offer an opportunity for new producers and for our processing plant and for young farmers, I believe. The other thing in our operation that is a concern as it relates to LB1174 is our company has had to take over one of our grower's farms, again, in order to keep the production coming to the plant. And I'm not sure exactly what implications LB1174 would have on that. With the corporation owning the turkeys, I think it probably doesn't pass. As you are aware, Initiative 300 included an exemption from the restrictions of the amendment for corporations involved in raising poultry. This language is included in substantially similar form in LB1174. This exemption has been the subject of much confusion and has been a substantial burden on the poultry industry in this state for more than 20 years. We have provided you with copies of the Attorney General's Opinion dated January 24, 1985, which is the basis of the confusion. You also have a

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copy of a letter the Nebraska Poultry Industries sent to Senator Jerome Warner, at the time, discussing this opinion and asking for his help. The Attorney General's Opinion ultimately concluded after an incredibly labored analysis that eggs are not poultry and therefore chickens raised for the production of eggs would not be exempt from I-300 restrictions on corporate farming or ranching. In this opinion, the Attorney General cites conflicting case law definitions of what is and is not poultry. The opinion first cites our Nebraska Supreme Court which adopted the definition of poultry as domestic fowls reared for the table or for their eggs or feathers, such as cocks, hens, capons, turkeys, ducks and geese. Then the opinion jumps out of our jurisdiction and cites cases which exclude the products of these fowl from the definition of poultry and concludes that our Supreme Court also meant to exclude products of poultry despite the clear language of the definition. I believe the out of jurisdiction cases which excluded the products of poultry from being poultry were dealing with issues of imposing duties and taxes on the importation of poultry. In those cases, it made sense to exclude the meat, eggs, and products from the definition of poultry. It does not make sense in the case of exempting the production of poultry from the restrictions on corporate farming or ranching. We are asking that if LB1174 is adopted, that it first include language which would eliminate this confusion and the detrimental impact it has had on our industry. Poultry companies who already operate in our state and those who would want to invest in Nebraska, need to be certain of their legal status. Our industry is also concerned with language in Section 2 and 3 of LB1174, which could be interpreted to disallow corporations from contracting with poultry or other ag producers. The poultry industry in Nebraska, as in the rest of the country, is highly integrated. It is a food production system built on contractual relationships between the growers and the processor, and the processor and the buyers, to supply specific products to the processor and to the marketplace. Contracts are the vehicle through which risks of production and marketing are allocated. Our industry, the hog industry, and probably the future cattle industry will not exist without these contractual relationships. We need to make sure that the right to enter into these contracts is protected. We strongly urge that language be included in the bill that makes clear that the contracts involved in our vertically integrated industry will continue to be legal and valid. I would take any questions you might have. [LB1174]

SENATOR ERDMAN: Thank you, Bill. Any questions for Mr. Bevans? Senator Chambers. [LB1174]

SENATOR CHAMBERS: Just an observation. And I'm familiar with this opinion of the Attorney General. It's interesting that the Attorney General and Attorneys General before this one have said that an embryo is a human being but they won't say that an egg is a chicken. (Laughter) [LB1174]

WILLIAM BEVANS: (Inaudible.) [LB1174]

SENATOR CHAMBERS: It wasn't a question. [LB1174]

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SENATOR ERDMAN: Very well stated, Senator. Bill, as I asked, I think it was Russ, earlier about the contracting provision, I think you're hitting on that a little, as well. The section that I'm reading is in Section 3(2)(o) that would generally prohibit or severely limit the contracts that would be available for the care and feeding of livestock. As you understand the bill and the practical applications, is that the target of your concern is making sure that it's clear the way that your business or the way that your industry was operating prior or could operate into the future would be clarified to allow an exemption, or kind of walk me through kind of how the process works now. You have a contract with an independent producer to... [LB1174]

WILLIAM BEVANS: Produce either broilers or eggs or turkeys, and they're paid an agreed upon compensation for producing that product, and they're... [LB1174]

SENATOR ERDMAN: And over how long is that contract usually? Is it a year-to-year contract? Is it... [LB1174]

WILLIAM BEVANS: Yeah. Generally it's a year-to-year contract. [LB1174]

SENATOR ERDMAN: Okay. [LB1174]

WILLIAM BEVANS: But in the case of situations where the company wants to get, you know, facilities built, be they broiler, egg, or turkey, the banks will ask the processor to provide a 7- or 10-year contract, and on that basis then the bank can make the loan to the producer to put up the facilities. And without the contract, there's almost no way. [LB1174]

SENATOR ERDMAN: Okay. [LB1174]

WILLIAM BEVANS: Unless you are fortunate enough to have assets in your family. [LB1174]

SENATOR ERDMAN: All right. Any other questions for Bill? I don't see any. Thank you, sir. Appreciate your testimony. [LB1174]

WILLIAM BEVANS: Thank you. [LB1174]

SENATOR ERDMAN: The next testifier in opposition, Walt Radcliffe, followed by David Grimes. [LB1174]

WALTER RADCLIFFE: Senator Erdman and members of the Agriculture Committee, my name is Walter Radcliffe and I'm R-a-d-c-l-i-f-f-e. I'm appearing before you this afternoon as a registered lobbyist on behalf of the Nebraska Realtors Association in

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opposition to LB1174. They have continually opposed restrictions on any land ownership since and before Initiative 300 in 1982. And that position has not changed and I'm simply here today to state it once again. I would be happy to answer any questions. [LB1174]

SENATOR ERDMAN: Thank you, Walt. Any questions for Mr. Radcliffe? Walt, refresh my memory on--and maybe you're not aware of it--but as I understand it, and maybe your members have commented on this, an individual under I-300 would purchase a piece of property. It would go through title insurance. They would review it for compliance. Have your members ever stated to you that property that they had sold, specifically ag land, had ever been prosecuted under the previous law? [LB1174]

WALTER RADCLIFFE: No. No, I'm not aware of any prosecution that's been related to me. [LB1174]

SENATOR ERDMAN: Okay. Other questions? I don't see any. Thank you, sir. [LB1174]

WALTER RADCLIFFE: Thank you. [LB1174]

SENATOR ERDMAN: The next testifier, David Grimes. Hopefully I've got that right. Followed by Lynn Chrisp. [LB1174]

