

**Louis M. Mayberg, President and Treasurer**

President of:  
ProFund Advisors, LLC  
7501 Wisconsin Avenue, Suite 1000  
Bethesda, MD 20814-6527  
lmayberg@profunds.com

**Erwin Chemerinsky, Member**

Lawyer, Professor:  
University of California, Irvine  
401 East Peltason Drive, Room 1095  
Irvine, CA 92697-8000  
[echemerinsky@law.uci.edu](mailto:echemerinsky@law.uci.edu)

**Al Dvoskin, Member**

President & CEO:  
A.J. Dvoskin & Assoc. Inc  
9302 Lee Highway, Suite 300  
Fairfax, VA 22031-1214  
albdw@dvoskin.com

**Glenn Greenwald, Member**

Columnist, Salon.com  
c/o Salon.com  
1130 Connecticut Avenue NW, Suite 520  
Washington, DC 20036  
GGreenwald@salon.com

**Craig Kaplan, Member**

Counsel:  
Rabinowitz, Boudin, Standard Krinsky & Lieberman  
111 Broadway 11th Floor  
New York, NY 10006-1901  
ckaplan@rbskl.com

**John Luongo, Member**

Lightspeed Venture Partners  
2200 Sand Hill Road  
Menlo Park, CA 94025  
jluongo@Lightspeedvp.com

ELECTRONICALLY AND BY POST

December 10, 2010

Dear CREW Board of Directors:

The undersigned community, consumer, and farmer advocacy organizations have for decades urged the federal government to take action to enforce existing anti-trust and producer protection laws to address anti-competitive and unfair practices in the U.S. livestock and poultry sectors. Therefore, it was with great concern that we learned of CREW's November 15th letter to USDA criticizing the Grain Inspection, Packers and Stockyards Agency (GIPSA) for taking action to address anti-competitive behavior in the livestock and poultry sectors, and alleging conflicts of interest for the Agency's Administrator.

Many of the statements made by CREW in its letter to USDA's General Counsel are misleading or demonstrably false and we urge an immediate retraction. Moreover, many of CREW's allegations and even language are disturbingly similar to charges leveled by the meatpacker, hog processor and poultry industry. Whenever a regulated industry cries foul about the federal government's efforts to regulate their errant behavior, it should be common practice to closely scrutinize the motives of the groups that bring charges of conflict of interest as well as the merits of their arguments and tactics. When CREW adopts the language, rhetoric and tactics of a special interest group in the guise of

objective and non-partisan disclosure it belittles the efforts of all good-government groups.

As an organization focused on government ethics and the role of money and power in politics, CREW should be skeptical of the anti-regulation spins of corporate lobby shops. But in this case, it appears that CREW lifted its conflict-of-interest allegations against GIPSA Administrator Butler directly from industry talking points, without checking the facts. This diminishes the credibility of CREW and muddies the public discourse on the role of special interests during rulemaking.

Since the timing of CREW's allegations against Mr. Butler appear to have coincided with the departure of your Executive Director, we assume that the action was due, in part, to a vacuum in leadership within the organization. Given CREW's good reputation, we believe that it would be in your organization's best interest to fully inform the public about the real facts of the issue and to set the record straight.

To understand why CREW's action on this matter is such a serious misstep, we'd like to provide some background on the problems and abuses associated with livestock and poultry companies in their dealing with farmers.

GIPSA has long been criticized by producer and consumer groups across the country for its lack of enforcement of the Packers & Stockyards Act of 1921, which lays out broad prohibitions against unfair and deceptive trade practices, and undue and unreasonable preferences or advantages by packers and live poultry dealers in their dealings with farmers. Yet despite the strong provisions of the statute, the livestock and poultry sector have become more concentrated, facilitating the use by these firms of business practices that are widely viewed as abusive and/or anti-competitive. Both the Government Accountability Office (GAO) and USDA's own Office of Inspector General have also joined in criticizing the agency's longstanding inaction in enforcing the statute.

Over the past few decades, the oversight of the livestock industry was crippled by the undue influence of meatpacker, hog processor and poultry company special interests. Former lobbyists and meat processing industry representatives worked inside GIPSA and the powerful meat lobby pressed Congress and the executive branch to approach the industry with light and timid oversight. There has been no political will in past Administrations to issue the regulations necessary to adequately define and enforce the law. CREW has been silent on the regulatory capture of USDA by meatpacker and processor interests.

