

## The Meat and Poultry Promotion Coalition urges you to vote **YES** on the **Lincoln Substitute**

A plaintiff bringing suit under the Packers and Stockyards Act and or the Agricultural Fair Practices Act must show that a defendant's alleged violations of these Acts adversely affects competition or are likely to adversely affect competition. Senator Harkin has filed an amendment that would eliminate this standard and turn years of legal precedent on its head, immediately impacting the economic health of the U.S. livestock and meat industries. Moreover, the Harkin amendment will drive further concentration in the industry, pushing packers to more fully integrate with a select group of producers. Given these serious concerns, Senator Lincoln has filed a substitute to the Harkin amendment that would require the Secretary of Agriculture, in consultation with the Attorney General, to thoroughly study how removal of the no competitive injury standard will affect the meat, livestock, and poultry industry. Here is why the Lincoln substitute is necessary:

- If the competitive injury standard is stricken, there is no other standard in place to determine whether or not a producer, packer, swine contractor or live poultry dealer is in violation of the law. Removal of this requirement will expose the entire meat, poultry, and livestock industry to a flood of litigation, and will subject livestock and poultry producers, packers, swine contractors, cattle feeders, and live poultry dealers to liability under the Packers and Stockyards Act for a simple breach of contract or for justifiably terminating a contract where the other contracting party has failed to perform as promised.
- Striking this requirement will pit neighbor against neighbor in rural communities that are defined by the close, community bond. It would allow one producer to challenge in court the marketing arrangement of another producer simply because he believes it is "unfair" that his neighbor was able to obtain a better price for a higher quality product.
- This provision would apply only to meat and poultry litigation, thus carving out agriculture from all other sectors of the economy.
- Courts have ruled that competitive injury must be proven to rule that a producer or processor is in violation of the Packers and Stockyards Act. According to the 10<sup>th</sup> Circuit Court, "eliminating the competitive impact requirement would ignore the long time antitrust policies which formed the backbone of PSA's creation." (Been v. O.K. Industries, 2007 WL 2181511 (10<sup>th</sup> Cir. (Okla.)).

Freedom of contracting is critical to the livestock and poultry industry. The unintended consequences of removing the competitive injury standard threaten the economic health of producers and packers, and will also have negative economic implications on U.S. consumers. For these reasons, we recommend that this issue be carefully and closely examined before steps are taken to drastically change the laws governing the meat, poultry, and livestock industries. We urge you to vote **YES** to the **Lincoln substitute** to the Harkin no competitive injury amendment.

### *The Meat & Poultry Promotion Coalition includes:*

National Cattlemen's Beef Association • National Chicken Council • National Pork Producers Council • National Turkey Federation • American Foods Group • American Meat Institute • Cargill • Christensen Farms • Hatfield Quality Meats • Hormel Foods • National Beef • National Meat Association • Seaboard Corporation • Smithfield Foods • Swift & Co • Tyson Foods, Inc. • U.S. Premium Beef