DAVID GRIMES: I'm David Grimes, D-a-v-i-d G-r-i-m-e-s, and I'm here representing myself this afternoon. I'm a family farmer. I live about a dozen miles north of Lincoln, farm in Lancaster County. We raise corn and soybeans on about 1,500 acres, have four children--three boys and a girl, and my wife is a physician assistant in Lincoln, and I'm here to speak in opposition of LB1174. First of all, I appreciate and respect the intentions of the bill and of the introducers to protect family farmers. I think that's a good cause. My concern with the bill is that it might restrict how family farmers, and especially young and beginning farmers might be able to obtain capital to operate to be able to farm, especially ones that aren't fortunate enough to have family that already farm, that already...aren't fortunate enough to have that access to that base, that amount of capital. Oh, I guess I could mention, my family...my parents did not farm. I grew up in Lincoln. And I'm probably better at conversing than I am at public speaking, but I think...so I'll be short and then if...I would be happy to answer questions, or if somebody has a comment, that's fine. But I think possibly an unintended consequence of Initiative 300 and of a bill like this would be to sort of maintain the progression of concentration of farm assets and farming operations into fewer, bigger hands, because I think it has the potential to restrict smaller, especially beginning operators, to obtain capital. I don't think that's the only way to...I don't think all farmers need to be able to form corporations. I'm not incorporated. I farm alone. I'm a sole proprietor. But in some cases I think that might be something that could help them. And I applaud...I don't know if the gentleman is here that was helping the young man become a starting out and producing hogs, but we

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need more people like that in agriculture. I'm on a school board and because of my close proximity to Lincoln, in my 30 years of farming I've hired a lot of college and high school students, and there are so many of them that would love to farm, but just don't have anyone in their family that farms or someone that can help them. My dad had polio when he was young and so did not farm, but I was fortunate enough that he did help me in getting capital, I guess you could say to get started in farming. Not everybody has that opportunity. And with that, again I thank you for the opportunity in speaking. I would be happy to answer any questions. I can't claim to be an expert on too much but I do my best. [LB1174]

SENATOR ERDMAN: Thank you, Dave. Any questions for Mr. Grimes? I don't see any. Thank you for coming down. [LB1174]

DAVID GRIMES: Thank you. I'm going to stick around a little bit and then I've got a school board meeting at 6:00, and I've got to help my 12-year-old water his cattle first. [LB1174]

SENATOR ERDMAN: Very good. Well, thanks for coming down. [LB1174]

DAVID GRIMES: Thank you. [LB1174]

SENATOR ERDMAN: Mr. Lynn Chrisp is next, followed by Jeffery Monhollon. [LB1174]

LYNN CHRISP: (Exhibit 20) My name is Lynn Chrisp; that's C-h-r-i-s-p. Chairman Erdman committee members, I farm near Kenesaw, Nebraska, and I want to thank you for this opportunity to share about the reality of LB1174 as currently proposed. I did originally vote for I-300, and in the process I failed to see how the promoters might seek to apply the law, and was extremely disappointed by that outcome. My objection to LB1174 comes from the requirements of day-to-day labor and related-party ownership. The best business relationship is not always based on family relations. The points of objection I would like to highlight come directly from the case that was brought against Progress Pig, Inc., and Dave Zahn as sole stock owner, by the plaintiffs who comprised of four individuals. This was a case to define the purpose of I-300 and was heard in the Nebraska Supreme Court. David Zahn is a quiet, soft-spoken, friendly individual known for his focus on community, neighborly relations, love for nature, and stewardship of the environment. He also has a real ability, through hard work and understanding, to make commercial hog facilities a successful business. Dave had experienced success being a key part of two previous hog operations before his purchase of the entity identified in the case as Progress Pig. Dave had purchased the struggling business as a sole proprietor and had made the personal sacrifices in day-to-day operations, being there on the premises daily to steward the business back to a healthy profitable business. He understood that a transition was necessary to sustain this enterprise and developed a plan for the future. Time has a way of changing priorities for family and business, and

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Dave desired the flexibility to pursue other interests in life. He had no desire to be permanently shackled to one enterprise. With this in mind he decided to incorporate in order to create a business structure that he knew would be the preferred way to manage the sharing of ownership, as he was already in similar ownership sharing arrangements with two other businesses. Dave's desire was to share the ownership with another young man who had shown much promise and needed an opportunity to be vested into the business. The hope was, if all went well, this young man would eventually be in a position to complete the purchase of the business over time. The young man was not family to Dave for corporate ownership and in the transition of passing on more responsibility, Dave was not involved in the everyday care, as the court said was a requirement of corporate ownership for hog production. The court found Progress Pig, Inc., in violation, and ordered compliance in 120 days. The pending case had caused differences for the young man who decided to sell back his shares to Dave and pursue other opportunities. Dave struggled, not able to replace the ability of the young man. As a result of the case, Dave paid \$30,000 in legal fees and over \$200,000 in taxes, reorganizing the business to comply with the inability to be in the barns every day. Four years later, the business was liquidated to avoid the continuing struggle. Farmers Union and the Center for Rural Affairs call this a win. I believe it reveals poor judgment on their part, resulting in a tragedy and a travesty of bad law. Until appropriately amended, I urge the members of this committee not to support LB1174. [LB1174]

SENATOR ERDMAN: Thank you, Lynn. Any questions for Mr. Chrisp? Lynn, let me follow up on your last statement. It says, "Until appropriately amended, I urge the members of the committee not to support LB1174." As I understand the Progress Pig case, and other similar cases, whether it's a nonstock entity or an unrelated producer, what specifically do you think would be appropriate amendments, if any, to the bill to correct the flaws that you see in the law? [LB1174]

LYNN CHRISP: Well, as that court decision specifically specified, it held those who are under a corporate structure to a very strict interpretation of day-to-day labor and management. And the judge had showed or had stated in his opinion that from a pure point of view via a dictionary definition, that Dave was in compliance of labor and management, but the day-to-day clause that was in the law then led him to believe that day-to-day meant every day, which would hold him to a much higher standard than most other people who were sole proprietors. And that's one of my personal objections to this particular situation, that the people who have introduced this law, I'm not sure that that's necessarily their intent, but it's just essentially impossible. [LB1174]

SENATOR ERDMAN: Okay. Other questions for Mr. Chrisp? I don't see any. Thank you, sir. Appreciate your testimony. [LB1174]

LYNN CHRISP: Thank you. [LB1174]

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SENATOR ERDMAN: (Exhibit 21) I have a Jeffery Monhollon if you are here. If not, I have a letter from you. I have a letter in opposition from the American Society of Farm Managers and Rural Appraisers, in opposition. And again it's from Jeffery D. Monhollon. That will be entered into the record. We have about 15 minutes left. If there are other individuals that were not previously listed on the testifier's sheet that wish to testify in opposition to LB1174. I see none. Can I see a show of hands of those that wish to testify neutral on LB1174? I see four hands. Okay. I have an idea of who the folks might be, but we'll just let you decide who would like to go first and follow accordingly. We do have 30 minutes set aside for the neutral testifiers. There are four of you and we will let you approximately have about 6 minutes or so and then that will leave a little bit of extra time in case somebody would come in a little bit later. And we'll follow the same process. If you'll identify yourself at your introduction and then we will count the time from that point forward. [LB1174]