During the 2008 Presidential campaign, Barack Obama made enforcement of the Packers & Stockyards Act a key plank in his platform on agriculture policy. In keeping with that promise, many of our organizations urged the Administration to appoint a GIPSA Administrator who was knowledgeable about the Packers & Stockyard Act, not closely allied with the companies regulated by the Act, and who had a full understanding of the negative effects of anti-competitive practices in the livestock and poultry sectors. J.

Dudley Butler, a farmer and lawyer, had represented farmers that were harmed by unfair practices of meatpackers and poultry processors.

In the year preceding Mr. Butler's appointment, Congress passed the 2008 Farm Bill, which included provisions requiring GIPSA to issue regulations to define the criteria it will use in enforcing key aspects of the Packers & Stockyard Act, and defining some of the broad terms of that statute, such as "undue or unreasonable preference or advantage." One of Mr. Butler's key roles since he took office has been to help draft the regulations to implement the Congressional directives in this regard, but also to move forward on other key regulations backlogged within the agency.

When GIPSA issued its proposed rule to implement Sections 11005 and 11006 of the 2008 Farm Bill, they were widely praised by independent producer, consumer, and antitrust organizations as a long-overdue effort to rein in some of the abusive and anticompetitive practices that have become common in the highly concentrated livestock and poultry processing sectors. Not surprisingly, the livestock and poultry companies employing the unfair and often abusive practices the regulation proposed to restrict were critical of the regulation, often relying on personal attacks on Administrator Butler as an attempt to divert the focus away from their unfair dealings and practices with livestock and poultry producers.

Unfortunately, CREW chose to wade into the middle of this highly polarized debate with a letter and press release criticizing the Administrator's motives and alleging a conflict of interest on his part for issuing the regulations to begin to define and enforce the Packers and Stockyards Act. While CREW attorneys and senior leadership have contended that they were merely noting Administrator Butler's apparent conflict of interest for his former representation of farmers, the CREW press release makes more alarming and prejudicial allegations. The release alleges that the proposed rules "will serve his future personal financial interests;" that CREW is asking for an investigation "after learning that J. Dudley Butler [...] has boasted about putting in place regulations that make it easier to sue meat and poultry companies;" and that "Mr. Butler stands to benefit financially once he leaves the government by exploiting a loophole he helped create."

We believe that CREW has been irresponsible in parroting the myths promoted by meatpacking and poultry industry lobbying organizations. Mr. Butler did not boast that he would facilitate lawsuits against meat and poultry companies. During the speech in question, Mr. Butler lamented that the current broad language of the existing statute was "a plaintiff lawyer's dream come true," and that the new regulation provided needed clarification that would reduce, not increase, the threat of litigation. The proposed rules do not create a loophole, but implement necessary regulations to a century-old law as directed by Congress.

Since these arguments do not fit the rhetoric and talking points of regulated meatpacking and poultry processing companies, they have contorted Administrator Butler's quotes out of all context to make allegations against Mr. Butler that are entirely false. We understand their self-interested motive in weaving that tale. CREW's failure to examine

this motivation and blind acceptance of spin as fact calls into question the quality of CREW's work and the potential institutional conflicts of interest that would allow CREW to embrace and perpetuate special interest propaganda.

Therefore, we strongly urge CREW to retract its letter to USDA and the related press release, and to issue a correction to set the record straight.

Sincerely,

Alabama Contract Poultry Growers Association  
Campaign for Contract Agriculture Reform  
Cattle Producers of Louisiana  
Colorado Independent Cattle Growers Association  
Contract Poultry Growers Association of the Virginias  
Dakota Resource Council  
Farm and Ranch Freedom Alliance  
Food & Water Watch  
Independent Beef Association of North Dakota (I-BAND)  
Independent Cattlemen of Nebraska  
Missouri Farmers Union  
Missouri Rural Crisis Center  
National Family Farm Coalition  
National Farmers Organization  
North Carolina Contract Poultry Growers Association  
Oregon Rural Action  
Organization for Competitive Markets  
Pennsylvania Farmers Union  
R-CALF United Stockgrowers of America  
Rural Advancement Foundation International-USA  
South Dakota Stockgrowers Association  
United Poultry Growers Association  
Virginia Association for Biological Farming  
Western Organization of Resource Councils (WORC)