STEVE GRASZ: (Exhibit 22) Mr. Chairman and members of the committee, my name is Steve Grasz, G-r-a-s-z. From the fall of 2004 until April 2007, I was involved with the Jones v. Gale case in the U.S. District Court, the Eighth Circuit Court of Appeals, and the U.S. Supreme Court. And as the committee is aware, this case involved the challenge to Initiative 300 which resulted in the ruling that Article XII, Section 8, of the Nebraska Constitution violated the Commerce Clause and the Supremacy Clause of the U.S. Constitution. My testimony today concerns the question of whether the provisions of LB1174 actually resolve the constitutional problems that were found by the federal courts. LB1174 makes two primary changes to the former law in an apparent attempt to address the Commerce Clause problem. Section 1 contains legislative findings regarding the purpose of the bill and the policy objectives sought to be achieved, such as a reduction in rural poverty and unemployment, and the stewardship of natural resources. Section 2 alters the definition of family farm or ranch, which in turn changes the qualifications of what constitutes a family farm or ranch. Like the former law, Section 3 exempts family farms and ranches from the prohibition against limited liability entities acquiring real estate used for farming or ranching in Nebraska or engaging in farming or ranching in Nebraska. The key change from the former law is that under LB1174 exempt family farm corporations would now encompass all agricultural production activities, whether within or outside of Nebraska--that's from the definition section--where the majority voting stock is held by members of a family and at least one family member is actively engaged in the day-to-day labor and management of the agricultural production activity at any location--and that would be in any state. This means that a corporation feeding hogs or turkeys in North Carolina, raising catfish in Mississippi, or growing cranberries in Massachusetts could qualify as a family farm in Nebraska and be exempt from the statute as long as it met the stock ownership and labor requirements in its own state. On the other hand, a person in southern Kansas or western Colorado who owned no farmland there, but who wanted to own livestock or farmland in Nebraska using a limited liability company could not do so. Those who do

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not live within daily commuting distance of Nebraska would once again be placed at a distinct disadvantage to Nebraska residents in their ability to own land or livestock in the state. At the same time, distant corporations meeting the stock ownership and labor requirements in their own state could buy as much Nebraska farmland as they desire. Thus, LB1174 raises similar legal questions as Initiative 300 concerning compliance with the Commerce Clause. In addition, with the changes described above, the bill's language also raises additional questions about its soundness under both the Equal Protection Clause and the Commerce Clause. That's because there would not appear to be a rational relationship between the definition of family farming and the objectives stated in Section 1. Likewise, it is difficult to see a legitimate local interest--now, that's a term of art under Commerce Clause analysis--served by such disparate treatment of those wanting to engage in commerce in the state of Nebraska. Allowing a corporation in New York to buy Nebraska farmland but refusing the opportunity to two residents of Nebraska who do not meet the definition of a family farm, all in the name of stewardship of natural resources or reduction in rural poverty, is difficult to defend under the relevant constitutional tests. In conclusion, the language of LB1174 raises numerous constitutional questions and appears to lack sufficient relationship between its prohibitions and its stated objectives. [LB1174]

SENATOR ERDMAN: Thank you, Steve. Any questions for Mr. Grasz? Steve, I'll ask probably the obvious one. Based on the box that we appear to be in by the ruling of the court, is it realistic to create the law to comply with that? I mean, it seems to be somewhat tenuous that we're trying to figure out how to do this, and obviously if we change one provision, as you have pointed out, it may bring in previous challenges that were upheld under court challenges against Initiative 300, and it took until the Commerce Clause issue to ultimately invalidate it, so then we go back and make a change and we go back to the same process. Any observations? I mean, it's not easy, obviously, but... [LB1174]

STEVE GRASZ: Right. That is a potential problem. The constitutionality of Initiative 300 under the Equal Protection Clause has been upheld twice, once maybe 20 years ago and then also by the federal courts in the latest litigation. But the disconnect between stewardship of natural resources, for example as an objective, and allowing a corporation in Massachusetts to qualify as a family farm, would seem to be...there would seem to be a problem there with the rational relationship. Basically, any time you favor in-state residents over out-of-state residents in their ability to participate in commerce in the state, you're going to have a very difficult problem as the Eighth Circuit has interpreted the Commerce Clause. [LB1174]

SENATOR ERDMAN: Okay. Other questions for Mr. Grasz? Senator Dubas. [LB1174]

SENATOR DUBAS: Thank you, Senator Erdman. Thank you, Mr. Grasz. Just your personal opinion when I ask this question: Do you feel the absence of a corporate

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farming ban puts individual producers at an economic disadvantage in a relationship to corporate ownership? [LB1174]

STEVE GRASZ: I'm not sure that I'm qualified to answer that. Personally, I guess I don't think that that's the case. I tend to look at my own community. I grew up on a farm in Deuel County in western Nebraska, and if I felt that this bill would improve the economy there I would certainly think that would be a good thing. But my observation is that during the time that Initiative 300 was in place, I saw my hometown continue to shrink, lose population, lose businesses, and I don't really feel that it made any difference. My personal preference would be to see the Legislature create additional incentives for biofuels production, value-added agriculture, and ways to allow farmers to have different marketing opportunities for their products, and reduce the property taxes. [LB1174]

SENATOR DUBAS: Thank you. [LB1174]

SENATOR ERDMAN: Other questions? Steve, let me just ask a practical question. It wasn't uncommon for the state of Nebraska to be defending Initiative 300 either in state or federal court over the 25 years that it was in effect. Given the uncertainty or the potential certainty of a response, depending upon where folks feel they're at, what are the odds, and obviously your previous client is not who you're representing today, you're here on your own behalf, but do you get the sense that the state will be given some time to work through this, or is it your sense that a response would likely be met by a challenge as quickly as is practical? [LB1174]

STEVE GRASZ: If this were enacted? That's hard to predict. I do know that after the Hazeltine decision was handed down by the Eighth Circuit, it was only a matter of time until it was challenged in Nebraska. And now that there's been two decisions, it would seem to me quite likely that there would be a challenge brought unless the bill somehow addressed the problems that the court found in that case. [LB1174]

SENATOR ERDMAN: Okay. Other questions? I don't see any. Thank you, sir. The next testifier in a neutral position. [LB1174]

ANTHONY SCHUTZ: (Exhibit 23) My name is Anthony Schutz. I'm a professor at the University of Nebraska. My last name is spelled S-c-h-u-t-z. I probably couldn't disagree more with Mr. Grasz. I'm not sure if I can disagree with another neutral testifier. Is that in order? [LB1174]

SENATOR ERDMAN: I guess I didn't cover that, so you're not disagreeing with proponents or opponents, so I guess technically that's why you are neutral, to argue with your fellow lawyers, so have at it. [LB1174]

ANTHONY SCHUTZ: Okay. I sense a bit of hostility to lawyers, but I know that from the

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previous time I was here. I believe there's sort of a fundamental difference between this law and the original law, and that's how it defines the farm. It basically takes geography out of the mix. So as between the Colorado individual, all right, who does no farming in Colorado, and the owners of the New York corporation who do do farming, all right, those two folks are not similarly situated, and there is a rational basis for distinguishing between those two, all right. They are not active farmers, regardless of the location at which the conduct occurs. This legislation favors active farmers in the sense that it's defined in this legislation as those who engage both in the day-to-day labor and management. So in that respect I don't see any discrimination. If there is no discrimination, then we are into a different sort of analysis under the dormant Commerce Clause, which is the Pike balancing test, and under the Pike balancing test the vast majority of state and local measures are upheld because the burden on interstate commerce must clearly outweigh the putative local benefits that the legislation seeks to achieve. So I believe that takes it out of the discrimination prong of analysis. As far as equal protection challenges go, rational basis review, especially of legislative matters, and especially in terms of sort of a facial attack on this legislation would be very difficult. That's not to say the fight wouldn't ensue, but the prospect of litigation, I don't know if that's a good reason of avoiding legislation. Okay. So one thing I would like to sort of, I guess, caution the committee on, given Hazeltine and given Jones v. Gale to a lesser extent, is the notion of purpose. There is at least some support for the notion that regardless of whether or not the legislation you pass is discriminatory or not, regardless of whether or not it has facial discrimination or whether or not it generates a discriminatory effect, but a discriminatory purpose would be enough to trigger the rigorous scrutiny of the dormant Commerce Clause. This most often arises when we start mentioning individuals or entities that we see as a danger or as a policy problem. So when I mention, for example, KAAPA or ConAgra or Berkshire as the problem, you do not attribute to me some sort of a discriminatory animus, at least in terms of insider or outsider status, because those are at least arguably insiders. But if I start, talking about Cargill, Tyson, and Prudential, same problem. But they are probably what most people would think of as outsiders. So in terms of identifying individual or entities that are associated with the problem, the main idea, of course, is to make sure that if that person or entity were an insider, that they would pose the same problem; that it's not their insider or outsider status that is motivating the legislation, but rather some other trait or characteristic that is causing this sort of treatment that you want to give to that group. Now that's not to say that you need to refrain from mentioning those folks. I think there are a variety of problems that exist beyond our borders that we can talk about and legislate about without creating discriminatory purposes. And indeed, a broad interpretation of that would take away the entire idea of preventative legislation, but it's always something to be wary of. On page 7 of my written testimony I offer a few technical changes to the language. Section 2(3) of the bill, on page 4, lines 15-19, attempts to define the farm or ranch at an operational level. And the reason for that, of course, is to identify those who engage in farming, regardless of their location. The term within or outside of Nebraska, "whether within or outside of Nebraska" appears to

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modify only the term "agricultural production activities" because of its placement in the sentence. The best or one of the ways of dealing with that problem is to move that clause so that it modifies "all agricultural land and agricultural structures," because it's geography that matters. It's land and structures that matters. So moving that language to modify that clause would help. Additionally, in Section 2(4) of the bill, page 5, lines 1-3, the legislation reads, "on the farm or ranch." If that read, "of" the farm or ranch it would be helpful in terms of avoiding any sort of geographic implications that come from the language. I believe though that there's a better way of fixing this. I don't think that one needs to try to define the farm or ranch. One could simply substitute the term "the farming or ranching operation" for the term "the farm or ranch." And I've proposed changes along those lines later on in this written testimony. The first change is to Section 2(4) of the bill which strike the term "on the farm or ranch," and substitute it with "of the family farm or ranch entity's farming or ranching operation." And then Section 2(3), a new section 2(3) would articulate a definition for farming or ranching operation. Conforming amendments would be necessary because there are four...five other places, I'm sorry, in the legislation where the term "the farm or ranch" is used. And basically all this would require is substituting operational language for what was geographic language. So rather than trying to redefine a geographical term in operational terms, why not just use the operational term and define it as such under the act. So if there are any questions I could answer for the panel, I'd be more than happy. [LB1174]

SENATOR ERDMAN: Thank you, Anthony. Any questions for Mr. Schutz? Anthony, I know that we have appreciated your input throughout this process and look forward to continuing to work with you. I note in your testimony that you have some other ideas beyond the specific language that may, I think your word is, make it operate more cleanly. And we recognize your interest and willingness, and we've appreciated that throughout this process, and thank you for coming here today and sitting through the testimony and helping to clarify things that need to be clarified. [LB1174]

ANTHONY SCHUTZ: Thank you. [LB1174]

SENATOR ERDMAN: Thank you very much. The next testifier who wishes to appear in a neutral position. [LB1174]

DAVID JARECKE: (Exhibits 24 and 25) Senator Erdman and members of the committee, thank you for this opportunity. I'm David Jarecke. I am...that's J-a-r-e-c-k-e...appearing on behalf of the Nebraska Cooperative Council. The first speaker this morning--and I hope I'm not violating the senator's rules in terms of comment--the first speaker, I believe, mistakenly believed that cooperatives were a part of this LB1174. That is a mistaken belief, and the amendment that is being distributed to the committee right now is an amendment offered on behalf of or from the Nebraska Cooperative Council to allow cooperatives as an entity that could legally operate under

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the constraints of LB1174. The other key point here, however, though, is this is a very narrowly drawn and intentionally very narrowly drawn amendment not to expand this to cooperatives that might be a Cargill or other joint entities. This, with respect to the terms that have been used today, this literally means boots on the ground. This means the farmer, the operator that is involved in both labor and management on a day-to-day basis, if those persons, including the former speaker, Mr. Brian Brandt, one of the proponents of this bill, if he wanted to form a cooperative with a young hog producer that he is working with, the 18-year-old man, that is the type of cooperative we're talking about here. That is the cooperative that could allow Mr. Brandt and this 18-year-old young man to operate as a legal entity where they're both, again, involved in the day-to-day labor and management, and legally operate. I don't think anyone is opposed to that concept. Senator Dubas has asked many times, what are some of the alternatives? We believe that this is one such alternative that allows farmers and ranchers greater economic ability, and less risk. The question has been asked many times, what is the risk? I believe Mr. Brandt mistakenly understood the question in terms of what is the risk. The risk to him is if that 18-year-old young man gets in an accident delivering those hogs to the pork plant in terms of processing, and that accident causes, you know, kills three school children, Mr. Brandt just became liable for that entire lawsuit. This cooperative will protect Mr. Brandt from that risk. The cooperative would be the entity that would be responsible for that. The cooperative assets, of course, would be completely at risk, but Mr. Brandt's personal assets would not be at risk. So again, the intent...and again, as Senator Erdman has mentioned, there was a...to further clarify that there was previous litigation also concerning a somewhat similar amendment called Pig Pro, but this amendment is more narrow than the previous litigation. That previous amendment did not include the definitions, day-to-day labor and management. This amendment is intended to fulfill that requirement. I would be happy to take any questions. [LB1174]

SENATOR ERDMAN: Thank you, Dave. Any questions for Mr. Jarecke? Dave, if...and maybe this isn't the position of the Co-op Council but I'm going to ask it; if you can answer it that would be great...is it the position of the council that if an amendment, this amendment or a similar amendment would be adopted, that they would support LB1174, or have they taken a position on that at this point? [LB1174]

DAVID JARECKE: Senator, I cannot answer that question. Their position is neutral. I think as many diverse associations such as that, there are different opinions within that, and I simply cannot speak on their behalf as to what that position would become. [LB1174]

SENATOR ERDMAN: Okay. Well, we'll follow up with them directly then. Other questions for Mr. Jarecke? I don't see any. Thank you, David. [LB1174]

DAVID JARECKE: Thank you. [LB1174]

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SENATOR ERDMAN: Others testifying neutral? Is there anyone else that wishes to testify in a neutral position? I had four to start with and I think that's all we have at this point. Okay. [LB1174]

DAVID BRACHT: (Exhibit 26) Mr. Chairman and members of the committee, my name is David Bracht, and that's spelled D-a-v-i-d; last name is spelled B-r-a-c-h-t. I want to thank you for allowing me to speak here today. I'm appearing today on my own behalf. I was one of the attorneys that represented the plaintiffs in the Jones v. Gale suit. As previously noted, that suit ultimately resulted in a ruling by the federal courts that Initiative 300 was unconstitutional. The intent of my testimony today is to compare how the plaintiffs in that suit and others like them would be affected if LB1174 passed. There were six plaintiffs in the Jones suit, each of them with different concerns about I-300, and all of them, which had or were independent producers or relied on independent ag producers. Many of you know Senator Jones and know of his story. He started in agriculture by forming a corporation with a farmer that was approaching retirement, and gradually gained ownership that way. When the senator's son, Gordon, wanted to do the same thing, Initiative 300 had already passed, and consequently he was unable to do that. The day-to-day labor and day-to-day management requirements of LB1174 would similarly prevent the arrangement that Senator Jones and his son wished to form. Similarly, the second plaintiff, Harold Rickertsen, was also prevented by I-300 from working with a younger farmer to allow him to continue his farming operation upon retirement. Because of I-300, Mr. Rickertsen could not form a corporation or an LLC with a young farmer. As a result, Mr. Rickertsen was forced with the decision of either putting at risk all of his assets that he had built up over the years of his operation that he would be relying on for his retirement, or getting out of farming. Mr. Rickertsen, like many, unfortunately, older farmers in Nebraska, felt compelled to choose the latter, and his land is now farmed by one of the larger farmers in the area. Given that the restrictions are the same under LB1174, it's likely that a similar result would occur and that we would continue to see the reduction in the number of farmers, as we have over the last 20 years under Initiative 300. A third plaintiff, Terry Schumacher, faced a similar decision under Initiative 300. His father had operated a very successful agriculture business. Over the years, he had accumulated and purchased some farmland, and rented it to the area farmers. Mr. Schumacher and his siblings wanted to continue that relationship. In many cases, the tenants on those farms had been one, two, and in one case even three generations; in other words, from the original farmer that had started the relationship some 30 years ago, now it was not only the son but the grandson that was renting that farm. However, to do that, Mr. Schumacher and his siblings wanted to form an LLC or some other type of limited liability entity because their families had now grown, they had other businesses and family interests involved, but they were prevented from doing so by Initiative 300. Based on this restrictions, LB1174 would have a similar effect, and essentially force the sale of the land and the disruption of decades-long relationships, and forcing the young people that were renting that land to

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either come up with the money or get out of farming. LB1174 would seem to me to likely cause further accumulation in the hands of those that are fortunate enough to have families with heirs interested in farming and with financial wherewithal to, in fact, buy it rather than rent. As land prices have increased, particularly over the last two years, this is a situation that is going to increase. One of the plaintiffs, Robert Beck, owns and operates a commercial cattle feedyard. As you know, the cattle industry is the single largest agricultural industry in the state and is critical for the support it gives to our other major industries, the corn and ethanol industry. Moreover, it supports the cattle packing industry which was referenced earlier. As was noted, Nebraska is the number one ranking in red meat production. To be clear, what that means is that Nebraska cattle and hog packing companies slaughter and produce more pounds of red meat, both pork and beef, than in any other state. However, it should be noted that Nebraska packers have been forced over the years to rely increasingly on cattle and hogs that are fed in other states to be able to meet their packing requirements. Given a situation where we have an overproduction or overcapacity in the slaughter industry as exhibited by recent closings of beef plants in other states, I think that's a serious concern for Nebraskans. Mr. Beck's business is based on feeding cattle owned by others. I have a personal contact here in that my family...I'm the oldest of eight children...my families have been in the cattle feeding business for 25 years. Three of my siblings stay and still are on the farm in Cuming County where we have a commercial cattle feeding operation. Like many cattle feeders in the state, the market risk of owning the cattle fed on the lot would force Mr. Beck and it would force, in our family, to reduce their number of cattle that they feed significantly if they were forced to assume all of the market risk. Along with that then would be a reduction in the number of employees hired, the amount of corn and other inputs that are purchased. In other major cattle feeding states, many of the customers of commercial cattle feeding operations are, in fact, either LLCs or corporations, but this was not allowed under...at least under a recent interpretation of Initiative 300. LB1174 appears to similarly prevent LLCs and corporations from owning cattle in Nebraska feedyards, which would put these feedlot owners at a disadvantage to those competing states, again. The only exception it would appear under LB1174, would be for a qualified producer, someone qualified in another state, that could, in fact, own those cattle, for instance, a Texas cattle...someone who owned a Texas cattle feedyard. However, I think if you look across the industry, those operations which tend to be larger are much more likely to rather purchase the feedlot itself rather than simply buy the cattle. So, ironically, LB1174 might even accelerate the consolidation of the cattle feeding industry that we've seen ongoing. Finally, the two plaintiffs that had physical limitations preventing them from providing day-to-day labor required by I-300. Now, the Eighth Circuit did not approach that issue because it found the unconstitutional restrictions on interstate commerce and did not address the Americans with Disabilities Act. As a result, the Nebraska District Court's rulings which did find Initiative 300 as violating the ADA still stands. LB1174 attempts to address this in Section 2(4) and Section 4(3), by directing the Secretary of State to make reasonable accommodations, and I'm reading from the bill now, to allow farm ownership by individuals with physical or

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mental impairment that substantially imparts major life functions. Now, I admit some might argue that anyone choosing to be in agriculture is showing some level of mental impairment just by that fact, however impairments and what reasonable accommodations are, are not defined within the bill. Not only does this expose the enforcement of LB1174 to litigation, it's possible even, and this is not an area I'm that familiar with, within the law, so I'm not...I think you would have to go somewhere else to ask the harder question, but I believe that there is a concept of improper delegation where the legislative body has to give some standard to the administrative body for it to take out its actions. In other words, it's not clear to me that the Secretary of State, with the bare language that's in LB1174, is given enough to know what was it that the Legislature intended when it said substantial impairment or reasonable restrictions. Again, that's not an area that I'm certainly that experienced in, but I think it does raise a question. As I explained, it appears that each of the plaintiffs in the Jones suit, and other Nebraskans like them, would find LB1174 equally restrictive, and candidly, in the cattle feeding area that I have a personal affinity for, even more restrictive and more disadvantageous than that of Initiative 300. I fear then that LB1174 would and could result in or at least not do anything to stop the decline in farm ownership that we've seen and the continued consolidation that occurred throughout the tenure of Initiative 300. Thank you again for allowing me to speak and I'd be happy to answer any questions that you might have. [LB1174]

SENATOR ERDMAN: Thank you, David. Any questions for Mr. Bracht? I don't see any. Thank you, sir. [LB1174]

DAVID BRACHT: Thank you. [LB1174]

SENATOR ERDMAN: Anyone else in a neutral position on LB1174? Before we close the hearing, we had a great deal of work done this interim on LR93 and LB516, and we were assisted by the Legislative Research Division of the Nebraska Legislature, the University of Nebraska-Lincoln, and also a great number of Nebraskans similar to yourself that attended our hearings and took part in our discussions, and so we appreciate your interest, and we have to thank Senator Friend and the Urban Affairs Committee for giving us the larger room today to facilitate this discussion. With that, Senator Dierks, you're recognized to close on LB1174. [LB1174]

SENATOR DIERKS: Thank you, Senator Erdman and committee, for your patience today. One thought that keeps prevailing with me is that I'm so happy that I majored in veterinary medicine, because most things are black and white there, and we saw an awful lot of attorneys arguing today over...it was an attorney's field day, really, wasn't it? One of the things I want to mention is that, that I want to just remind you that we live in the greatest and only democracy known to man that exists over 200 years. We'll be celebrating our 232nd birthday, July 4 this year. Other democracies have failed and they failed because of greed on the part of their leaders, greed for money, greed for power,

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greed for property. Our constitution in this country has allowed corporate America to make America great. I'm afraid, ladies and gentlemen, that corporate America today has brought America to its knees, and I want to just mention a few of the reasons I think that. The Packers and Stockyards Act was passed, I believe, in 1921. Is that right, Rick? '21. A couple years ago the Government Accounting Office did a report on the Packers and Stockyards Act, and they found there were over 1,400 requests for action for investigation into improprieties in the Packers and Stockyards Division. Those requests had been placed on a shelf in the back room, and to this day they have not been investigated. So several years ago, in the court of law in Alabama, there was a court case called Pickett v. IBP which became Pickett v. Tyson. A 12-member jury composed of women and men, some Caucasian, some black, came down with a unanimous decision on seven counts, I believe, that Pickett was guilty...or Pickett would win a lawsuit in the amount of \$1.2 billion. This was a class action lawsuit that would have gone to feeders across the nation, people who fed cattle that had been gypped by IBP/Tyson. After that decision, the judge said, oh, the jury didn't know what they were doing; I'm going to overturn the court case, and besides that, Pickett gets to pay all the costs. Last week, or maybe it was last month, the same thing happened in a court in South Dakota. A jury found that Tyson had been guilty of cheating farmer/feeders up there. And the judge threw it out. I'm trying to figure out where the protection is for our citizens, for the ranchers and farmers of our nation, when corporate America can win in these things, just like they won Initiative 300. I had the opportunity to visit with Mr. Tyson one time, and I reminded him that one of the most poverty-stricken counties in Nebraska was Loup County where Taylor is the county seat. The only thing they produce up there, ladies and gentlemen, are cattle. That's all they have. Do you know what their per capita income was that year? Under \$5,000 per capita. I asked him how he explained that. I said, you're the people that provides us with the income; why aren't these people doing better than that? Well, he said, it depends on the cycle. I said, look, I've been around for 70 years, and I've been through a lot of cycles, but I have never seen a cycle in 15 years on the downside, and that's exactly what we're in today. That was five years ago that I talked to him about that. A lot of people complain to me during the years that Initiative 300 wasn't working because they were building these corporate...or not corporate but confinement feeding floors in the state, both for swine and for livestock...or for cattle. But Initiative 300 wasn't designed to stop that. Initiative 300 was designed to keep corporate America out of the business. These were individuals that were building these things. So many people had a lot of bad feelings about Initiative 300, and really that wasn't part of Initiative 300's performance. I used to listen to a radio report every morning from Yankton, and the radio reporter would give this report about the slaughter of cattle that day. And she would say, this is an approximation, but she would say, 40,000 cattle slaughtered in Texas today, roughly 90 percent packer controlled; 35,000 cattle slaughtered in Kansas today, 95 percent packer controlled; 40,000 cattle slaughtered in Nebraska today, 30 percent packer controlled. Now, why did packers control 90 percent of the market in Texas and Kansas, but only 30 percent in Nebraska? I think it was because of Initiative 300. And if Initiative 300 had

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worked perfectly, there would only have been 0 percent in Nebraska. I still think that LB1174 is a viable piece of legislation and I'm very willing to work with those people who have some suggestions for us to make it viable enough to protect our consumers in Nebraska against corporate spread. Thank you very much. [LB1174]

SENATOR ERDMAN: Thank you, Senator Dierks. Any questions for Senator Dierks? Senator Wallman. [LB1174]

SENATOR WALLMAN: Thank you, Senator Erdman. Thank you, Cap. I agree. I think we have to tie that somehow to food safety. You know, you see about all this stuff coming in our country and not inspected, and that's done by these same institutions. So probably if we're going to change something it has to be food safety. [LB1174]

SENATOR DIERKS: I agree. [LB1174]

SENATOR ERDMAN: Thank you, Senator Wallman. Other questions? I don't see any. Again, we thank all of you for coming this afternoon to the hearing on LB1174. That will close the hearing on LB1174 and we will open the hearing on LB1113. Senator Dubas, you will have the Chair. [LB1174]

SENATOR DUBAS: We are going to proceed with the next bill, so if you're planning on staying for this hearing, we appreciate that. And if you're not, we would ask that you give us the opportunity to move forward with this and keep things as quiet as possible. Thank you, Senator Erdman. [LB1113]

SENATOR ERDMAN: Senator Dubas. My name is Philip Erdman and I represent the 47th Legislative District and either their patience has grown thin with us or their interest in my bill has not caused them to stick around. LB1113 proposes a creation of an appointed task force identified as the Family Farm Advisory Council to recommend programs, policies, services and strategies to support family farm operations. The work of the task force is intended to focus primarily on strategies to enhance income opportunities for family scale farming operations and to tailor lending, tax incentives, state procurement preferences, certification, rural development and other programs for the encouragement and support of preferred models of agricultural production. The council has administratively housed in the Department of Agriculture and authorized the department to facilitate the flow of information to assist the council in carrying out its task, including the services of a meeting facilitator and the solicitation of advice of experts. The council is directed to report its findings and recommendations to the Legislature on or before December 15, 2008. There's only one reason, in my opinion, to introduce this study or task force. It's if you need money. As you are well aware, we passed LB516 last year which authorizes a one-time transfer from the value added grant program of \$50,000 to help us facilitate the process of which we went and engaged Nebraskans in the discussion of the previous legislation which was Initiative

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300 or similar topics under LR93. As the committee is aware, we approximately spent around \$25,000 of the \$50,000 and I would say that, based on the research information that we have received and the information that that provides for us, I think it was money well spent. Having said that, we still have approximately \$25,000 left over. This bill is not designed to be a part or to be replacing any existing law. It's simply a recognition that as we ask the legislative research folks to compile what all other states are doing in these areas, as we've looked at some of the research that's been done in other states as far as the programs that they may want to put in place, as well as some of the legislation that's before the Legislature this year on beginning farmer programs and other ideas, it's probably worth our time to consider going the next step. We have gathered the information. We have compiled it. We have said, this is what other states are doing. The next logical step that I can see is to say, what should we do with that information? The authority that this bill would authorize is a task force of individuals, half appointed by the Governor, half appointed by the Ag Committee, that would represent a diverse interest in the agricultural community. We heard today about profitability. We heard today about the need for tax opportunities or investigations about rural development. All of those things would likely fall under the task of this task force. It does have an emergency clause and so in an effort to facilitate this, the folks would be appointed as soon as the bill would be passed within 30 days. They would have the remainder of this year, which would likely be close to eight to nine months, to be able to work on this project. The funding would also be available then to hire a facilitator, someone to help coordinate the information. The Department of Agriculture would have the administrative responsibility of oversight, which may be able to provide staff as well, but the intent is to take the information we have gathered and to take it to that next step. Regardless of what we do or what public policy we may have in place under LB1174, there's likely going to be needs, as Senator Dierks even mentioned in his closing, to pursue other ideas outside of that to help with some of the additional interests or ideas. One of the things that I'll offer to the committee that's not in the green copy of the bill is that we have spent a great deal of time as a Legislature and as a state since 1999 focusing on beginning farmers. Those that want to become directly engaged in production agriculture whether it's livestock or row crop or a combination of the two. One of the things that I had the opportunity to learn about in an Ag conference I attended in St. Louis in the middle of January, was legislation that is going through the Wisconsin Legislature, that actually broadens that focus a little bit. Doesn't necessarily divert from the attention of trying to encourage young people to get involved in agriculture but it does go to the issue of our Ag work force. Are there things that we should be considering? Are there policies or potentials or programs that we should be putting in place to encourage people, whether they're capable or able to come back into, engaged directly in production agriculture or not, but also the folks that may be able to serve them. Maybe there are those businesses that we continue to hear about and some of you are involved in, that are designed to capture that next step. To make sure that there are opportunities beyond the direct production but the marketing, the services that are also provided. And so, one of the ideas that I would offer to the committee at an

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appropriate time is the possibility of adding, in addition to the issues that they look at, on page 5, adding an item under rural development which may look at the ag work force necessary for our state. And I think it's critical that we do both, the beginning farmer side of things as well as the ag work force side of things, in addition to the other proposals or at least consider them and prepare the next Legislature for those opportunities to be able to continue to move this discussion forward about how we promote agriculture in the state of Nebraska. And I would try to answer questions, if I'm able. [LB1113]

SENATOR DUBAS: Thank you, Senator Erdman. Questions? Senator Wallman. [LB1113]

SENATOR WALLMAN: Senator Erdman, could that be hooked in with like Main Street, or something like that, for small town America? [LB1113]

SENATOR ERDMAN: I think there's a lot of coordination, Senator Wallman, between existing programs that different organizations are under that are possibly even funded by the state of Nebraska. I think we do ourselves a disservice by simply assuming that people who can't come back to farm don't want to come back at all. And so there's definitely some opportunities whether it's the Lied Main Street program or other entities that seek to promote rural communities and rural main streets or the viability of rural communities to be a part of any discussion that we would have going forward because obviously if those people are there, that's a work force, that's attractive to the employers there, that's a great sign of a return of our investment on those individuals. Education, that we've invested in them whether it's at the high school level or some post-secondary level but I think there's a great opportunity to capitalize on that. I don't get the sense at this point, that we're coordinating that and I think from the standpoint of what's in the best interest of the state generally ties to what's in the best interest of agriculture because it is our number one industry. And so I think there are some opportunities for those type of collaborative efforts to be undertaken. [LB1113]

SENATOR WALLMAN: Thank you. [LB1113]

SENATOR DUBAS: Other questions? Senator Dierks. [LB1113]

SENATOR DIERKS: Senator Erdman, do you recall a study that Senator Wehrbein authored, oh, seven or eight years ago? [LB1113]

SENATOR ERDMAN: I wasn't in the Legislature but I have discussed it with him and with you, I believe. [LB1113]

SENATOR DIERKS: You've seen that report? [LB1113]

SENATOR ERDMAN: I haven't, I don't recall it off the top of my head but I recall

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generally what it deals with. [LB1113]

SENATOR DIERKS: Okay. Well, I think that there was a final report drafted by economics department out at...ag econ department out at the university. And I just wondered if that might have some information available that would provide you some of the same information your wanting here. It had about the same size of a committee I remember and there were, as I recall, two members of the Legislature on that committee. There were people from the Panhandle, there were...I was on the committee along with Senator Wehrbein and we had pork producers, cattlemen, Farm Bureau, Farmers Union, wheat growers and we met, I think about...we met monthly for about six months. And then the report came out and we had, every time we met we had designated speakers come in and talk to us. We had economists from Purdue and from Texas A&M. We had actually Neal Harl came over from Ames, Iowa, to talk to us. But there's a bundle of information that came out of that hearing. I just wondered if there might some things there that you could read and see that might...do some of the things that you're asking for here. [LB1113]

SENATOR ERDMAN: I think it's appropriate. My thought isn't that this may be the ultimate solution but I think that over the course of time we've had different groups actually study what might be done but not actually go to the step of actually pursuing those actively and saying, this is what the results may be. Just as we did last session, or last interim, with the studies of other states done by the legislative research division, we have a lot of information about what could be done. I think where we're at now is practically how do we do it. I think Senator Karpisek has carried the mantel that one of his predecessors, Senator Coordsen, had previously carried and that's on the valuation of ag land for taxation purposes based on income approach or other means that may be more fairly treated for agriculture. I'm not saying that this would solve that. I'm saying that we take that information that the task force you were on, the research that we've done and put folks in a room and say, how do we get there. Not what could we do but actually how do we do it. And so I think any information that's out there and there's a lot of work done by the Center for Rural Affairs and other groups that have gone out and tried to figure out what programs we could put in place. I'm saying, we bring that to the table and put a concerted effort to actually try to get some of these things done instead of continually talking about them. In fact on my desk, I have the report that was distributed to the committee under LB516 from the Center for Rural Affairs that outlines probably 20 possibilities as far as programs that we could either enhance or encourage. Some of them have been introduced this session, some of them have not. And it's a matter of providing the best forum for us as those involved in agriculture to figure out how we get where we need to go to make the industry viable and profitable. [LB1113]

SENATOR DIERKS: See, I'm not even sure, I don't recall that there were any suggestions for legislation of that study we did. There probably were but I was gone for a while so I just don't know if that happened or not but it would be interesting to find that

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out. [LB1113]

SENATOR ERDMAN: Yeah, I agree. [LB1113]

SENATOR DIERKS: Thank you. [LB1113]

SENATOR ERDMAN: You bet. [LB1113]

SENATOR DUBAS: Other questions? Thank you. [LB1113]

SENATOR ERDMAN: Thank you. [LB1113]

SENATOR DUBAS: Can I see the hand of how many, hands of how many are planning on testifying in support? Four. How many in opposition? Neutral? Okay. Have our first proponent, please. [LB1113]

JAY REMPE: (Exhibit 27) Senator Dubas, members of the committee, my name is Jay Rempe, J-a-y R-e-m-p-e. I'm state director of governmental relations for Nebraska Farm Bureau here today on behalf of Nebraska Farm Bureau. Mr. Spilker was going to get back up here again so the letter I'm passing out is Mr. Spilker's comments on this. He had to get back to Beatrice for a parent-teachers conference and I said, well, these issues are important, that's more important I think so. I'm also appearing here this afternoon on behalf of the Nebraska Pork Producers because they had to leave as well and the Nebraska Bankers Association so I'm wearing three hats here. And I'll keep my comments really brief. We're very supportive of this task force idea and we're very supportive of the way Senator Erdman framed it in terms of trying to take these ideas and maybe move to that next step. Because I think that's a very important step. We, ourselves, and I think it kind of gets to some of the questions you were asking earlier, Senator Dubas, what are the alternatives, what are some things. Farm Bureau, we've been very active this session in trying to work on changes to the Beginning Farmer Act. We've been working on changes to the Rural Development Act to try to enhance its availability for farmers and ranchers. Also the Microenterprise Act. So those are some things that we're trying to do this session but I know...and we also have been working with NCTA on their 100 cow program. So there's a lot of things that are out there, and I think there's more out there that we don't realize yet and we need to think outside that box and I think this kind of a group would help us to do that, help us try to figure how we can build on these efforts, and we are very supportive of that. So with those comments, I would sure be happy to answer any questions you might have. [LB1113]

SENATOR DUBAS: Questions for Mr. Rempe? Seeing none, thank you, Jay. [LB1113]

DAVID JARECKE: Hello, Senators. Thank you. Again, David Jarecke, J-a-r-e-c-k-e, testifying in favor of LB1113 on behalf of the Nebraska Cooperative Council. As

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evidenced by the previous testimony concerning LB1174, the Nebraska Cooperative Council believes there are solutions that could involve cooperatives as economic opportunity for the agricultural sector and highly support Senator Erdman's bill, LB1113, and again hope to bring other value added opportunities to agriculture through the cooperative organizations. Happy to take any questions. [LB1113]

SENATOR DUBAS: Thank you, Mr. Jarecke. Questions? Seeing none, thank you. [LB1113]

DAVID JARECKE: Thank you. [LB1113]

SCOTT MERRITT: Good afternoon, my name is Scott Merritt, M-e-r-r-i-t-t. I serve as executive director of Nebraska Corn Growers Association. We'd like to extend our support for LB1113. We had some discussion on it outside of a few mechanical more questions, the committee thought it falls well within our scope. We do appreciate the broad sort of range reaching out to different organizations, different species, different production crops and also agribusiness so we would thank the committee if they would advance this bill. If there's any questions? [LB1113]

SENATOR DUBAS: Thank you, Mr. Merritt. Questions? Seeing none, thank you. [LB1113]

TODD SCHROEDER: I'm Todd Schroeder, T-o-d-d S-c-h-r-o-e-d-e-r, and I'm here on behalf of the Nebraska Cattlemen and I'm a cattle producer from Wisner, Nebraska. We also just wanted to show our support for LB1113. After all the testimony that we witnessed earlier today, we think this bill goes a direction to help us find a creative and inspiring answer to some of the problems that we think we face here in Nebraska. Also am pleased to hear Senator Erdman's proposal to add work force development. That is a major issue in ag production here in Nebraska at this time so we in Nebraska Cattlemen would like to support LB1113. Thank you. [LB1113]

SENATOR DUBAS: Questions for Mr. Schroeder? Seeing none, thank you. Others in support of LB1113? Opposition? Neutral? Senator Erdman. [LB1113]

SENATOR ERDMAN: Senator Dubas, I wasn't sure if anyone was going to testify on my bill today but I appreciate those that did and I will tell you that this bill was introduced...Rick and I sat down one day and were visiting about maybe some ideas that we should have to kind of continue on what our work had done last session, our last interim. I have no idea where some of the groups would fit into the proposal here but I'm grateful to hear that they're interested in continuing the discussion. We look forward to any feedback from the committee. You know, I continually look at the opportunities in agricultural and I think there are opportunities, and I think there are bright ones. I think the future of the state depends on that being true. And I think to the extent that we can

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provide vehicles and mechanisms to accomplish better policies and procedures as well as engaging Nebraskans in what those are, I think the better the success we have as a state and as an industry in being successful. [LB1113]

SENATOR DUBAS: Thank you. Questions? Seeing none, that closes the hearing for LB1113. Thank you all for your attendance. [LB1113]

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Disposition of Bills:

LB1113 - Held in committee.

LB1174 - Advanced to General File.

\_\_\_\_\_  
Chairperson

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Committee Clerk